

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/SB 2300

INTRODUCER: Judiciary Committee and Senator Villalobos

SUBJECT: Court Rules/Statutory References

DATE: April 23, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Maclure	Maclure	JU	Fav/CS
2.			JA	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

For the 2007 interim, the Committee on Courts of the House of Representatives reviewed the Florida Statutes for references to various rules of court. The committee examined the statutes to find such references, and found 160 statutes with rule references. The committee found numerous concerns in those references which may warrant legislative action. Those concerns generally fall in one of the following categories:

- Reference to incorrect specific rule;
- Reference to incorrect set of court rules; and
- Unnecessary reference to court rules.

To address these concerns, the bill, in multiple sections of the Florida Statutes, removes references to court rules or in other instances replaces specific references with general references using the term “court rule.”

This bill substantially amends the following sections of the Florida Statutes: 27.51, 34.01, 34.011, 39.01, 39.4086, 39.504, 39.507, 39.603, 39.701, 39.801, 39.802, 39.807, 39.824, 39.825, 48.27, 55.503, 56.29, 61.1301, 61.14, 61.16, 63.087, 63.122, 68.083, 83.231, 83.625, 222.30,

255.071, 316.1934, 327.354, 364.183, 366.093, 367.156, 368.108, 392.60, 393.11, 393.12, 400.0233, 409.2563, 409.257, 415.1045, 415.1051, 429.293, 440.31, 447.507, 448.110, 456.057, 518.112, 552.40, 607.0505, 617.0503, 713.346, 718.1255, 720.311, 723.0381, 726.108, 727.104, 731.011, 732.107, 733.101, 733.212, 733.6171, 733.705, 734.102, 736.0109, 738.104, 738.1041, 741.30, 742.16, 742.18, 744.3025, 744.307, 744.447, 765.105, 765.113, 768.81, 784.046, 790.157, 896.101, 916.13, 916.15, 916.302, 924.07, 932.704, 984.03, 984.04, 984.19, 984.20, 985.19, 985.255, 985.26, 985.35, and 985.534.

II. Present Situation:

Review of Statutes for References to Court Rules¹

For the 2007 interim, the Committee on Courts of the House of Representatives reviewed the Florida Statutes for references to various rules of court. The committee first examined the statutes to find such references, and found 160 statutes with rule references. References were to the following rule provisions:

Number of Statutory References to Court Rules	
Appellate	6
Civil Procedure	95
Criminal Procedure	32
Family Law	5
Federal	3
Judicial Administration	1
Juvenile	25
Probate	28
Small Claims	5
<i>Total References</i>	200 ²

Any use of a reference in statutes to an outside source creates the potential for a number of potential concerns. The primary concerns are:

Reference Concern

This is an uncommon but serious concern found in a few statutes. A few of the statutes that actually reference a specific rule number appear to reference the wrong rule, or fail to reference all of the rules that appear to be related to the subject of the statute.

Reference to Wrong Set of Rules

This is a common concern, often in statutes related to family law proceedings. For instance, many statutes related to family law proceedings still reference the rules of civil procedure, which rules formerly governed family law proceedings. Such statutes have not been updated to

¹ This information is from Florida House of Representatives, *Staff Analysis of HB 7023* (March 10, 2008), available at <http://www.flsenate.gov/data/session/2008/House/bills/analysis/pdf/h7023.SSC.pdf>.

² Many statutes contain multiple references, which is why the number of references exceeds the number of statutes affected.

recognize the family law rules of procedure that were first adopted in 1996. In a few instances, this difference is significant.

Incomplete Reference to Rules

This was a fairly prevalent concern. Indeed, many rule references in the statutes fall into this category. For instance, a reference to the rules of civil procedure is incorrect where the amount in controversy is less than \$5,000 and the case falls under the small claims rules. A reference to the rules of civil procedure is also incorrect as some civil matters are governed by the family court rules, rules of juvenile procedure, or probate rules. A reference to the rules of criminal procedure may be incorrect if a juvenile is the offender, as the rules of juvenile procedure would apply, and may also be incorrect where the case is governed by the traffic court rules.

Unnecessary Reference to Rules

This is also a common issue in the statutes and is commonly related to an incomplete reference to the rules. For instance, many statutes creating a civil cause of action include a sentence that says, in effect, that the complaint must be filed under the rules of civil procedure. At first glance, this is obvious and does not need to be said. Whether or not the statute requires this, a plaintiff will have to file his or her complaint in proper form under the rules of civil procedure, or the court will dismiss the action. Of course, this statutory reference can lead to great confusion if a plaintiff takes this literally and tries to file a standard civil complaint in the small claims court. Similarly, criminal law statutes sometimes require compliance with the rules of criminal procedure, which rules the court will enforce with or without the statutory requirement.

