

# Supreme Court of Florida

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No. SC19-2104

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## **IN RE: AMENDMENTS TO FLORIDA RULE OF JUDICIAL ADMINISTRATION 2.140.**

February 6, 2020

PER CURIAM.

The Court, on its own motion, amends Florida Rule of Judicial Administration 2.140 (Amending Rules of Court) to allow The Florida Bar's rules committees to propose and the Court to adopt procedural rule changes in a more efficient, timely manner. *See Fla. R. Jud. Admin. 2.140(d)*. We have jurisdiction. *See art. V, § 2(a), Fla. Const.*

Currently, under rule 2.140, The Florida Bar's ten rules committees report, on a staggered basis, the majority of their proposed rule changes to the Court in scheduled regular-cycle reports filed every three years. *See Fla. R. Jud. Admin. 2.140 (b)(1)*. Rule 2.140 also authorizes the committees to propose out-of-cycle rule changes under a limited set of circumstances. *See Fla. R. Jud. Admin. 2.140(e)(1), (2)*. After discussions with representatives of the Bar and the various

rules committees about ways to improve the rulemaking process, the Court has determined that amending subdivision (b) (Schedule for Regular-Cycle Rules Proposals) of rule 2.140 to do away with the set schedule for rules committee reports and allow the committees to file rules proposals with the Court whenever a committee determines rules changes are needed will streamline the process and provide for more expeditious rule making. This change also should result in more informative committee reports and responses to comments by helping to ensure that the proposing committee's chair and a majority of its members<sup>1</sup> were involved in the development of the rules proposals filed with the Court.

Consistent with the amendments to subdivision (b) of rule 2.140, the Court deletes, as unnecessary, subdivision (e)(2) of the rule, which provides for nonemergency out-of-cycle rules proposals when out-of-cycle proposals are sufficiently necessary to the administration of justice. As amended, subdivision (e) of rule 2.140 will govern only rules reports filed using the committees' fast-track procedures, which are used for rule amendments that warrant expedited consideration or are necessary due to changes in legislation. Amended subdivision (e) also makes clear that fast-track reports filed in response to new legislation are

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1. *See* Fla. R. Jud. Admin. 2.140(a)(4) (providing that rules committee members serve for three-year staggered terms).

designed to ensure that ordinarily the proposed rules amendments can be adopted before the effective date of the relevant legislation.

The Court also amends subdivision (d) (Emergency Amendments by Court) of rule 2.140 consistent with the Court's current practices when amending court rules on the Court's own motion. The Court makes several other more minor changes throughout rule 2.140.

Accordingly, the Florida Rules of Judicial Administration are amended as reflected in the appendix to this opinion. New language is indicated by underscoring; deletions are indicated by struck-through type. The amendments shall become effective June 1, 2020, at 12:01 a.m. Because the amendments were not published for comment prior to their adoption, interested persons shall have seventy-five days from the date of this opinion in which to file comments with the Court.<sup>2</sup> The Court specifically seeks comments and any suggested revisions to the

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2. All comments must be filed with the Court on or before April 21, 2020, with a separate request for oral argument if the person filing the comment wishes to participate in oral argument, which may be scheduled in this case. If filed by an attorney in good standing with The Florida Bar, the comment must be electronically filed via the Florida Courts E-Filing Portal (Portal) in accordance with *In re Electronic Filing in the Supreme Court of Florida via the Florida Courts E-Filing Portal*, Fla. Admin. Order No. AOSC13-7 (Feb. 18, 2013). If filed by a nonlawyer or a lawyer not licensed to practice in Florida, the comment may be, but is not required to be, filed via the Portal. Comments filed via the Portal must be submitted in Microsoft Word 97 or higher. *See In re Electronic Filing in the Florida Supreme Court*, Fla. Admin. Order No. AOSC17-27 (May 9, 2017). Any person unable to submit a comment electronically must mail or hand-deliver the originally signed comment to the Florida Supreme Court, Office of the

Court's amendments to rule 2.140 from the Bar's Rules of Judicial Administration  
Committee.

It is so ordered.

CANADY, C.J., and POLSTON, LABARGA, LAWSON, and MUÑIZ, JJ.,  
concur.

