

IN THE SUPREME COURT OF FLORIDA

PROPOSALS OF THE RULES OF JUDICIAL ADMINISTRATION COMMITTEE ON THE IMPLEMENTATION OF CASE PRIORITIES IN THE TRIAL COURTS IN FLORIDA

I. INTRODUCTION

On July 13, 2000, the Florida Supreme Court ("the Court") in *In re Proposed Amendment to Florida Rule of Judicial Administration 2.052(a)*, 770 So. 2d 152 (Fla. 2000), directed that the Rules of Judicial Administration Committee ("the Committee") should conduct a study of the manner in which the Rules of Judicial Administration assist or guide state trial courts in implementing the various case priorities established by statute, rule of procedure, case law, or otherwise. The Court also directed that the Committee report back in nine months with the results of its inquiry and with any relevant recommendations. Although the mandate was a general one (addressing how priority cases are handled in all trial courts in Florida), the Court expressed particular concern for the tools that trial courts have available to them to address case priorities "to ensure the expedited processing of trial-level proceedings relating to children and other time-sensitive matters."¹ A report and proposals were submitted by the Committee in response to this directive. The report attached a series of proposed changes to the Rules of Judicial Administration which, in the view of a majority of the Committee, as an appropriate response to the Court's concerns.

On June 5, 2001, the Court directed the Committee to file its final proposals out of cycle in accordance with Rule of Judicial Administration 2.130(e). However, the Court also directed the Committee, prior to filing the proposals, to publish the proposals for comment and make any changes it deemed to be warranted based on those comments.

Pursuant to the Court's directives, the proposals were published and the Committee received comments from Judge Daniel Dawson, Attorney Frank Kreidler and Judge Judy Pittman. Judge Dawson reported on the positions of the Juvenile Rules Committee, Children's Court Improvement Committee and the Family Court Steering Committee. Judge Pittman submitted a response as Chair of the Judicial Administration Section of the Conference of Circuit Judges and on behalf of the Chief Judges.

¹ Letter from the Honorable Leander J. Shaw, Jr. to the Honorable Charles J. Kahn, Jr., Chair of the Rules of Judicial Administration Committee, dated July 18, 2000.

After careful consideration, the entire Committee voted 19-0 for final approval of the proposals contained in the report previously submitted without any changes. The proposals contained in that report are hereby submitted below.

II. HISTORICAL BACKGROUND OF THIS COURT'S DECISION IN *In re Proposed Amendment to Florida Rule of Judicial Administration 2.052(a)*

A. State-Federal Judicial Council Resolution

In 1995, the Florida State-Federal Judicial Council Regarding Calendar Conflicts Between State and Federal Courts approved a series of procedures for use when an individual attorney has a scheduling conflict requiring his or her presence in a state court and a federal court simultaneously. The guidelines were general in nature, and the procedures created to resolve any such conflict for the individual lawyer were largely informal.

B. Genesis of Rule 2.052

In 1996, the Committee addressed the question of scheduling conflicts between two competing state court matters (or a state matter and a federal matter) scheduled for simultaneous hearings or trials. As the Committee reported to the Court in 1996, it considered rewriting the guidelines (called “priorities” in the state-federal resolution) to fine-tune the considerations suggested for judges faced with such a situation, but determined that the better course was to adopt the same general guidelines employed in the state-federal resolution. In the Committee's judgment, this would allow judges and lawyers to use the same approach in determining priorities when a lawyer faced temporally conflicting court schedules in two or more different cases. This led to Rule 2.052 in its present form.

C. Limited Purpose of Rule 2.052

The Committee favored the adoption of Rule 2.052. Nevertheless, the Court should recognize what Rule 2.052 was not intended to do. First, the rule was not intended to have any impact whatsoever on managing the priorities of cases that a single judge would face while controlling his or her docket and trying to determine which cases were “more important” than other cases on the judge's docket. In other words, it was not intended to be a docket management or control device for any particular judge or division of court, nor was it intended to superimpose a new set of case priorities on the numerous priorities already established under state and federal law.

