

So You *Think* You Know All of the Rules!

(Amendments to Rules of Judicial Administration)

Presented for
Real Property, Probate and Trust Law Section
of the
The Florida Bar

March 17 and 18, 2011

Laird A. Lile
Laird A. Lile, P.A.
Naples, Florida
LLile@LairdALile.com

**So You *Think* You
Know All of the Rules!**
(Amendments to Rules of Judicial Administration)

Table of Contents

| | |
|---|-----------|
| PROLOGUE | 1 |
| RULES | 1 |
| COURT RULES | 1 |
| FLORIDA RULES OF JUDICIAL ADMINISTRATION | 2 |
| RULE 2.540: REQUESTS FOR ACCOMMODATIONS BY PERSONS WITH DISABILITIES | 2 |
| RULE 2.420: PUBLIC ACCESS TO JUDICIAL BRANCH RECORDS | 3 |
| RULE 2.236: FLORIDA COURTS TECHNOLOGY COMMISSION | 8 |
| PROPOSED RULE 2.516: SERVICE OF PLEADINGS AND DOCUMENTS | 11 |
| EPILOGUE | 12 |
| APPENDIX | 13 |

So You *Think* You Know All of the Rules!

(Amendments to Rules of Judicial Administration)

PROLOGUE

RULES. We live by rules. Or at least try to. Professionally, we first met rules in law school. Since then, it's been a love/hate relationship. We love them when they help our client and hate them when used against us. We may try to ignore them. But they are still there.

Rules come in different forms. Some think of the Florida Probate Code and the Internal Revenue Code as sets of rules. And right they are. Those legislatively enacted rules create substantive law. The Florida Administrative Code and the Treasury Regulations also set forth rules that we need to know (or at least know of). Judicial decisions also create sets of rules that apply to the parties in that proceeding and may also have some precedential value. But none of those rules are the rules to which I am referring.

COURT RULES. Florida's Supreme Court adopts procedures in the form of court rules. Those rules are categorized based upon function.

Rules beginning with a '1' are known as the Florida Rules of Civil Procedure.

RULE 1.010. SCOPE AND TITLE OF RULES

These rules apply to all actions of a civil nature and all special statutory proceedings in the circuit courts and county courts except those to which the Florida Probate Rules, the Florida Family Law Rules of Procedure, or the Small Claims Rules apply. The form, content, procedure, and time for pleading in all special statutory proceedings shall be as prescribed by the statutes governing the proceeding unless these rules specifically provide to the contrary. These rules shall be construed to secure the just, speedy, and inexpensive determination of every action. These rules shall be known as the Florida Rules of Civil Procedure and abbreviated as Fla.R.Civ.P.

Rules beginning with a '3' govern procedure in criminal proceedings. Fla. R. Crim. P. 3.010 (The rules beginning with '4' applied to Workers' Compensation proceedings until repealed in 2004.)

The rules which we know best begin with '5'. We call them Probate Rules, yet we know those apply also to guardianship matters. Fla. Prob. R. 5.010

Traffic proceedings, including those classified as criminal traffic offenses, are governed by the rules which begin with a '6.' Fla. R. Traf. Ct. 6.010

Proceedings that involve civil actions in county courts with a value of \$5,000 or less at controversy are governed by the Small Claims Rules, which begin with '7'. Fla. Sm. Cl. R. 7.010

Delinquency and dependency matters, and proceedings with families and children in need, are governed by rules beginning with an '8'. Fla. R. Juv. P. 8.000

Appellate Rules are found in the court rules beginning with a '9'. Fla. R. App. P. 9.010

Mediation procedure is set forth in rules beginning with '10' and Arbitration procedure is described in rules beginning with '11'.

Rules beginning with a '12' apply to actions concerning family matters, including dissolution of marriages, child support, paternity, adoption and the like. Fla. Fam. L. R. P. 12.010(a)

FLORIDA RULES OF JUDICIAL ADMINISTRATION. The observant realize the group of rules starting with a '2' was skipped in the above section. Those rules, known as the Florida Rules of Judicial Administration, are the subject of these materials. Unlike most of the other series of rules, the Rules of Judicial Administration do not deal with a particular subject area of court proceedings. Rather, these Rules "apply to administrative matters in all courts to which the rules are applicable by their terms." Fla R. Jud. Admin 2.110 These Rules are divided into five parts:

- PART I. GENERAL PROVISIONS
- PART II. STATE COURT ADMINISTRATION
- PART III. JUDICIAL OFFICERS
- PART IV. JUDICIAL PROCEEDINGS AND RECORDS
- PART V. PRACTICE OF LAW

Many of these Rules, such as Rule 2.220 titled "Conference of County Court Judges," have little application to how we practice law. In fact, most will not be of much interest to probate practitioners. Let's turn to those few that should be of interest you.

RULE 2.540: REQUESTS FOR ACCOMMODATIONS BY PERSONS WITH DISABILITIES. Notices of court proceedings are required to include certain information regarding accommodations for individuals with a disability. Fla. R. Jud. Admin. 2.540(c) The content of that information was

changed by a modification to this Rule by Order of the Florida Supreme Court dated May 20, 2010 (SC09-1487), which states:

(1) All notices of court proceedings to be held in a public facility, and all process compelling appearance at such proceedings, shall include the following statement in bold face, 14-point Times New Roman or Courier font:

“If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact [identify applicable court personnel by name, address, and telephone number] ~~within 2 days of your receipt of this [describe notice]~~ at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.”

RULE 2.420: PUBLIC ACCESS TO JUDICIAL BRANCH RECORDS. Just one year ago, the Supreme Court issued its Order setting forth changes to Rule 2.420. In that Order, the court weighted the competing interests of the public’s “right to know” (that is, access to court records) and privacy rights. (SC07-2050) As a result of that balancing, the confidentiality procedure now exists.

1. Compliance with the confidentiality requirements is placed on all practitioners. Failure to do so may result in sanctions. The sanctions may be for:
 - a. attempting to treat information as confidential which are not made in good faith and not supported by sound legal or factual basis. Fla. R. Jud. Admin. 2.420(e)(6)(A)
 - b. failing to protect confidential information. Fla. R. Jud. Admin. 2.420(e)(6)(B)
2. The default, or general, rule is that the public has access to all records of the judicial branch. In order for court records to be withheld from the public, a specific exception must be identified.
 - a. General rule: public has access to public records. Fla. R. Jud. Admin. 2.420(a)
 - b. Exception: confidential information. Fla. R. Jud. Admin. 2.420(c)

3. The filer, which includes us as attorneys, has the responsibility to either file a Notice or a Motion, neither of which are confidential.
 - a. For the 19 items listed in Rule 2.420(d)(1)(B), treatment as confidential is automatic. The filer must file a Notice of Confidential Information within Court Filing, which must:
 - i. Indicate that confidential information from the list of 19 is included in a document being filed and identify which of the 19 applies; and
 - ii. Identify the precise location of the confidential information within that document. Fla. R. Jud. Admin. 2.420(d)(2)
 - iii. Form of Notice of Confidential Information within Court Filing is included in the Rule. Many local clerks also have a version of the Form available on the clerk's website.
 - b. A filer who believes, in good faith, that a filing contains confidential information other than of the type in the 19 items, the filer must file a Motion to Determine Confidentiality of Court Records. The Motion must:
 - i. Identify material alleged to be confidential, with specificity, but without disclosing the information;
 - ii. Specify the bases for determining the information is confidential; and
 - iii. Set forth specific legal authority and applicable legal standard. Fla. R. Jud. Admin. 2.420(e)(1)
 - iv. The Motion must include a signed certification by the party or the attorney for the party making the request that the motion is made in good faith and is supported by a sound factual and legal basis. Fla. R. Jud. Admin. 2.420(e)(1)
 - c. The Notice or Motion must be served on the parties and on any affected non-party.
 - i. The affected non-party must also receive notice, a copy of which must be filed with the court, identifying the case by docket number and describing the confidential information with specificity but

without disclosing the confidential information.¹ In addition, the notice to the affected non-party must:

- (a) in the case of a request to deem materials confidential, a statement that if the motion is denied then the subject material will not be treated as confidential by the clerk; and
- (b) in the case of a motion to unseal confidential records or a motion to vacate an order deeming records confidential, a statement that if the motion is granted, the subject material will no longer be treated as confidential by the clerk. Fla. R. Jud. Admin. 2.420(d)(4)(D)

ii. An “affected non-party” is defined to mean any non-party identified by name in a court record that contains confidential information pertaining to that non-party. Fla. R. Jud. Admin. 2.420(b)(5)

4. The clerk also has responsibilities regarding confidential information and the public’s access to judicial records.

- a. When a Notice of Confidential Information within Court Filing is received, the clerk must make an initial determination of confidentiality. Fla. R. Jud. Admin. 2.420(d)(2)
- b. If the clerk agrees with the assertions in the Notice, the clerk must thereafter prohibit the public from accessing that confidential information. Fla. R. Jud. Admin. 2.420(d)(1), (e)(1) To the extent reasonably practicable, the clerk must restrict access to confidential information in a manner that does not restrict access to any portion of the record that is not confidential. Fla. R. Jud. Admin. 2.420(b)(4)
- c. If an Order grants in whole or in part a Motion to Determine Confidentiality of Court Records, the must publish that Order. Fla. R. Jud. Admin. 2.420(e)(3)(H)

¹ These requirements are also requirements for the Notice or Motion and therefore the information should not need to be duplicated in this additional notice to an affected non-party.

- d. Within 10 days after entry of the Order, the clerk must post a copy on the clerk's website and in a prominent public location in the court house for at least 30 days. Fla. R. Jud. Admin. 2.420(e)(4)
5. The court also has important responsibilities in determining the confidentiality of court records.
- a. A determination must occur as soon as practicable, but in all events no later than 30 days after filing the motion.
 - b. A hearing, if held, must be open to the public.
 - c. During the hearing, any person may request all or any part of the review to occur *in camera* if necessary to protect information that may be confidential.
 - d. The court must issue its ruling within 30 days of the hearing.
 - e. Any order granting in whole or in part the motion must state, with as much specificity as possible without disclosing the confidential information, the following:
 - i. The type of case in which the order is being entered.
 - ii. The particular grounds for determining information to be confidential.
 - iii. Whether any party's name is determined to be confidential and if so the pseudonym or other term to be substituted for the party's name.
 - iv. Whether the progress docket or other records to indicate activity in the proceeding are determined to be confidential.
 - v. The particular information determined to be confidential.
 - vi. Identification of persons who are permitted to view the confidential information.
 - vii. That the court finds that (i) the degree, duration and manner of confidentiality set forth in the order are no broader than necessary to protect the interests described in the Rule and that (ii) no less restrictive measures are available to protect those interests. Fla. R. Jud. Admin. 2.420(e)(3)

6. Special rules apply in criminal proceedings and in appellate proceedings. Fla. R. Jud. Admin. 2.420(f) and (g)
7. Now that the overall structure and requirements of this Rule have been reviewed, we will consider application in probate proceedings.
 - a. A Notice of Confidential Information within Court Filing will be required whenever filing documents that have any of the following items:
 - i. Social security numbers, bank account numbers, credit (or charge or debit) card numbers, generally only as of January 1, 2011. Fla. R. Jud. Admin. 2.420(d)(1)(B)(iii). But see, Fla. Stat. §119.0714(2).
 - ii. Birth and death certificates. Fla. R. Jud. Admin. 2.420(d)(1)(B)(vi)
 - iii. Probate inventory (regular, amended, supplemental, elective share). Fla. R. Jud. Admin. 2.420(d)(1)(B)(xi)
 - iv. Estate accountings. Fla. R. Jud. Admin. 2.420(d)(1)(B)(xi)
 - v. Guardianship reports and orders appointing court monitors. Fla. R. Jud. Admin. 2.420(d)(1)(B)(xv)
 - b. A Motion to Determine Confidentiality of Court Records will be required for anything else that may be confidential.
 - i. Confidential information includes information that is confidential under this rule or under a court order entered pursuant to this rule.
 - ii. Confidential information is information that is exempt from the public right of access under article I, section 24(a) of the Florida Constitution.
 - iii. Confidential information may only be released to the persons or organizations designated by law, statute or court order. Fla. R. Jud. Admin. 2.420(b)(4)
8. A perhaps unintended consequence of the Rule is to prohibit the filer of a motion from receiving un-redacted copies of the file stamped motion and of an order entered on that motion.
 - a. For example, a Petition for Summary Administration will nearly always include confidential information.

- b. The confidential information must be identified, by the filer, with a Notice of Confidential Information within Court Filing.
- c. The petition will thereafter be made available to the public in a redacted form, with the confidential information inaccessible. The filer will not be entitled to receive an un-redacted copy of the petition.
- d. If, however, the petition requests that the court order the clerk to make an un-redacted copy available to the filer, then the clerk will do so.
- e. Similarly, for the order itself.
- f. Therefore, a Petition for Summary Administration should include an additional allegation that the filer is entitled to an un-redacted copy of the Petition, as filed, and the Order on the Petition. Then, based upon the court order, the filer will have access to un-redacted copies of those items.

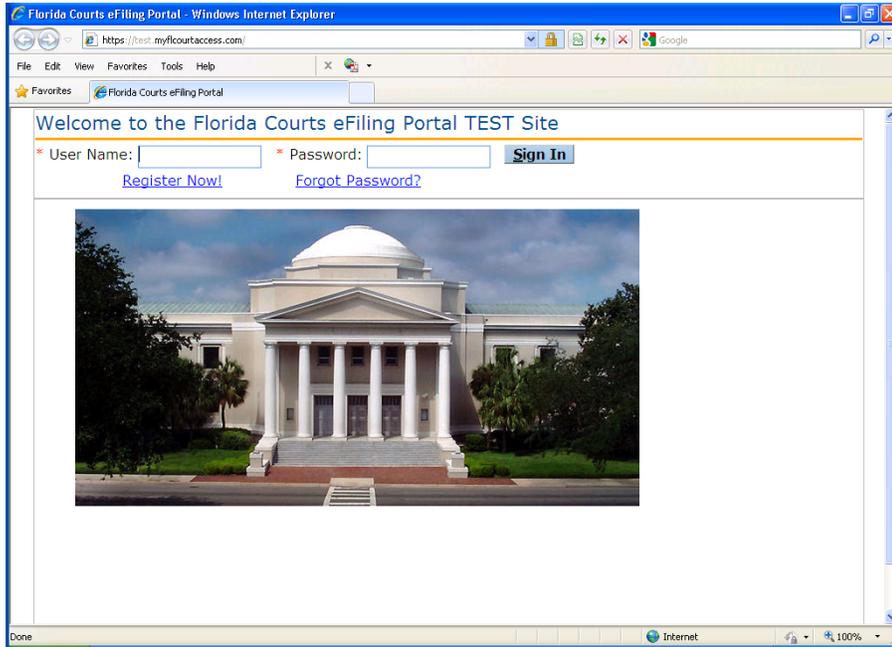
RULE 2.236: FLORIDA COURTS TECHNOLOGY COMMISSION. Less than one year ago, the Supreme Court issued its Order creating the Florida Courts Technology Commission as a standing Supreme Court commission. (SC10-241) In promulgating this Rule, the Court recognizes that it is moving from a system that depends on paper records to a system that uses digital information and technology. The Commission is to provide consistent oversight and direction on these important technology issues.²

The Commission has broad responsibility for overseeing, managing, and directing the development and use of technology within the judicial branch. These responsibilities include all electronic filing (“e-filing”) considerations. The Rule provides that the Commission shall consist of 25 members. The members are two district court judges, five circuit court judges, two county court judges, three court administrators, three technology officers, four clerks of court, four members of The Florida Bar and two members of the public at large.

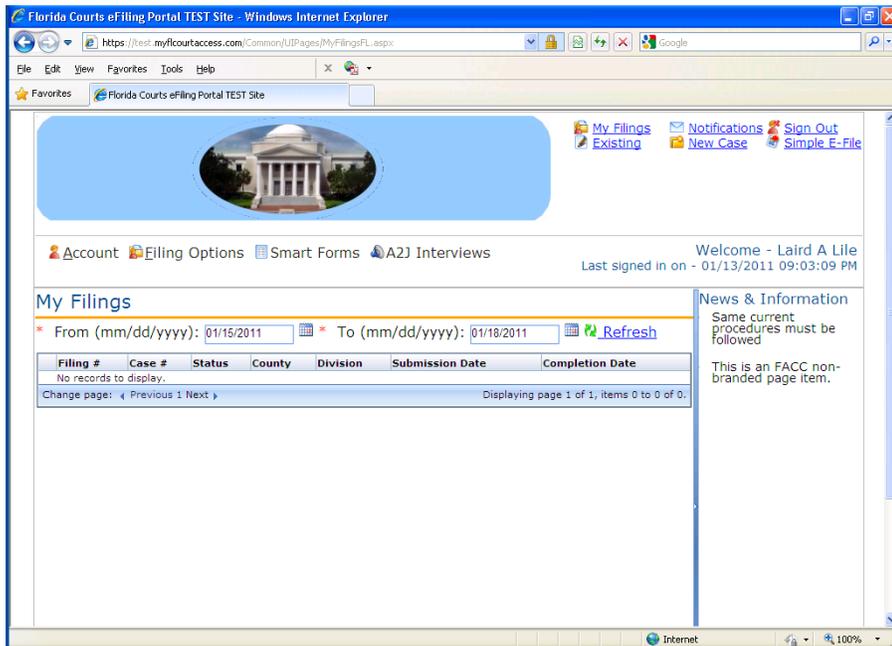
This Commission is working closely with the Florida eFiling Authority. The Authority was created as an inter-governmental entity and it operates the ePortal (also referred to simply as a portal on occasion). The ePortal is established as a centralized e-filing system for filing court documents.

² Full disclosure: The author was appointed by the Court to serve on this Commission.

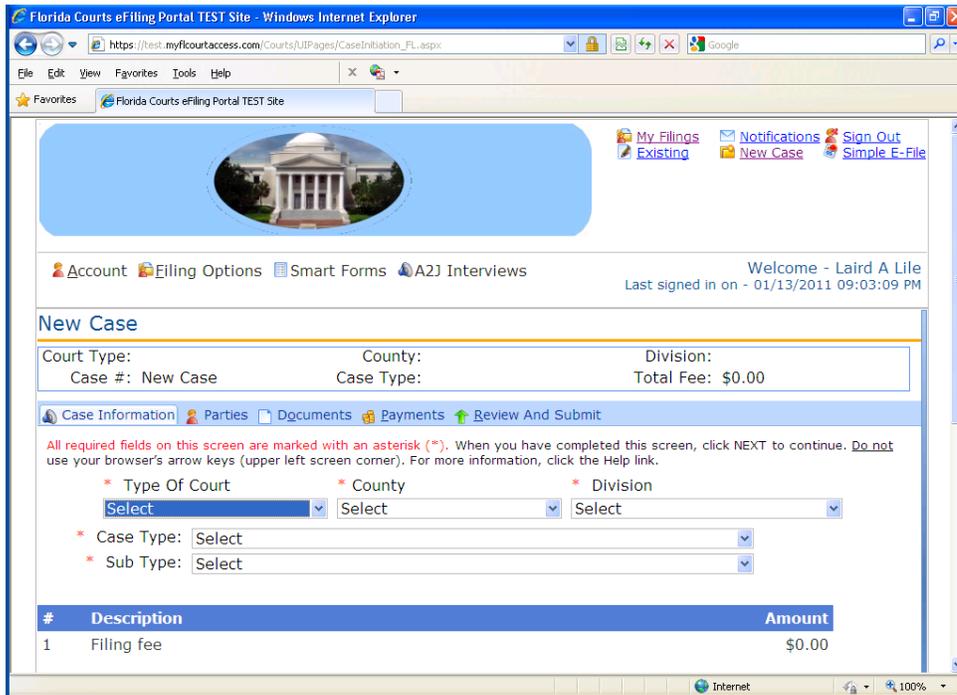
E-filing is already underway in the Florida courts. E-filing includes some aspects that are centralized and others that are decentralized. The centralized aspects include access of one portal through a single website. As of the submission of these materials, access to e-filing begins by accessing a Welcome, or log-in, webpage that displays as set forth below.



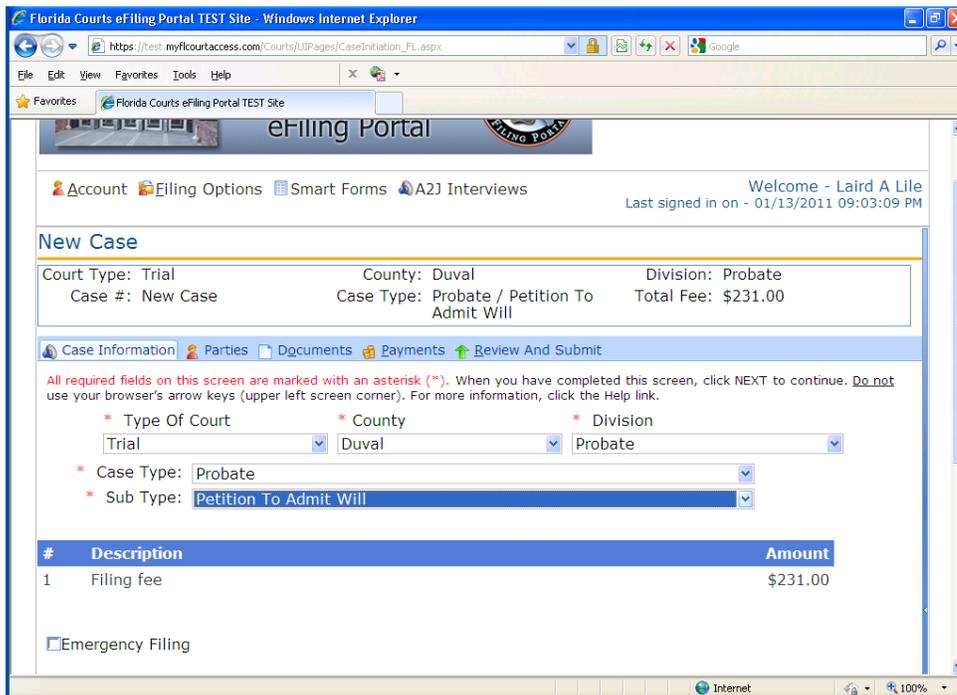
Once the filer has signed in to the ePortal, the webpage below is displayed. A new case can be commenced by selecting the Filing Options and then New Case.



At that time, the webpage below is displayed.



At this point, the decentralized aspects become apparent. The available divisions are dependent upon which county is selected. Each of the 67 clerks has local control over which types of matters may be submitted through the ePortal at this time. Duval County includes Probate as a division that accepts e-filing as indicated in the webpage displayed below.



Payment of filing fees through the ePortal may be made by most types of credit cards (other than VISA) or by an ACH withdrawal from a bank account. The webpage displayed below is the interface for processing payment.

The screenshot shows the Duval County Clerk of Courts eFiling Portal. The header includes the portal name and a Florida eFiling Portal logo. Navigation links for 'My Filings Existing', 'Notifications New Case', and 'Sign Out Simple E-File' are visible. A user is logged in as 'Laird A Life' with a last sign-in time of 01/13/2011 09:03:09 PM. The main section is titled 'New Case' and displays case details: Court Type: Trial, County: Duval, Division: Probate, Case #: New Case, Case Type: Probate / Petition To Admit Will, and Total Fee: \$231.00. Below this is a 'Payments' tab with a 'Next' button and a note: 'Select ONE payment option, then click NEXT to continue'. A red note states: 'Fields marked with an asterisk (*) are required.' The payment form includes fields for Credit Card Type, Credit Card Number, CVV, Expiration Date Month, Year, Check Routing Number, Checking Account Number, Name on Account, and Account Type (Checking or Savings). A red note at the bottom of the form states: 'There is a 3% statutory convenience fee for payments made via credit card. The statutory convenience fee for payments made via electronic check (direct debit from a bank account) is \$3.00.'

E-filings may also occur in existing cases. Registration as a user of the ePortal is straightforward and can be initiated on the first webpage displayed above.

As electronic filing of court records becomes available in all counties and in all divisions, the Authority and the Commission will continue to work together toward efficient and convenient processes.

PROPOSED RULE 2.516: SERVICE OF PLEADINGS AND DOCUMENTS. A Petition is pending with the Supreme Court, as of the preparation of these materials, seeking to substantially and materially change the practice of law in Florida. In SC10-2101, representatives from the courts rules committees present a proposal for mandatory service by e-mail. The proposal describes four core concepts:

1. A mandate for e-service by lawyers, with very, very limited exceptions.
2. Uniform procedure regardless of court.

3. Simplified implementation to ease lawyers into the digital age.
4. Structural change to court rules to result in one service rule, in the Rules of Judicial Administration.