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

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Clerk, 500 South Duval Street, Tallahassee, Florida 32399-1927; no additional  
copies are required or will be accepted.

## APPENDIX

### RULE 2.140. AMENDING RULES OF COURT

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

(1) ~~Proposals~~Suggestions for court rules, amendments to them, or abrogation of them may be made by any person.

(2) ~~Proposals~~Rules suggestions shall be submitted to the clerk of the supreme court, the committee chair(s) of a Florida Bar committee listed in subdivision (a)(3), or the Bar staff liaison of The Florida Bar in writing and shall include a general description of the proposed rule change or a specified proposed change in content. The clerk of the supreme court shall refer proposals to the appropriate committee under subdivision (a)(3).

(3) – (7) [No Change]

#### (b) ~~Schedule for Regular-Cycle Rules Proposals.~~

(1) Each rules committee ~~shall~~may report ~~all~~ proposed rule changes ~~on a staggered basis (with the first cycle starting in 2006) to the supreme court whenever the committee determines rule changes are needed. Reports shall be made by the Criminal Procedure Rules Committee, the Traffic Court Rules Committee, and the Juvenile Court Rules Committee in 2006; by the Civil Procedure Rules Committee, the Probate Rules Committee, the Small Claims Rules Committee, and the Code and Rules of Evidence Committee in 2007; and by the Family Law Rules Committee, the Appellate Court Rules Committee, and the Rules of Judicial Administration Committee in 2008. Thereafter, the cycle shall repeat.~~

(2) ~~No later than June 15 of the year prior to each reporting year or such other date as the board of governors of The Florida Bar may set~~Before filing a report of proposed rule changes with the supreme court, each the reporting committee shall submit ~~all~~the proposed rule changes to the board of governors with the committee's final numerical voting record on each proposal. Contemporaneously with reporting proposed rule changes to the board of governors, ~~each~~the committee report shall be furnished to the Speaker of the

Florida House of Representatives, the President of the Florida Senate, and the chairs of the House and Senate committees as designated by the Speaker and the President, and published on the website of The Florida Bar, and in *The Florida Bar News*. Any person desiring to comment upon proposed rule changes shall submit written comments to the appropriate committee chair(s) ~~no later than August 1 of the year prior to each reporting year~~ as provided in the notice. ~~Each~~The committee shall consider any comments submitted and thereafter report to the board of governors, ~~no later than October 31 of the year prior to each reporting year~~, any revisions to the proposed rule changes. Contemporaneously with reporting any revisions to the board of governors, ~~each~~the committee's revised proposed rule changes shall be furnished to the Speaker of the Florida House of Representatives, the President of the Florida Senate, and the chairs of the House and Senate committees as designated by the Speaker and the President, and published on the website of The Florida Bar and in *The Florida Bar News*. Any person desiring to comment thereafter shall submit written comments to the supreme court in accordance with subdivision (b)(6).

(3) ~~No later than December 15 of the year prior to each reporting year,~~ The board of governors shall consider the proposals and shall vote on each proposal to recommend acceptance, rejection, or amendment.

(4) ~~No later than February 1 of each reporting year,~~ The committee and the executive director of The Florida Bar shall file ~~at~~the report of ~~it~~the proposed rule changes with the supreme court. ~~Each~~The committee may amend its recommendations to coincide with the recommendations of the board of governors or may decline to do so or may amend its recommendations in another manner. Any such amendments also ~~also~~ shall be reported to the supreme court. The report and proposed rule changes must conform to the Guidelines for Rules Submissions approved by administrative order and posted on the websites of the supreme court and The Florida Bar. Consistent with the requirements that are fully set forth in the Guidelines, the report shall include:

(A) – (G) [No Change]

The report and the proposed rule changes shall be filed with the supreme court in an electronic format approved by the supreme court.