Solutions to Rule Concerns

Where appropriate, the recommended solution is to simply remove all reference to court rules. Many such references appear unnecessary. Where the entire reference cannot be removed without changing the context of the statute, the recommended solution is to reference the general term “court rule” rather than the specific section of rules. A simple reference using the term “court rule” cures any concern related to incorrect or incomplete reference to a specific set of court rules.

There remain many provisions that should not be amended. At the top of that list are certain criminal sentencing statutes that reference a now-repealed sentencing court rule. In that defendants are still occasionally being arrested and tried for offenses that still fall under the rule, the statutory reference must remain. There are also many instances where reference to a specific set of rules is appropriate to the context and should remain. For instance, different court rules direct different means by which services of process is effective. Statutes that create procedures to follow before a case may be filed appropriately references rules of procedure for service of process. Finally, it appears prudent to leave a rules reference that is preceded by a phrase similar to “except as otherwise provided by this statute, the _____ rules apply,” as such statutes appear to be a policy decision by the legislature creating exceptions to the rules of procedure.

III. Effect of Proposed Changes:

This bill stems from an interim project of the Committee on Courts of the House of Representatives, which examined the Florida Statutes for unnecessary or inaccurate references to court rules. In multiple statutory sections, the bill removes references to court rules or replaces references to specific rule provisions with references to the general term “court rule.” The bill also makes other technical and clarifying changes to some of these sections.

The amended statutory sections are as follows:

Section 1 amends s. 27.51, F.S., regarding the duties of public defenders.

Section 2 amends s. 34.01, F.S., regarding the jurisdiction of county court.

Section 3 amends s. 34.011, F.S., regarding jurisdiction in landlord and tenant cases.

Section 4 amends s. 39.01, F.S., regarding definitions in proceedings relating to children.

Section 5 amends s. 39.4086, F.S., regarding the pilot program for attorneys ad litem for dependent children.

Section 6 amends s. 39.504, F.S., regarding an injunction pending disposition of petition.

Section 7 amends s. 39.507, F.S., regarding adjudicatory hearings.

Section 8 amends s. 39.603, F.S., regarding court approvals of case planning.

Section 9 amends s. 39.701, F.S., regarding judicial review.

Section 10 amends s. 39.801, F.S., regarding procedures and jurisdiction.

Section 11 amends s. 39.802, F.S., regarding termination of parental rights.

Section 12 amends s. 39.807, F.S., regarding the right to counsel and guardian ad litem.

Section 13 amends s. 39.824, F.S., regarding procedures and jurisdiction.

Section 14 amends s. 39.825, F.S., regarding a petition for appointment of a guardian advocate.

Section 15 amends s. 48.27, F.S., regarding certified process servers.

Section 16 amends s. 55.503, F.S., regarding the recording of foreign judgments.

Section 17 amends s. 56.29, F.S., regarding supplementary proceedings.

Section 18 amends s. 61.1301, F.S., regarding income deduction orders.

Section 19 amends s. 61.14, F.S., regarding enforcement and modification of support, maintenance, or alimony agreements.

Section 20 amends s. 61.16, F.S., regarding attorney's fees.

Section 21 amending s. 63.087, F.S., regarding proceedings for termination of parental rights pending adoption.

Section 22 amends s. 63.122, F.S., regarding notice of hearing on petition.

Section 23 amends s. 68.083, F.S., regarding civil actions for false claims.

Section 24 amends s. 83.231, F.S., regarding the removal of a tenant.

Section 25 amends s. 83.625, F.S., regarding the power to enter money judgments in an action by a landlord.

Section 26 amends s. 222.30, F.S., regarding fraudulent asset conversions.

Section 27 amends s. 255.071, F.S., regarding payment of subcontractors for public projects.

Section 28 amends s. 316.1934, F.S., regarding presumption of impairment.

Section 29 amends s. 327.354, F.S., regarding presumption of impairment.

Section 30 amends s. 364.183, F.S., regarding access to company records.

Section 31 amends s. 366.093, F.S., regarding public utility records.

Section 32 amends s. 367.156, F.S., regarding public utility records and confidentiality.

Section 33 amends s. 368.108, F.S., regarding confidentiality and discovery.

Section 34 amends s. 392.60, F.S., regarding the right of appeal.

Section 35 amends s. 393.11, F.S., regarding involuntary admission to residential services.

Section 36 amends s. 393.12, F.S., regarding capacity and a guardian advocate.

Section 37 amends s. 400.0233, F.S., regarding informal discovery.

Section 38 amends s. 409.2563, F.S., regarding the administrative establishment of child support obligations.

Section 39 amends s. 409.257, F.S., regarding service of process.

Section 40 amends s. 415.1045, F.S., regarding medical examinations.