Because the court has not yet addressed this proposed Rule, these materials do not describe the details of the e-service process or how such a regime would be implemented. Nevertheless, the submission to the court, by the rules committees, demonstrates the growing importance of the Rules of Judicial Administration for all areas of practice. After disclosing that the rules committees universally accepted the concept of moving the rules regarding service to one central location, to wit: the Rules of Judicial Administration, the petition states:

This is not a new concept; over the years and with increasing frequency, procedures that have common application in all courts have more and more been placed in the Rules of Judicial Administration. The procedures for e-filing, public access to records, computation of time, disqualification of judges, size and type of paper, pro hac vice motions, and numerous other concepts are now centrally located in the Rules of Judicial Administration.

EPILOGUE

To the extent you *believe* you know all of the rules, be sure you include in your repertoire the Rules of Judicial Administration. Those Rules are important and becoming more so.

Appendix to

**So You *Think* You
Know All of the Rules!**
(Amendments to Rules of Judicial Administration)

RULE 2.420: PUBLIC ACCESS TO JUDICIAL BRANCH RECORDS

SUPREME COURT ORDER SC07-2050, INCLUDING RULE 2.420 AS MODIFIED

PROPOSED RULE 2.516: E-SERVICE

PETITION TO ADOPT PROPOSED RULE

PROPOSED RULE 2.516: SERVICE OF PLEADINGS AND DOCUMENTS

PROBATE RULES TO BE CHANGED BY PROPOSED RULE 2.516

Supreme Court of Florida

No. SC07-2050

**IN RE: AMENDMENTS TO FLORIDA RULE OF JUDICIAL
ADMINISTRATION 2.420 AND THE FLORIDA RULES OF APPELLATE
PROCEDURE.**

[March 18, 2010]

PER CURIAM.

We have for consideration three sets of proposed amendments to Florida Rule of Judicial Administration 2.420, the rule that governs public access to judicial branch records.¹ A thorough understanding of these proposals is critical to ensure the integrity of court records as we move inevitably into the electronic age. The amendments we adopt address procedures for the clerks to identify a narrow set of records as confidential, procedures for sealing and unsealing records, specific procedures targeted at criminal cases, and related appellate procedures.

1. We have jurisdiction. See art. V, § 2(a), Fla. Const.

The first set of amendments is proposed by the Committee on Access to Court Records (Access Committee). Those amendments provide a mechanism to protect confidential information in court records from public view. Enacting a procedure that ensures the confidentiality of a narrow set of court records is a necessary prerequisite to the Court's ongoing effort to provide the public with electronic access to court records. While there are enormous benefits to electronic access to court records, the Court has an ongoing concern that we not sacrifice the important goal of protecting those records that are confidential.

The other proposals deal specifically with the issue of sealing and unsealing court records both in criminal and civil cases. The proposals refine the procedures developed in 2007 for sealing and unsealing noncriminal trial court records and specifically include procedures targeted at criminal and appellate court records. In conjunction with these proposals, the Court also considers related amendments to the Rules of Appellate Procedure, which clarify that requests to seal appellate court records are governed by rule 2.420 and provide for review of court orders granting access to judicial branch records and proceedings, in addition to orders denying access.

We adopt the majority of the proposals, with only minor modifications. The goal of the comprehensive amendments to rule 2.420 is to balance the public's constitutional right to access to court records with the courts' responsibility to

protect from public access court records that are confidential. The amendments also bring our court system closer to providing the public with electronic access to court records.

BACKGROUND

Privacy Committee Recommendations and Access Committee Charge

A number of the proposed amendments regarding the treatment of confidential information that is included in court records began with the recommendations of the Committee on Privacy and Court Records (Privacy Committee), established in November 2003. While this Court recognized the advantages of greater access to court records by electronic means, it had become aware of the potential for abuse if otherwise confidential information was available online.

The Privacy Committee was charged with providing recommendations to the Court regarding electronic access to court records in Florida.² In August 2005, the Privacy Committee submitted its report and recommendations.³ The Court solicited comments and held three public hearings on the recommendations. The

2. See In re Committee on Privacy and Court Records, Fla. Admin. Order No. AOSC04-04 (Feb. 12, 2004) (substituted for AOSC03-49).

3. See Committee on Privacy and Court Records, Privacy, Access and Court Records: the Report and Recommendations of the Committee on Privacy and Court Records (2005) (“Privacy Committee Report”).

Court received helpful comments from, among others, various media groups and the clerks of court. After consultation with the Court, in June 2006, then Chief Justice Pariente and Chief Justice-Elect Lewis issued an administrative order partially implementing the Privacy Committee's recommendations.⁴ By separate administrative order, the Access Committee was created to further study and implement a number of the Privacy Committee's recommendations,⁵ including the recommendations concerning rule 2.420 at issue here.⁶

The Privacy Committee had concluded in its report, and the Court agreed, that the Florida judicial branch should have a goal of providing the public with electronic access to nonconfidential court records when appropriate conditions are met.⁷ The Access Committee was created to assist in establishing those necessary conditions, one of which was the need to narrow the scope of subdivision (c)(8) of rule 2.420 to a finite set of public records exemptions that are appropriate for court

4. See In re Implementation of Report and Recommendations of the Committee on Privacy and Court Records, Fla. Admin. Order No. AOSC06-20 (June 30, 2006) ("Admin. Order No. AOSC06-20").

5. See In re Committee on Access to Court Records, Fla. Admin. Order No. AOSC06-27 (Aug. 21, 2006) ("Admin. Order AOSC06-27").

6. The recommendations of the Privacy Committee at issue here are Recommendations Two (Scope of Confidentiality); Thirteen (Confidential Information); Sixteen (Unsealing of Records); and Seventeen (Responsibility of Filer).

7. See Admin. Order AOSC06-20 at 1, 9.

records and are identifiable. The ability to identify a finite set of public records exemptions that apply to court records under the rule was critical to the larger task of allowing electronic access to court records.⁸ Accordingly, the Access Committee was charged with reviewing rule 2.420 and proposing amendments to the rule consistent with the Privacy Committee's recommendations.⁹

8. The Privacy Committee recognized that the task of applying all statutory exemptions to court records would be a practically impossible task for the clerks of court. The need for the clerks to screen all court records and redact all confidential information before storing the records on a publicly accessible electronic system would be an insurmountable obstacle to the implementation of public online access to court records. See Privacy Committee Report at 33-34.

9. Specifically, the Access Committee was charged as follows with respect to rule 2.420:

The primary purpose of the Committee is to review [rule 2.420] and develop proposed revisions to the rule with regard to the following matters:

1. Recommendation Two. Scope of Confidentiality. Review and explore revisions to rule [2.420] to narrow its application to a finite set of exemptions that are appropriate in the court context and are identifiable. The Committee should note that the Supreme Court has not made a decision as to whether the absorption doctrine applies.

....

4. Recommendation Thirteen: Confidential Information. Propose revisions to rule [2.420] to clarify that those records defined in the rule are confidential and may not be released except as provided. Because this requirement is already established in existing law, the Committee is directed to propose a rule amendment or committee note that is consistent with the recognition of the current legal requirements.

5. Recommendation Sixteen: Unsealing of Records. Propose revisions to rule [2.420] to provide a clear and effective mechanism

Development of Procedures for Sealing Court Records

While the Access Committee was developing its proposed amendments to rule 2.420, the Court issued an opinion in the initial “sealing case,” In re Amendments to Florida Rule of Judicial Administration 2.420—Sealing of Court Records & Dockets, 954 So. 2d 16 (Fla. 2007). There, in response to Florida news media reports of “hidden cases and secret dockets,” the Court adopted new rule 2.420(d)¹⁰ to provide a procedure for seeking to seal noncriminal trial court records under rule 2.420(c)(9)¹¹ and for seeking to unseal those records. 954 So. 2d at 17.

through which a preliminary determination that a record is exempt or confidential can be challenged and reviewed.

6. Recommendation Seventeen: Responsibility of Filer.

Propose revisions to rule [2.420] to provide for certain responsibilities of the filer of court documents regarding confidential information.

Admin. Order AOSC06-27 at 2-4.

10. Renumbered rule 2.420(e) here.

11. The subdivision (c)(9) factors for determining the confidentiality of court records are derived from the Court’s decision in Barron v. Florida Freedom Newspapers, Inc., 531 So. 2d 113, 118 (Fla. 1988). The subdivision provides for confidentiality for

[a]ny court record determined to be confidential in case decision or court rule on the grounds that

(A) confidentiality is required to

(i) prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice;

(ii) protect trade secrets;

Because the Rules of Judicial Administration Committee (RJA Committee) had focused only on the sealing of noncriminal court records, the Court declined to adopt suggested procedures that would have broadly required that all sealing orders in criminal cases be kept confidential and not posted in order to protect confidential informants. See id. at 23 n.13 (declining to adopt proposals by the Florida Prosecuting Attorneys Association and the Florida Public Defender Association to keep sealing orders in criminal cases confidential in order to protect confidential informants). Rather, the Court asked the RJA Committee to work with the Criminal Procedure Rules Committee (CPR Committee) “to propose rule amendments to address the sealing of court records in criminal cases.” 954 So. 2d

(iii) protect a compelling governmental interest;

(iv) obtain evidence to determine legal issues in a case;

(v) avoid substantial injury to innocent third parties;

(vi) avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of proceeding sought to be closed;

(vii) comply with established public policy set forth in the Florida or United States Constitution or statutes or Florida rules or case law;

(B) the degree, duration, and manner of confidentiality ordered by the court shall be no broader than necessary to protect the interests set forth in subdivision (A); and

(C) no less restrictive measures are available to protect the interests set forth in subdivision (A).

Fla. R. Jud. Admin. 2.420(c)(9).

at 23. By follow-up letter, the committees were asked to specifically address the concerns raised about the need to protect confidential informants. The Court also asked the RJA Committee to work with the Appellate Court Rules Committee (ACR Committee) “to consider the need for rules governing requests to seal appellate court records.” Id.

In October 2007, the RJA Committee filed its report and proposals, encompassing the work of the three rules committees. The proposals, which were endorsed by the CPR Committee, included new procedures for sealing criminal trial court records. The RJA Committee offered, with the endorsement of the ACR Committee, a brief commentary to rule 2.420 to address the sealing of appellate court records. The RJA Committee’s report is the subject of the instant case.

Before the RJA Committee’s proposals were filed, the Court had sua sponte drafted a new rule to govern the sealing of appellate court records and sought input on the procedures from the chief judges of the district courts of appeal. After the chief judges had commented and after the RJA Committee’s report was filed, the Court drafted additional changes to rule 2.420, incorporating most of the RJA Committee’s proposals into its proposed amendments.

The Court sought comments on the two sets of amendments. A number of comments were filed, including comments from The Florida Bar’s Special Joint

Committee on Changes to Rule 2.420 (Special Joint Committee),¹² which was created to study the Court's proposals for sealing appellate court records.

Access Committee Proposals

In October 2008, before the Court considered the comments to the two sets of sealing proposals, the Access Committee filed its petition to amend rule 2.420 to implement the Privacy Committee's recommendations.¹³ The Access Committee used the Court's proposed version of the rule as the foundation for its proposals. The Access Committee's proposals, the focal point of which is a new procedure for the identification and segregation of confidential information in court records, were consolidated with the pending sealing proposals in this case and were published for comment.

Comments, Oral Argument, and Further Refinement by the Court

12. The Special Joint Committee is composed of members of the RJA and ACR committees, assisted by representatives from the CPR Committee and the Access Committee. The Special Joint Committee greatly assisted the Court in refining the new procedures.

13. The Access Committee has also submitted a comprehensive report of proposed amendments to various rules of procedure to minimize unnecessary personal information in court records, which is being considered separately in In re Implementation of Committee on Privacy and Court Records Recommendations, No. SC08-2443 (Fla. petition filed Dec. 22, 2008). Implementation recommendations concerning electronic access to court records contained in the Access Committee's final report and recommendations submitted in September 2008 also are being considered separately. See Committee on Access to Court Records, Final Report and Recommendations (2008) ("Access Committee Report").

Comments addressing the various amendments at issue here were filed by the ACR Committee, the CPR Committee, the Special Joint Committee, Florida Media Organizations,¹⁴ the First Amendment Foundation, Reporters Committee for Freedom of the Press, the Volusia County, Sarasota County, and Miami-Dade County Clerks of Court, the Florida Public Defender Association, and the Florida Prosecuting Attorneys Association. The RJA Committee filed comments as well as a response to other comments. The Florida Courts Technology Commission's Subcommittee on Access to Court Records (Access Subcommittee), which is the successor to the Access Committee,¹⁵ also filed a response and comments.

In September 2009, after holding separate arguments on each of the major topics at issue here, the Court further revised the pending amendments and sought comments on its revisions from the various committees and those who filed comments. See In re Amends. to Fla. Rule of Jud. Admin. 2.420, No. SC07-2050 (Fla. order filed Sept. 9, 2009). The Court also asked the committees, with input

14. "Florida Media Organizations" include: Media General Operations, Inc., d/b/a The Tampa Tribune, WFLA-TV/News Channel 8; NYT Management Services, Inc., publisher of the (Sarasota) Herald-Tribune, (Lakeland) Ledger, Gainesville Sun and (Ocala) Star-Banner; Sun-Sentinel Company, d/b/a the South Florida Sun-Sentinel; and The Florida Press Association.

15. See In re Fla. Courts Tech. Comm'n, Subcomm. on Access to Court Records, Fla. Admin. Order No. AOSC09-3 (Jan. 27, 2009) (directing commission to establish a Subcommittee on Access to Court Records to act as the successor to the Access Committee for the purpose of advancing the Access Committee's proposals).

from the clerks of court, to develop a new form to be used with the proposed rule for identifying and designating confidential information.

Further comments were received, including comments from The Florida Bar's newly created Consolidated Rules Committee, which submitted the requested new form and suggested additional revisions to the rule.¹⁶ The Access Subcommittee concurs with the majority of the Consolidated Rules Committee's suggested revisions.

After considering the various proposals, the numerous comments, and suggested revisions, as well as the issues addressed at oral argument, we amend Rule of Judicial Administration 2.420 and the Rules of Appellate Procedure to provide comprehensive procedures for identifying and segregating confidential information in court records, for sealing and unsealing court records, and for reviewing orders issued under the rule. We discuss the more significant amendments below.

AMENDMENTS

16. The Consolidated Rules Committee is composed of representatives from the RJA Committee, ACR Committee, and CPR Committee. The Consolidated Rules Committee received input from the Access Subcommittee, the offices of the clerks of court of the Seventh and Thirteenth Judicial Circuits, and various media organizations. We commend the Consolidated Rules Committee and those who provided input to the committee for their thorough review of the proposed procedures and for assisting the Court in finalizing the procedures.

Rule of Judicial Administration 2.420, Public Access to Judicial Branch Records

New Subdivision (b)(4), Confidential

New subdivision (b)(4) defines the term “confidential” as used in the rule. The new definition is in response to Privacy Committee Recommendation Thirteen (Confidential Information),¹⁷ and the Access Committee’s charge to “[p]ropose revisions to rule [2.420] to clarify that those records defined in the rule are confidential and may not be released except as provided.” Admin. Order AOSC06-27 at 3. The new subdivision clarifies that “ ‘[c]onfidential,’ as applied to information contained within a record of the judicial branch, means that such

17. In Recommendation Thirteen (Confidential Information), the Privacy Committee reported:

The Committee has found that the responsibility of protecting confidential information is a constitutional mandate upon the judicial branch and that any access to court records must be conditioned on the effective identification and protection of confidential information. Ultimate responsibility for protecting confidential information in court records belongs to the court. The responsibility of the court extends to the clerk of court as the custodian of the court’s records pursuant to Article V of the Florida Constitution.

Confidential Information Not to be Released

The Committee recommends that the Supreme Court direct revision of Rule [2.420] to clarify that those records defined in Rule [2.420](c) of the judicial branch are confidential and may not be released except as provided.

Privacy Committee Report at 59.

information is exempt from the public right of access under article I, section 24(a) of the Florida Constitution and may be released only to the persons or organizations designated by law, statute, or court order.” It also explains that “[a]s applied to information contained within a court record, ‘exempt’ means that such information is confidential” and that “[c]onfidential information includes information that is confidential under this rule or under a court order entered pursuant to this rule.”

The definition further provides that “[t]o the extent reasonably practicable, restriction of access to confidential information shall be implemented in a manner that does not restrict access to any portion of the record that is not confidential.”

The RJA Committee originally suggested the “[t]o the extent reasonably practicable” qualifier be added to the caveat on restriction of access and the language be included in retitled subdivision (c), Confidential and Exempt Records. We declined to adopt most of the RJA Committee’s revisions to subdivision (c) because they merely restated much of new subdivision (b)(4). However, we added the suggested qualifying language to subdivision (b)(4) in recognition that there likely will be instances when it will not be reasonably practicable for the clerk to redact all the confidential information in a document and the clerk will have to treat the entire document as confidential.

New Subdivision (b)(5), Affected Non-Party

New subdivision (b)(5) defines the term “affected non-party,” as used in the rule, to mean “any non-party identified by name in a court record that contains confidential information pertaining to that non-party.” The new definition was proposed by the Consolidated Rules Committee to clarify the non-parties who are entitled to receive notice of certain filings under the revised rule. The new definition and notice requirements throughout the rule, see rule 2.420(d)(4), (e)(5), (g)(5), respond to Privacy Committee Recommendation Seventeen, which urged that the rule be amended to require a filer to give a non-party notice of the filing of confidential information that pertains to the non-party. See Privacy Committee Report at 64.

New Subdivision (d), Procedures for Determining Confidentiality of Court Records

New subdivision (d), Procedures for Determining Confidentiality of Court Records, is the cornerstone of the Access Committee’s work.¹⁸ It moves Florida courts a step closer to providing the public electronic access to court records by providing a mechanism that will allow clerks of court to more readily identify confidential information that must be screened from public view.¹⁹ It also provides

18. See Admin. Order AOSC06-27 at 2 (directing Access Committee to “[r]eview and explore revisions to rule [2.420] to narrow its application to a finite set of exemptions that are appropriate in the court context and are identifiable”).

19. On July 1, 2009, the Florida Supreme Court Statewide Standards for Electronic Access to the Courts (“Standards”) were adopted by administrative

a procedure to ensure that confidential information that is not automatically screened from public view by the clerk will be the subject of a determination of confidentiality by the court.

In its 2005 report, the Privacy Committee recommended a plan for providing the public with electronic access to court records, but recommended that implementation of the plan be deferred until rule 2.420 could be revised to reduce the scope of records that are automatically confidential under subdivision (c)(8) of the rule and that must be identified by court clerks and screened from public view. In Recommendation Two (Scope of Confidentiality), the Privacy Committee explained:

Any system of access to court records must identify and protect information that is confidential. Confidentiality of Florida court

order. See In re Statewide Standards for Electronic Access to the Courts, Fla. Admin Order No. AOSC09-30 (July 1, 2009). The Standards were developed in response to chapter 2009-61, section 16, Laws of Florida, which requested that the Court establish statewide e-filing standards to be used by the clerks of court to implement electronic filing. Standard 4.1.15, Documents Exempt from Public Access, was included in the Standards to serve as a “placeholder” for the procedure adopted here. Standard 4.1.15 provides:

If a filer who electronically files a document containing information identified as exempt from public access pursuant to Rule 2.420, Florida Rules of Judicial Administration and applicable statute, the filer shall indicate that the document contains confidential information by placing the notation “confidential” in the comments section. Documents that are exempt or claimed to be exempt from public access shall be processed pursuant to Rule 2.420.

Standards at 12.

records is controlled by Florida Rule of Judicial Administration [2.420]. The Committee has concluded that subdivision (c)(8) of the rule incorporates state and federal laws, making the relevant information confidential from disclosure under the rule. The Committee recognizes that to implement an electronic access system with the capacity to identify and redact all information in court files embraced by the current rule would be exceedingly difficult, if not impossible given the foreseeable resources of the judicial branch.

However, it is the further view of the Committee that some of the incorporated exemptions in Florida law may be unnecessary or overly broad in the judicial context where a strong presumption of openness exists. The Committee is of the opinion that it is within the rule-making power of the Supreme Court, and not contrary to the Florida Constitution, to effectively expand public access to court records by reducing the scope of confidentiality under subdivision (c)(8) of the rule. Protections provided by other subdivisions of the rule should remain in effect. The electronic access plan set out in [the report] should be deferred pending completion of this revision process.

Privacy Committee Report at 47. Because the Committee concluded “that implementation of a system that allows large volumes of court records to be released electronically cannot be responsibly achieved” under the current rule, it urged a review of the scope of subdivision (c)(8) of the rule and revision of the rule to narrow “its application to a finite set of exemptions that are appropriate in the court context and are readily identifiable.” Id. New subdivision (d) implements that recommendation.

Privacy Committee Recommendation Two is based on the Committee’s conclusion that subdivision (c)(8) of the rule “generally absorbs Florida statutory exemptions and federal confidentiality.” Privacy Committee Report at 60. In

other words, the Committee determined that subdivision (c)(8) “incorporates by reference statutory exemptions of Florida and federal law, making the statutory exemptions rule-based confidentiality pursuant to the grandfather clause for rules of court in Section 24(d) of the Florida Constitution.” Id.; see also id. at 29-33, 60-61.²⁰ This interpretation of the interplay between statutory public records

20. Article I, section 24 of the Florida Constitution, titled “Access to public records and meetings,” was adopted in November 1992 and became effective July 1, 1993. It provides in relevant part:

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder

. . . .

(c) This section shall be self-executing. The legislature, however, may provide by general law passed by a two-thirds vote of each house for the exemption of records from the requirements of subsection (a) . . . provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law. . . .

(d) All laws that are in effect on July 1, 1993 that limit public access to records or meetings shall remain in force, and such laws apply to records of the legislative and judicial branches, until they are repealed. Rules of court that are in effect on the date of adoption of this section that limit access to records shall remain in effect until they are repealed.

Art. I, § 24, Fla. Const. (emphasis added).

Immediately prior to adoption of article I, section 24 by the electors, the Court adopted rule 2.051, Public Access to Judicial [Branch] Records, [since

exemptions and the subdivision (c)(8) exceptions to the mandate that the public shall have access to all judicial branch records has been referred to as the “absorption doctrine.” See Admin. Order AOSC06-27 at 2.

In referring Recommendation Two to the Access Committee, the Court emphasized that it “has not made a decision as to whether the absorption doctrine applies.” Id. In adopting a procedure for identifying and segregating confidential information in court records, we, likewise, do not decide the adsorption issue here. As the Privacy Committee noted in Recommendation Fourteen of its report, the absorption issue is better left for a proper case and controversy. See Privacy Committee Report at 60 (noting that “the interplay of the statutes and the rule

renumbered 2.420], effective October 29, 1992. In re Amends. to Fla. Rules of Jud. Admin.—Public Access to Jud. Records, 608 So. 2d 472, 473-74 (Fla. 1992). The rule states that “[t]he public shall have access to all records of the judicial branch, except as provided [therein].” Fla. R. Jud. Admin. 2.420(a). The rule 2.420 exceptions that were in effect at the time article I, section 24 was adopted are currently provided in subdivision (c), Exemptions.

As relevant here, subdivision (c) provides:

The following records of the judicial branch shall be confidential: . . .

(7) All records made confidential under the Florida and United States Constitutions and Florida and federal law;

(8) All records presently deemed to be confidential by court rule, including the Rules for Admission to the Bar, by Florida Statutes, by prior case law of the State of Florida, and by the rules of the Judicial Qualifications Commission;

presents substantial legal issues requiring resolution in properly contested cases or controversies”).

New subdivision (d) sets forth the procedure for the clerks of court to designate court records as confidential under subdivisions (c)(1) through (c)(8) and limits the subdivision (c)(7) and (c)(8) records that must be automatically designated confidential to a “finite set” of nineteen statutory exemptions. It also provides a mechanism for the filer to seek a judicial determination of confidentiality as to subdivision (c)(7) and (c)(8) records that are not automatically designated confidential by the clerk.

In developing the new procedures for designating court records as confidential, the Access Committee reviewed the over 1000 statutory public records exemptions and identified nineteen exemptions it determined are applicable in the context of court records and readily identifiable to clerks of court. The Access Committee refers to confidential information covered by the nineteen identified exemptions as “type I information.” Examples of type I information include adoption records, social security numbers, and information identifying victims of sexual offenses. New subdivision (d)(1)(B) contains the nineteen exemptions identified by the Committee, with minor revision by the Court.²¹

21. We revised subdivision (d)(1)(B)(v) to clarify that test results concerning sexually transmitted diseases and the identities of patients within the test results, which are exempt under section 384.29, Florida Statutes (2009), are

New subdivision (d)(1) requires the clerk of court to designate and maintain as confidential information governed by existing subdivisions (c)(1) through (c)(6) and information that is confidential or exempt under a subdivision (d)(1)(B) exemption (type I information). The clerk's responsibility under the new subdivision is independent of the responsibility of the filer.

