

INTERNAL OPERATING PROCEDURES OF THE FLORIDA APPELLATE COURT RULES COMMITTEE

I. INTRODUCTION

Under Florida Rule of General Practice and Judicial Administration 2.140, The Florida Bar has established the Appellate Court Rules Committee (the “committee”) to consider rule proposals and amendments to the Florida Rules of Appellate Procedure. Rule 2.140 requires the committee to be composed of attorneys and judges with extensive experience and training in an area of practice that calls for regular, frequent use of the appellate rules.

II. OFFICERS

Subject to the discretion of bar president-elect, the officers of the committee consists of a chair, 1 or more vice chairs, and a secretary.

a. Chair. The president-elect of bar appoints the chair of the committee to serve for a 1-year term to coincide with the president-elect’s term of office as president. R. Regulating Fla. Bar 2-8.1. The chair governs the committee during that term and has the powers set forth in these internal operating procedures. Once appointed by the president-elect, the chair-elect immediately has the power to make any appointment authorized in these internal operating procedures for that chair-elect’s term of office as chair.

b. Vice Chair. The president-elect of bar appoints 1 or more vice chairs of the committee to serve for a 1-year term to coincide with the term of the chair appointed by the president-elect. R. Regulating Fla. Bar 2-8.1. A vice chair will serve in the chair’s absence. The vice chair(s) otherwise assists the chair as needed. A vice chair is the logical successor to the chair.

c. Secretary. The chair appoints a secretary to serve during the chair’s term of office. The secretary keeps minutes of the

committee's activities under rule 2.140. Consistent with the rule, the minutes must reflect the action taken on each proposal. For each proposed rule and amendment, the secretary must clearly set forth the proposal with sufficient context from the existing rule (if any) to allow meaningful review of the effect of the proposal and its interaction with other provisions of the rule. Proposed amendments are indicated through the use of underlining (for additions) and strike-throughs (for deletions). Copies of the minutes as drafted by the secretary must first be furnished for review and correction to the chair and staff liaison to the committee. Copies of the minutes as corrected must be furnished to the chair electronically no later than 30 days after the committee meeting.

The minutes must be included in the materials for the next regular committee meeting for a vote of approval by the committee.

d. Rules of General Practice and Judicial Administration Liaison. Under rule 2.140, at least 1 committee member will serve as liaison to the Rules of General Practice and Judicial Administration Committee. The chair appoints the liaison to serve during the chair's term of office.

e. Parliamentarian. The chair appoints a parliamentarian to serve during the chair's term of office. The parliamentarian must be familiar with these internal operating procedures and Robert's Rules of Order and will advise the chair on matters of parliamentary procedure. The parliamentarian also serves as a member of the Internal Operating Procedures Subcommittee.

III. SUBCOMMITTEES

Subcommittees of the committee consist of: (1) standing subcommittees; (2) special subcommittees; and (3) an Executive Subcommittee. Appointment, removal, or replacement of members of subcommittees is at the sole discretion of the chair. At all times

during their membership, committee members must serve on at least 1 of the following subcommittees: Civil Practice, Criminal Practice, or General Practice. Committee members must simultaneously serve on at least 1 additional standing or special Subcommittee. Composition and authority of the Executive Subcommittee is set forth below. The chair has the discretion to appoint non-committee members to standing, special, and Executive Subcommittees when special expertise is needed to assist with an issue being considered by a subcommittee. Non-committee members may attend, participate, and vote on issues at the subcommittee level and may attend and participate at the committee level but have no voting rights at the committee level.

a. Standing Subcommittees.

1. The following subcommittees are established on an ongoing basis: Civil Practice, Criminal Practice, General Practice, Administrative Law Practice, Family Law Practice, Workers Compensation Practice, Record on Appeal, Original Proceedings, and Internal Operating Procedures. By a majority vote, the committee may establish other standing subcommittees.

2. The chair appoints both a chair and a vice chair for each standing subcommittee to serve during the chair's term. The vice chair of each standing subcommittee is the logical successor to a standing subcommittee chair. Because of term limitations, it is preferable that no subcommittee chair serve more than 2 years in that position.

b. Special Subcommittees.

1. The chair has the discretion to create and appoint special subcommittees when needed to review and reevaluate the rules in a particular area not well-suited to review and reevaluation by a standing subcommittee or to handle a special project or assignment.