Similarly, the order of the stated “priorities” or “guidelines” in Rule 2.052 was not intended to be a ranking of priorities, such that a preference recognized in subdivision (1) would necessarily have more importance than the factors addressed in subdivision (2) or in any subsequent subdivision. In other words,

a civil jury trial could, in any particular set of circumstances, be more worthy of immediate attention than a criminal, non-jury matter. Also, realizing that the Committee chose not to vary the language of the state-federal resolution, one can safely say that the Committee intended that the criminal/civil division of Rule 2.052(a)(1) was not an attempt to eliminate altogether matters that were neither strictly criminal nor strictly civil, such as certain proceedings involving the placement of children. In proposing Rule 2.052, the Committee sought to advance a principle to which the Committee steadfastly adheres to this day — a trial judge's control of cases is largely and quite properly left to the judge's sound discretion, exercised after identifying all relevant factors that might bear on deciding which case or matter should be advanced on a docket. Thus, Rule 2.052(b), a catchall section, was carried over from the state-federal resolution as an attempt to emphasize that the “priorities” or “guidelines” set forth in subdivision (a) were not rigid and unyielding rules. The trial courts were urged to evaluate the full panoply of circumstances involved in any particular case before assessing the relative merits of the respective cases that caused the scheduling conflict.

D. Frank Kreidler's Petition

Shortly after the approval of Rule 2.052, Frank Kreidler sought to advance by a rule amendment his perception that termination of parental rights (TPR) cases were not receiving the prompt attention in Florida courts that they deserved. More specifically, he argued that TPR cases were never highlighted as priority cases in scheduling conflicts within the purview of Rule 2.052.² Mr. Kreidler's proposed solution (or at least partial solution) was simply to give TPR cases first priority, in all circumstances, as the first subdivision under Rule 2.052(a). When a proposed rule to that effect came to the Supreme Court, the proposal found support in some form³ from a number of organizations and individuals in Florida. These proponents advocated the relative importance of TPR cases and urged the Court to accept the amendment proffered by Mr. Kreidler's petition as at least a partial solution.

The Committee opposed Mr. Kreidler's petition and its variants on procedural and practical grounds. The Committee argued that however meritorious the concept of expediting TPR cases might be, neither they nor any other particular type of case should be given super priority status, as a matter of law, over every other type of case. Instead, the Committee advocated a system that continued to vest control over a trial court's docket squarely in the hands of the trial judge, exercising his or her broad discretion. On July 13, 2000, the Court in a 4-3 opinion, rejected Mr. Kreidler's proposed amendment to Rule 2.052(a),

² In addition to Mr. Kreidler's policy arguments, he also contended that TPR cases were neither criminal nor civil and, as non-jury matters, would be entitled to little if any weight if the "priorities" of Rule 2.052(a) were strictly followed as a rank ordering of how priorities were administered.

³ For example, the Juvenile Court Rules Committee submitted a modified proposal placing the highest priority on only contested TPR cases.

but in so doing endorsed the proposition, and legal requirement, that TPR cases and other cases involving the custody and placement of children should be expedited.⁴ However, the Court agreed with the Committee that the proposed change to Rule 2.052 was not an effective vehicle for accomplishing that end.⁵ Instead, the Court directed this Committee to conduct a review of how cases worthy of priority should be handled in trial courts, and specifically directed that particular attention be given to cases involving time-sensitive matters involving children and families.