(5) If oral argument is deemed necessary, the supreme court shall establish a date ~~in the month of June of each reporting year~~ for oral argument on the proposals. Notice of the oral argument on the proposals and a copy of the

proposals shall be furnished to the affected committee chair(s) and vice chair(s), the executive director and staff liaison of The Florida Bar, all members of the Judicial Management Council, the clerk and chief judge of each district court of appeal, the clerk and chief judge of each judicial circuit, the Speaker of the Florida House of Representatives, the President of the Florida Senate, the chairs of the House and Senate committees as designated by the Speaker and the President, and any person who has asked in writing filed with the clerk of the supreme court for a copy of the notice. The clerk may provide the notice electronically. The recommendations or a resume of them shall be published on the websites of the supreme court and The Florida Bar and in *The Florida Bar News* before the oral argument or consideration of the proposals without oral argument. Notice of the oral argument, if scheduled, shall also be published on the websites of the supreme court.

(6) Within the time allowed for comments set by the supreme court, any person may file comments concerning the proposals. All comments and other submissions by interested persons shall be filed with the clerk of the supreme court and served on the chair(s) of the appropriate rules committee, the Bar staff liaison, and on the proponent of the rule change if other than a member of the rules committee. The chair(s) of the rules committee and the executive director of The Florida Bar shall file a response to all comments within the time period set by the court. All comments and other submissions regarding the rule change proposals shall be filed in an approved electronic format with the supreme court. As soon as practicable after the date of filing, the clerk of the supreme court shall publish on the website of the supreme court all comments and the responses of the chair(s) of the rules committee that have been filed concerning the ~~rule change~~ proposals. All requests or submissions by a rules committee made in connection with a pending rule change proposal shall be filed with the clerk of the supreme court and thereafter published by the clerk of the supreme court on the websites of the supreme court and The Florida Bar.

(7) ~~Opinions adopting the proposals should be issued in sufficient time for the rule changes to take effect on~~ Rule changes adopted by the court shall be made effective January 1 of the year following the reporting year their adoption or on such other date as may be requested by the committee or set by the court. The supreme court may permit motions for rehearing to be filed on behalf of any person who filed a comment, The Florida Bar, ~~any bar association,~~ and the affected committee.

(c) [No Change]

(d) ~~Emergency Amendments by Court.~~ The supreme court, with or without notice, may change court rules, on its own motion, at any time ~~if an emergency exists that does not permit~~ without reference to ~~the appropriate~~ a rules committee of The Florida Bar for recommendations. The rule changes must conform to the Rules Style Guide contained in the Guidelines for Rules Submissions approved by administrative order and posted on the websites of the supreme court and The Florida Bar. The change may become effective immediately or at a future time. In either event, the court shall give notice of and fix a date for further consideration of the change. Any person may file comments concerning the change, seeking its abrogation or a delay in the effective date, in accordance with the procedures set forth in subdivision (b)(6). The court may allow oral argument ~~in support of such comments by The Florida Bar, by its sections and committees, and by other bar associations~~ on the proposal or change. Notice of the oral argument, if scheduled, on the change and a copy of the change shall be furnished to the affected committee chair(s) and vice chair(s), the executive director and staff liaison of The Florida Bar, all members of the Judicial Management Council, the clerk and chief judge of each district court of appeal, the clerk and chief judge of each judicial circuit, the Speaker of the Florida House of Representatives, the President of the Florida Senate, the chairs of the House and Senate committees as designated by the Speaker and the President, and any person who has asked in writing filed with the clerk of the supreme court for a copy of the notice. The clerk may provide the notice electronically. Notice of the change shall be published on the websites of the supreme court and The Florida Bar, and in *The Florida Bar News* either before or after the change is adopted. Notice of the oral argument, if scheduled, shall also be published on the website of the supreme court.

(e) ~~Out-of-Cycle Committee Proposals~~ Expedited Proposals and Proposals in Response to Legislative Changes by Rules Committees.