Subdivision (d)(2) requires a filer to identify type I information to the clerk at the time of filing by filing a "Notice of Confidential Information Within Court Filing."²² The notice form, which is added to the end of rule 2.420, identifies the applicable provision of subdivision (d)(1)(B) and the specific location of the confidential information within the document being filed. This subdivision is in response to Privacy Committee Recommendation Seventeen, addressing the duty of the filer to identify confidential information. Privacy Committee Report at 64.

Under subdivision (d)(2), the clerk of court must review the information identified by the filer to determine whether the information is facially subject to the

confidential under the rule when provided by the Department of Health or the department's authorized representative.

22. We agree with the Access Subcommittee that revisions to subdivision (d)(2) suggested by the Consolidated Rules Committee, which would apply the new subdivision to documents introduced into evidence during court proceedings, do not give adequate guidance as to the procedures the judge would follow or how a party or other interested person would seek review of the court's decision as to the documents. Therefore, we decline to adopt the suggested revisions at this time. However, we encourage the RJA Committee, in consultation with the Access Subcommittee, to consider the matter for possible future amendment.

identified provision. If the clerk determines that the information is not facially subject to the provision, the clerk must give the filer written notice of the determination and maintain the information as confidential for ten days or until the court rules on a motion to determine the confidentiality of the information, if one has been filed.

New subdivision (d)(3) applies to what the Access Committee refers to as “type II information,” which is information that may be confidential under subdivisions (c)(7) or (c)(8), but that is not automatically confidential under the new rule. Under this subdivision, the filer of a document has a duty to determine whether type II information is contained in the document being filed. If the filer has a good faith belief the document contains confidential information, the filer must file a “Motion to Determine Confidentiality of Court Records,” requesting a judicial determination of confidentiality, unless the filer is the only person whose confidential information is included in the document or is the attorney representing all such persons, and a waiver of confidential status is intended. Any interested person also may request that type II information be maintained confidential by filing a motion to determine confidentiality.

The Court added new subdivision (d)(4) to require a filer to give a non-party notice of certain filings involving confidential information pertaining to the non-party. Under the new subdivision, a person filing a notice of confidential

information or filing a motion under the rule must give notice of the filing to an affected non-party, as defined under new subdivision (b)(5).

Renumbered Subdivision (e), Request to Determine Confidentiality of Trial Court Records in Noncriminal Cases

Existing subdivision (d) is renumbered (e) and retitled “Request to Determine Confidentiality of Trial Court Records in Noncriminal Cases.” The subdivision currently provides a procedure for seeking a judicial determination that trial court records in noncriminal cases are confidential under subdivision (c)(9) (the Barron test)²³ and for unsealing those records. See In re Amends. to Fla. Rule of Jud. Admin. 2.420—Sealing of Court Records & Dockets, 954 So. 2d at 17. This procedure serves as the foundation for the new procedures for seeking a judicial determination as to type II information discussed above. It also effectively implements Privacy Committee Recommendation Sixteen (Unsealing of Records)²⁴ by providing a clear mechanism for seeking to unseal records sealed under the rule.²⁵

The scope of renumbered subdivision (e) is expanded to provide for motions based on other provisions of subdivision (c), Confidential and Exempt Records, not

23. See supra note 11.

24. See Privacy Report at 63.

25. Rule of Appellate Procedure 9.100(d) provides the procedure for seeking review of orders granting or denying access to court records.

just motions based on subdivision (c)(9). This will permit motions to seal based on statutory exemptions or federal confidentiality laws that are arguably incorporated into the rule through subdivisions (c)(7) or (c)(8), but not among the nineteen exemptions listed in subdivision (d)(1)(B). This concept is continued in new subdivisions (f) (criminal court records) and (g) (appellate court records).

Another significant amendment to this subdivision is the addition of provisions to subdivisions (e)(2) and (e)(5) that provide for expedited consideration and rulings on motions to seal or unseal. Also significant are the amendments to subdivision (e)(6) that provide for sanctions in connection with bad-faith designations of confidential information or sealing motions. The amendments also provide for sanctions for the failure to comply with the requirements for filing confidential information. This is consistent with that portion of Privacy Committee Recommendation Seventeen urging that filers be subject to sanctions for willfully failing to comply with requirements for the filing of confidential information. See Privacy Committee Report at 64.

New Subdivision (f), Request to Determine Confidentiality of Court Records in Criminal Cases

Subdivision (f) is new and provides the procedures for requesting a confidentiality determination for criminal trial and appellate court records. The new subdivision is the culmination of suggestions, which were intended to protect the identities of confidential informants, made by the Florida Prosecuting

Attorneys Association and the Florida Public Defender Association in the original sealing case,²⁶ the subsequent joint work of the RJA and CPR Committees, the alternative proposal of the Access Committee, and later suggestions by the Consolidated Rules Committee. The more restrictive subdivision (f)(3) procedures we adopt here balance the established policy of protecting from public disclosure information that reveals the identity of a confidential informant or concerns an active criminal investigation²⁷ with the public's constitutional right to access to court records.

Under subdivisions (f)(1) and (f)(2), the subdivision (e) procedures for noncriminal trial court records and subdivision (g) procedures for noncriminal appellate court records apply to the majority of motions to determine the confidentiality of court records in criminal cases. The exception is the narrow set of records governed by the more restrictive subdivision (f)(3) procedures.

The Court revised the proposals submitted by the committees to ensure that the more restrictive procedures that apply under this subdivision are narrowly applied. As revised, the restrictive procedures apply to requests to determine the

26. See 954 So. 2d at 23 n.13.

27. See §§ 119.071(2)(c) (public records exemption for active criminal investigative information); 119.071(2)(f) (public records exemption for information revealing the identity of a confidential informant); 119.0714(1)(f) (application of section 119.071(2)(f) to court files), Fla. Stat. (2009).

confidentiality of criminal court records that pertain to a plea agreement, substantial assistance agreement, or other court record that reveals the identity of a confidential informant or active criminal investigative information. A subdivision (f)(3) motion must be based on a request for confidentiality under subdivisions (c)(9)(A)(i) (confidentiality required to prevent a serious and imminent threat to administration of justice), (c)(9)(A)(iii) (confidentiality required to protect a compelling governmental interest),²⁸ (c)(9)(A)(v) (confidentiality required to avoid substantial injury to innocent third parties), or (c)(9)(A)(vii) (confidentiality required to comply with established public policy) of the rule.

Information that is the subject of a subdivision (f)(3) motion must be treated as confidential by the clerk pending a ruling on the motion. At the urging of the Consolidated Rules Committee, with the support of the Access Subcommittee and the Florida Public Defender Association, we have included a provision that requires that a subdivision (f)(3) motion be treated as confidential pending a ruling on the motion or until otherwise ordered by the court. Cf. §§ 119.071(2)(c); 119.071(2)(f); 119.0714(1)(f), Fla. Stat. (2009). However, we reject the suggestion that the motion and the court records that are the subject of the motion must not be indicated on the public docket. If filings that are subject to this subdivision are not

28. In Barron, 531 So. 2d at 118, the Court recognized the need to protect a compelling governmental interest as a reason to seal records pertaining to confidential informants.

noted on the docket, the result would be a “false docket,” by omission. We have previously explained our condemnation of prior practices that resulted in reports of “hidden cases and secret dockets.” In re Amends. to Fla. Rule of Jud. Admin. 2.420—Sealing of Court Records & Dockets, 954 So. 2d at 16. Therefore, consistent with new subdivision (f)(4), which cautions that this subdivision does not authorize the falsification of court records or progress dockets,²⁹ we have added language that requires the motion and any filings containing information that is the subject of the motion to be indicated on the public docket. The filings must be indicated in a manner that does not reveal the confidential nature of the information. To ensure that the motion, which must be indicated on the docket by generic title, can be docketed without revealing the nature of the motion, the motion must be titled “Motion to Determine Confidentiality of Court Records,” as are other motions to seal filed under the rule.

The subdivision (e)(3)(A)–(G) (requirements for orders granting motion), (e)(6) (sanctions),³⁰ and (g)(7) (lower tribunal may revisit appellate court’s sealing order) procedures apply under subdivision (f)(3). However, the subdivision (e)(1) (requirements for motion), (e)(2) (requirements for hearing, record of hearing,

29. This cautionary provision was added at the urging of the Florida Public Defender Association to address concerns about prior reports of the falsification of court records and dockets to protect confidential informants.

30. Providing for sanctions will discourage abuses of the more restrictive procedures.

public notice of hearing, time for ruling), (e)(3)(H) (publishing order), (e)(4) (notice of order), and (e)(5) (motion to unseal) procedures do not apply.

For subdivision (f)(3) motions filed in the trial court, unless the parties agree to the relief requested, the hearing on the motion must be held within fifteen days of the filing of the motion. We have added the requirement that the hearing must be an open proceeding, but any person may request that the court conduct all or part of the hearing in camera to protect subdivision (c)(9)(A) interests. A motion under this subdivision may be filed in an appellate court with respect to a record for which no confidentiality determination has been made by the lower tribunal.

We also have endorsed provisions that will ensure that both the trial and appellate courts must issue a ruling on the motion expeditiously. A trial court must rule within ten days of the hearing on a contested motion or within ten days of the filing of an agreed-upon motion. An appellate court must rule within ten days of the filing of a response on a contested motion or within ten days of the filing of an uncontested motion.

The records cannot be sealed, under the restrictive procedures, for longer than is necessary to achieve the objective of the motion and never longer than 120 days. Extensions for up to sixty days may be requested by filing another motion under the subdivision. Orders issued under the subdivision will not be published

unless directed by the court and will be indicated on the docket only by noting the entry of the order.

New Subdivision (g), Request to Determine Confidentiality of Appellate Court Records in Noncriminal Cases

New subdivision (g), Request to Determine Confidentiality of Appellate Courts Records in Noncriminal Cases, is modeled after renumbered subdivision (e), which was originally adopted by the Court to govern the sealing and unsealing of trial court records in noncriminal cases. See In re Amends. to Fla. Rule of Jud. Admin. 2.420—Sealing of Court Records & Dockets, 954 So. 2d at 17. The most significant provisions of new subdivision (g) are explained below.

A motion to seal appellate court records other than records subject to subdivision (f)(3) must comply with the subdivision (e)(1) requirements for a motion to seal trial court records. However, no hearing is held on a motion to seal appellate court records. Except as provided by law, within ten days after the entry of an order granting the motion, the clerk of the appellate court must post a copy of the order on the clerk's website and must provide a copy of the order to the clerk of the lower tribunal, with directions that the clerk is to seal the records identified in the order. The order must remain posted for no fewer than thirty days.

A request to unseal appellate court records must be made in a written motion filed in the appellate court. All parties and affected non-parties must be served

with a copy of the motion or furnished with a copy of the motion by the court, as appropriate under the rule.

Consistent with subdivision (e)(6), sanctions for bad-faith appellate motions or notices of confidential information are provided for in subdivision (g)(8). The provision in the current rule that addresses the treatment of records sealed by a lower tribunal during a review proceeding has been moved to new subdivision (g)(9). We also have added language to clarify that this subdivision does not preclude review under Rule of Appellate Procedure 9.100(d) or affect the standard of review of a sealing order entered by a lower tribunal.

Renumbered Subdivision (h), Denial of Access Request for Administrative Records

At the suggestion of the Access Committee, we have renamed and amended renumbered subdivision (h), which currently provides for mandamus review of denials of access to judicial branch records, to limit the subdivision's application to the review of administrative records of the judicial branch and to remove reference to an appellate remedy. Review of court orders granting or denying access to judicial branch records is governed by Rule of Appellate Procedure 9.100(d), discussed below.

Rules of Appellate Procedure

Finally, we have made several suggested revisions to the Rules of Appellate Procedure. First, at the suggestion of the Special Joint Committee, we have added

new subdivision (i) to rule 9.040 (General Provisions) and have included new committee notes to rules 9.100 (Original Proceedings) and 9.110 (Appeal Proceedings to Review Final Orders of Lower Tribunals) to clarify that requests to determine the confidentiality of appellate records are governed by rule 2.420.

Finally, at the suggestion of the ACR Committee, we have made several revisions to rule 9.100(d), Exception; Orders Excluding Press or Public. The most significant of these revisions are the addition of language that provides for review of court orders that deny motions to seal or otherwise grant access to judicial branch records or court proceedings and language that requires the proceedings or records that are the subject of a motion to stay to be treated as confidential pending a ruling on the motion.

CONCLUSION

We thank the various committees and those who submitted comments for greatly assisting the Court in adopting clear procedures for sealing and unsealing court records, as well as a process that will make the application of the rule more manageable for our clerks of court as we move toward providing electronic access to court records. We especially thank the Access Committee for providing the Court with a workable solution to the formidable task of narrowing the scope of rule 2.420 in relation to the clerk of court's duty to screen confidential information

from public view, and we thank the committee for its recommendations regarding the transition to providing electronic access. See Access Committee Report.

Accordingly, we amend the Florida Rules of Judicial Administration and the Florida Rules of Appellate Procedure as reflected in the appendix to this opinion. New language is indicated by underscoring; deletions are indicated by struck-through type. The committee notes are offered for explanation only and are not adopted as an official part of the rules. Our adoption of these rule amendments is not a determination of the merits of any substantive arguments concerning the new procedures and does not preclude the raising of those arguments in a proper case and controversy. As suggested by the Access Subcommittee, new rule 2.420(d) shall become effective October 1, 2010, at 12:01 a.m. The remainder of the amendments shall become effective immediately upon the release of this opinion.

It is so ordered.

QUINCE, C.J., and PARIENTE, LEWIS, CANADY, POLSTON, LABARGA, and PERRY, JJ., concur.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE AMENDMENTS.

Original Proceeding – Florida Rules of Judicial Administration Committee and Florida Rules of Appellate Procedure Committee

Judge Lisa Davidson, Chair, Rules of Judicial Administration Committee, Eighteenth Judicial Circuit, Viera, Florida, Scott M. Dimond, Past Chair, Miami, Florida; John F. Harkness, Jr., Executive Director, The Florida Bar, Tallahassee, Florida; Judge Judith L. Kreeger, Chair, Committee on Access to Court Records,

Eleventh Judicial Circuit, Miami, Florida, and Jonathan D. Kaney, Jr.,
Subcommittee on Access to Court Records, Daytona Beach, Florida,

for Petitioners

Carol Jean LoCicero and Deanna K. Shullman of Thomas and LoCicero, PL, on behalf of the Florida Media Organizations, Tampa, Florida; Carol M. Touhy and Laura E. Roth, on behalf of Diane M. Matousek, Clerk of the Circuit Court, Seventh Judicial Circuit, Deland, Florida; Beth C. Weitzner, Assistant Public Defender, Eleventh Judicial Circuit, Miami, Florida, and Robert Dewitt Trammell, General Counsel on behalf of The Florida Public Defender Association, Tallahassee, Florida; Barbara A. Petersen, President and Adria E. Harper, Director, on behalf of First Amendment Foundation, Tallahassee, Florida; Matthew B. Pollack, on behalf of The Reporters Committee on Freedom of the Press, Arlington, Virginia; Fleur J. Lobree, Chair, H. Scott Fingerhut, Past Chair, Miami, Florida, and Thomas H. Bateman, III, Past Chair, Tallahassee, Florida, Criminal Procedure Rules Committee; Arthur I. Jacobs, General Counsel, Fernandina Beach, Florida and Penny H. Brill, Assistant State Attorney, Eleventh Judicial Circuit, Miami, Florida, on behalf of Florida Prosecuting Attorneys; John G. Crabtree, Chair, Miami, Florida, Steven L. Brannock, Past Chair, Holland, and Knight, Tampa, Florida, and John S. Mills, Past Chair, Jacksonville, Florida, on behalf of the Appellate Court Rules Committee; Irene G. Plank, Director of Court Services, Twelfth Judicial Circuit, Sarasota, Florida, on behalf of Karen E. Rushing, Clerk of Circuit Court and County Comptroller, Sarasota County; Mark Martinez, Chief, Family Court Division, Eleventh Judicial Circuit, Miami, Florida, on behalf of Harvey Ruvlin, Clerk of Courts, Miami-Dade County; Stanford R. Solomon, Chair, Special Joint Committee on Rule 2.420, Tampa, Florida;

Responding with comments

APPENDIX

RULE 2.420. PUBLIC ACCESS TO JUDICIAL BRANCH RECORDS

(a) [No change]

(b) **Definitions.**

(1)-(3) [No change]

(4) “Confidential,” as applied to information contained within a record of the judicial branch, means that such information is exempt from the public right of access under article I, section 24(a) of the Florida Constitution and may be released only to the persons or organizations designated by law, statute, or court order. As applied to information contained within a court record, the term “exempt” means that such information is confidential. Confidential information includes information that is confidential under this rule or under a court order entered pursuant to this rule. To the extent reasonably practicable, restriction of access to confidential information shall be implemented in a manner that does not restrict access to any portion of the record that is not confidential.

(5) “Affected non-party” means any non-party identified by name in a court record that contains confidential information pertaining to that non-party.

(c) **Exemptions-Confidential and Exempt Records.** The following records of the judicial branch shall be confidential:

(1)-(9) [No change]

(10) The names and any identifying information of judges mentioned in an advisory opinion of the ~~Committee on Standards of Conduct for Judges~~Judicial Ethics Advisory Committee.

(d) Procedures for Determining Confidentiality of Court Records.

(1) The clerk of the court shall designate and maintain the confidentiality of any information contained within a court record that is described in subdivision (d)(1)(A) or (d)(1)(B) of this rule. The following information shall be maintained as confidential:

(A) information described by any of subdivisions (c)(1) through (c)(6) of this rule; and

(B) except as provided by court order, information subject to subdivision (c)(7) or (c)(8) of this rule that is currently confidential or exempt from section 119.07, Florida Statutes, and article I, section 24(a) of the Florida Constitution under any of the following statutes or as they may be amended or renumbered:

(i) Chapter 39 records relating to dependency matters, termination of parental rights, guardians ad litem, child abuse, neglect, and abandonment. § 39.0132(3), Fla. Stat.

(ii) Adoption records. § 63.162, Fla. Stat.

(iii) Social Security, bank account, charge, debit, and credit card numbers in court records. § 119.0714(1)(i)–(j), (2)(a)–(e), Fla. Stat. (Unless redaction is requested pursuant to 119.0714(2), this information is exempt only as of January 1, 2011.)

(iv) HIV test results and patient identity within those test results. § 381.004(3)(e), Fla. Stat.

(v) Sexually transmitted diseases - test results and identity within the test results when provided by the Department of Health or the department's authorized representative. § 384.29, Fla. Stat.

(vi) Birth and death certificates, including court-issued delayed birth certificates and fetal death certificates. §§ 382.008(6), 382.025(1)(a), Fla. Stat.

(vii) Identifying information in a petition by a minor for waiver of parental notice when seeking to terminate pregnancy. § 390.01116, Fla. Stat.

(viii) Identifying information in clinical mental health records under the Baker Act. § 394.4615(7), Fla. Stat.

(ix) Records of substance abuse service providers which pertain to the identity, diagnosis, and prognosis of and service provision to individuals who have received services from substance abuse service providers. § 397.501(7), Fla. Stat.

(x) Identifying information in clinical records of detained criminal defendants found incompetent to proceed or acquitted by reason of insanity. § 916.107(8), Fla. Stat.

(xi) Estate inventories and accountings. § 733.604(1), Fla. Stat.

(xii) The victim's address in a domestic violence action on petitioner's request. § 741.30(3)(b), Fla. Stat.

(xiii) Information identifying victims of sexual offenses, including child sexual abuse. §§ 119.071(2)(h), 119.0714(1)(h), Fla. Stat.

(xiv) Gestational surrogacy records. § 742.16(9), Fla. Stat.

(xv) Guardianship reports and orders appointing court monitors in guardianship cases. §§ 744.1076, 744.3701, Fla. Stat.

(xvi) Grand jury records. Ch. 905, Fla. Stat.

(xvii) Information acquired by courts and law enforcement regarding family services for children. § 984.06(3)-(4), Fla. Stat.

(xviii) Juvenile delinquency records. §§ 985.04(1), 985.045(2), Fla. Stat.

(xix) Information disclosing the identity of persons subject to tuberculosis proceedings and records of the Department of Health in suspected tuberculosis cases. §§ 392.545, 392.65, Fla. Stat.

(2) Any person filing any document containing confidential information shall, at the time of filing, file with the clerk a "Notice of Confidential Information within Court Filing" in order to: (A) indicate that confidential information described in subdivision (d)(1)(B) of this rule is included within the document being filed; (B) identify the provision of subdivision (d)(1)(B) of this rule that applies to the identified information; and (C) identify the precise location of the confidential information within the document being filed. A form Notice of Confidential Information within Court Filing accompanies this rule. The clerk of court shall review filings identified by filers as containing confidential information to determine whether the purported confidential information is facially subject to confidentiality under the identified provision in subdivision (d)(1)(B). If the clerk determines that filed information is not subject to confidentiality under the

identified provision, the clerk shall notify the person who filed the document in writing within 5 days of the filing and thereafter shall maintain the information as confidential for 10 days from the day such notice is served. The information shall not be held as confidential for more than 10 days, unless the filer has filed a motion pursuant to subdivision (d)(3).

(3) Any person filing a document with the court shall ascertain whether any information contained within the document may be confidential under subdivision (c) of this rule notwithstanding that such information is not itemized at subdivision (d)(1) of this rule. A person filing information that he or she believes in good faith to be confidential but that is not described in subdivision (d)(1) of this rule shall request that the information be maintained as confidential by filing a “Motion to Determine Confidentiality of Court Records” under the procedures set forth in subdivision (e), (f), or (g), unless (A) the person filing the information is the only individual whose confidential information is included in the document to be filed or is the attorney representing all such individuals; and (B) a knowing waiver of the confidential status of that information is intended by the person filing the information. Any interested person may request that information within a court file be maintained as confidential by filing a motion as provided in subdivision (e), (f), or (g).

(4) If a notice of confidential information is filed pursuant to subdivision (d)(2), or a motion is filed pursuant to subdivision (e)(1) seeking to determine that information contained in court records is confidential, or pursuant to subdivision (e)(5) seeking to vacate an order that has determined that information in a court record is confidential or seeking to unseal information designated as confidential by the clerk of court, then the person filing the notice or motion shall give notice of such filing to any affected non-party. Notice pursuant to this provision must:

(A) be filed with the court;

(B) identify the case by docket number;

(C) describe the confidential information with as much specificity as possible without revealing the confidential information, including specifying the precise location of the information within the court record; and

(D) include:

(i) in the case of a request to deem materials confidential, a statement that if the motion is denied then the subject material will not be treated as confidential by the clerk; and

(ii) in the case of a motion to unseal confidential records or a motion to vacate an order deeming records confidential, a statement that if the motion is granted, the subject material will no longer be treated as confidential by the clerk.

Any notice described herein must be served together with the motion that gave rise to the notice in accordance with subdivision (e)(5) or (g)(5). When serving the notice and motion described in this subdivision on a non-party, the server shall use reasonable efforts to locate the non-party and may serve such non-party by any method set forth in Florida Rule of Civil Procedure 1.080(b).

(de) Request to ~~Make~~Determine Confidentiality of ~~Circuit and County~~Trial Court Records in Noncriminal Cases-Confidential.

(1) A request to ~~make~~determine the confidentiality of ~~circuit and county~~trial court records in noncriminal cases ~~confidential~~ under subdivision (c)(~~9~~) must be made in the form of a written motion captioned “Motion to MakeDetermine Confidentiality of Court Records-Confidential.” A motion made under this subdivision must:

(A) identify the particular court records or a portion of a record that the movant seeks to ~~make~~have determined as confidential with as much specificity as possible without revealing the information to be made confidential subject to the confidentiality determination; ~~and~~

(B) specify the bases for ~~making~~determining that such court records are confidential; ~~and~~

(C) set forth the specific legal authority and any applicable legal standards for determining such court records to be confidential.

Any motion made under this subdivision must include a signed certification by the party or the attorney for the party making the request that the motion is ~~being~~ made in good faith and is supported by a sound factual and legal basis. ~~The court records that are~~Information that is subject to such a motion ~~made under this subdivision~~ must be treated as confidential by the clerk pending the court’s ruling on the motion. Notwithstanding any of the foregoing, the court may not ~~make~~

~~confidential~~ determine that the case number, docket number, or other number used by the clerk's office to identify the case file is confidential.

(2) Except when a motion filed under subdivision ~~(d)~~(1) represents that all parties agree to all of the relief requested, the court must, as soon as practicable but no later than 30 days after the filing of a motion under this subdivision, hold a hearing before ruling on the motion. Whether or not any motion filed under subdivision ~~(d)~~(1) is agreed to by the parties, the court may in its discretion hold a hearing on such motion. Any hearing held under this subdivision must be an open proceeding, except that any ~~party~~person may request that the court conduct all or part of the hearing in camera to protect the interests set forth in subdivision ~~(c)(9)(A)~~. Any person may request expedited consideration of and ruling on the motion. The moving party shall be responsible for ensuring that a complete record of any hearing held pursuant to this subdivision be created, either by use of a court reporter or by any recording device that is provided as a matter of right by the court. The court may in its discretion require prior public notice of the hearing on such a motion in accordance with the procedure for providing public notice of court orders set forth in subdivision ~~(d)~~(4) or by providing such other public notice as the court deems appropriate. The court must issue a ruling on the motion within 30 days of the hearing.