III. COMMITTEE'S POSITION REGARDING CASE PRIORITIES

In attempting to identify any other types of priority cases perceived as not receiving appropriate attention by trial courts, the Committee contacted all Sections of The Florida Bar as well as relevant committees and interested groups. Responses suggested that, with the exception of cases involving juveniles, no other types of cases afforded priority or expedited treatment under any aspect of Florida law were being inappropriately treated by trial judges. The Committee also learned during the study period that other aspects of the problems inherent in handling certain juvenile matters in a timely fashion were being and had been studied extensively by other groups in Florida. *See, e.g., FLORIDA'S DEPENDENCY COURT IMPROVEMENT PROGRAM ASSESSMENT REPORT, OFFICE OF THE STATE COURTS ADMINISTRATOR (1997).*

A. Approaches Considered by the Committee

As a result of its survey, and after a careful review of the rules committed to its charge, the Committee identified three broad approaches that might be recommended in response to the Court's July 13, 2000 directive.

1. First Alternative

First, the Committee realized that it could recommend no action, thereby leaving the issue of handling priority cases to the discretion of trial judges. The Court may regard such an approach as nonresponsive. Nevertheless, the approach had some philosophical support in the Committee. The Committee, of course, may not budget more money to handle an increased case load and an increasingly cumbersome juvenile court system, cannot force the legislature to approve additional judges certified by the Supreme Court, and cannot comprehensively or intelligently address all of the myriad factors relevant to a trial judge's handling of a docket.

⁴ *In re Proposed Amendment to Florida Rule of Judicial Administration 2.052(a)*, 770 So. 2d 152 (Fla. 2000).

⁵ The three dissenting Justices agreed that the Committee should study the matter, but favored implementing an interim rule that gave priority to contested TPR cases.

This “hands off” approach, although rejected by the Committee, was fully consistent with the Committee's strong preference for, and confidence in, the broad discretion historically afforded trial judges. Notwithstanding this philosophical support, the Committee ultimately recognized that the Rules of Judicial Administration could be adapted to implement and advance the values expressed by the Court in *In re Proposed Amendment to Florida Rule of Judicial Administration 2.052(a)*.

2. Second Alternative

The second alternative, also rejected by the Committee, was to do exactly the opposite — enact a comprehensive rule identifying each and every type and category of case, proceeding, or hearing that was given some priority status under Florida law or that was entitled to expedited treatment, for the purpose of ranking every proceeding as to its relative worth and merit. Under such a system, a trial judge in the management of the docket, would simply identify the particular type of case at issue and then plug it into a formula based on a predetermined universal ranking scheme.

The Committee's rejection of this approach was also fully consistent with its preferences on this issue from earlier days. Although, granting that certain cases (such as TPR cases) may generally be more important and time-sensitive than another category of cases (such as non-jury civil cases) in many circumstances, the Committee was unable and unwilling to give any one type of case or proceeding an absolute priority, as a matter of law, under all circumstances, over any other category or type of case. The Committee concluded that if a type of case were that meritorious and the law giving that case a priority were so clear, any trial judge would note the importance of the case and give it appropriate attention. Although the Committee considered anecdotal reports that certain judges exhibited poor judgment in weighing relative case priorities, the Committee nevertheless concluded that the damage done by these reported lapses of judgment would be far less than that wrought by the unintended consequences of an arbitrary and automatic system of absolute case priorities, ranked as a matter of law by a well-intentioned rules committee.

3. Third Alternative

The final approach rejected both extremes. The Committee identified those participants who affect the way in which cases are scheduled and priorities given to competing cases on a trial docket. In so doing, the Committee identified three such participants in the trial court system who have the ability to influence the way cases are assigned priorities and scheduled. Those participants are the trial judges in Florida, the attorneys appearing before those judges, and the chief judges of the various circuits throughout Florida.

B. Recommendations of the Committee

1. The Trial Judge

The Committee principally focused on the role of the trial judge. The Committee recognized that many, if not most, judges need no additional guidance in how to manage and control their dockets, even in the area of matters related to juveniles. Nevertheless, the Committee concedes that the Court correctly noted the absence of specific guidance for assessment of various priority cases by trial judges. Although Rule 9.146(g) of the Florida Rules of Appellate procedure assigns priority to certain cases involving children, the differences in operation between appellate courts and trial courts renders any comparison inapposite.

a. Proposed Rule 2.050(g)

The Committee proposes the addition of new subdivision 2.050(g), which would provide as follows:

Duty to Expedite Priority Cases. Every judge has a duty to expedite priority cases to the extent reasonably possible. Priority cases are those cases that have been assigned a priority status or assigned an expedited disposition schedule by statute, rule of procedure, case law, or otherwise. Particular attention shall be given to all juvenile dependency and termination of parental rights cases, and to cases involving families and children in need of services.