2. The chair appoints a chair, and may appoint a vice chair, for special subcommittees.

c. Executive Subcommittee. The Executive Subcommittee consists of the chair, the vice chair(s), the secretary, all subcommittee chairs, and the immediate past-chair if still on the committee. The Executive Subcommittee has authority to act as set forth in these procedures and under Rule 2.140 when an emergency matter is presented to the committee.

d. Subcommittee Records. The vice chair of each subcommittee (or the chair's designee), whether standing, special, or Executive, must keep minutes of subcommittee meetings. The minutes must reflect the action taken on each proposal, and copies of the minutes must be furnished to the chair and vice chair of the committee and staff liaison to the committee. Copies of subcommittee minutes must be included in the committee's agenda for the meeting at which the matters contained therein will be considered.

Subcommittee reports and minutes must be submitted to the chair and staff liaison at least 20 days before a committee meeting. Subcommittee reports and minutes must be submitted in Microsoft Word or similar word processing program, and must not be scanned PDFs. Subcommittee reports must be prepared using the Pre-Vote Subcommittee Report form, unless an alternative format in a particular circumstance is approved by the staff liaison.

IV. CONDUCTING BUSINESS

a. Governing Rules. The rules as provided in the Rules Regulating the Florida Bar and standing board policies govern in all matters.

b. Quorum. No business will be conducted unless a quorum is present at any meeting. For purposes of these internal operating procedures, a quorum is defined as a simple majority of the committee. A quorum for subcommittee

business is defined as the presence of 3 subcommittee members; except a quorum for the Civil or General Practice Subcommittees is defined as the presence of 5 members.

c. Voting.

1. A majority vote is sufficient to pass any action taken by the committee except as otherwise provided in these internal operating procedures. All voting is by open ballot, either orally or by show of hands. If a vote is not unanimous, a show of hands vote and count will be taken and appropriately recorded by the secretary. If the committee takes action by email, as authorized in these internal operating procedures, voting need not be by open ballot.

2. Proxy and absentee voting are prohibited.

3. Voting by Electronic Means. Electronic means in these internal operating procedures includes, but is not limited to, telephone conference, video conference, and email.

a. Action by the full Committee. The chair or the chair's designee has discretion to call for a vote of the committee by electronic means if action, which otherwise does not qualify as an Emergency Proposal, must be taken before the next regularly scheduled meeting of the committee. The chair or the chair's designee may schedule a meeting of the full committee by electronic means, at which the action can be discussed and a vote taken, or call for a vote of the full committee by email.

b. Action by a Subcommittee. The subcommittee chair or the subcommittee chair's designee has discretion to call for a vote of the subcommittee by electronic means. The subcommittee chair or the subcommittee chair's

designee may schedule a meeting of the subcommittee by electronic means, at which the subcommittee action can be discussed and a vote taken, or call for a vote of the subcommittee by email.

d. Attendance. All members of the committee are expected to attend all meetings. The chair has the authority to grant excused absences for good cause shown. Within 1 bar calendar year, any member who has 2 unexcused absences from meetings for which at least 30 days-notice was provided is deemed to have resigned from the committee, and the chair will notify the bar president of such resignation. Notice that a meeting will be held at the Fall, Winter, or Annual Meeting of The Florida Bar, if given at least 30 days in advance, constitutes notice under this procedure even if actual notice of the exact meeting date is not made until less than 30 days before the meeting. Any member who loses membership in this manner may be reinstated to the committee only on successful appeal of the member's loss of membership to the bar president.

e. Records Retention. To maintain a record of the committee's actions for the sake of accuracy and historical perspective, the secretary must preserve in electronic form all minutes of committee meetings as approved by the committee. The secretary must furnish the minutes in electronic form to the chair and staff liaison to the committee no later than 30 days after approval by the committee. The chair or the chair's designee will furnish to the staff liaison all agendas and related materials in electronic form for dissemination to the committee. The staff liaison will ensure that all such materials, including the minutes, are accessible by members and stored by the bar. The staff liaison will serve as the custodian of records described in Florida Rule of General Practice and Judicial Administration 2.420 and will use any computer facilities the bar has available for electronic data storage so that any member of the public may request these records. The

staff liaison will provide, in electronic form, the minutes as approved by the Committee to the Clerk of the Supreme Court (“Supreme Court”) The staff liaison retains the records of the Committee as administrative records of the judicial branch in conformity with Florida Rule of General Practice and Judicial Administration 2.440.