(3) Any order granting in whole or in part a motion filed under subdivision ~~(d)(1)(e)~~ must state the following with as much specificity as possible without revealing the information made confidential subject to the confidentiality determination:

(A) The type of case in which the order is being entered;

(B) The particular grounds under subdivision ~~(c)(9)(A)~~ for ~~making~~determining the ~~court records~~information to be confidential;

(C) Whether any party's name is ~~to be made~~determined to be confidential and, if so, the particular pseudonym or other term to be substituted for the party's name;

(D) Whether the progress docket or similar records generated to document activity in the case are determined to be ~~made~~confidential;

(E) The particular ~~court records~~information that ~~are to be made~~is determined to be confidential;

(F) ~~The names~~Identification of those persons who are permitted to view the confidential ~~court records~~information;

(G) That the court finds that: (i) the degree, duration, and manner of confidentiality ordered by the court ~~is~~are no broader than necessary to protect the interests set forth in subdivision (c)(9)(A); and (ii) no less restrictive measures are available to protect the interests set forth in subdivision (c)(9)(A); and

(H) That the clerk of the court is directed to publish the order in accordance with subdivision ~~(d)~~(4).

(4) Except as provided by law or court rule, notice must be given of any order granting in whole or in part a motion made under subdivision ~~(d)~~(1) as follows. Within 10 days following the entry of the order, the clerk of court must post a copy of the order on the clerk's website and in a prominent, public location in the courthouse. The order must remain posted in both locations for no less than 30 days. This subdivision shall not apply to orders determining that court records are confidential under subdivision (c)(7) or (c)(8).

(5) If a nonparty requests that the court vacate all or part of an order issued under subdivision ~~(d)~~(3), or requests that the court order the unsealing of records designated as confidential under subdivision (d), the request must be made ~~in the form of~~by a written motion, filed in that court, that states with as much specificity as possible the bases for the request. The motion must set forth the specific legal authority and any applicable legal standards supporting the request. The movant must serve all parties ~~in the action~~and all affected non-parties with a copy of the motion. ~~In the event that~~If the subject order ~~specifies~~determines that the names or addresses of one or more parties are ~~to be made~~ confidential, the movant must state prominently in the caption of the motion "Confidential Party — Court Service Requested." When a motion so designated is filed, the court shall be responsible for providing a copy of the motion to ~~the~~all parties and all affected non-parties in such a way as ~~to not~~to reveal the confidential information to the movant. Except when a motion filed under this subdivision represents that all parties agree to all of the relief requested, the court must, as soon as practicable but no later than 30 days after the filing of a motion under this subdivision, hold a hearing ~~before ruling on~~ the motion. Regardless of w~~Whether or not~~ any motion filed under this subdivision is agreed to by the parties, the court may in its discretion hold a hearing on such motion. Any person may request expedited consideration of and ruling on the motion. Any hearing held under this subdivision must be an open proceeding, except that any partyperson may request that the court conduct all or part of the hearing in camera to protect the interests set forth in subdivision (c)(9)(A). The court must issue a ruling on the motion within 30 days of the hearing. The movant shall be responsible for ensuring that a complete record of any hearing held under this subdivision be created, either by use of a court reporter or by any recording

device that is provided as a matter of right by the court. This subdivision shall not apply to orders determining that court records are confidential under subdivision (c)(7) or (c)(8).

(6) If the court determines that a motion made under subdivision (d)(1) was not made in good faith and supported by a sound legal and factual basis, the court may impose sanctions upon the movant. After notice and an opportunity to respond, the court may impose sanctions against any party or non-party and/or their attorney, if:

(A) the court determines that a designation made under subdivision (d) or a motion made under subdivision (d)(3) or (e) was not made in good faith and was not supported by a sound legal or factual basis, or

(B) a document is filed in violation of subdivision (d)(2) or (d)(3).

(7) Court records made confidential under this rule must be treated as confidential during any appellate proceedings. In any case where an order making court records confidential remains in effect as of the time of an appeal, the clerk's index must include a statement that an order making court records confidential has been entered in the matter and must identify such order by date or docket number.

(f) Request to Determine Confidentiality of Court Records in Criminal Cases.

(1) Subdivision (e) shall apply to any motion by the state or a defendant to determine the confidentiality of trial court records under subdivision (c), except as provided in subdivision (f)(3). As to any motion filed in the trial court under subdivision (f)(3), the following procedure shall apply:

(A) Unless the motion represents that both the movant and any other party subject to the motion agree to all of the relief requested, as evidenced by all such parties signing the motion, the court shall hold a hearing on a motion filed under this subdivision within 15 days of the filing of the motion. Any hearing held under this subdivision must be an open proceeding, except that any person may request that the court conduct all or part of the hearing in camera to protect the interests set forth in subdivision (c)(9)(A).

(B) The court shall issue a written ruling on a motion filed under this subdivision within 10 days of the hearing on a contested motion or within 10 days of the filing of an agreed motion.

(2) Subdivision (g) shall apply to any motion to determine the confidentiality of appellate court records under subdivision (c), except as provided in subdivision (f)(3). As to any motion filed in the appellate court under subdivision (f)(3), the following procedure shall apply:

(A) The motion may be made with respect to a record that was presented or presentable to a lower tribunal, but no determination concerning confidentiality was made by the lower tribunal, or a record presented to an appellate court in an original proceeding.

(B) A response to a motion filed under this subdivision may be served within 10 days of service of the motion.

(C) The court shall issue a written ruling on a motion filed under this subdivision within 10 days of the filing of a response on a contested motion or within 10 days of the filing of an uncontested motion.

(3) Any motion to determine whether a court record that pertains to a plea agreement, substantial assistance agreement, or other court record that reveals the identity of a confidential informant or active criminal investigative information is confidential under subdivision (c)(9)(A)(i), (c)(9)(A)(iii), (c)(9)(A)(v), or (c)(9)(A)(vii) of this rule may be made in the form of a written motion captioned “Motion to Determine Confidentiality of Court Records.” Any motion made pursuant to this subdivision must be treated as confidential and indicated on the docket by generic title only, pending a ruling on the motion or further order of the court. As to any motion made under this subdivision, the following procedure shall apply:

(A) Information that is the subject of such motion must be treated as confidential by the clerk pending the court’s ruling on the motion. Filings containing the information must be indicated on the docket in a manner that does not reveal the confidential nature of the information.

(B) The provisions of subdivisions (e)(3)(A)–(G), (e)(6), and (g)(7) shall apply to motions made under this subdivision. The provisions of subdivisions (e)(1), (e)(2), (e)(3)(H), (e)(4), and (e)(5) shall not apply to motions made under this subdivision.

(C) No order entered under this subdivision may authorize or approve the sealing of court records for any period longer than is necessary to achieve the objective of the motion, and in no event longer than 120 days. Extensions of an order issued hereunder may be granted for 60-day periods, but each such extension

may be ordered only upon the filing of another motion in accordance with the procedures set forth under this subdivision. In the event of an appeal or review of a matter in which an order is entered under this subdivision, the lower tribunal shall retain jurisdiction to consider motions to extend orders issued hereunder during the course of the appeal or review proceeding.

(D) The clerk of the court shall not publish any order of the court issued hereunder in accordance with subdivision (e)(4) or (g)(4) unless directed by the court. The docket shall indicate only the entry of the order.

(4) This subdivision does not authorize the falsification of court records or progress dockets.

(g) Request to Determine Confidentiality of Appellate Court Records in Noncriminal Cases.

(1) A motion to determine the confidentiality of appellate court records in noncriminal cases under subdivision (c) must be filed in the appellate court and must be in compliance with the guidelines set forth in subdivision (e)(1). Such a motion may be made with respect to a record that was presented or presentable to a lower tribunal, but no determination concerning confidentiality was made by the lower tribunal, or a record presented to an appellate court in an original proceeding.

(2) A response to a motion filed under subdivision (g)(1) may be served within 10 days of service of the motion.

(3) Any order granting in whole or in part a motion filed under subdivision (g)(1) must be in compliance with the guidelines set forth in subdivisions (e)(3)(A)-(H). Any order requiring the sealing of an appellate court record operates to also make those same records confidential in the lower tribunal during the pendency of the appellate proceeding.

(4) Except as provided by law, within 10 days following the entry of an order granting a motion under subdivision (g)(1), the clerk of the appellate court must post a copy of the order on the clerk's website and must provide a copy of the order to the clerk of the lower tribunal, with directions that the clerk is to seal the records identified in the order. The order must remain posted for no less than 30 days.

(5) If a nonparty requests that the court vacate all or part of an order issued under subdivision (g)(3), or requests that the court order the unsealing of records designated as confidential under subdivision (d), the request must be made by a written motion, filed in that court, that states with as much specificity as possible the bases for the request. The motion must set forth the specific legal authority and any applicable legal standards supporting the request. The movant must serve all parties and all affected non-parties with a copy of the motion. If the subject order determines that the names or addresses of one or more parties are confidential, the movant must state prominently in the caption of the motion “Confidential Party— Court Service Requested.” When a motion so designated is filed, the court shall be responsible for providing a copy of the motion to all parties and all affected non-parties in such a way as not to reveal the confidential information to the movant. A response to a motion may be served within 10 days of service of the motion.

(6) The party seeking to have an appellate record sealed under this subdivision has the responsibility to ensure that the clerk of the lower tribunal is alerted to the issuance of the order sealing the records and to ensure that the clerk takes appropriate steps to seal the records in the lower tribunal.

(7) Upon conclusion of the appellate proceeding, the lower tribunal may, upon appropriate motion showing changed circumstances, revisit the appellate court’s order directing that the records be sealed.

(8) If the court determines that a designation made under subdivision (d) or a motion made under subdivision (g)(1) was not made in good faith and was not supported by a sound legal or factual basis, the court may impose sanctions on the movant after notice and an opportunity to respond.

(9) Records of a lower tribunal determined to be confidential by that tribunal must be treated as confidential during any review proceedings. In any case where information has been determined to be confidential under this rule, the clerk of the lower tribunal shall so indicate in the index transmitted to the appellate court. If the information was determined to be confidential in an order, the clerk’s index must identify such order by date or docket number. This subdivision does not preclude review by an appellate court, under Florida Rule of Appellate Procedure 9.100(d), or affect the standard of review by an appellate court, of an order by a lower tribunal determining a record to be confidential.

(eh) Judicial Review of Denial of Access Request for Administrative Records. Expedited review of denials of access to administrative records of the

judicial branch shall be provided through an action for mandamus, or other appropriate ~~relief~~appellate remedy, in the following manner:

(1)-(2) [No Change]

(fi) Procedure. Requests and responses to requests for access to records under this rule shall be made in a reasonable manner.

(1)-(3) [No Change]

Committee Note

1995 Amendment. [No Change]

2002 Court Commentary

[No Change]

2005 Court Commentary

[No Change]

2007 Court Commentary

[No Change]

2007 Committee Commentary

[No Change]

IN THE _____ COURT,
JUDICIAL CIRCUIT, IN AND FOR
_____ COUNTY, FLORIDA

CASE NO.: _____

Plaintiff/Petitioner,

v.

Defendant/Respondent.
_____ /

NOTICE OF CONFIDENTIAL INFORMATION WITHIN COURT FILING

Pursuant to Florida Rule of Judicial Administration 2.420(d)(2), the filer of a court record at the time of filing shall indicate whether any confidential information is included within the document being filed; identify the confidentiality provision that applies to the identified information; and identify the precise location of the confidential information within the document being filed.

Title/Type of Document(s): _____

Indicate the applicable confidentiality provision(s) below from Rule 2.420(d)(1)(B), by specifying the location within the document on the space provided:

Chapter 39 records relating to dependency matters, termination of parental rights, guardians ad litem, child abuse, neglect, and abandonment. § 39.0132(3), Fla. Stat. (If the document is filed within a Chapter 39 case, this form is not required.)

Adoption records. § 63.162, Fla. Stat. (If the document is filed within a Chapter 63 adoption case, this form is not required.)

Social Security, bank account, charge, debit, and credit card numbers in court records. § 119.0714(1)(i)–(j), (2)(a)–(e), Fla. Stat. (Unless redaction is requested pursuant to § 119.0714(2), this information is exempt only as of January 1, 2011.)

HIV test results and patient identity within the HIV test results. § 381.004(3)(e), Fla. Stat.

Sexually transmitted diseases — test results and identity within the test results when provided by the Department of Health or the department’s authorized representative. § 384.29, Fla. Stat.

Birth and death certificates, including court-issued delayed birth certificates and fetal death certificates. §§ 382.008(6), 382.025(1)(a), Fla. Stat.

Identifying information in petition by minor for waiver of parental notice when seeking to terminate pregnancy. § 390.01116, Fla. Stat. (If the document is filed within a Ch. 390 waiver of parental notice case, this form is not required.)

Identifying information in clinical mental health records under the Baker Act. §394.4615(7), Fla. Stat.

Records of substance abuse service providers which pertain to the identity, diagnosis, and prognosis of and service provision to individuals who have received services from substance abuse service providers. § 397.501(7), Fla. Stat.

Identifying information in clinical records of detained criminal defendants found incompetent to proceed or acquitted by reason of insanity. § 916.107(8), Fla. Stat.

Estate inventories and accountings. § 733.604(1), Fla. Stat.

Victim's address in domestic violence action on petitioner's request. § 741.30(3)(b), Fla. Stat.

Information identifying victims of sexual offenses, including child sexual abuse. §§ 119.071(2)(h), 119.0714(1)(h), Fla. Stat.

Gestational surrogacy records. § 742.16(9), Fla. Stat.

Guardianship reports and orders appointing court monitors in guardianship cases. §§ 744.1076, 744.3701, Fla. Stat.

Grand jury records. Ch. 905, Fla. Stat. (If the document is filed in a Ch. 905 grand jury proceeding, this form is not required.)

Information acquired by courts and law enforcement regarding family services for children. § 984.06(3)–(4), Fla. Stat. (If the document is filed in a Ch. 984 family services for children case, this form is not required.)

Juvenile delinquency records. §§ 985.04(1), 985.045(2), Fla. Stat. (If the document is filed in a Ch. 985 juvenile delinquency case, this form is not required.)

Information disclosing the identity of persons subject to tuberculosis proceedings and records of the Department of Health in suspected tuberculosis cases. §§ 392.545, 392.65, Fla. Stat.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by U.S. mail / personal service to: _____, on _____, 20_____.

Attorney Name
Address
Phone
Florida Bar No.

Note: The clerk of court shall review filings identified as containing confidential information to determine whether the information is facially subject to confidentiality under the identified provision. The clerk shall notify the filer in writing within 5 days if the clerk determines that the information is NOT subject to confidentiality, and the records shall not be held as confidential for more than 10 days, unless a motion is filed pursuant to subdivision (d)(3) of the Rule. Fla. R. Jud. Admin. 2.420(d)(2).

RULE 9.040. GENERAL PROVISIONS

(a) – (h) [No Change]

(i) Requests to Determine Confidentiality of Appellate Court Records.

Requests to determine the confidentiality of appellate records are governed by Florida Rule of Judicial Administration 2.420.

Committee Notes

[No Change]

RULE 9.100. ORIGINAL PROCEEDINGS

(a) – (c) [No Change]

(d) Exception; Orders Excluding or Granting Access to Press or Public.

(1) A petition to review an order excluding the press or public from, access to or granting the press or public access to, any proceeding, any part of a proceeding, or any judicial records of the judicial branch, if the proceeding or records are not required by law to be confidential, shall be filed in the court as soon as practicable following rendition of the order to be reviewed, if written, or announcement of the order to be reviewed, if oral, but no later than 30 days after rendition of the order. A copy of the petition shall be furnished to the person (or chairperson of the collegial administrative agency) issuing the order, and to the parties to the proceeding, and any affected non-parties, as defined in Florida Rule of Judicial Administration 2.420.

(2) The court shall immediately consider the petition to determine whether a stay of proceedings in the lower tribunal or the order under review is appropriate; and, on its own motion or that of any party, the court may order a stay on such conditions as may be appropriate. Any motion to stay an order granting access to a proceeding, any part of a proceeding, or any records of the judicial branch made under this subdivision must include a signed certification by the movant that the motion is made in good faith and is supported by a sound factual and legal basis. Pending the court's ruling on the motion to stay, the clerk of the court and the lower tribunal shall treat as confidential those proceedings or those records of the judicial branch that are the subject of the motion to stay.

(3) ~~If requested by the petitioner or any party, or on its own motion, the court may allow oral argument.~~ Review of orders under this subdivision shall be expedited.

(e) – (l) [No Change]

Committee Notes

1977 Amendment – 1999 Amendment [No Change]

2010 Amendment. Subdivision (d) is revised to allow review not only of orders that deny access to records of the judicial branch or judicial proceedings, but also those orders that deny motions to seal or otherwise grant access to such records or proceedings claimed to be confidential. This revision is intended to recognize and balance the equal importance of the constitutional right of privacy, which includes confidentiality, and the constitutional right of access to judicial records and proceedings. The previous rule allowed review of orders denying access only “if the proceedings or records are not required by law to be confidential.” This provision is eliminated because it is unworkable in that such a determination of what is required by law to be confidential usually concerns the merits of whether the proceedings or records should be confidential in the first instance. Outer time limits for seeking review are added. Subdivision (d)(2) is revised to provide continued confidentiality of judicial proceedings and records to which the order under review has granted access upon the filing of a motion to stay that order until the court rules on the motion to stay. The former subdivision (d)(3) concerning oral argument is deleted as unnecessary in light of Rule 9.320. New subdivision (d)(3) is a recognition of the public policy that favors expedited review of orders denying access and the provision for expedited review in Florida Rule of Judicial Administration 2.420.

2010 Note. As provided in Rule 9.040, request to determine the confidentiality of appellate court records are governed by Florida Rule of Judicial Administration 2.420.

Court Commentary

[No Change]

RULE 9.110. APPEAL PROCEEDINGS TO REVIEW FINAL ORDERS OF LOWER TRIBUNALS AND ORDERS GRANTING NEW TRIAL IN JURY AND NON-JURY CASES

(a) – (n) [No Change]

Committee Notes

1977 Amendment – 2006 Amendment. [No Change]

2010 Note. As provided in Rule 9.040, requests to determine the confidentiality of appellate court records are governed by Florida Rule of Judicial Administration 2.420.

Court Commentary

[No Change]

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO THE FLORIDA
RULES OF JUDICIAL ADMINISTRATION**

CASE NO. SC10-

**OUT-OF-CYCLE REPORT OF THE
FLORIDA RULES OF JUDICIAL ADMINISTRATION COMMITTEE
ON EMAIL SERVICE AND
CONFORMING CHANGES IN THE OTHER COURT RULES OF
PROCEDURE**

John G. Crabtree, Chair, Appellate Court Rules Committee, Donald E. Christopher, Chair, Civil Procedure Rules Committee, Robert Eschenfelder, Chair, Code and Rules of Evidence Committee, Robert T. Strain, Chair, Criminal Procedure Rules Committee, Steven P. Combs, Chair, Family Law Rules Committee, William W. Booth, Chair, Juvenile Court Rules Committee, Jeffrey S. Goethe, Chair, Probate Rules Committee, Katherine E. Giddings, Chair, Rules of Judicial Administration Committee (“RJA”), Michele A. Cavallaro, Chair, Small Claims Rules Committee, John J. Anastasio, Chair, Traffic Court Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, file this Out-Of-Cycle Report of the RJA on Email Service, proposed Fla. R. Jud. Admin. 2.516, and conforming changes to other rules of procedure, and respectfully request that this Court approve the attached proposed rules with respect to email service. In addition, the Criminal Procedure Rules Committee and Code and Rules of Evidence Committee file comments.

INTRODUCTION

For over one hundred years, lawyers practicing in Florida courts have communicated with each other in essentially two ways: by telephone and, when pleadings and court papers had to be served, by U.S. Mail. Paper is inserted into a machine; ink is mechanically applied to the paper; the paper is removed, signed by hand, folded, and stuffed in an envelope; postage is glued onto an envelope that is addressed in the same manner; the envelope is sealed, and the mail is taken to a post office. Reliably, one to four days later, the vast majority of that mail is delivered, and the cycle repeats itself as the receiving lawyer prepares his or her response to the pleading.

Although electronic mail (or email) has been added to virtually every lawyer's available options as a means of informal communication with other lawyers, the means by which pleadings and other documents are formally exchanged between counsel, and among counsel and Florida's courts and clerks, has changed little. The use of paper delivered by U.S. Mail predominates in Florida courts today, with few exceptions.

For the reasons delineated in this report, Florida lawyers on the RJA, joined by all of The Florida Bar rules committees, present to this Court a series of proposals which, if accepted by this Court, will be the first significant comprehensive change in the manner in which law is practiced in Florida in well

over a century. The changes contained herein will require a conversion to email as the predominant means of service of pleadings between lawyers and will accelerate the process of converting Florida's legal system from a paper-based system to a digital system so that lawyers, the courts, and the public they serve in Florida can obtain the many benefits of an efficient and practical electronic court system.

OVERVIEW OF PROPOSED RULE 2.516

In the mid 1990s, the RJA took the first step toward moving the practice of law and the court system in Florida into the electronic age by amending Rule 2.090 in anticipation of the day when lawyers would be able to file documents in court electronically. *Amd. to the Rules of Jud. Admin. — Rule 2.090 —Electronic Transmission and Filing of Documents*, 681 So. 2d 698 (Fla. 1996).

For the next 12 to 14 years, although the court system worked steadily toward grooming the system for the day when there would actually be electronic access to court files, the progress was measured at best, and lawyers, by and large, continued to practice as they had for the preceding 100 years.

In the year and a half before June 2009, at least three different rules committees (the Rules of Civil Procedure, the Rules of Appellate Procedure and the RJA), considered the possibility that there was some way to allow attorneys to at least deliver copies of pleadings to each other by email or some other electronic means, so as to make the system more efficient and less expensive. This was in

part because there appeared to be no comprehensive e-filing/e-court system on the horizon. Those efforts were not coordinated and did not yield any final proposal. Because of this interest by the Bar, the chairs of each of The Florida Bar's rules committees were asked in June of 2009 to designate at least one member of their committees to serve on a joint committee to explore the possibility of a comprehensive proposal for email service. This ad hoc committee, chaired by Paul Regensdorf, became known as the Joint Email Service Committee and began its work in July of 2009.

From that date until the date of this filing, it can fairly be reported to this Court that the representatives of each of the ten rules committees, unanimously, and later, in January 2010, each of the ten rules committees acting as full committees, unanimously, endorsed the concept of developing a new method of electronic service in Florida. In the summer of 2010, each committee acted to approve Rule 2.516 in concept and to create the necessary conforming changes to its own set of rules to implement email service. The Florida Bar rules committees present these proposals to implement email service for all lawyers in Florida.

FACTORS DRIVING EMAIL SERVICE PROPOSAL

Because Florida will in the near future have an operational e-filing system comparable to that already in existence in the federal court system, and because that e-filing system will eventually have an electronic service component, the

implementation of email service is an important bridge between the paper-based world of the past and the electronic-based court of the future. Because this pure email service system will only exist for the majority of lawyers until the fully integrated e-filing portal is operational in all divisions of all courts in all counties, the sooner it can be implemented, the sooner lawyers will begin to practice those skills and establish those procedures that will be necessary for the electronic court of tomorrow.

When the Joint Committee first met, there was a determined belief among each of the representatives of the various rules committees that four principles, which are discussed below, should guide the development and ultimate implementation of the rule. The Joint Committee further believed that its work and the work of the ten separate rules committees that were represented on the Joint Committee should be completed as quickly as possible. The conversion of the legal system to an electronic procedure for service is an important and significant first step toward establishing an e-courts system in Florida.

A. The Timing Consideration

The Joint Committee determined it is essential that any email service rule be approved and implemented without delay; the adoption of an email system for the service of pleadings can be accomplished with practically no cost to the Bar and the courts. Working on both a draft email service rule and the complex task of

presenting to the court a package of rules for all rules committees to implement email service, the process has gone from the genesis of an idea to a complete package for this Court in just over 14 months.

B. The Four Core Concepts Behind Email Service.

When the Joint Committee first met, its representatives from each of the rules committees, after discussing the concerns about antiquated regular mail service in Florida, unanimously recognized that an alternative means of electronic service needed to be established and identified four basic core concepts that any system of electronic service (or email service) should adhere to. Those concepts are: (1) the system would have to be mandatory for all lawyers across all courts throughout the State of Florida, with very limited exceptions; (2) the procedure should be uniform across the State of Florida, in whatever court or division or level of court the service would be accomplished; (3) the changes in the means of service should be as simple as possible so as to ease the approximately 88,000 members of The Florida Bar into the digital age; and (4) the new email service rule should be located in only one place, the Rules of Judicial Administration, and should not be repeated in other rules of procedure.

