

1 A bill to be entitled
2 An act relating to court rules of process and procedure;
3 amending s. 25.371, F.S.; providing that statutes
4 supersede court rules; creating s. 43.45, F.S.; providing
5 that no court rule may modify any substantive right or
6 conflict with general law; creating s. 43.46, F.S.;
7 creating a judicial conference; designating a chair;
8 providing membership; providing for the duties of the
9 conference; requiring an annual report; requiring creation
10 of an advisory committee and subcommittees; providing for
11 appointments; limiting membership on the judicial
12 conference; providing that the judicial conference is
13 administratively housed in the state courts system;
14 requiring that the judicial conference establish a
15 website; creating s. 43.47, F.S.; providing a process for
16 creation and adoption of court rules, administrative
17 orders, forms, and jury instructions; providing
18 definitions; prohibiting rules, local rules,
19 administrative orders, forms, and jury instructions from
20 modifying any substantive right or conflicting with
21 general law; requiring the judicial conference to publish
22 procedures for adoption and review of proposed rules,
23 local rules, administrative orders, forms, and jury
24 instructions; creating a process for rule adoption;
25 requiring proposed rules to be published and heard before
26 a subcommittee, the rules committee, and the judicial
27 conference before being submitted to the Legislature;
28 providing that rules go into effect if the Legislature

HB 7027

2011

29 does not act; providing exceptions; creating s. 43.48,
 30 F.S.; providing exceptions to specified provisions
 31 relating to court rule adoption; providing legislative
 32 intent; providing for adoption of certain specific court
 33 rules in effect on the effective date of this act;
 34 providing conditional adoption of existing court rules,
 35 local rules, administrative orders, forms, and jury
 36 instructions in effect before the effective date of this
 37 act; providing a contingent effective date.
 38

39 Be It Enacted by the Legislature of the State of Florida:
 40

41 Section 1. Section 25.371, Florida Statutes, is amended to
 42 read:

43 25.371 Effect of rules.—When a rule is adopted by the
 44 Supreme Court ~~supreme court~~ concerning practice and procedure,
 45 and such rule conflicts with a statute, the statutory provision
 46 ~~rule~~ supersedes the rule ~~statutory provision~~.

47 Section 2. Section 43.45, Florida Statutes, is created to
 48 read:

49 43.45 Court rules of practice and procedure.—A court rule
 50 may not abridge, enlarge, or modify any substantive right. Court
 51 rules of practice and procedure may not conflict with general
 52 law.

53 Section 3. Section 43.46, Florida Statutes, is created to
 54 read:

55 43.46 The judicial conference.—

HB 7027

2011

56 (1) There is created within the judicial branch a judicial
57 conference. The Chief Justice of the Supreme Court shall be the
58 chair of the judicial conference.

59 (2) The members of the judicial conference are:

60 (a) The Chief Justice.

61 (b) The chief judge of each district court of appeal.

62 (c) One circuit judge from each appellate district, chosen
63 by the chief judge of the district.

64 (3) The judicial conference shall conduct a continuous
65 study of the operation and effect of rules of practice and
66 procedure in all state courts. Any amendments of existing rules
67 or addition of new rules as the judicial conference may deem
68 desirable to promote simplicity in procedure, fairness in
69 administration, just determination of litigation, and
70 elimination of unjustifiable expense and delay, when not
71 inconsistent with general law, shall be recommended by the
72 judicial conference to the Supreme Court for its consideration
73 and adoption, modification, or rejection, in accordance with
74 law. The judicial conference shall also create, revise, and
75 implement forms for use in court proceedings, approve local
76 rules of court, approve form jury instructions, and any other
77 task or duty prescribed by law or designated by the Chief
78 Justice.

79 (4) On the first business day of December of every year,
80 the Chief Justice shall submit to the Speaker of the House of
81 Representatives and the President of the Senate an annual report
82 of the proceedings of the judicial conference, proposed rule
83 amendments and adoptions, and recommendations for legislation

HB 7027

2011

84 respecting general rules of practice and procedure before the
85 state courts.

86 (5) The judicial conference shall create advisory
87 committees and subcommittees to assist the judicial conference
88 in the performance of its duties. The judicial conference shall
89 create a standing committee on court rules, which committee
90 shall make recommendations on rule amendments and adoptions. The
91 committee on court rules shall have, at a minimum, advisory
92 subcommittees in appellate court rules, civil procedure rules,
93 code and rules of evidence, criminal procedure rules, family law
94 rules, probate rules, juvenile court rules, rules of judicial
95 administration, small claims rules, and traffic court rules.

96 (6) The Chief Justice shall appoint the chair and members
97 of advisory committees and subcommittees. Advisory committees
98 and subcommittees must be chaired by a state court judge
99 currently in office. Advisory committees and subcommittees shall
100 include practicing attorneys and legal academics, and each
101 committee must have at least one member of the general public
102 who is not an attorney or an academic.

103 (7) Any justice or judge who has been impeached by the
104 House of Representatives or is awaiting disposition after a
105 finding of probable cause by the Judicial Qualifications
106 Commission is disqualified from serving on the judicial
107 conference or any advisory committee of the judicial conference.

108 (8) The judicial conference shall be administratively
109 housed in the state courts system.