V. PROCEDURES FOR AMENDING RULES

a. Initiating Proposals. Any proposal for a new rule or for an amendment to an existing rule must be submitted in writing to the chair. The chair also has the authority to initiate proposals on the chair’s own motion.

b. Action upon Initiation of Proposal. On initiation of a proposal, the chair has the discretion to take 1 or more of the following actions:

1. Bring the matter before the committee to consider whether to approve, study, or reject the proposal.
2. Refer the matter first to a subcommittee to consider the proposal and to report back to the chair with a written recommendation, which must be prepared by the subcommittee chair using the Pre-Vote Subcommittee Report Form, unless an alternative format in a particular circumstance is approved by the staff liaison.
3. Determine that the matter is beyond the scope of the committee’s authority. This determination must be reported to the committee and is subject to override by a 2/3 vote of those present. If the chair determines that the proposal should be considered by some other body, such as another rules committee of the bar, the chair will refer the proposal to that body.
4. Determine that a portion of a proposal is beyond the scope of the committee’s authority, in which case the chair will report that fact to the committee and will take 1

of the actions set forth in the above subsections with regard to the remainder of the proposal.

c. Notice. A copy of the agenda for each committee meeting, including each proposal and subcommittee report will be provided to members and notice of the meeting will be furnished by electronic mail to the members of the committee at least 10 days before the committee meeting at which the committee will vote on the proposal. In the absence of this notice, no final vote may be taken on any proposal unless either 2/3 of those present vote to waive this requirement, or a vote is required due to a request by the supreme court, the board of governors, or the chair for expedited or emergency consideration of the proposal. The chair must announce the need for expedited or emergency consideration at the earliest practical opportunity. The chair's determination that a matter requires expedited or emergency consideration may be overridden by a 2/3 vote of those present. This notice requirement will not apply to floor amendments or substitute language suggested at a meeting; however, the chair may declare a proposed floor amendment or substitute language a major change, which requires prior circulation or referral to a subcommittee for consideration. The chair's determination may be overridden by a 2/3 vote of those present.

d. No Action Recommendations.

1. Matters Initially Referred to Subcommittees. If the subcommittee determines that no action is necessary on a proposal, it must report that decision to the chair on the Pre-Vote Subcommittee Report Form.

2. Matters Referred by the Supreme Court. If the supreme court refers a matter to the committee for consideration only and does not direct the committee to propose a rule change and, after considering the matter referred, the committee determines that no rule change is warranted, the committee must submit a "no action

report” to the supreme court explaining its recommendation that no rule change is needed. A no action recommendation should not be included in a report proposing rule changes filed under any other subdivision of rule 2.140.

e. Reconsideration of Proposals at the Same Meeting.

Requests to reconsider proposals in the same meeting will proceed as set forth in Robert’s Rules.

f. Reconsideration of Adopted Proposals Before Submission to the Board of Governors or the Supreme Court.

The committee may reconsider any proposal it adopted at a previous meeting if the proposal has not yet been submitted to the board of governors or filed with the supreme court. On receiving a reconsideration request concerning an adopted proposal, the committee must use this subdivision to reconsider the previously adopted amendments. The following procedures apply to reconsiderations depending on whether the proposal under reconsideration was originally passed after advance written notice or on oral motion:

1. The request to reconsider must be sent in writing to the chair with sufficient notice to allow it to be placed on the agenda of the next meeting and distributed to committee members at least 10 days before that committee meeting.
2. If the proposal was adopted after being circulated in writing in accordance with the notice requirements set forth in these procedures:
 - a. The request must be made by a committee member who originally voted for the proposal or by a member who did not attend the meeting when the proposal was passed and had advised the chair of that inability in advance.

b. Two-thirds of the members present must vote to reconsider.