These four core concepts, established in July 2009, continue to be the controlling concepts behind Rule 2.516 and the various other conforming rules.

1. Email Service Needs to be Mandatory for All Lawyers.

The RJA recognizes it is human nature for people to resist change and, when change is proposed, the inclination to resist that change may be substantial.

However, it was the strong and unanimous belief of the joint committee that email service needs to be made mandatory for all lawyers and that the time to transform the method of service used by lawyers in Florida is now. The reasons are largely self-evident.

In order to get the maximum benefit available to a change from mail service to email service, the system must be established in a way that requires all lawyers at the same time to convert from regular mail service to an email service format. The court system has for 15 years technically had an e-filing system that essentially required the utilization of paper as a backup. One result of that decision was, in many situations, the required maintenance of two systems, paper and electronic, which may have actually impeded the modernization of the legal system. To allow the continuance of both paper and electronic formats would defeat the purpose of the change and doom Florida lawyers to an unnecessary period of wasted time, energy, and expense.

However, nothing in this proposal requires that lawyers or law firms abandon paper altogether; if lawyers wish to maintain a paper system and duplicate the electronic system that would be created as a result of this means of service,

they are free to do so. The cost and expense of that duplication, however, would be borne by those lawyers who choose not to modernize. But to force that unnecessary expense on lawyers as a whole would be unreasonable and would delay the improvement of the court system.

As discussed below, there is one limited circumstance in which lawyers should not be required to utilize email service, but that exception deals with the impossibility of using it as a delivery technique, and not a voluntary choice to use regular mail service.

2. The system should be uniform across Florida.

While this set of rules was developing through the Bar's committee structure, many other lawyers, judges, and clerks throughout the state have been working to implement the beginnings of the statewide portal for electronic filing of documents. Just as that system anticipates a single uniform delivery point for pleadings to be sent for all divisions of all courts in all counties and all circuits, so too should lawyers serving documents on opposing parties and counsel be entitled to expect that a single uniform statewide system is available for that purpose.

While this package of rules does make appropriate allowance for *pro se* individuals who may not be able to (or who choose not to) use email, it is the expectation of the RJA and all of the other committees that email service should be applicable under each set of rules and in every type of court proceeding in Florida.

3. The proposed email service system should be kept simple.

The third core concept in Rule 2.516 and the conforming changes in the other rules sets is that the system called for in these rules should be as simple as possible, thereby easing the transition for lawyers from mail service to email service as much.

To accomplish this, the Joint Committee selected Rule 1.080 of the Florida Rules of Civil Procedure as its base rule so as to use as the platform for email service a format and procedure that is generally familiar to most Florida lawyers. Also, because there will be limited circumstances in which pleadings and documents may need to be served outside of email service, the basic Rule 1.080 provisions have been largely incorporated into Rule 2.516. The actual method to accomplish email service is no more complicated than sending a regular email with a document attached. No significant training is needed and no technical or expensive equipment is required.

4. The email service rule should be placed in the Rules of Judicial Administration.

Over the years, the rules governing lawyers in their practices in different courts and different types of proceedings have expanded to the point that there are multiple different sets of rules to which a lawyer must look for guidance. As the number of rules sets expanded, many similar concepts, such as service, filing, and discovery, were repeated and reiterated in each of the rules sets. However, as those

concepts spread into the different sets of rules, the concepts blurred and changed over time and there was no longer a single consistent meaning or definition for many of the concepts in the various rules sets.

Accordingly, when the Joint Committee first met, and when the issues were first presented to all of the rules committees in January 2010, the concept of consolidating the procedures for email service in one place was universally accepted.

This is not a new concept; over the years and with increasing frequency, procedures that have common application in all courts have more and more been placed in the Rules of Judicial Administration. The procedures for e-filing, public access to records, computation of time, disqualification of judges, size and type of paper, *pro hac vice* motions, and numerous other concepts are now centrally located in the Rules of Judicial Administration.

Consistent with this trend and for the laudable reason of ensuring that any necessary changes in the email service rule can be made quickly and efficiently through one rules committee, it was the unanimous conclusion of the Bar and its committees that the place for the email service rule would be in the Rules of Judicial Administration. However, as discussed below in the section on conforming changes to the juvenile rules, it should be noted that the Juvenile

Procedure Rules Committee determined that the email service rule should also be included in its entirety in three juvenile rules.

BENEFITS OF EMAIL SERVICE

A. Generally.

It is respectfully suggested to this Court that the benefits of converting from the paper system using regular mail to an electronic system for the delivery of documents can hardly be debated. Most businesses and professions have long since converted their record-keeping systems to some data management service that utilizes digitalized data rather than archived paper records. Unfortunately, for various reasons, the courts and many lawyers have not yet been able to make that change.

The benefits of a modern digitalized electronic record-keeping and document transmission system are believed to be well known to this Court and to The Florida Bar, but they will be reiterated briefly below.

B. Benefits to the Bar.

Florida's lawyers will be the principal beneficiaries of an email service rule that can be utilized by all lawyers until the court system finally implements a complete e-filing portal with an electronic service component for each and every court and division of court in Florida. Each year in Florida, the number of pieces of paper filed in the court system in all divisions of all courts in all counties is not

precisely known, but is well in excess of 100,000,000 pages per year, and may easily exceed 200,000,000 pages. If those filed pieces of paper were served on only one other lawyer or party, the number of pages and documents served would obviously equal the number filed in all the courts in Florida. Just as obviously, in every case with multiple parties, the number of pieces of paper mailed out increases directly.

If these millions of pieces of paper were eliminated and transmitted as electronic documents, the savings in terms of paper, ink, toner, postage, envelopes, and labor is incalculable. The corresponding reduction in demands for paper and the destruction of trees is a secondary benefit that is of no small moment.

As substantial as these tangible benefits are, it is respectfully suggested to this Court that the principal benefit to the Bar will be in allowing the immediate transmittal and receipt of information in a verifiable format and in a manner that allows far more flexibility in the use of the digitalized data in subsequent pleadings, documents, or correspondence. The electronic court system has functioned remarkably well in the federal system for years, and if Florida had been able to overcome its political and financial constraints, it may have implemented a comparable system long before this proposal.

Again, the benefits of email service do not need to be accepted by lawyers in their own offices. If attorneys wish to continue using paper in their own internal

document managing systems, they can. But the costs for such duplication of files will be borne by them, and not by the vast bulk of attorneys who would be utilizing an electronic format.

The selection of the Internet as a means for the delivery of emails is also of tremendous benefit to virtually all lawyers in the State of Florida. While ten or fifteen years ago the prevalence of Internet access in law firms and the use of email for routine communications was not widespread, in today's world it is the rare and unusual lawyer or group of lawyers who do not have and regularly use the Internet. Because the Internet email system has proven to be a reliable system that virtually all lawyers already utilize, and because that system can be designated as Florida's email service vehicle without any substantial investment, its availability for use is a tremendous benefit.

C. Benefits to the Judiciary.

While the courts do not generate the same volume of paper as lawyers and parties, courts need to deliver to lawyers and parties pleadings, notices, judgments, orders, and other documents — all of which are prepared, typed, stamped, and served in the same way that most lawyers serve pleadings today. A secondary but not insubstantial benefit to the court system in these days of limited public funding is that the courts will also be able to use email service for required and necessary

communications with lawyers, and in certain circumstances, non-represented parties.

Just as with lawyers, the increased utilization of the email system for the delivery of documents from the court will also have the secondary advantage of educating judges and court personnel about digitalized record-keeping and will help the courts transition to a fully electronic court.

Finally, as with lawyers in general, it is believed that all courts have at least basic Internet access through adequate computers so that the court system will be able to use email service immediately, with a great savings in terms of paper costs and virtually no outlay of additional expense.

D. Benefits to the Clerks.

The benefits to the clerks of court are directly comparable to the benefits to the courts themselves. As with courts, clerks from time to time are required to serve orders, opinions, notices, and other documents to parties and attorneys and are usually required to do so using paper, ink, toner, envelopes, postage, and the United States mail.

With the adoption of Rule 2.516 and the conforming changes, clerks will be specifically authorized to serve all such documents by email upon lawyers and individuals who are a part of the email system. Also, as with judges and lawyers, clerks too have computer access to the Internet universally available to them and

can participate in this process without any additional increase in capital expenditures or operating costs.

E. Benefits to the Public.

Last, but certainly not least, the public will benefit substantially by the implementation of this rules package. The legal system, which exists to do the public's work, will work more efficiently and at a lower cost, thereby delivering justice in a more efficient and appropriate way. If attorneys can do their jobs more efficiently and at lower cost, the benefits of necessity will flow to the public. And if judges and clerks are also able to more effectively and efficiently deliver justice in all divisions of our courts, the public is a substantial, if not primary, beneficiary of this benefit as well.

The RJA did not feel it could impose email service on individuals who represent themselves in the court system, but as discussed below, they are authorized by this rule to participate in email service if they are able and willing to do so.

DISCUSSION OF SPECIFIC SUBDIVISIONS OF PROPOSED RULE 2.516

The Title.

The title of this Rule, while taken generally from Rule 1.080, changes the word "papers" to the word "documents" to make the terminology consistent with electronic files.

Subdivision (a).

This subdivision is taken almost directly from Rule 1.080. The first sentence is slightly rewritten to anticipate the gradual shift from paper filing to electronic transmission of documents, and eventually to filing through the e-portal. Nevertheless, until that day comes, or until the Supreme Court otherwise orders, service in all courts would be required to comply with this rule.

Specific language in this subdivision addresses concerns raised by probate practitioners. “Documents served by formal notice or required to be served in the manner provided for service of formal notice” are excepted from email service to allow for probate pleadings that must be “served” consistent with Florida Statutes and the probate rules. Such documents are more in the nature of original complaints or petitions than they are in the nature of documents exchanged between counsel who have already noted their appearance in the case.

Subdivision (b).

This small subdivision has not materially changed in the email service rule.

Subdivision (b)(1).

This subdivision establishes the mandatory nature of electronic mail service. It explicitly states that parties who are required or permitted to serve another party must do so email “unless this rule otherwise provides.” In short, if this rule

becomes effective, lawyers will not be able to opt for “traditional” mail service of paper pleadings.

Notwithstanding the efficiencies and benefits of email service, there will still be circumstances in which a litigant will want to deliver a particular document or pleading to the opposing attorney by hand or by facsimile. The second sentence of subdivision (b)(1) allows this by providing that if a sender wishes to use another means of service authorized by this rule (such as hand-delivery), any time limits established by other provisions governing that means of service control. As discussed below, service by email is still intended to give the recipient an additional five days from the date of service to respond, as though the document had been delivered by regular mail. This is consistent with the federal court rules, which likewise provide for additional days from the date of service for documents served electronically. However, if a litigant wishes to speed up that process, the document can still be delivered by hand delivery, and the additional time for mailing will be eliminated.

Subdivision (b)(1)(A).

This subdivision establishes the procedure for the exchange of email addresses to be used in any proceeding. At the time an attorney first appears in a case, that attorney must serve a designation of a “primary” email address and may designate up to two additional or secondary email addresses. The primary address

is intended to be the address of the person who would most regularly review incoming emails to determine the service of pleadings and could easily be designated as the individual in a law office whose job it is to receive pleadings. The secondary email addresses could be designated for partners and associates working on the case, or even a client, if the lawyer wished the client to receive documents immediately. Once the attorney serves the designation of email addresses, those addresses shall be listed on each subsequent document filed in that case.

If, for any reason, an attorney fails or refuses to designate an email address for service, all documents in a particular case or proceeding may be served on that attorney by the sending-attorney at the email address on record with The Florida Bar. Nothing in this rule is intended to prevent an opposing attorney from filing an appropriate motion with the court to compel the designation of an email address for service.

Subdivision (b)(1)(B).

This subdivision establishes the only exception to mandatory email service on and by attorneys. If an attorney demonstrates that the attorney has no email account and lacks access to the Internet at the attorney's office, then the court, upon motion, may excuse that attorney from the requirements of email service.

Once excused, service on and by that attorney thereafter will be by the traditional means found originally in Rule 1.080, but now incorporated in subdivision (b)(2).

No other exceptions were thought worthy of inclusion in the rule. Again, should extraordinary circumstances present themselves, nothing in this rule prevents an attorney from seeking relief from this rule from the court.

Subdivision (b)(1)(C).

This subdivision provides that parties not represented by an attorney are not required to use email service, but they may use email service if they wish. If such parties choose to use email service, they are required to serve a designation of a primary email address and up to two secondary email addresses just as attorneys must do. If they do not designate an email address for service, however, then service by and upon them will have to be made in accordance with subdivision (b)(2).

Subdivision (b)(1)(D).

This subdivision deals with time of service. It is almost completely analogous to the concept of service by mail. Just as service by mail is complete upon mailing (even though there may be no attendant external evidence generated of that mailing), so too is an email deemed served “on the date it is sent.” Some individuals anticipate chicanery by members of the Bar with respect to the date pleadings and other documents are “sent.” It is respectfully suggested to this Court

that virtually every email system generates a record of the date and time, down to the minute, that an email is sent, and it is believed that such evidence of service is a vast improvement over United States mail delivery; there is no record of when a piece of mail is delivered to the post office unless a certified mail fee is paid.

The second portion of this subdivision addresses the problem of non-delivery. The RJA proposes that the delivery of email is as successful, and probably significantly more successful, than the use of United States mail. Nevertheless, some lawyers have expressed concern that email might not be received even though it is sent (just as United States mail is sometimes not received even though it is mailed). The current Florida Rules of Civil Procedure make no provision for what happens when regular mail is not delivered, but a series of common sense procedures have been established by the case law should that fact become known to the mailer.

Similarly, the second portion of this subdivision specifically provides that if a sender learns an email did not reach the address of the person to be served, the sender must immediately resend the email or deliver the document or pleading by any of the other means authorized by subdivision (b)(2). While all email systems do not presently give the sender a return receipt option, many do, and if a sender's system provides for such an option and no receipt is received, then the sender will be charged with knowing the email did not get delivered. Similarly, as is the case

with paper service, the sending attorney may learn an email does not get through any one of a hundred different normal communications that may occur between the sending attorney and the receiving attorney. Any of those sources of information will be sufficient to trigger the obligation to resend an email, just as they trigger it now with the obligation to resend a paper document.

Subdivision(b)(1)(D)(iii) provides that “email service is treated as service by mail for the computation of time.” While it may seem counterintuitive to the Court that a communication by email that is virtually instantaneous should entitle the recipient to five extra days to respond (as though it had been sent by regular mail), the provision was deliberately selected. After a great deal of thought, the Joint Committee initially, and all of the rules committees of The Bar subsequently, have approved the concept that email service should be treated exactly like service by mail for the computation of time. In other words, despite the fact that email is delivered immediately, 24 hours a day, and that it will be deemed served on the date that it was sent, the recipient will still have the additional days currently provided for by the rules as though the document had been served by mail rather than by email. In civil practice, that would be five additional days, and in criminal practice, that would be three additional days.

The primary reason for this additional time was because there is no good reason to further accelerate the pace of the practice of law and it is consistent with

the system currently in place in the federal rules. Over the last 10 or 20 years, a lawyer's day to day practice has significantly speeded up as modern technology causes things to happen faster and requires responses more quickly. Because there has been no outcry from the Bar that the delivery of responses to various pleadings needs to happen even more quickly, it was the opinion of the Joint Committee, and later the RJA and the other committees, that the recipient of email service would still benefit from the additional delivery time afforded to routine delivery by mail.

In addition to not desiring to speed up the process of professional life still further, there was another concern that, despite the fact that an email might be delivered immediately, it may not be observed or seen by the lawyer or his office staff immediately. The additional days for responses to emailed documents would provide ample opportunity for any office to establish procedures to insure that an email had been reviewed and evaluated.

Subdivision (b)(1)(E).

The mechanics of email service are designed to be simple. A document is served by email when it is attached to an email itself in .pdf format and sent to those lawyers and parties who have designated email addresses. The .pdf format was selected because it is universally available at no cost to lawyers and non-lawyers alike and because it is the currently widely accepted format for the transmission of documents. Furthermore, it provides an acceptable level of

security for documents as compared to documents delivered in other formats, such as Microsoft Word, which can be edited and changed. It is also the format approved by this Court for transmission of documents and is in use throughout the United States in comparable systems.

The first portion of this subdivision directs that the subject line of an email that has documents attached to it shall start with the words “SERVICE OF COURT DOCUMENT” so that the recipient will be aware that there is an email of particular importance. Some concern has been expressed that the selection of three required words in the subject line may attract the unhealthy attention of spammers. It is acknowledged this could happen, but at this time the RJA believes this concern does not warrant any change to the current proposal. The RJA notes that of the hundreds of lawyers using email service voluntarily at this time, none have reported any such problem. In addition, the District Court of Appeal, First District, which has recently implemented electronic filing and service, and which currently has 2400 registered users, has reported learning of no such spamming problem. That is not to say it could not conceivably happen, but there is simply no evidence that it will, or that it cannot be easily corrected if it does.

The second portion of this subdivision requires that the sender give additional information about the document, beyond that placed in the subject line,

in the body of the email itself to allow the recipient to correctly identify the attached document.

The third portion of this subdivision carries forward the “/s” signature format previously approved by this Court in other contexts. This is allowed on the emailed document to avoid printing and scanning the document, so long as the filed original of any such document or pleading has an original signature as required by the applicable rules of procedure.

Finally, the last portion of this rule limits the size of any email (with its attached documents) to a total of five megabytes (5MB). If an attached document or series of documents to be served, along with the covering email, are larger than that, then they need to be broken down into separate emails and sent separately, to ensure that no one email, along with all of the attachments thereto, exceeds five megabytes in size. This provision was placed in the rule because of concerns there are email systems in Florida that may have size restrictions on incoming emails. The five megabyte limitation is the same size limitation utilized in most other courts using similar systems and was thought to be sufficiently small to escape the arbitrary settings of most size filters.

Subdivision (b)(2).

This subdivision essentially incorporates, verbatim, the original language of Rule 1.080 allowing service of pleadings and other documents by a variety of

means. Because email service will be the mandatory means for virtually all pleadings by lawyers, this provision of the original Rule 1.080 will be used primarily by *pro se* individuals and by those few lawyers who are excused from email service.

The first sentence of this subdivision has been added to work in conjunction with the second sentence of subdivision (b)(1), which is designed to ensure an attorney may select a means of service from subdivision (b)(2), along with email service, and still get the benefit of the immediate delivery time or other characteristic of service by non-email means.

Subdivision (c),(d) and (e).

These subdivisions are incorporated from Rule 1.080 unchanged.

Subdivision (f).

This subdivision has been changed to reflect that email service is the first means of delivering pleadings and other documents for service.

Subdivision (g).

This subdivision is modified very slightly from Rule 1.080 to allow, but not require, clerks to serve notices and other documents by any means allowed in subdivision (b). Although attorneys are required to use email, clerks are simply allowed to use email if they are equipped to do so. Because clerks may not have

ready access to an attorney's designation of his or her email address, it may be more difficult for clerks to email notices than it is for lawyers or judges.

Subdivision (h).

This subdivision has been specifically amended to authorize, but not require, the Court to utilize email service for any order or judgment that is sent to an attorney who has not been excused for email service or to any person not represented by an attorney who has opted into email service.

Conforming Amendments to Other Court Rules of Procedure

The following rules amendments are proposed to conform with proposed new Rule 2.516. The comments on this proposal of the Criminal Procedure Rules Committee and Code and Rules of Evidence Committee are also included below.

Rules of Civil Procedure

Fla.R.Civ.P. 1.080 is deleted and a paragraph added that service must be made in accordance with Rule 2.516.

Rule 1.170(g) is amended to reflect relocation of the service rule to Rule 2.516.

Rule 1.351(b) is amended to include email service.

Rules 1.410(c), 1.440(c), 1.442(c)(2)(G), 1.510(d)(5), and 1.630(d)(5) are amended to reflect relocation of the service rule to Rule 2.516.

The Court should note there are amendments to Rules 1.080, 1.351, 1.410, and 1.510 that were submitted in the committee's cycle report and approved by the Court in case number SC10-148. These amendments will become effective January 1, 2011. In proposing Rule 2.516, the Rules of Judicial Administration Committee took account of the pending amendments to *Rule* 1.080.

Rules of Judicial Administration

Rule 2.515(a) is amended to require an attorney's current record Florida Bar address and primary and secondary email addresses, if any, on pleadings and other papers.

Rules of Criminal Procedure

Rule 3.030 is amended to conform to Rule 2.516.

Rule 3.070 is amended to include service by electronic mail.

Rule 3.852(c)(2) is amended to correct a cross-reference.

Committee Comment:

The Criminal Procedure Rules Committee recognizes the inevitability of electronic service and has proposed conforming amendments to its rules.

However, many concerns have been identified by the committee about the implementation of a rule mandating electronic service. The following summarizes the concerns raised by the committee:

A. Proof of service and time of service: The committee is concerned that it is often difficult to insure that service actually occurred. Electronic messages can be transmitted without necessarily being received, particularly with large government offices that have spam filters or county servers where electronic messages can sit without the sender or recipient being aware that they are there. The date an electronic message is sent is also vague: is it when the sender clicks “send” or when the mail server actually transmits the message to the recipient’s mail server? The additional time for service applicable to mail service does not solve this problem. Neither “Read Receipt” (confirmation that a recipient opened an email) nor “Delivery Receipt” (confirmation that the email was successfully transmitted to the recipient’s email server) are universally supported options.

B. Discovery: Proposed Rule 2.516 applies to all documents served after the initial pleading, and does not exempt written discovery, which can be voluminous. Many small practitioners as well as large government offices are not set up for the volume of scanning and data storage necessary for emailing and retaining such volumes of material. It is also unclear whether documents to be served by email include photographs, which would either have very large file sizes or would require alteration of the original photograph resolution for emailing.

C. Format for email service: More specific formatting standards for the body of the email are needed in order to assist with future automation of routing,

printing, storing, etc. For example, the first line of the body of the email should identify the case number, the second line the date of service, the third line the court in which the proceeding is pending, the fourth line sender's name and telephone number, the fifth line the names of the initial parties, the sixth and subsequent lines the titles of documents served with the email, one document name per line.

D. Technical Issues: Proposed Rule 2.516 sets a 5MB size limit. This may not be realistic. It is questionable whether the rule creates a viable fix with breaking large attachments up into smaller parts. Format issues for attachments are not specified. The rule should require that .pdfs be attached individually in their native state, and not be compressed into zip files in order to facilitate automated printing and storing.

E. Cost: The full cost of moving to electronic service is unknown. Certainly, there are technology expenses (servers, scanners, etc.). However, there are also personnel and training expenses. Additional personnel would be needed simply to "man" the electronic mailboxes in big offices and to scan documents. Training of personnel on how to "serve" pleadings would likewise be required.

The CPRC believes a broad pilot program or phase-in period should predate the move to mandatory electronic service. This would provide an opportunity to address problems before implementation statewide. Justice and liberty interests in criminal proceedings are too valuable and important to risk by moving forward too

rapidly in these untested waters. Furthermore, state attorney and public defender offices are suffering from chronic underfunding. A mandate to move forward with electronic service may well present an insurmountable burden on already limited resources. A pilot project and/or phase-in period would allow agencies to determine the cost and best practices for technology upgrades, personnel, and training, in order to adequately address the requirements of electronic service. It also would insure that dollars are not used on efforts that are not successful. The private sector is likewise experiencing financial hardships. The additional technology necessary to implement this rule may be beyond the ability of the small practitioner.

Florida Probate Rules

Rules 5.030 and 5.040 Rule History and Rule Reference lists are updated.

Rule 5.041 is amended to cross-reference and provide for service in accordance with Rule 2.516. The Rule History and Rule Reference lists are also updated.

Rule 5.060 Rule History and Rule Reference lists are updated.

Rule 5.120 is updated with a general service provision and the Rule History and Rule Reference lists are updated.

Rule 5.200 Rule History and Rule Reference lists are updated.

Rules 5.340(d) and 5.342(c) are amended to remove the duplicative requirement of filing a proof of service for a document that includes a certificate of service as provided in Rule 2.516. If service of the inventory is by formal notice, then proof of service is filed in accordance with Rule 5.040(a)(5). The Rule History and Rule Reference lists are updated.

Rules 5.350, 5.360, 5.370, 5.380, 5.385, 5.386, 5.400, 5.401, 5.402, 5.403, 5.405, and 5.406 Rule History and Rule Reference lists are updated.

Rule 5.407 is amended to make the possessive pronoun gender neutral in compliance with AOSC06-14. The Rule History and Rule Reference lists are updated.