This proposed amendment would create an explicit requirement that trial judges give appropriate attention to the many types of cases given priority under Florida law. This portion of the rule highlights the trial judge's responsibility to appropriately manage priority cases. The last sentence of this new subdivision highlights juvenile dependency and TPR cases, and cases involving families and children in need of services, the same types of cases identified in Fla. R. App. P. 9.146. Before arriving at the "particular attention" language, the Committee considered a more inelastic approach. The Committee determined, however, that such a pre-emptive strike might well hit the wrong target. Accordingly, the case categories selected in proposed Rule 2.050(g) mirror those currently in the Florida Rules of Appellate Procedure. Again, consistent with historical opinion that the ultimate responsibility lies with the trial judge in the handling of dockets, no particular procedure or implementation format is required.⁶

⁶ See, e.g., *Cooper v. State*, 336 So. 2d 1133, 1138 (Fla. 1976) ("While death penalty cases command our closest scrutiny, it is still the obligation of an appellate court to review with caution the exercise of experienced discretion by a trial judge in matters such as a motion for a continuance."); *Acree v. State*, 15 So. 2d 262, 264 (Fla. 1943) ("In both criminal and civil cases it is settled law that an application for a continuance is addressed to the sound discretion of the trial court and the denial thereof will not be reversed unless it clearly appears that there has been a palpable abuse of judicial discretion."); *C. J. v. Dept. of*

b. Proposed Rule 2.085(b)

The Committee also proposes an amendment to Rule 2.085(b). Subdivision (b) is somewhat general and establishes the judge's responsibility to take control of the docket assigned to that division, and in its previous format, required the trial judge to identify such factors as alternative dispute resolution processes and procedures for setting cases for trial.

The Committee has suggested two additions to, and one modification of, the subparts of Rule 2.085(b). First, the proposed amendment requires that the judge, at the outset, identify what cases have priority status under controlling Florida law. After identifying those cases, the judge must implement (or modify) existing docket control policies so as to advance the priority cases and ensure prompt resolution in accordance with priorities.

The Committee also recommends a modification to the final subpart of Rule 2.085(b), which presently gives priority only to “older cases and cases of greater urgency.” The Committee concluded that, consistent with the Court's wishes, special attention should also be given to those cases that have priority under Florida law.

These three modifications to the rule will afford trial judges the foundation to acquire information about priority cases and use that information in a way that increases the likelihood that they will be addressed promptly. Implied in these proposed amendments is the lawyer's obligation to provide information regarding priorities, as discussed in the next section of this report.

2. The Lawyer

Children and Families, 756 So. 2d 1108, 1109 (Fla. 3d DCA 2000) (Observing, in a TPR case, that the “decision to grant or deny a continuance is within the sound discretion of the trial court.”); *First State Bank of Lantana v. Goldstein*, 469 So. 2d 939 (Fla. 4th DCA 1985) (Noting “[t]he court's inherent power to manage its case load. . .”); *Condominium Owners Org. of Century Village East, Inc. v. Century Village East, Inc.*, 428 So. 2d 384, 386 (Fla. 4th DCA 1983) (“We record our views that in arranging logistics trial courts should be accorded maximum discretion. . .The trial judges are truly on the firing line and so are in a much better position to determine how to handle their dockets.”); *Glades General Hospital v. Louis*, 411 So. 2d 1318, 1319 (Fla. 4th DCA 1981) (Acknowledging the trial court's “far superior vantage point as to prior discovery . . . and the many considerations which go into managing a trial docket and granting continuances.”)