3. If the proposal was adopted without having been circulated in writing in accordance with the notice provisions herein:

a. The request may be made by any committee member.

b. A majority of the members present must vote to reconsider.

g. Reconsideration of Rejected Proposals. Requests to reconsider proposals that the committee rejected at a previous meeting will be treated the same as reconsideration of adopted proposals, except that the member requesting reconsideration must have originally voted against the proposal when it was originally rejected, or been absent as defined above. The requirement that the requesting member must have originally voted against the proposal will expire 3 years from the committee's rejecting vote.

h. Reconsideration by Subcommittees. A subcommittee must reconsider proposals it previously acted on at the request of the chair. On receiving a reconsideration request concerning a proposal, the chair must refer the request to the subcommittee that originally proposed the corresponding amendment for review and consideration. The subcommittee chair will be advised that the proposal is being submitted for reconsideration and provided with historical data. If the reconsideration is for a proposal which has previously been either rejected or adopted by the committee, the subcommittee chair will be advised that the sponsorship of the request is in accordance with the provisions for reconsideration by the full committee. The subcommittee chair must draft a report detailing the subcommittee's activity under subsection (III)(d).

i. Procedures after Proposal Passed. Any proposal the committee passes must be reported as provided in Florida Rule of General Practice and Judicial Administration 2.140 in a timely manner. As required by that rule, all proposals must be submitted to the board of governors before submission to the supreme court. Proposals submitted to the board must contain the committee's final numerical voting record on each proposal.

Within 14 days of the final vote of the full committee, a legal summary must be submitted to the staff liaison by the subcommittee chair using the Post-Vote Subcommittee Report Form. This report may be included in any submissions to the court.

j. Procedures for Comments on Proposed Amendments Submitted to the Board of Governors. In the event any person submits a comment on proposed rule amendments during the noticed comment period following the proposal's publication, the chair must direct the applicable subcommittee to review the proposal in light of the comment(s) and prepare a written response recommending any action that the subcommittee determines is warranted with an explanation for that recommendation. The subcommittee's written response must be timely submitted for inclusion in the agenda packet for discussion at the next committee meeting. If the subcommittee determines that action is warranted, the subcommittee's timely, written response serves as a reconsideration request under subdivision (V)(f). If the subcommittee determines that no action is warranted, the committee may not reconsider the proposal unless a reconsideration request that meets the requirements of subdivision (V)(f) is timely made to the chair.

k. Submission of Proposals to Supreme Court. The chair must timely prepare and submit (or appoint a designee to timely prepare and submit) the appropriate pleadings for the filing of all proposals being submitted to the supreme court,

which pleadings must conform to the requirements of Florida Rule of General Practice and Judicial Administration 2.140. The chair must provide advance copies of each court submission to the vice chair(s) and the chair of any subcommittee whose proposal(s) is to be included in the submission to the court.

l. Scrivener's Authority. In submitting any proposed rule or amendment, the chair or the chair's designee may correct typographical errors and errors in spelling, punctuation, numbering, and style as long as such corrections do not in any way alter the substance or intent of the proposed rule or amendment. The staff liaison will ensure that any proposed rule or amendment complies with the supreme court's Guidelines for Rules Submissions.

m. Additional Pleadings in the Supreme Court, Including Responses to Comments or Any Comments Filed by the Committee. With regard to any proceeding in the supreme court in which the committee has taken a position, the chair or the chair's designee has the authority to submit any subsequent pleadings consistent with the committee's position that the chair or the chair's designee deems necessary. Whenever feasible, the chair will furnish the vice chair(s) and affected subcommittee chairs advance copies of each submission. In response to comments on committee proposals, the chair may direct the applicable subcommittee to review the proposal in light of the comment(s) and prepare a proposed written response recommending any action that the subcommittee determines is warranted with an explanation for that recommendation. For any comments that will be filed by the committee in the supreme court (either addressing a proposal by another committee or an amendment by the court), the chair may direct a subcommittee to review the matter and prepare a written comment. If the next scheduled meeting of the full committee will not take place in sufficient time for consideration of the matter, the chair may call for a vote of the full committee by electronic means.

n. Oral Argument. If the court sets oral argument on a committee proposal, the chair or the chair's designee must attend and argue the proposal before the court.

o. Emergency Proposals.

1. Application. The chair has authority to invoke the emergency procedure when:

- a. an act of the legislature implicates a rule of appellate procedure;
- b. the supreme court requests an immediate recommendation from the committee; or
- c. the chair determines immediate action is necessary.