Rules 5.430, 5.440, 5.460, 5.470, 5.475, 5.496, 5.498, 5.499, 5.510, 5.530, 5.620, 5.630, 5.650, 5.660, 5.670, 5.680, 5.690, 5.695, 5.696, and 5.700 Rule History and Rule Reference lists are updated.

The Court should note there are amendments to Rules 5.030(b), (c) and Committee Notes, 5.040(d) and Committee Notes, 5.041 and 5.060 Rule History and Statutory References, 5.200 (e) and Rule History, 5.340(a), (d)-(h) and Rule History and Statutory References, 5.360 and 5.405 Rule History and Statutory References, 5.406(c) and Rule History, 5.440 Title and Rule History, 5.470 Rule History and Rule References, 5.496(b) and Rule History, and 5.696(b) and Rule History that were submitted in the committee's cycle report and approved by the

Court in case number SC10-171. These amendments will become effective January 1, 2011.

Rules of Traffic Court

Rule 6.370 is amended to substitute “document” for “paper” to allow for service of materials other than paper. The rule is also amended to broaden the types of service available. The title of the rule is amended to allow for all types of service, except hand delivery.

Florida Small Claims Rules

Rules 7.050(a) and (b) are amended to require attorneys to provide, and allow unrepresented parties to provide, an email address on a statement of claim.

Rules 7.080(b) and (e) are amended to require attorneys to serve each other as provided in the Rules of Judicial Administration and to include email service as an option on the certificate of service.

The Court should note that there is an amendment to Rule 7.050 that was submitted in the committee’s cycle report and approved by the Court in case number SC10-144. This amendment will become effective January 1, 2011.

Rules of Juvenile Procedure

The Juvenile Court Rules Committee proposes to amend the service rules in each of the three parts of its rules, 8.085 (delinquency), 8.225 (dependency and termination of parental rights), and 8.635 (families and children in need of

services), rather than deleting existing language and adding a cross-reference to Rule 2.516, because the committee believes that it will be more efficient and convenient for practitioners to only have to refer to one set of rules, rather than two. The language in the rule amendments was taken from the final version of Rule 2.516.

Form 8.903, certificate of service, is amended to include email service.

Rules of Appellate Procedure

Rules 9.420(a), (c), and (d) are amended to incorporate reference to Rule 2.516 and remove conflicting provisions.

Family Law Rules of Procedure

Rules 12.040(c)–(e) are amended to require that a notice of limited appearance include email addresses and to provide that an unrepresented party may also designate email addresses.

Rules 12.080(a) and (c) are amended to require service in accordance with Rule 2.516. Subdivision (c) contains a grammatical correction.

Rule 12.090 is amended to provide that email service is treated as service by mail for the computation of time.

Rule 12.170 is amended to provide for service under Rule 2.516.

Rule 12.285(b)(1)(B) is amended to add service of documents produced under mandatory disclosure by email.

Rules 12.351 and 12.410 are amended to provide for service under Rule 2.516.

Rule 12.440(a) is amended to provide that service on parties in default must be in accordance with Rule 2.516.

Rules 12.510, 12.611(b)(3), 12.615(b), and 12.630 are amended to provide for service under Rule 2.516.

In Form 12.900(b), the certificate of service is amended to add email service and signature blocks are amended to add email addresses. The instructions are amended to advise users that service must be in accordance with Rule 2.516. ADA, grammatical, and style corrections have also been made throughout the forms.

In Form 12.900(c), the certificate of service is amended to add email service and signature blocks are amended to add email addresses. The instructions are amended to advise users that service must be in accordance with Rule 2.516.

In Form 12.900(d), the certificate of service is amended to add email service and signature blocks are amended to add email addresses. Instructions are amended to advise users that service must be in accordance with Rule 2.516..

In Form 12.900(e), the certificate of service is amended to add email service and signature blocks are amended to add email addresses. Instructions are amended to advise users that service must be in accordance with Rule 2.516. The title of the form is also corrected.

In Forms 12.900(f), 12.900(g), 12.900(h), and 12.902(b), the certificates of service are amended to add email service and signature blocks are amended to add email addresses. The instructions are amended to advise users that service must be in accordance with Rule 2.516. The title of the form is also corrected.

In Forms 12.902(c) and 12.902(e), the certificates of service are amended to add email service and signature blocks are amended to add email addresses. Instructions are amended to advise users that service must be in accordance with Rule 2.516. An error in *West's Rules of Court – 2010* is also corrected.

Form 12.915 is amended to allow parties to designate both a mailing and email address.

In Forms 12.920(a), (b), and (c) and 12.930(a), the certificates of service are amended to add email service and signature blocks are amended to add email addresses. Instructions are amended to advise users that service must be in accordance with Rule 2.516.

In Form 12.930(b), the certificate of service is amended to add email service and signature blocks are amended to add email addresses. The instructions are amended to advise users that service must be in accordance with Rule 2.516. The title of the form is also corrected. Two errors in *West's Rules of Court – 2010* are also corrected.

In Forms 12.930(c), 12.932, and 12.996(b) and (c), the certificates of service are amended to add email service and signature blocks are amended to add email addresses. Instructions are amended to advise users that service must be in accordance with Rule 2.516.

Code and Rules of Evidence

At its January 2010 meeting, the Code and Rules of Evidence Committee voted to approve proposed Fla. R. Jud. Admin. 2.516 in concept. The vote was 20-6. The committee does not believe that the proposed rule has any impact on the Code and Rules of Evidence.

The votes on the committees' proposals are shown in Appendix A. The proposed amendments to the rules and forms are found in Appendix B (full-page format) and Appendix C (two-column format). The Board of Governors of the Florida Bar approved this package of rules in September 2010 by a vote of 36-3.

The committees respectfully request that the Court amend the rules of procedure as outlined in this report.

CERTIFICATE OF COMPLIANCE

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

I certify that this rule was read against *West's Florida Rules of Court (2010 Revised Edition)*.

Jodi Jennings, Liaison
Rules of Judicial Administration Committee
The Florida Bar
651 E. Jefferson St.
Tallahassee, FL 32399
Florida Bar No.: 930880
850/561-5706

Proposed rule

Reasons for change

RULE 2.516 SERVICE OF PLEADINGS AND DOCUMENTS

(a) Service; When Required. Unless the court otherwise orders, or a statute or supreme court administrative order specifies a different means of service, every pleading subsequent to the initial pleading and every other document filed in any court proceeding, except applications for witness subpoenas and documents served by formal notice or required to be served in the manner provided for service of formal notice, must be served in accordance with this rule on each party. No service need be made on parties against whom a default has been entered, except that pleadings asserting new or additional claims against them must be served in the manner provided for service of summons.

(b) Service; How Made. When service is required or permitted to be made upon a party represented by an attorney, service must be made upon the attorney unless service upon the party is ordered by the court.

(1) Service by Electronic Mail (“Email”). All documents required or permitted to be served on another party must be served by email, unless this rule otherwise provides. When, in addition to service by email, the sender also utilizes another means of service provided for in subdivision (b)(2), any differing time limits and other provisions applicable to that other means of service control.

New Rule 2.516 providing for electronic service of pleadings and documents.

(A) Service on Attorneys. Upon

appearing in a proceeding, an attorney must serve a designation of a primary email address and may designate no more than two secondary email addresses. Thereafter, service must be directed to all designated email addresses in that proceeding. Every document filed by an attorney thereafter must include the primary email address of that attorney and any secondary email addresses. If an attorney does not designate any email address for service, documents may be served on that attorney at the email address on record with The Florida Bar.

(B) Exception to Email Service on

Attorneys. Service by an attorney on another attorney must be made by email unless excused by the court. Upon motion by an attorney demonstrating that the attorney has no email account and lacks access to the Internet at the attorney's office, the court may excuse the attorney from the requirements of email service. Service on and by an attorney excused by the court from email service must be by the means provided in subdivision (b)(2) of this rule.

(C) Service on and by Parties Not

Represented by an Attorney. Any party not represented by an attorney may serve a designation of a primary email address and also may designate no more than two secondary email addresses to which service must be directed in that proceeding by the means provided in subdivision (b)(1) of this rule. If a party not represented by an attorney does not designate an email address for service in a proceeding, service on and by that party must be

by the means provided in subdivision (b)(2) of this rule.

(D) Time of Service. Service by email is complete when it is sent.

(i) An email is deemed served on the date it is sent.

(ii) If the sender learns that the email did not reach the address of the person to be served, the sender must immediately send another copy by email, or by a means authorized by subdivision (b)(2) of this rule.

(iii) Email service is treated as service by mail for the computation of time.

(E) Format of Email for Service.

Service of a document by email is made by attaching a copy of the document in PDF format to an email sent to all addresses designated by the attorney or party.

(i) All documents served by email must be attached to an email message containing a subject line beginning with the words “SERVICE OF COURT DOCUMENT” in all capital letters, followed by the case number of the proceeding in which the documents are being served.

(ii) The body of the email must identify the court in which the proceeding is pending, the case number, the name of the initial party on each side, the title of each document served with that email, and the sender's name and telephone number.

(iii) Any document served by email may be signed by the "/s" format, as long as the filed original is signed in accordance with the applicable rule of procedure.

(iv) Any email which, together with its attached documents, exceeds five megabytes (5MB) in size, must be divided and sent as separate emails, no one of which may exceed 5MB in size and each of which must be sequentially numbered in the subject line.

(2) Service by Other Means. In addition to, and not in lieu of, service by email, service may also be made upon attorneys by any of the means specified in this subdivision (b)(2). Service on and by all parties who are not represented by an attorney and who do not designate an email address, and on and by all attorneys excused from email service, must be made by delivering a copy of the document or by mailing it to the party or attorney at their last known address or, if no address is known, by leaving it with the clerk of the court. Service by mail is complete upon mailing. Delivery of a copy within this rule is

complete upon:

(A) handing it to the attorney or to the party,

(B) leaving it at the attorney's or party's office with a clerk or other person in charge thereof,

(C) if there is no one in charge, leaving it in a conspicuous place therein,

(D) if the office is closed or the person to be served has no office, leaving it at the person's usual place of abode with some person of his or her family above 15 years of age and informing such person of the contents, or

(E) transmitting it by facsimile to the attorney's or party's office with a cover sheet containing the sender's name, firm, address, telephone number, and facsimile number, and the number of pages transmitted. When service is made by facsimile, a copy must also be served by any other method permitted by this rule. Facsimile service occurs when transmission is complete.

(F) Service by delivery after 5:00 p.m. must be deemed as if it had been made by mailing on the date of

delivery.

(c) Service; Numerous Defendants. In actions when the parties are unusually numerous, the court may regulate the service contemplated by these rules on motion or on its initiative in such manner as may be found to be just and reasonable.

(d) Filing. All original documents must be filed with the court either before service or immediately thereafter, unless otherwise provided for by general law or other rules. If the original of any bond or other document is not placed in the court file, a certified copy must be so placed by the clerk.

(e) Filing Defined. The filing of documents with the court as required by these rules must be made by filing them with the clerk, except that the judge may permit documents to be filed with the judge, in which event the judge must note the filing date before him or her on the documents and transmit them to the clerk. The date of filing is that shown on the face of the document by the judge's notation or the clerk's time stamp, whichever is earlier.

(f) Certificate of Service. When any attorney certifies in substance:

"I certify that a copy hereof has been furnished to (here

insert name or names and addresses used for service) by (email) (delivery) (mail) (fax) on(date).....

Attorney”

the certificate is taken as prima facie proof of such service in compliance with this rule.

(g) Service by Clerk. Service of notices and other documents required to be made by the clerk must also be done as provided in subdivision (b).

(h) Service of Orders.

(1) A copy of all orders or judgments must be transmitted by the court or under its direction to all parties at the time of entry of the order or judgment. No service need be made on parties against whom a default has been entered except orders setting an action for trial and final judgments that must be prepared and served as provided in subdivision (h)(2). The court may require that orders or judgments be prepared by a party, may require the party to furnish the court with stamped, addressed envelopes for service of the order or judgment, and may require that proposed orders and judgments be furnished to all parties before entry by the court of the order or judgment. The court may serve any order or judgment by email to all attorneys who have not been excused from email service and to all parties not represented by an attorney who have designated an email address for service.

(2) When a final judgment is entered against a party in default, the court must mail a conformed copy of it to the party. The party in whose favor the judgment is entered must furnish the court with a copy of the judgment, unless it is prepared by the court, with the address of the party to be served. If the address is unknown, the copy need not be furnished.

(3) This subdivision is directory and a failure to comply with it does not affect the order or judgment, its finality, or any proceedings arising in the action.

Proposed rule

Reasons for change

RULE 5.030. ATTORNEYS

(a)–(c) [No change]

Committee Notes

[No change]

Rule History

1975 Revision: Subdivision (a) is same as prior rule 5.040 with added provision for withdrawal of attorney similar to Florida Rule of Appellate Procedure 2.3(d)(2). Subdivision (b) reflects ruling in case of State ex rel. Falkner v. Blanton, 297 So. 2d 825 (Fla. 1974).

1977 Revision: Editorial change requiring filing of petition for withdrawal and service of copy upon interested persons. Editorial change in citation forms in rule and committee note.

1984 Revision: Minor editorial changes and addition of subdivision (c). Committee notes expanded.

1988 Revision: Editorial changes and order of subdivisions rearranged. Committee notes expanded. Citation form changes in committee notes.

1992 Revision: Editorial changes. Committee notes revised. Citation form changes in committee notes.

Update to the history list.

2003 Revision: Committee notes revised.

2005 Revision: Committee notes revised.

2006 Revision: Committee notes revised.

2008 Revision: Subdivision (a) amended to reflect that a guardian advocate may not be required to be represented by an attorney in some instances. Committee notes revised.

2010 Revision: Committee notes revised.

Statutory References

[No change]

Rule References

Fla. Prob. R. 5.041~~(b)~~ Service of pleadings and ~~papers~~documents.

Fla. Prob. R. 5.110(b), (c) Resident agent.

Fla. R. Jud. Admin. 2.505 Attorneys.

Fla. R. Jud. Admin. 2.516 Service of pleadings and documents.

Fla. R. App. P. 9.440 Attorneys.

Updates to the rule reference list.

Proposed Rule

Reasons for change

RULE 5.040. NOTICE

(a)–(d) [No change]

Committee Notes

[No change]

Rule History

1975 Revision: Implements section 731.301, Florida Statutes.

1977 Revision: Reference to elisor.

1980 Revision: Editorial changes. Clarification of time for filing defenses after formal notice. Authorizes court to give relief to delinquent respondent from ex parte status; relief from service on numerous persons; allows optional use of formal notice.

1984 Revision: Editorial changes. Eliminates deadline for filing as opposed to serving defenses after formal notice; defines procedure subsequent to service of defenses after formal notice; new requirements for service of formal notice on incompetents and corporations; defines when service of formal notice is deemed complete; provisions relating to method of service of informal notice transferred to new rules 5.041 and 5.042; eliminates waiver of notice by will.

1988 Revision: Editorial changes. Committee notes

revised. Citation form changes in committee notes.

1991 Revision: Subdivision (b) amended to define informal notice more clearly.

1992 Revision: Editorial changes. Committee notes revised. Citation form changes in committee notes.

1996 Revision: Subdivision (a) amended to permit service of formal notice by commercial delivery service to conform to 1993 amendment to section 731.301(1), Florida Statutes. Editorial changes.

2001 Revision: Editorial changes in subdivision (a)(3)(A) to clarify requirements for service of formal notice.

2003 Revision: Committee notes revised.

2005 Revision: Subdivision (a)(3)(A) amended to delete requirement of court approval of commercial delivery service.

2006 Revision: Committee notes revised.

2007 Revision: Committee notes revised.

2007 Revision: New subdivision (a)(3)(A)(iv) inserted in response to *Cason ex rel. Saferight v. Hammock*, 908 So. 2d 512 (Fla. 5th DCA 2005), and subsequent subdivisions renumbered accordingly. Committee notes revised.

2008 Revision: Subdivision (a)(3)(A)(iii) revised to include “person with a developmental disability.” Committee

notes revised.

Update to the history list.

2010 Revision: Subdivision (b) revised to reflect amendment to rule 5.041.

Statutory References

[No change]

Rule References

Fla. Prob. R. 5.025 Adversary proceedings.

Fla. Prob. R. 5.030 Attorneys.

Fla. Prob. R. 5.041 Service of pleadings and ~~papers~~documents.

Fla. Prob. R. 5.042 Time.

Fla. Prob. R. 5.060 Request for notices and copies of pleadings.

Fla. Prob. R. 5.180 Waiver and consent.

Fla. Prob. R. 5.560 Petition for appointment of guardian of an incapacitated person.

Fla. Prob. R. 5.649 Guardian advocate.

Fla. Prob. R. 5.681 Restoration of rights of person with developmental disability.

Fla. R. Jud. Admin. 2.505 Attorneys.

Fla. R. Jud. Admin. 2.516 Service of pleadings and documents.

Fla. R. Civ. P. 1.070 Process.

Fla. R. Civ. P. Form 1.902 Summons.

Updates to the rule reference list.

Proposed rule

Reasons for change

RULE 5.041. SERVICE OF PLEADINGS AND PAPERS DOCUMENTS

Rule updated to provide for electronic documents and include a cross reference to Fla.R.Jud.Admin. 2.516.

~~(a) **Service; When Required.**~~ Unless the court orders otherwise, every petition or motion for an order determining rights of an interested person, and every other pleading or ~~paper document~~ filed in the particular proceeding which is the subject matter of such petition or motion, except applications for witness subpoenas, shall be served on interested persons as set forth in Florida Rule of Judicial Administration 2.516 unless these rules, the Florida Probate Code, or the Florida Guardianship Law provides otherwise. No service need be made on interested persons against whom a default has been entered, or against whom the matter may otherwise proceed ex parte, unless a new or additional right or demand is asserted. For purposes of this rule an interested person shall be deemed a party under rule 2.516.

~~(b) **Service; How Made.**~~ ~~When service is required or permitted to be made on an interested person represented by an attorney, service shall be made on the attorney unless service on the interested person is ordered by the court. Except when serving formal notice, or when serving a motion, pleading, or other paper in the manner provided for service of formal notice, service shall be made by delivering or mailing a copy of the motion, pleading, or other paper to the attorney or interested person at the last known address or, if no address is known, leaving it with the clerk of the court. If the interested person is a minor whose disabilities of nonage are not removed, and who is not represented by an attorney, then service shall be on the persons designated to accept service of process on a minor under chapter 48, Florida Statutes.~~

In expectation of Fla.R.Jud.Admin. 2.516, amendment and following the reference to that rule, specific service provisions were deleted from the Fla.Prob.R. 5.041.

~~Service by mail shall be complete upon mailing except when serving formal notice or when making service in the manner of formal notice. Delivery of a copy within this rule shall be complete upon~~

~~(1) handing it to the attorney or to the interested person; or~~

~~(2) leaving it at the attorney's or interested person's office with a clerk or other person in charge thereof; or~~

~~(3) if there is no one in charge, leaving it in a conspicuous place therein; or~~

~~(4) if the office is closed or the person to be served has no office, leaving it at the person's usual place of abode with some person of his or her family above 15 years of age and informing that person of the contents; or~~

~~(5) transmitting it by facsimile to the attorney's or interested person's office with a cover sheet containing the sender's name, firm, address, telephone number, facsimile number, and the number of pages transmitted. When delivery is made by facsimile, a copy shall also be served by any other method permitted by this rule. Facsimile delivery occurs when transmission is complete.~~

~~Service by delivery after 4:00 p.m. shall be deemed to have been made on the next day that is not a Saturday, Sunday, or legal holiday.~~

~~(e) **Service; Numerous Interested Persons.** In proceedings when the interested persons are unusually numerous,~~

~~the court may regulate the service contemplated by these rules on motion or on its initiative in a manner as may be found to be just and reasonable.~~

~~(d) **Filing.** All original papers shall be filed either before service or immediately thereafter. If the original of any bond or other paper is not placed in the court file, a certified copy shall be so placed by the clerk.~~

~~(e) **Filing With Court Defined.** The filing of papers with the court as required by these rules shall be made by filing them with the clerk, except that the judge may permit the papers to be filed with the judge in which event the judge shall note the filing date and transmit the papers to the clerk. The date of filing is that shown on the face of each paper by the judge's notation or the clerk's time stamp, whichever is earlier.~~

~~(f) **Certificate of Service.** When any attorney shall certify in substance:~~

~~I certify that a copy hereof has been served on (here insert name or names) by (delivery) (mail) (fax) on (date).~~

~~_____

—Attorney's~~

~~the certificate shall be taken as prima facie proof of service in compliance with these rules except in case of formal notice or service in the manner of formal notice. A person not represented by an attorney shall certify in the same manner, but the certificate must be verified.~~

~~(g) **Service of Orders.**~~

~~(1) A copy of all orders or judgments determining rights of an interested person shall be transmitted by the court or under its direction at the time of entry of the order or judgment to all interested persons in the particular proceeding.~~

~~(2) This subdivision (g) is directory, and a failure to comply with it does not affect the order or judgment or its finality.~~

Committee Notes

[No change]

Rule History

1984 Revision: New rule. Subdivision (c) is same as former rule 5.040(d).

1988 Revision: Committee notes revised. Citation form changes in committee notes.

1992 Revision: Editorial changes. Committee notes revised. Citation form changes in committee notes.

1996 Revision: Subdivision (b) amended to allow service to be made by facsimile. Committee notes revised.

2000 Revision: Subdivision (b) amended to clarify requirements for service of pleadings and papers. Subdivision (e) amended to clarify date of filing. Editorial changes in subdivision (f).

2003 Revision: Committee notes revised.

2005 Revision: Changes in subdivisions (b) and (f) to clarify service requirements, and editorial changes in (e).

2006 Revision: Committee notes revised.

2007 Revision: Provisions regarding service on a minor added in subdivision (b) in response to *Cason ex rel. Saferight v. Hammock*, 908 So. 2d 512 (Fla. 5th DCA 2005). Committee notes revised.

2008 Revision: Committee notes revised.

2010 Revision: Portions of subdivision (b) and all of subdivisions (d), (e), (f), and (g) deleted in response to creation of Rule 2.516 of the Rules of Judicial Administration. Committee notes revised.

Update to the history list.

Statutory References

[No change]

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.025 Adversary proceedings.

Fla. Prob. R. 5.030 Attorneys.

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.042 Time.

Fla. Prob. R. 5.150(c) Order requiring accounting.

Fla. Prob. R. 5.180 Waiver and consent.

Fla. Prob. R. 5.240(a) Notice of administration.

Fla. Prob. R. 5.340(d) Inventory.

Fla. Prob. R. 5.550 Petition to determine incapacity.

Fla. Prob. R. 5.560 Petition for appointment of guardian of an incapacitated person.

Fla. Prob. R. 5.649 Guardian advocate.

Fla. Prob. R. 5.681 Restoration of rights of person with developmental disability.

Fla. R. Civ. P. 1.080 Service of pleadings and papers.

Fla. R. Jud. Admin. 2.505 Attorneys.

Fla. R. Jud. Admin. 2.516 Service of pleadings and documents.

Update to the rule reference list.

Proposed rule

Reasons for change

RULE 5.060. REQUEST FOR NOTICES AND COPIES OF PLEADINGS

(a)–(b) [No change]

Committee Notes

Rule History

1975 Revision: This rule substantially incorporates the provisions of prior rule 5.060 except that now a copy of the request shall be mailed by the clerk only to the attorney for the personal representative or guardian. Even though a request under this rule has not been made, informal notice as provided in rule 5.040(b)(3) may still be required.

1977 Revision: Editorial and citation form change in committee note.

1980 Revision: Caveat, the personal representative may want to give notice to parties even though not required, for example, where an independent action has been filed on an objected claim.

1988 Revision: Captions added to subdivisions. Committee notes expanded. Citation form changes in committee notes.

1992 Revision: Editorial changes. Committee notes revised. Citation form changes in committee notes.

2003 Revision: Committee notes revised.

2010 Revision: Committee notes revised.

Update to the history list.

Statutory References

[No change]

Rule References

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service of pleadings and
~~papers~~documents.

Fla. Prob. R. 5.340 Inventory.

Fla. Prob. R. 5.341 Estate information.

Fla. R. Jud. Admin. 2.516 Service of pleadings and
documents.

Updates to the rule reference list.

Proposed rule

Reasons for change

**RULE 5.120. ADMINISTRATOR AD LITEM AND
GUARDIAN AD LITEM**

(a)–(b) [No change]

(c) Notice. Within 10 days after appointment, the petitioner shall ~~deliver or mail~~serve conformed copies of the petition for appointment of a guardian ad litem and order to any guardian, or if there is no guardian, to the living natural guardians or the living natural guardian having legal custody of the minor, person with a developmental disability, or incapacitated person.