Section 41 amends s. 415.1051, F.S., regarding protective services intervention.

Section 42 amends s. 429.293, F.S., regarding informal discovery.

Section 43 amends s. 440.31, F.S., regarding witness fees.

Section 44 amends s. 447.507, F.S., regarding violation of strike prohibition.

Section 45 amends s. 448.110, F.S., regarding state minimum wage and annual wage adjustment.

Section 46 amends s. 456.057, F.S., regarding patient records.

Section 47 amends s. 518.112, F.S., regarding delegation of investment functions.

Section 48 amends s. 552.40, F.S., regarding administrative remedy for alleged damage due to use of explosives in mining.

Section 49 amends s. 607.0505, F.S., regarding registered agents of corporations.

Section 50 amends s. 617.0503, F.S., regarding registered agents.

Section 51 amends s. 713.346, F.S., regarding payment on construction contracts.

Section 52 amends s. 718.1255, F.S., regarding mandatory nonbinding arbitration.

Section 53 amends s. 720.311, F.S., regarding dispute resolution.

Section 54 amends s. 723.0381, F.S., regarding civil arbitration.

Section 55 amends s. 726.108, F.S., regarding remedies of creditors.

Section 56 amends s. 727.104, F.S., regarding commencement of proceedings.

Section 57 amends s. 731.011, F.S., regarding determination and procedure of substantive rights.

Section 58 amends s. 732.107, F.S., regarding escheat.

Section 59 amends s. 733.101, F.S., regarding venue of probate proceedings.

Section 60 amends s. 733.212, F.S., regarding notice of administration.

Section 61 amends s. 733.6171, F.S., regarding compensation of attorneys for the personal representative.

Section 62 amends s. 733.705, F.S., regarding payment of and objection to claims.

Section 63 amends s. 734.102, F.S., regarding ancillary administration.

Section 64 amends s. 736.0109, F.S., regarding methods and waiver of notice.

Section 65 amends s. 738.104, F.S., regarding a trustee's power to adjust.

Section 66 amends s. 738.1041, F.S., regarding total return unitrust.

Section 67 amends s. 741.30, F.S., regarding domestic violence.

Section 68 amends s. 742.16, F.S., regarding expedited affirmation of parental status for gestational surrogacy.

Section 69 amends s. 742.18, F.S., regarding disestablishment of paternity or termination of child support obligation.

Section 70 amends s. 744.3025, F.S., regarding claims of minors.

Section 71 amends s. 744.307, F.S., regarding foreign guardians.

Section 72 amends s. 744.447, F.S., regarding a petition for authorization to act.

Section 73 amends s. 765.105, F.S., regarding review of surrogate or proxy's decision.

Section 74 amends s. 765.113, F.S., regarding restrictions on providing consent.

Section 75 amends s. 768.81, F.S., regarding comparative fault.

Section 76 amends s. 784.046, F.S., regarding repeat violence, sexual violence, or dating violence.

Section 77 amends s. 790.157, F.S., regarding presumption of impairment.

Section 78 amends s. 896.101, F.S., regarding the Florida Money Laundering Act.

Section 79 amends s. 916.13, F.S., regarding involuntary commitment of defendant adjudicated incompetent.

Section 80 amends s. 916.15, F.S., regarding involuntary commitment of defendant adjudicated not guilty by reason of insanity.

Section 81 amends s. 916.302, F.S., regarding involuntary commitment of a defendant determined incompetent to proceed.

Section 82 amends s. 924.07, F.S., regarding appeal by state.

Section 83 amends s. 932.704, F.S., regarding forfeiture proceedings.

Section 84 amends s. 984.03, F.S., regarding the definition of a “dependent child.”

Section 85 amends s. 984.04, F.S., regarding families and children in need of services.

Section 86 amends s. 984.19, F.S., regarding medical screening and treatment of a child.

Section 87 amends s. 984.20, F.S., regarding hearings for child-in-need-of-services cases.

Section 88 amends s. 985.19, F.S., regarding incompetency in juvenile delinquency cases.

Section 89 amends s. 985.255, F.S., regarding detention criteria and detention hearings.

Section 90 amends s. 985.26, F.S., regarding the length of detention.

Section 91 amends s. 985.35, F.S., regarding adjudicatory hearings.

Section 92 amends s. 985.534, F.S., regarding juvenile justice appeals.

Section 93 provides an effective date of July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on April 21, 2008:

The committee substitute removes four sections of the bill that revised court-rule provisions in the following sections of the Florida Statutes:

- Punitive damages – ss. 400.0237 and 429.297, F.S.;
- Books of financial institutions – s. 655.059, F.S.; and
- Pleading in civil actions – s. 768.72, F.S.

By removing these sections from the bill, the committee substitute has the effect of maintaining the existing statutory language.

B. Amendments:

None.