2. Emergency Procedure.

- a. When the chair determines the emergency procedure should be invoked, the matter is referred to the Executive Subcommittee.
- b. The Executive Subcommittee must convene by electronic means within 10 days of the referral. The Executive Subcommittee may determine, by majority vote, whether to refer the matter to a standing subcommittee or an ad hoc subcommittee.
- c. The members of the Executive Subcommittee, or the members of another subcommittee to which the matter has been referred, determine by majority vote whether to propose amending or adopting a rule. If the subcommittee decides to recommend a proposed rule, it must draft the rule. If a subcommittee decides no action is necessary, it must prepare a memorandum setting forth its reasons. Any rule proposal or memorandum

prepared under this emergency procedure must be submitted to the chair within 30 days of the chair's referral of the matter.

d. If the next scheduled meeting of the full committee will take place in sufficient time for expedited consideration of the matter, the committee will at that time consider the rule proposal or the memorandum recommending no action.

e. If the next scheduled meeting of the full committee will not take place in sufficient time for expedited consideration of the matter, the chair must call for a vote of the full committee by electronic means. No later than 5:00 p.m. on the 10th calendar day after the call, the committee members may vote to approve or disapprove the rule proposal, or the memorandum recommending no action. The chair may shorten the period for voting, and may schedule a meeting of the full committee by electronic means.

i. If a proposed rule is approved by a majority of the committee members voting, and less than 1/3 of the full committee disapprove the proposal, the chair or the chair's designee must immediately submit an appropriate pleading to the board of governors for further action. If 1/3 or more of the full committee disapproves a proposed rule, the chair must suspend this emergency procedure and place the proposal on the agenda for the next scheduled meeting of the committee.

ii. If a subcommittee's recommendation to take no action is approved by a majority of the committee members voting, and disapproved

by less than 1/3 of the full committee, the matter is ended and the chair or the chair's designee will advise all interested parties of the committee's decision. If 1/3 or more of the full committee disapproves the subcommittee's recommendation, the chair must suspend this emergency procedure and may refer the matter back to the subcommittee for further consideration. The chair will place the matter on the agenda for the next scheduled committee meeting.

p. Status Report to Succeeding Chair. The chair must provide the succeeding chair with a written document setting forth:

1. Each proposal that:
 - a. was submitted during the chair's tenure and that remains pending before the board of governors or the supreme court; or
 - b. was approved by the committee during the chair's tenure but has not yet been submitted to the board of governors or the supreme court, and
2. The rationale for the proposal.

The chair must also provide the succeeding chair with any such documents received from the preceding chair.

q. Committee Notes.

1. The committee must vote on the language of new committee notes.
2. The committee may adopt a new committee note, even if the committee does not simultaneously recommend amending the corresponding rule.

3. The committee must direct that the adoption date be included in the published committee note.
4. The committee must report to the supreme court all new committee notes by either inclusion in the committee's report of proposed rule amendments or submitting them to the supreme court separately from a proposed rule report.
5. The committee cannot adopt or amend court comments, which are prepared by the supreme court.

VI. ORIENTATION

All new members must attend orientation during their first year on the committee unless the chair excuses them from participating or allows them to postpone attendance at orientation for good cause shown.

- a. Date.** The chair will set the date and time of orientation and the content to be presented at orientation, in consultation with the incoming chair and the staff liaison.
- b. Content.** Subject to the discretion of the chair and the incoming chair, orientation may include the following:
 1. Chairs and bar staff will provide new members with an overview of the rule-making procedures and the operation of the committee.
 2. All subcommittee chairs (or vice chairs if the chair is unavailable) will attend and provide new members with a brief overview of their subcommittee and the status of issues pending before their subcommittee.
 3. Others will assist in orientation as determined by the chair.

4. All new members will be required to select service on at least 2 subcommittees each year during their membership on the committee.

c. Mentors. The Chair may designate committee members serving in their second 3-year term (and if needed committee members serving in the third year of their first 3-year term) to mentor 1 new committee member by being available to that member to answer questions and to assist in welcoming them to the committee.

VII. AMENDMENTS

These internal operating procedures may be amended at any meeting of the committee by a majority vote of the members of the committee present and voting, provided that any proposed amendment must first have been provided in writing to all committee members at least 30 days before such meeting.