(d) Report. The guardian ad litem shall ~~deliver or mail~~serve conformed copies of any written report or finding of the guardian ad litem’s investigation and answer filed in the proceedings, petition for compensation and discharge, and the notice of hearing on the petition to any guardian, or in the event that there is no guardian, to the living natural guardians or the living natural guardian having legal custody of the minor, person with a developmental disability, or incapacitated person.

(e) Service of Petition and Order. Within 10 days after appointment, the petitioner for an administrator ad litem shall ~~deliver or mail~~serve conformed copies of the petition for appointment and order to the attorney of record of each beneficiary and to each known beneficiary not represented by an attorney of record.

(f)–(g) [No change]

In anticipation of modernized service methods and in conjunction with rule 5.041 amendments, the paper specific methods were removed and updated with a general service provision.

In anticipation of modernized service methods and in conjunction with rule 5.041 amendments, the paper specific methods were removed and updated with a general service provision.

In anticipation of modernized service methods and in conjunction with rule 5.041 amendments, the paper specific methods were removed and updated with a general service provision.

Committee Notes

Rule History

1977 Revision: Editorial change in (a) limiting application of rule to probate and guardianship proceedings. In (b) the petition for appointment of a guardian need not be verified. Deletion of (g) as being substantive rather than procedural and changing former (h) to new (g). Change in committee note to conform to statutory renumbering.

This rule implements sections 731.303(5), 733.308, and 744.391, Florida Statutes, and includes some of the provisions of prior rule 5.230.

1988 Revision: Editorial changes; captions added to paragraphs. Citation form changes in committee notes.

1992 Revision: Addition of phrase in subdivision (a) to conform to 1992 amendment to section 731.303(5), Florida Statutes. Editorial changes. Committee notes revised. Citation form changes in committee notes.

2003 Revision: Committee notes revised.

2006 Revision: Committee notes revised.

2008 Revision: Subdivisions (a), (b), (c), and (d) amended to include persons with a developmental disability. Committee notes revised.

2010 Revision: The phrase “deliver or mail” in subdivisions (c), (d), and (e) has been replaced with the word

Update to the history list.

“serve” to comply with other rules relating to service of pleadings and documents. Committee notes revised.

Statutory References

[No change]

Rule References

Fla. Prob. R. 5.041 Service of pleadings and documents.

Fla. R. Jud. Admin. 2.516 Service of pleadings and documents.

Updates to the rule reference list.

Proposed change

Reasons for change

RULE 5.200. PETITION FOR ADMINISTRATION

The petition for administration shall be verified by the petitioner and shall contain:

(a)–(j) [No change]

Committee Notes

Rule History

1977 Revision: Addition to (b)(5) to require an affirmative statement that the person sought to be appointed as personal representative is qualified to serve. Committee note expanded to include additional statutory references.

Substantially the same as section 733.202, Florida Statutes, and implementing sections 733.301 through 733.305, Florida Statutes.

1988 Revision: Editorial changes. Committee notes revised.

1992 Revision: Addition of phrase in subdivision (b) to conform to 1992 amendment to section 733.202(2)(b), Florida Statutes. Reference to clerk ascertaining the amount of the filing fee deleted in subdivision (g) because of repeal of sliding scale of filing fees. The remaining language was deemed unnecessary. Editorial changes. Committee notes revised. Citation form changes in committee notes.

2002 Revision: Addition of phrases in subdivision (j) to add references to wills probated in Florida where the original is in the possession of a foreign official. Editorial changes. Committee notes revised.

2003 Revision: Committee notes revised.

2007 Revision: Committee notes revised.

2007 Revision: Editorial changes in (h) and (i).

2010 Revision: Committee notes revised.

Update to the history list.

Statutory References

[No change]

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service of pleadings and ~~papers~~documents.

Fla. Prob. R. 5.180 Waiver and consent.

Fla. Prob. R. 5.201 Notice of petition for administration.

Fla. R. Jud. Admin. 2.516 Service of pleadings and documents.

Updates to the rule reference list.

Proposed change

Reasons for change

RULE 5.340. INVENTORY

(a)–(c) [No change]

(d) **Service.** The personal representative shall serve a copy of the inventory and all supplemental and amended inventories on the Department of Revenue, the surviving spouse, each heir at law in an intestate estate, each residuary beneficiary in a testate estate, and any other interested person who may request it in writing. ~~The personal representative shall file proof of such service.~~

The last sentence of subdivision (d) is deleted to remove the duplicative requirement of filing a proof of service for a document which includes a certificate of service as provided in Fla. R. Jud. Admin. 2.516. If service of the inventory is by service in the manner provided for service of formal notice, then proof of service should be filed as provided in rule 5.040(a)(5).

(e)–(g) [No change]

Committee Notes

[No change]

Rule History

1980 Revision: Eliminated the time limit in requesting a copy of the inventory by an interested person or in furnishing it by the personal representative.

1984 (First) Revision: Extensive changes. Committee notes revised.

1984 (Second) Revision: Subdivision (a) modified to clarify or re-insert continued filing requirement for inventory.

1988 Revision: Editorial changes in (b) and (d).

Committee notes revised. Citation form changes in committee notes.

1992 Revision: Editorial changes. Committee notes revised. Citation form changes in committee notes.

2001 Revision: Subdivision (a) amended to conform to statutory changes. Subdivision (d) amended to add requirement of filing of proof of service. Subdivision (e) amended to clarify personal representative's duty to furnish explanation of how inventory values were determined. Subdivision (f) added to require personal representative to file inventory of property entering into elective share. Subdivision (g) added to require verification of inventories. Committee notes revised.

2002 Revision: Subdivision (e) amended to conform to section 733.604(3), Florida Statutes. Subdivision (f) amended to establish procedures for interested persons to obtain information about assets and values listed in the inventory of the elective estate. Committee notes revised.

2003 Revision: Committee notes revised.

2010 Revision: The last sentence of subdivision (d) is deleted to remove duplicative requirement of filing a proof of service for a document which includes a certificate of service as provided in Fla. R. Jud. Admin. 2.516. If service of the inventory is by service in the manner provided for service of formal notice, then proof of service should be filed as provided in rule 5.040(a)(5). Committee notes revised.

Update to the history list that provides the explanation for the removal of the last sentence in (d) and the committee note reference.

Constitutional Reference

[No change]

Statutory References

[No change]

Rule References

Fla. Prob. R. 5.041 Service of pleadings and ~~papers~~documents.

Fla. Prob. R. 5.060 Request for notices and copies of pleadings.

Fla. Prob. R. 5.330 Execution by personal representative.

Fla. Prob. R. 5.360 Elective share.

Fla. Prob. R. 5.405 Proceedings to determine homestead real property.

Fla. R. Jud. Admin. 2.516 Service of pleadings and documents.

Updates to the rule reference list.

Proposed rule

Reasons for change

RULE 5.342. INVENTORY OF SAFE-DEPOSIT BOX

(a)–(b) [No change.]

(c) **Service.** The personal representative shall serve a copy of the inventory on the surviving spouse, each heir at law in an intestate estate, each residuary beneficiary in a testate estate, and any other interested person who may request it in writing. ~~The personal representative shall file proof of such service.~~

The last sentence of subdivision (c) is deleted to remove the duplicative requirement of filing a proof of service for a document which includes a certificate of service as provided in Fla. R. Jud. Admin. 2.516. If service of the inventory is by service in the manner provided for service of formal notice, then proof of service should be filed as provided in rule 5.040(a)(5).

Committee Notes

[No change]

Rule History

2003 Revision: New rule.

2010 Revision: The last sentence of subdivision (c) is deleted to remove duplicative requirement of filing a proof of service for a document which includes a certificate of service as provided in Fla. R. Jud. Admin. 2.516. If service of the inventory is by service in the manner provided for service of formal notice, then proof of service should be filed as provided in rule 5.040(a)(5). Committee notes revised.

Update of history list that provides the explanation for the removal of the last sentence in (c) and the committee note reference.

Statutory References

[No change]

Rule References

Fla. Prob. R. 5.041 Service of pleadings and
~~papers~~documents.

Fla. Prob. R. 5.340 Inventory.

Fla. R. Jud. Admin. 2.516 Service of pleadings and
documents.

Updates to the rule reference list.

Proposed rule

Reasons for change

**RULE 5.350. CONTINUANCE OF UNINCORPORATED
BUSINESS OR VENTURE**

(a)–(d) [No change]

Committee Notes

Rule History

1975 Revision: New rule. 733.612 Fla. Stat.

1984 Revision: Extensive changes in rule and title.

Clarifies procedural steps to be taken by a personal representative who determines it to be in the best interest of an estate to continue any unincorporated business beyond the time authorized by statute. Information required to be filed in a verified petition is specified, and normal information to be included in a court order is listed. Other pertinent information under (b)(6) may include provisions for insurance of business or venture, proposed professionals to be used in connection with such activities, how the business or venture shall be managed, the person or persons proposed for managerial positions, a list of all other employees, agents, or independent contractors employed by or affiliated with the business or venture, and proposed compensation for all such management personnel, agents, employees, and independent contractors. Committee notes revised and expanded.

1988 Revision: Editorial change in caption of (b).

Committee notes revised. Citation form changes in committee notes.

1992 Revision: Committee notes revised. Citation form changes in committee notes.

2010 Revision: Committee notes revised.

Update to the history list.

Statutory Reference

[No change]

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service of pleadings and
~~papers~~documents.

Fla. Prob. R. 5.330 Execution by personal representative.

Fla. R. Jud. Admin. 2.516 Service of pleadings and
documents.

Updates to the rule reference list.

Proposed rule

Reasons for change

**RULE 5.355. PROCEEDINGS FOR REVIEW OF
EMPLOYMENT OF AGENTS AND
COMPENSATION OF PERSONAL
REPRESENTATIVES AND ESTATE
EMPLOYEES**

[No change]

Committee Notes

[No change]

Rule History

1988 Revision: New rule.

1992 Revision: Editorial changes. Committee notes revised. Citation form changes in committee notes.

1996 Revision: Committee notes revised.

2003 Revision: Committee notes revised.

2007 Revision: Committee notes revised.

2010 Revision: Committee notes revised.

Update to the history list.

Statutory References

[No change]

Rule References

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service of pleadings and
~~papers~~documents.

Fla. R. Jud. Admin. 2.516 Service of pleadings and
documents.

Updates to the rule reference list.

Proposed rule

Reasons for change

RULE 5.360. ELECTIVE SHARE

(a)–(e) [No change.]

Committee Notes

[No change]

Rule History

1984 Revision: Extensive changes. Clarifies information to be included in a petition for elective share filed by a personal representative and specifies information to be included in an order determining elective share. Committee notes revised and expanded.

1988 Revision: Extensive changes. A new procedure has been added providing for optional service of a notice of election together with a copy of the election and a procedure to expose objections to and determine right to entitlement, separate from the pre-existing procedure of determination of amount and setting aside. Subdivisions (c) and (d) represent rule implementation of procedure in statute. Committee notes revised and expanded. Citation form changes in committee notes.

1992 Revision: Editorial change. Committee notes revised. Citation form changes in committee notes.

2001 Revision: Entire rule rewritten. Committee notes revised.

2003 Revision: Committee notes revised.

2005 Revision: Subdivision (a) amended to require service in the manner of formal notice of the notice of election. Subdivision (b)(3) amended to provide time period for personal representative to service notice of election on interested persons, and title revised. Subdivision (d)(2) amended to provide time limit and service requirement for elective estate inventory and petition for determination of amount of elective share. Committee notes revised.

Update to the history list.

2010 Revision: Committee notes revised.

Statutory References

[No change]

Rule References

Updates to the rule reference list.

Fla. Prob. R. 5.025 Adversary proceedings.

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service of pleadings and ~~papers~~ documents.

Fla. Prob. R. 5.340 Inventory.

Fla. R. Jud. Admin. 2.516 Service of pleadings and documents.

Fla. R. App. P. 9.020(h) Definitions.

Proposed rule

Reasons for change

**RULE 5.370. SALES OF REAL PROPERTY WHERE NO
POWER CONFERRED**

(a)–(b) [No change]

Committee Notes

[No change]

Rule History

1984 Revision: Extensive changes. Notice of hearing on any petition concerning sale of real property is required by statute unless waived. The requirement to record a certified copy of the order approving sale of real estate in each county where the real property or any part thereof is situated has been deleted. Committee notes revised and expanded.

1988 Revision: Committee notes expanded. Citation form changes in committee notes.

1992 Revision: Committee notes revised. Citation form changes in committee notes.

1996 Revision: Editorial changes.

2010 Revision: Committee notes revised.

Update to the history list.

Statutory References

[No change]

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service of pleadings and
papersdocuments.

Fla. Prob. R. 5.180 Waiver and consent.

Fla. R. Jud. Admin. 2.516 Service of pleadings and
documents.

Updates to the rule reference list.

Proposed rule

Reasons for change

RULE 5.380. COMPULSORY PAYMENT OF DEVICES OR DISTRIBUTIVE INTERESTS

(a)–(c) [No change]

Committee Notes

Rule History

1984 Revision: Extensive changes. Committee notes revised.

1988 Revision: Editorial change in caption of (a). Citation form change in committee notes.

1992 Revision: Editorial changes. Committee notes revised. Citation form changes in committee notes.

2003 Revision: Committee notes revised.

2010 Revision: Committee notes revised.

Update to the history list.

Statutory References

[No change]

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service of pleadings and

Updates to the rule reference list.

~~papers~~documents.

Fla. R. Jud. Admin. 2.516 Service of pleadings and documents.

Proposed rule

Reasons for change

**RULE 5.385. DETERMINATION OF BENEFICIARIES
AND SHARES**

(a)–(c) [No change]

Committee Notes

[No change]

Rule History

1988 Revision: New rule.

1992 Revision: Editorial changes. Committee notes revised. Citation form changes in committee notes.

2002 Revision: Subdivision (c) added to implement procedure formerly found in section 733.105(2), Florida Statutes. Committee notes revised.

2003 Revision: Change in subdivision (c) to replace “heirs or devisees” with “beneficiaries” to incorporate term used in section 733.105, Florida Statutes. Committee notes revised.

2007 Revision: Committee notes revised.

2010 Revision: Committee notes revised.

Update to the history list.

Statutory References

[No change]

Rule References

Fla. Prob. R. 5.025 Adversary proceedings.

Fla. Prob. R. 5.040 Notice.

Fla. Prob. Rule 5.041 Service of pleadings and
~~papers~~documents.

Fla. Prob. R. 5.120 Administrator ad litem and guardian ad
litem.

Fla. Prob. R. 5.205(a)(5) Filing evidence of death.

Fla. R. Jud. Admin. 2.516 Service of pleadings and
documents.

Updates to the rule reference list.

Proposed rule

Reasons for change

RULE 5.386. ESCHEAT

(a)–(c) [No change]

Committee Notes

[No change]

Rule History

1988 Revision: New rule.

1992 Revision: Editorial change. Committee notes revised. Citation form changes in committee notes.

2003 Revision: Committee notes revised.

2010 Revision: Committee notes revised.

Update to the history list.

Statutory References

[No change]

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service of pleadings and
papers/documents.

Fla. Prob. R. 5.042 Time.

Fla. Prob. R. 5.385 Determination of beneficiaries and

Updates to the rule reference list.

shares.

Fla. R. Jud. Admin. 2.516 Service of pleadings and documents.

Proposed rule

Reasons for change

RULE 5.400. DISTRIBUTION AND DISCHARGE

(a)–(e) [No change]

Committee Notes

[No change]

Rule History

1980 Revision: Change in prior (a)(6) to require that an objection set forth the basis on which it is being made.

1984 Revision: This rule has been substantially revised. Portions of the prior rule are now incorporated in rules 5.400 and 5.401. The committee has included the procedure for filing and serving of objections to the final accounting, petition for discharge, plan of distribution, or compensation in rule 5.401.

1988 Revision: Subdivision (b)(1) is deleted to avoid duplication with rule 5.346. Subdivision (c) is amended to add the 12-month time specification of section 733.901(1), Florida Statutes. Committee notes revised. Citation form changes in committee notes.

1992 Revision: Subdivision (b)(5)(D) is added. Editorial changes. Committee notes revised. Citation form changes in committee notes.

1996 Revision: Addition in (a)(4) of specific attorney fee compensation disclosure requirements found in 733.6171(9),

Florida Statutes, and expanded to cover all compensation.
Committee notes revised.

2003 Revision: Committee notes revised.

2005 Revision: Subdivision (f) deleted to avoid
duplication with rule 5.180.

2006 Revision: Committee notes revised.

2007 Revision: Committee notes revised.

2010 Revision: Committee notes revised.

Update to the history list.

Statutory References

[No change]

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service of pleadings and
~~papers~~documents.

Updates to the rule reference list.

Fla. Prob. R. 5.042 Time.

Fla. Prob. R. 5.180 Waiver and consent.

Fla. Prob. R. 5.330 Execution by personal representative.

Fla. Prob. R. 5.346 Fiduciary accounting.

Fla. Prob. R. 5.401 Objections to petition for discharge or
final accounting.

Fla. R. Jud. Admin. 2.250(a)(1)(D) Time standards for
trial and appellate courts and reporting requirements.

Fla. R. Jud. Admin. 2.516 Service of pleadings and
documents.

Proposed rule

Reasons for change

RULE 5.401. OBJECTIONS TO PETITION FOR DISCHARGE OR FINAL ACCOUNTING

(a)–(f) [No change]

Committee Notes

Rule History

1984 Revision: New rule. Objections to the petition for discharge or final accounting were formerly under prior rule 5.400. Clarifies procedure for objections.

1988 Revision: Editorial changes in (a). Committee notes revised. Citation form changes in committee notes.

1992 Revision: Committee notes revised. Citation form changes in committee notes.

1996 Revision: Subdivision (d) amended to clarify that 90-day period pertains to service of hearing notice, not the actual hearing date.

2003 Revision: Committee notes revised.

2007 Revision: Committee notes revised.

2010 Revision: Committee notes revised.

Update to the history list.

Statutory References

[No change]

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service of pleadings and
~~papers~~documents.

Fla. Prob. R. 5.042 Time.

Fla. Prob. R. 5.180 Waiver and consent.

Fla. Prob. R. 5.400 Distribution and discharge.

Fla. R. Jud. Admin. 2.516 Service of pleadings and
documents.

Updates to the rule reference list.

Proposed rule

Reasons for change

**RULE 5.402. NOTICE OF LIEN ON PROTECTED
HOMESTEAD**

(a)–(c) [No change]

Committee Notes

Rule History

2005 Revision: New rule.

2010 Revision: Committee notes revised.

Updates to the rule history list.

Statutory References

[No change]

Rule References

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service of pleadings and
~~papers~~documents.

Fla. Prob. R. 5.403 Proceedings to determine amount of
lien on protected homestead.

Fla. Prob. R. 5.404 Notice of taking possession of
protected homestead.

Fla. Prob. R. 5.405 Proceedings to determine protected
homestead real property.

Fla. R. Jud. Admin. 2.516 Service of pleadings and
documents.

Update to the rule references list.

Proposed rule

Reasons for change

**RULE 5.403. PROCEEDINGS TO DETERMINE
AMOUNT OF LIEN ON PROTECTED
HOMESTEAD**

(a)–(c) [No change.]

Committee Notes

Rule History

2005 Revision: New rule.

2010 Revision: Committee notes revised.

Updates the rule history.

Statutory References

[No change]

Rule References

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service of pleadings and
~~papers~~documents.

Updates to the rule reference list.

Fla. Prob. R. 5.402 Notice of lien on protected homestead.

Fla. Prob. R. 5.404 Notice of taking possession of
protected homestead.

Fla. Prob. R. 5.405 Proceedings to determine protected
homestead real property.

Fla. R. Jud. Admin. 2.516 Service of pleadings and
documents.

Proposed rule

Reasons for change

**RULE 5.405. PROCEEDINGS TO DETERMINE
PROTECTED HOMESTEAD REAL
PROPERTY**

(a)–(c) [No change]

Committee Notes

[No change]

Rule History

1984 Revision: New rule.

1988 Revision: Editorial change in (a). Subdivision (b)(4) amended to conform to constitutional change. Committee notes revised. Citation form change in committee notes.

1992 Revision: Editorial change. Committee notes revised. Citation form changes in committee notes.

1996 Revision: Subdivision (c) amended to require description of real property that is the subject of the petition, description of any homestead property, and definition of specific interests of persons entitled to homestead real property.

2002 Revision: Replaces “homestead” with “protected homestead” throughout to conform to addition of term in section 731.201(29), Florida Statutes. Committee notes revised.

2003 Revision: Committee notes revised.

2007 Revision: Committee notes revised.

2010 Revision: Committee notes revised.

Update to the history list.

Constitutional Reference

[No change]

Statutory References

[No change]

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service of pleadings and
~~papers~~documents.

Fla. Prob. R. 5.205(a)(6) Filing evidence of death.

Fla. Prob. R. 5.340 Inventory.

Fla. Prob. R. 5.404 Notice of taking possession of
protected homestead.

Fla. R. Jud. Admin. 2.516 Service of pleadings and
documents.

Updates to the rule reference list.

Proposed rule

Reasons for change

RULE 5.406. PROCEEDINGS TO DETERMINE EXEMPT PROPERTY

(a)–(c) [No change]

Committee Notes

[No change]

Rule History

1984 Revision: New rule.

1988 Revision: Subdivision (a) revised to reflect editorial changes and to require verification. Subdivision (b)(1) revised to require the basis for asserting exempt property status. Subdivision (b)(2) added the requirement of stating addresses of those entitled to exempt property. Subdivision (c) revised to reflect editorial changes and to require determination of the value of each item of exempt property. Committee notes revised.

1992 Revision: Committee notes revised. Citation form changes in committee notes.

1996 Revision: Editorial changes in rule to conform to similar language in rule 5.405. Committee notes revised.

2003 Revision: Committee notes revised.

2010 Revision: Committee notes revised.

Update to the history list.

Statutory References

[No change]

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service of pleadings and
~~papers~~documents.

Fla. Prob. R. 5.042 Time.

Fla. Prob. R. 5.420 Disposition of personal property
without administration.

Fla. R. Jud. Admin. 2.516 Service of pleadings and
documents.

Updates to the rule reference list.

Proposed rule

Reasons for change

RULE 5.407. PROCEEDINGS TO DETERMINE FAMILY ALLOWANCE

(a) [No change]

(b) **Contents.** The petition shall be verified by the petitioner and shall:

(1) state the names and addresses of the decedent's surviving spouse and the decedent's lineal heirs who were being supported by the decedent or who were entitled to be supported by the decedent at the time of ~~his~~ the decedent's death, stating the dates of birth of those who are minors; and

(2) for each person for whom an allowance is sought, state the person's name and relationship to the decedent, the basis on which the allowance is claimed, and the amount sought.

(c) [No change]

Amended to make this possessive pronoun gender neutral in compliance with AOSC06-14.

Committee Notes

Rule History

2003 Revision: New rule.

2010 Revision: Editorial change in (b)(1) for gender neutrality. Committee notes revised.

Update to the history list.

Statutory References

[No change]

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service of pleadings and
papersdocuments.

Fla. R. Jud. Admin. 2.516 Service of pleadings and
documents.

Updates to the rule reference list.

Reasons for change

Proposed rule

RULE 5.430. RESIGNATION OF PERSONAL REPRESENTATIVE

(a)–(k) [No change]

Committee Notes

[No change]

Rule History

1975 Revision: The rule provides for the orderly succession of personal representatives in the event a personal representative resigns or is removed.

1977 Revision: Editorial change in committee note.

1988 Revision: Editorial changes; captions added to subdivisions. Committee notes revised. Citation form changes in committee notes.

1992 Revision: Editorial changes. Committee notes revised. Citation form changes in committee notes.

2003 Revision: Rule completely revised to comply with statutory changes. Committee notes revised.

2007 Revision: Committee notes revised.

Update to the history list.

2010 Revision: Committee notes revised.

Statutory References

[No change]

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service of pleadings and
~~papers~~documents.

Fla. Prob. R. 5.180 Waiver and consent.

Fla. Prob. R. 5.310 Disqualification of personal
representative; notification.

Fla. Prob. R. 5.330 Execution by personal representative.

Fla. Prob. R. 5.345 Accountings other than personal
representative's final accountings.

Fla. Prob. R. 5.346 Fiduciary accounting.

Fla. Prob. R. 5.401 Objections to petition for discharge or
final accounting.

Fla. R. Jud. Admin. 2.516 Service of pleadings and
documents.

Updates to the rule reference list.

Reasons for change

Proposed rule

RULE 5.440. PROCEEDINGS FOR REMOVAL

(a)–(d) [No change]

Committee Notes

[No change]

Rule History

1980 Revision: Subdivision (a) amended to require formal notice to interested persons and to delete requirement that court give directions as to mode of notice. Surety authorized to petition for removal.

1984 Revision: Editorial changes. Provisions in prior rule for contempt have been deleted since the court has the inherent power to punish for contempt. Committee notes revised.