(1) ~~Emergency Proposals and Proposals in Response to Legislative Changes.~~ If, in the opinion of a committee, a proposal is ~~of an emergency nature~~ warrants expedited consideration or a rule amendment is necessary due to changes in legislation, and the board of governors concurs, proposals may be made ~~at any time~~ to the supreme court using the committees fast-track procedures. The report and proposed rule changes may be filed without prior



publication for comment and must conform to the Guidelines for Rules Submissions approved by administrative order and posted on the websites of the supreme court and The Florida Bar. The rules committees' fast-track procedures shall be used to address legislative changes to ensure that ordinarily any resulting proposed rule amendments ~~are filed with and~~ can be adopted by the court before ~~or soon after~~ the effective date of the legislation. If the court agrees that ~~an emergency exists~~ a proposal warrants expedited consideration or a rule change is necessary due to a legislative change, the court may publish the rule amendment for comment after adopting it or may set a time for oral argument or for consideration of the proposal without oral argument. Notice of the oral argument on the proposals, if scheduled before or after adoption, and a copy of the proposals shall be furnished to the affected committee chair(s) and vice chair(s), the executive director and the staff liaison of The Florida Bar, all members of the Judicial Management Council, the clerk and chief judge of each district court of appeal, the clerk and chief judge of each judicial circuit, the Speaker of the Florida House of Representatives, the President of the Florida Senate, the chairs of the House and Senate committees as designated by the Speaker and the President, and any person who has asked in writing filed with the clerk of the supreme court for a copy of the notice. The clerk may provide the notice electronically. Prior to or after their adoption, the recommendations or a resume of them shall be published on the websites of the supreme court and The Florida Bar, and in *The Florida Bar News*. Any person may file comments concerning the changes, in accordance with the procedures set forth in subdivision (b)(6). Notice of the oral argument, if scheduled, shall also be published on the website of the supreme court.

~~(2) — Non-Emergency Out-of-Cycle Proposals. If, in the opinion of a committee, a proposal is not of an emergency nature, but is sufficiently necessary to the administration of justice that it should not wait until the next regular cycle submission, and the board of governors concurs, proposals may be made out-of-cycle at any time to the supreme court. The report and proposed rule changes must conform to the Guidelines for Rules Submissions approved by administrative order and posted on the websites of the supreme court and The Florida Bar. Such out-of-cycle submissions must be published in *The Florida Bar News* and posted on the website of The Florida Bar for comment, and such comment must be reviewed and addressed by the committee prior to the out-of-cycle rule submission to the board of governors to recommend acceptance, rejection, or amendment. If the supreme court agrees that a proposal should be addressed before the next regular cycle~~

~~report, the supreme court may set a time for oral argument or for consideration of the proposal without oral argument. Notice of the oral argument on the proposals, if scheduled, and a copy of the proposals shall be furnished to the affected committee chair(s) and vice chair(s), the executive director and the staff liaison of The Florida Bar, all members of the Judicial Management Council, the clerk and chief judge of each district court of appeal, the clerk and chief judge of each judicial circuit, the Speaker of the Florida House of Representatives, the President of the Florida Senate, the chairs of the House and Senate committees as designated by the Speaker and the President, the person who initially proposed the matter to the committee, and any person who has asked in writing filed with the clerk of the supreme court for a copy of the notice. The clerk may provide the notice electronically. The recommendations or a resume of them shall be published on the websites of the supreme court and The Florida Bar, and in The Florida Bar News for comment before the oral argument or consideration of the proposals without oral argument. Any person may file comments concerning the proposals, in accordance with the procedures set forth in subdivision (b)(6). Notice of the oral argument, if scheduled, shall also be published on the website of the supreme court.~~

**(f) Request by Court.** ~~The supreme court may direct special consideration of a proposal at times other than those specified in this rule~~ refer a specific rules proposal or issue to a rules committee for consideration and may require ~~at~~ the committee to report its recommendation with the recommendations of the board of governors. All requests or submissions by a rules committee made in connection with a request under this subdivision shall be filed with or submitted to the clerk of the supreme court as provided in this subdivision.

**(1) Recommended Rule Changes.** ~~A rule change recommended in response to a request under this subdivision shall be included in the rules committee's next regular cycle reported to the supreme court in accordance with filed under subdivision (b), unless the court directs or the committee determines and the board of governors agrees that the rule change should be submitted out of cycle~~ a proposed rule change warrants expedited consideration. If the committee submits a recommended change out of cycle warrants expedited consideration, the procedures for out-of-cycle rule proposals under subdivision (e) procedures shall apply, except the A report filed under this subdivision shall state that it is filed in response to a request by the court under this subdivision.

- (2) [No Change]**
- (g) – (h) [No Change]**

**COMMITTEE NOTES**

**[No Change]**