Proposed new subdivision (c) of Rule 2.085 specifically addresses, and establishes procedures for appropriate treatment of, priority cases. Subdivision (c)(1) allows any party in a non-criminal case to file a notice of priority status explaining the nature of the priority and the effect that priority status may have on the conduct of the case. The contemplated notice will put all parties on notice of the claimed priority status and will inform the trial court of that status. The Committee decided against proposing a mandatory notice. The Committee recognized, for instance, that there may be cases entitled to priority status that for one reason or another the “benefited” party does not want to have expedited.

3. The Chief Judge

The second subpart of proposed Rule 2.085(c) brings all three of the important players together — the trial judge, the lawyers, and the chief judge of the circuit. This new provision would allow any party who has a good faith opinion that the case has not been appropriately advanced on the docket consistent with its priority status to seek review by the chief judge (or the chief judge's designee). That party may seek that review by filing a motion for review with the chief judge. No hearing is mandated, nor are any further pleadings expressly allowed. Resolution of the matter is left to the discretion of the chief judge.

The last sentence of this subdivision states that the filing of a motion for review with the chief judge of the circuit will not toll the time for seeking any available relief (e.g., certiorari, mandamus, or other review or original proceeding) under the Florida Rules of Appellate Procedure. The Committee was concerned that parties not be misled that a motion for review tolls or delays any other remedy that might be available.

4. Continuances in Priority Cases

The final proposed rule change is to the subdivision of Rule 2.085 that controls the requests for and granting of continuances, currently subdivision (c), but proposed to be redesignated as subdivision (d). Although the scheduling of priority cases for final hearing or trial is the responsibility of the trial judge, continuances are often granted. Because motions for continuance will always be part of the practitioner's arsenal, the Committee suggests that any motion for continuance filed in a priority case contain language that the case has a priority status and explain what effects the granting of the motion will have on the progress of the case. This proposal is intended to be mandatory and to apply not only to motions by parties who are “benefited” by the priority status, but also to those individuals who may not benefit as directly from a prompt and expeditious resolution of the case.

5. Amendment to Rule 2.052

Finally, the Committee re-examined the rule that stimulated this entire study of the Rules of Judicial Administration — Rule 2.052. The Committee sought to remove any misconceptions that may now exist

about the effect of the rule and to ensure that judges and lawyers know that judges should consider case priorities created by law when addressing a lawyer's scheduling conflicts.

The first change was to substitute the word “guidelines” for the word “priorities” throughout the rule. Some reports from lawyers and judges suggested that the various subparts of subdivision (a) were being viewed as a rigid rank-ordering of the criteria principles to be used in addressing scheduling conflicts. As previously expressed in this report, the Committee did not intend by these changes to resolve all scheduling conflicts; instead, the Committee recognized that the trial judge was the final arbiter of scheduling questions. The present proposal does not alter the philosophy that the judge, rather than a rules committee, should exercise sound discretion based on the exigencies of a particular situation.

Finally, the Committee included in subdivision (a) a new guideline not explicitly found in the state-federal resolution that was the genesis of Rule 2.052. Under this proposed amendment, trial courts would be reminded, consistent with the balance of the amendments suggested herein, that priority status should be considered when a scheduling conflict arises. The Committee's original preference for uniformity with the state-federal resolution is modified in this rule because the Committee concluded that the original rule was being misconstrued in a manner that did a disservice to cases with established priorities, and particularly to those involving time-sensitive matters affecting children and families. The Committee intends by this addition to correct this misapprehension.

IV. CONCLUSION

The Committee experienced a certain level of frustration in identifying those portions of the Rules of Judicial Administration that might be able to have a significant beneficial effect on the handling of priority cases in Florida trial courts. Nevertheless, the Committee believes that it has made a good faith effort to respond to the Court's request in *In re Proposed Amendment to Florida Rule of Judicial Administration 2.052(a)*, 770 So. 2d 152 (Fla. 2000).

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Respectfully submitted,

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