1988 Revision: Last phrase of (a) added to implement the procedure found in section 733.505, Florida Statutes. Subdivision (b) amended to parallel interim accounting rules. Deletes ability to extend time to file and adds reference to court power to punish for contempt. Committee notes expanded. Editorial changes. Citation form changes in committee notes.

1992 Revision: Editorial changes. Committee notes revised. Citation form changes in committee notes.

2002 Revision: Entire rule amended. Contents of accountings by removed fiduciaries are now governed by rule 5.346. Editorial changes in (a), (c), and (d). Committee notes revised.

2003 Revision: Committee notes revised.

2007 Revision: Committee notes revised.

Update to the history list.

2010 Revision: Committee notes revised.

Statutory References

[No change]

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.025 Adversary proceedings.

Fla. Prob. R. 5.040 Notice.

Updates to the rule reference list.

Fla. Prob. R. 5.041 Service of pleadings and ~~papers~~documents.

Fla. Prob. R. 5.042 Time.

Fla. Prob. R. 5.150 Order requiring accounting.

Fla. Prob. R. 5.310 Disqualification of personal representative; notification.

Fla. Prob. R. 5.345 Accountings other than personal representative's final accountings.

Fla. Prob. R. 5.346 Fiduciary accounting.

Fla. R. Jud. Admin. 2.516 Service of pleadings and documents.

Proposed rule

Reasons for change

RULE 5.460. SUBSEQUENT ADMINISTRATION

(a)–(c) [No change]

Committee Notes

[No change]

Rule History

1984 Revision: Extensive changes. Committee notes revised.

1992 Revision: Citation form change in committee notes.

2003 Revision: Committee notes revised.

2010 Revision: Committee notes revised.

Updates to the rule reference list.

Statutory Reference

[No change]

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service of pleadings and papers/documents.

Fla. R. Jud. Admin. 2.516 Service of pleadings and documents.

Updates rule references list.

Proposed rule

Reasons for change

RULE 5.470. ANCILLARY ADMINISTRATION

(a)–(c) [No change]

Committee Notes

Rule History

1975 Revision: The rule sets out the procedural requirements for issuance of ancillary letters.

1984 Revision: Editorial changes with addition of notice requirement in (b). Committee notes revised.

1988 Revision: Committee notes revised.

1992 Revision: Changed rule to require that notice be given to persons qualified to act as ancillary personal representative whose entitlement to preference of appointment is equal to or greater than petitioner's and to all domiciliary personal representatives prior to entry of an order admitting the will to probate. Committee notes revised. Citation form changes in committee notes.

1996 Revision: The requirement that a filing of an authenticated copy of a will be a probated will is removed from subdivision (c). There may be circumstances in which a will is on deposit or file in a foreign jurisdiction but is not being offered for probate. That should not preclude an ancillary administration in Florida of that estate. This change is not intended to allow an authenticated copy of any document other than an original

instrument to be filed under this rule and considered for probate.

2003 Revision: Committee notes revised.

2005 Revision: Committee notes revised.

2010 Revision: Committee notes revised.

Update to the history list.

Statutory References

[No change]

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service of pleadings and
~~papers~~documents.

Updates to the rule reference list.

Fla. Prob. R. 5.042 Time.

Fla. Prob. R. 5.065(b) Notice of civil action or ancillary
administration.

Fla. Prob. R. 5.205(a)(2) Filing evidence of death.

Fla. Prob. R. 5.215 Authenticated copy of will.

Fla. Prob. R. 5.240 Notice of administration.

Fla. Prob. R. 5.241 Notice to creditors.

Fla. Prob. R. 5.475 Ancillary administration, short form.

Fed. R. Civ. P. 44(a) Proof of official record.

Fla. R. Jud. Admin. 2.516 Service of pleadings and
documents.

Proposed rule

Reasons for change

RULE 5.475. ANCILLARY ADMINISTRATION, SHORT FORM

(a)–(f) [No change]

Committee Notes

[No change]

Rule History

1988 Revision: New rule.

1992 Revision: Editorial changes. Committee notes revised. Citation form changes in committee notes.

2003 Revision: Committee notes revised.

2005 Revision: Deletion of reference to intestate estates in subdivision (a) to conform to 2001 amendments to section 734.1025, Florida Statutes. Editorial changes throughout.

2010 Revision: Committee notes revised.

Updates the rule history list.

Statutory References

[No change]

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.
Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service of pleadings and
papersdocuments.

Fla. Prob. R. 5.042 Time.

Fla. Prob. R. 5.065(b) Notice of civil action or ancillary
administration.

Fla. Prob. R. 5.205(a)(2) Filing evidence of death.

Fla. Prob. R. 5.215 Authenticated copy of will.

Fla. Prob. R. 5.240 Notice of administration.

Fla. Prob. R. 5.241 Notice to creditors.

Fla. Prob. R. 5.470 Ancillary administration.

Fla. R. Jud. Admin. 2.516 Service of pleadings and
documents.

Updates to the rule reference list.

Proposed rule

Reasons for change

RULE 5.496. FORM AND MANNER OF OBJECTING TO CLAIM

(a)–(c) [No change.]

Committee Notes

[No change]

Rule History

1992 Revision: New rule.

2003 Revision: Reference in (a) to notice of administration changed to notice to creditors. Committee notes revised.

2005 Revision: Removed provision for objections to personal representative’s proof of claim, now addressed in rule 5.498, and subsequent subdivisions relettered. Reference to service on the claimant’s attorney removed because service on the attorney is required by rule 5.041(b). Committee notes revised.

2007 Revision: Editorial change in (a). Second sentence of (b) added to specify that the objection must include a certificate of service.

2010 Revision: Committee notes revised.

Update to the history list.

Statutory References

[No change]

Rule References

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service of pleadings and
~~papers~~documents.

Fla. Prob. R. 5.498 Personal representative's proof of
claim.

Fla. Prob. R. 5.499 Form and manner of objecting to
personal representative's proof of claim.

Fla. R. Jud. Admin. 2.516 Service of pleadings and
documents.

Updates to the rule reference list.

Proposed rule

Reasons for change

RULE 5.498. PERSONAL REPRESENTATIVE'S PROOF OF CLAIM

(a)–(b) [No change]

Committee Notes

[No change]

Rule History

2005 Revision: New rule.

2007 Revision: Subdivision (b) amended to eliminate the need to serve claimants listed as paid on the proof of claim, and clarifying editorial change.

2010 Revision: Committee notes revised.

Update to the history list.

Statutory References

[No change]

Rule References

Fla. Prob. R. 5.041 Service of pleadings and ~~papers~~documents.

Fla. Prob. R. 5.499 Form and manner of objecting to personal representative's proof of claim.

Fla. R. Jud. Admin. 2.516 Service of pleadings and

Updates to the rule reference list.

documents.

Proposed rule

Reasons for change

**RULE 5.499. FORM AND MANNER OF OBJECTING TO
PERSONAL REPRESENTATIVE'S PROOF
OF CLAIM**

(a)–(e) [No change]

Committee Notes

[No change]

Rule History

2005 Revision: New rule.

2007 Revision: Editorial change in (a). Extensive revisions to rest of rule to clarify the differences in procedure between items listed as paid and items listed as to be paid. Committee notes revised.

2010 Revision: Committee notes revised.

Updates rule history list.

Statutory Reference

[No change]

Rule References

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service of pleadings and
~~papers~~ documents.

Updates to the rule reference list.

Fla. Prob. R. 5.496 Form and manner of objecting to

claim.

Fla. Prob. R. 5.498 Personal representative's proof of

claim.

Fla. R. Jud. Admin. 2.516 Service of pleadings and documents.

Proposed rule

Reasons for change

**RULE 5.510. ESTABLISHMENT AND PROBATE OF
LOST OR DESTROYED WILL**

(a)–(e) [No change]

Committee Notes

[No change]

Rule History

1977 Revision: Editorial change in subdivision (c) of prior rule.

1984 Revision: Extensive changes. Committee notes revised.

1988 Revision: Rule rewritten to conform to statute. Committee notes expanded. Citation form change in committee notes.

1992 Revision: Committee notes revised. Citation form changes in committee notes.

2002 Revision: Subdivision (d) added to implement procedure formerly found in section 733.207(3), Florida Statutes. Committee notes revised.

2003 Revision: Committee notes revised.

2010 Revision: Committee notes revised.

Update to the history list.

Statutory Reference

[No change]

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.025 Adversary proceedings.

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service of pleadings and
papersdocuments.

Fla. Prob. R. 5.042 Time.

Fla. Prob. R. 5.200 Petition for administration.

Fla. R. Jud. Admin. 2.516 Service of pleadings and
documents.

Updates to the rule reference list.

Proposed rule

Reasons for change

RULE 5.530. SUMMARY ADMINISTRATION

(a)–(d) [No change]

Committee Notes

[No change]

Rule History

1977 Revision: Changes to conform to 1975 statutory revision. Established the requirements of a petition for summary administration and provided for the hearing thereon and the entry of the order of distribution of the assets.

1984 Revision: Extensive revisions and editorial changes. Committee notes revised.

1988 Revision: Editorial change in caption of (a). Committee notes revised.

1992 Revision: Editorial changes. Committee notes revised. Citation form changes in committee notes.

2002 Revision: Replaces “homestead” with “protected homestead” in (a)(2) to conform to addition of term in section 731.201(29), Florida Statutes. Committee notes revised.

2003 Revision: Committee notes revised.

2005 Revision: Subdivision (a)(3) amended to include

requirements of section 735.206(2), Florida Statutes.

2007 Revision: Rule substantially rewritten to require petition to include essentially the same information required to be stated in a petition for administration and to require the petitioners to specify facts showing they are entitled to summary administration. New subdivision (b) added to provide for formal notice of the petition, and subsequent subdivisions relettered.

2010 Revision: Committee notes revised.

Update to the history list.

Statutory References

[No change]

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service of pleadings and ~~papers~~documents.

Updates to the rule reference list.

Fla. Prob. R. 5.205(a)(3) Filing evidence of death.

Fla. R. Jud. Admin. 2.516 Service of pleadings and documents.

Proposed rule

Reasons for change

RULE 5.620. INVENTORY

(a)–(e) [No change]

Committee Notes

Rule History

1977 Revision: Change in committee notes to conform to statutory renumbering.

1984 Revision: Change to require inventory to be filed within 60 days after issuance of letters, rather than after appointment. Committee notes revised.

1988 Revision: Editorial changes. Committee notes revised. Citation form change in committee notes.

1989 Revision: Prior rule deleted and replaced by temporary emergency rule.

1991 Revision: Former rule 5.620(b) has been deleted as partly substantive and addressed in section 744.381, Florida Statutes, and the procedural part is unnecessary.

The committee recognizes the conflict between this rule and section 744.362, Florida Statutes, which requires the filing of the initial guardianship report (which includes the inventory) within 60 days after appointment. The committee believes this provision, which attempts to regulate when a paper must be filed with the court, is procedural and that a guardian may not receive letters of guardianship empowering the guardian to act contemporaneously with the appointment. Therefore, the issuance of letters is a more practical time from which to measure the

beginning of the time period for the accomplishment of this act.

1992 Revision: Citation form changes in committee notes.

2005 Revision: Editorial changes in (d).

2007 Revision: Committee notes revised.

2008 Revision: Adds reference to guardian advocate in new (e). Committee notes revised.

2010 Revision: Committee notes revised.

Update to the history list.

Statutory References

[No change]

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.041 Service of pleadings and ~~papers~~documents.

Updates to the rule reference list.

Fla. Prob. R. 5.060 Request for notices and copies of pleadings.

Fla. Prob. R. 5.610 Execution by guardian.

Fla. Prob. R. 5.649 Guardian advocate.

Fla. Prob. R. 5.690 Initial guardianship report.

Fla. Prob. R. 5.700 Objection to guardianship reports.

Fla. R. Jud. Admin. 2.516 Service of pleadings and documents.

Proposed rule

Reasons for change

RULE 5.630. PETITION FOR APPROVAL OF ACTS

(a)–(c) [No change]

Committee Notes

Rule History

1975 Revision: Substantially the same as sections 744.503, 744.447, and 744.451, Florida Statutes, with editorial changes.

1977 Revision: Change in statutory reference in rule and in committee note to conform to statutory renumbering.

1980 Revision: Implements 1979 amendment to section 744.447(2), Florida Statutes.

1988 Revision: Editorial changes; captions added to subdivisions. Committee notes revised. Citation form changes in rule and committee notes.

1989 Revision: Prior rule deleted and replaced by temporary emergency rule.

1991 Revision: Changes to conform to 1989 revised guardianship law.

1992 Revision: Committee notes revised. Citation form changes in committee notes.

2006 Revision: New (a)(6) added to incorporate 2006 amendment to section 744.441, Florida Statutes. New (c)(3) added to reflect passage of 2006 amendment to section 737.2065, Florida Statutes. Committee notes revised.

2007 Revision: Committee notes revised.

2008 Revision: Committee notes revised.

2010 Revision: Committee notes revised.

Update to the history list.

Statutory References

[No change]

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.025 Adversary proceedings.

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service of pleadings and papers documents.

Updates to the rule reference list.

Fla. Prob. R. 5.060 Request for notices and copies of pleadings.

Fla. Prob. R. 5.610 Execution by guardian.

Fla. Prob. R. 5.636 Settlement of minors' claims.

Fla. Prob. R. 5.649 Guardian advocate.

Fla. R. Jud. Admin. 2.516 Service of pleadings and documents.

Proposed rule

Reasons for change

**RULE 5.650. RESIGNATION OR DISQUALIFICATION
OF GUARDIAN; APPOINTMENT OF
SUCCESSOR**

(a)–(k) [No change]

Committee Notes

Rule History

1975 Revision: Substantially the same as sections 744.467 and 744.471, Florida Statutes, with editorial changes.

1977 Revision: No change in rule. Change in committee note to conform to statutory renumbering.

1988 Revision: Editorial changes in (a). Text of rule 5.590 inserted in (b). Editorial change in (c). Captions added to subdivisions. Committee notes revised. Citation form changes in committee notes.

1989 Revision: Prior rule deleted and replaced by temporary emergency rule.

1991 Revision: Substantial revision of entire rule to harmonize with procedure for termination of guardianship under rules 5.670 and 5.680. Subdivision (k) transferred from temporary emergency rule 5.800.

1992 Revision: Committee notes revised. Citation form

changes in committee notes.

2007 Revision: Subdivision (i) deleted because right of waiver is substantive. Subsequent subdivisions relettered.

2008 Revision: Subdivision (k) added to include guardian advocates. Committee notes revised.

2010 Revision: Committee notes revised.

Update to the history list.

Statutory References

[No change]

Rule References

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service of pleadings and ~~papers~~documents.

Updates to the rule reference list.

Fla. Prob. R. 5.180 Waiver and consent.

Fla. Prob. R. 5.610 Execution by guardian.

Fla. Prob. R. 5.649 Guardian advocate.

Fla. Prob. R. 5.681 Restoration of rights of person with developmental disability.

Fla. R. Jud. Admin. 2.516 Service of pleadings and documents.

Proposed rule

Reasons for change

**RULE 5.660. PROCEEDINGS FOR REMOVAL OF
GUARDIAN**

(a)–(e) [No change]

Committee Notes

Rule History

1977 Revision: No change in rule. Change in committee notes to conform to statutory renumbering.

1980 Revision: Subdivision (a) amended to specifically authorize any guardian or next of kin to file the petition and to require formal notice in conformity with rule 5.630(b).

1984 Revision: Subdivision (b) amended to conform to statute. Editorial changes and committee notes revised.

1988 Revision: Subdivision (a) rewritten for clarity. Language in (b) deleted as surplusage. Editorial change in caption of (c). Committee notes revised. Citation form change in committee notes.

1989 Revision: Prior rule deleted and replaced by temporary emergency rule.

1991 Revision: Subdivision (a) amended to require that the petition allege specific reasons why the guardian should be removed and to require service of the petition on the ward.

Otherwise, editorial changes in all subdivisions.

1992 Revision: Citation form changes in committee notes.

2006 Revision: Requirement in (b) to serve minors deleted to conform to 2006 amendment to section 744.511, Florida Statutes.

2008 Revision: Subdivision (e) added to include guardian advocates. Committee notes revised.

2010 Revision: Committee notes revised.

Update to the history list.

Statutory References

[No change]

Rule References

Fla. Prob. R. 5.025 Adversary proceedings.

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service of pleadings and ~~papers~~documents.

Updates to the rule reference list.

Fla. Prob. R. 5.649 Guardian advocate.

Fla. R. Jud. Admin. 2.516 Service of pleadings and documents.

Proposed rule

Reasons for change

**RULE 5.670. TERMINATION OF GUARDIANSHIP ON
CHANGE OF DOMICILE OF RESIDENT
WARD**

(a)–(h) [No change]

Committee Notes

Rule History

1977 Revision: Change in committee notes to conform to statutory renumbering.

1984 Revision: Adds 30-day requirement for filing objections. Editorial changes and committee notes revised.

1988 Revision: Editorial change in (c). First and last sentences of (d) deleted and clarifying word added.

1989 Revision: Prior rule adopted as temporary emergency rule.

1991 Revision: Substantial revision of entire rule to harmonize with procedure for discharge of guardian under rule 5.680 and to conform to section 744.524, Florida Statutes.

1992 Revision: Committee notes revised. Citation form changes in committee notes.

2007 Revision: Subdivision (i) deleted because right of

waiver is substantive. Committee notes revised.

2008 Revision: Committee notes revised.

2010 Revision: Committee notes revised.

Statutory References

[No change]

Rule References

Fla. Prob. R. 5.041 Service of pleadings and
papersdocuments.

Fla. Prob. R. 5.180 Waiver and consent.

Fla. Prob. R. 5.610 Execution by guardian.

Fla. Prob. R. 5.680 Termination of guardianship.

Fla. R. Jud. Admin. 2.516 Service of pleadings and
documents.

Update to the history list.

Updates to the rule reference list.

Proposed rule

Reasons for change

RULE 5.680. TERMINATION OF GUARDIANSHIP

(a)–(g) [No change]

Committee Notes

Rule History

1975 Revision: Implements sections 744.527 and 744.531, Florida Statutes, and also requires the guardian applying for discharge to do so by filing a petition for discharge and provides the procedure pertaining thereto.

1977 Revision: No change in rule. Change in committee note to conform to statutory renumbering.

1988 Revision: Captions added to subdivisions. Committee notes revised. Citation form changes in committee notes.

1989 Revision: Prior rule deleted and replaced by temporary emergency rule.

1991 Revision: Substantial revision of entire rule to harmonize with procedure for discharge of personal representatives under rules 5.400 and 5.401.

1992 Revision: Committee notes revised. Citation form changes in committee notes.

1996 Revision: Editorial changes to clarify that all

anticipated costs and fees should be shown on final report and thereafter paid prior to transfer of assets and discharge of guardian.

2003 Revision: Subdivision (a) amended to reflect addition of rule 5.552 dealing with voluntary guardianship of property. Committee notes revised.

2006 Revision: Subdivision (c) amended to conform to 2006 amendments to section 744.527, Florida Statutes. Subdivision (h) deleted as unnecessary because substantive right of waiver is provided by section 731.302, Florida Statutes.

2008 Revision: Reference to restoration of rights added in subdivision (a). Committee notes revised.

2010 Revision: Committee notes revised.

Update to the history list.

Statutory References

[No change]

Rule References

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service of pleadings and ~~papers~~ documents.

Updates to the rule reference list.

Fla. Prob. R. 5.180 Waiver and consent.

Fla. Prob. R. 5.552 Voluntary guardianship of property.

Fla. Prob. R. 5.610 Execution by guardian.

Fla. Prob. R. 5.681 Restoration of rights of person with developmental disability.

Fla. R. Jud. Admin. 2.516 Service of pleadings and

documents.

Proposed rule

Reasons for change

RULE 5.690. INITIAL GUARDIANSHIP REPORT

(a)–(b) [No change]

Committee Notes

[No change]

Rule History

1991 Revision: New rule.

1992 Revision: Addition of phrase in subdivision (b) to conform to 1992 amendment to section 744.362(1), Florida Statutes. Citation form changes in committee notes.

2010 Revision: Committee notes revised.

Update to the history list.

Statutory References

[No change]

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.041 Service of pleadings and papers/documents.

Fla. Prob. R. 5.060 Request for notices and copies of pleadings.

Fla. Prob. R. 5.180 Waiver and consent.

Fla. Prob. R. 5.610 Execution by guardian.

Updates to the rule reference list.

Fla. Prob. R. 5.620 Inventory.

Fla. Prob. R. 5.700 Objection to guardianship reports.

Fla. R. Jud. Admin. 2.516 Service of pleadings and documents.

Proposed rule

Reasons for change

RULE 5.695. ANNUAL GUARDIANSHIP REPORT

(a)–(b) [No change]

Committee Notes

[No change]

Rule History

1975 Revision: Substantially the same as section 744.427(1), (2), and (4), Florida Statutes, and section 744.437, Florida Statutes, with editorial changes and providing for the waiving, by a ward who has become sui juris or by the personal representative of a deceased ward, of the filing of an annual accounting. The rule requires the guardian of the property of a ward to appear before the court at the time he files his annual accounting or at such time the court shall determine in order that the court may inquire as to any matter relating to the physical and financial well-being of the ward. This appears to be in conflict with section 744.437, Florida Statutes, which refers to “every guardian” but in the same sentence it refers to “at the time the guardian files his annual return” and only the guardian of the property is required to file an annual accounting.

1977 Revision: No change in rule. Change in committee note to conform to statutory renumbering.

1980 Revision: Subdivision (e) amended to avoid conflict with statutory changes in section 744.437, Florida Statutes (1979).

1988 Revision: Matter in (b) deleted; covered in sections 744.427(2) and 744.434, Florida Statutes. Subdivision (c) deleted; covered in section 744.427(4), Florida Statutes. Captions added to subdivisions. Committee notes revised. Citation form changes in committee notes.

1989 Revision: Prior rule deleted and replaced by temporary emergency rule.

1991 Revision: Substantial changes and rule renumbered.

1992 Revision: Addition of language in subdivisions (a)(1) and (a)(2) to implement 1992 amendments to sections 744.367(1) and (2), Florida Statutes. Committee notes revised. Citation form changes in committee notes.

2006 Revision: Requirement in (b) to serve minors age 14 and above deleted to conform to amendment to section 744.367(3), Florida Statutes. Committee notes revised.

2010 Revision: Committee notes revised.

Update to the history list.

Statutory References

[No change]

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.041 Service of pleadings and ~~papers~~ documents.

Updates to the rule reference list.

Fla. Prob. R. 5.060 Request for notices and copies of pleadings.

Fla. Prob. R. 5.180 Waiver and consent.

Fla. Prob. R. 5.552 Voluntary guardianship of property.

Fla. Prob. R. 5.555 Guardianships of minors.

Fla. Prob. R. 5.610 Execution by guardian.

Fla. Prob. R. 5.700 Objection to guardianship reports.

Fla. Prob. R. 5.800(b) Application of revised chapter 744
to existing guardianships.

Fla. R. Jud. Admin. 2.516 Service of pleadings and
documents.

Proposed rule

Reasons for change

RULE 5.696. ANNUAL ACCOUNTING

(a)–(c) [No change]

Committee Notes

Rule History

1991 Revision: New rule.

1992 Revision: Citation form changes in committee notes.

2010 Revision: Committee notes revised.

Update to the history list.

Statutory References

[No change]

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.041 Service of pleadings and
~~papers~~documents.

Update to the rule reference list.

Fla. Prob. R. 5.060 Request for notices and copies of
pleadings.

Fla. Prob. R. 5.610 Execution by guardian.

Fla. Prob. R. 5.695 Annual guardianship report.

Fla. Prob. R. 5.700 Objection to guardianship reports.

Fla. R. Jud. Admin. 2.516 Service of pleadings and
documents.

Proposed rule

Reasons for change

RULE 5.700. OBJECTION TO GUARDIANSHIP REPORTS

(a)–(c) [No change]

Committee Notes

Rule History

1975 Revision: Substantially the same as section 744.427(3), (5), and (6), Florida Statutes, with editorial changes.

1977 Revision: No change in rule. Change in committee note to conform to statutory renumbering.

1988 Revision: Captions added to subdivisions. Committee notes revised. Citation form change in committee notes.

1989 Revision: Prior rule deleted and replaced by temporary emergency rule.

1991 Revision: Revised to conform with new statutory requirements.

1992 Revision: Citation form changes in committee notes.

2008 Revision: Committee notes revised.

2010 Revision: Committee notes revised.

Updates rule history.

Statutory References

[No change]

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.041 Service of pleadings and
~~papers~~documents.

Fla. Prob. R. 5.060 Request for notices and copies of
pleadings.

Fla. Prob. R. 5.180 Waiver and consent.

Fla. Prob. R. 5.610 Execution by guardian.

Fla. R. Jud. Admin. 2.516 Service of pleadings and
documents.

Updates to the rule reference list.