110 (9) The judicial conference shall be given a prominent
111 link on the primary web page of the state courts system. The

HB 7027

2011

112 judicial conference shall maintain a group of connected web
113 pages on the website of the state courts system dedicated to the
114 work of the judicial conference, the work of the advisory
115 committees, and the court rulemaking process. The website shall
116 include a form by which any member of the public can suggest a
117 rule adoption or change, and shall include contact information
118 or forms by which members of the public may comment on rule
119 proposals. All rule proposals, subcommittee and committee
120 agendas, and subcommittee and committee reports shall be
121 published on the website. The website shall allow any interested
122 person to receive e-mail notifications of the work of any
123 subcommittee or committee or the judicial conference. Access to
124 the website shall be free of charge.

125 Section 4. Section 43.47, Florida Statutes, is created to
126 read:

127 43.47 Creation and amendment of court rules of practice
128 and procedure, local rules, administrative orders, forms, and
129 jury instructions.—

130 (1) The Supreme Court shall recommend general rules of
131 practice and procedure in all courts. Recommended rules may be
132 adopted, amended, or rejected by the Legislature as provided by
133 this section. Any court may create administrative orders and
134 forms that apply in that court and in inferior courts, subject
135 to any limitation in general law and subject to the
136 administrative authority of the Supreme Court.

137 (2) For purposes of ss. 43.45 and 43.46 and this section,
138 the term:

HB 7027

2011

139 (a) "Rule" or "court rule" means a rule of practice or
140 procedure adopted to facilitate the uniform conduct of
141 litigation applicable to all proceedings, parties, and
142 attorneys. A rule has statewide impact.

143 (b) "Local rule" means a rule of practice or procedure for
144 circuit or county application only that, because of local
145 conditions, supplies an omission in or facilitates application
146 of a rule of statewide application.

147 (c) "Administrative order" means a directive necessary to
148 administer properly the court's affairs in a way consistent with
149 the State Constitution and court rules.

150 (d) "Form" means a form created for use by the parties in
151 a court action.

152 (e) "Jury instruction" means a standard suggested
153 instruction to juries on the law of a case.

154 (3) A rule, local rule, administrative order, form, or
155 jury instruction may not abridge, enlarge, or modify any
156 substantive right.

157 (4) Forms are subordinate to rules and to administrative
158 orders, and administrative orders are subordinate to rules. All
159 rules, local rules, administrative orders, forms, and jury
160 instructions are subordinate to general law.

161 (5) The judicial conference shall prescribe and publish
162 the procedures for the consideration of proposed rules, local
163 rules, forms, and jury instructions under this section. The
164 administrative process for changes to court rules shall include
165 the minimum following procedures:

HB 7027

2011

166 (a) Suggestions from the general public shall be referred
167 to the chair of the appropriate subcommittee. If the chair
168 believes the suggestion has merit, the chair shall request a
169 member of the subcommittee to sponsor it.

170 (b) Any member of an advisory subcommittee may sponsor a
171 proposed rule adoption or amendment for consideration. The
172 judicial conference shall establish a uniform numbering system
173 for proposals.

174 (c) An advisory subcommittee shall publish an agenda at
175 least 20 days before its meeting that sets forth all initial
176 proposals scheduled by the chair for consideration.

177 (d) If the advisory subcommittee determines by a majority
178 vote that a proposal has merit, the subcommittee may place the
179 proposal on the next agenda for consideration. Before the next
180 meeting, the subcommittee shall create an explanatory note on
181 the proposed rule, together with a fiscal estimate of the cost
182 of the rule to the state, to local government, and to the
183 general public. The explanatory note and fiscal estimate must be
184 published on the judicial conference webpage at least 30 days
185 before any subcommittee meeting at which the proposal will be
186 voted on.

187 (e) At a meeting in which a proposal is up for final
188 subcommittee consideration, the subcommittee shall consider the
189 proposal and the draft report. By majority vote, the
190 subcommittee may reject, adopt, or amend the proposal or the
191 explanatory note or fiscal estimates. Alternatively, the
192 subcommittee may move consideration of the proposal to the next
193 meeting of the subcommittee.

HB 7027

2011

194 (f) If the subcommittee adopts the proposal, the
195 subcommittee shall prepare a report to the rules committee
196 indicating the majority view and the fiscal estimates. Any
197 member of the subcommittee may object to the proposal, the
198 explanatory note, or the fiscal estimates by filing a minority
199 report with the rules committee, which must be sent to the rules
200 committee within 20 days after subcommittee adoption.

201 (g) The chair of the rules committee shall set the agenda
202 for the rules committee. The agenda shall be published at least
203 20 days before a meeting. A proposal may not be heard unless it
204 was passed by a subcommittee at least 60 days before the
205 committee meeting. The rules committee may adopt, amend, reject,
206 continue to another meeting, or return to the subcommittee for
207 further consideration any proposal. Any member of the rules
208 committee may object to a proposal, the explanatory note, or the
209 fiscal estimates by filing a minority report with the judicial
210 conference, which must be sent to the rules committee within 20
211 days after committee adoption.

212 (h) The Chief Justice shall set the agenda for the
213 judicial conference. The agenda shall be published at least 20
214 days before a meeting. A proposal may not be heard unless it was
215 passed by the rules committee at least 120 days before the
216 judicial conference meeting. The judicial conference may adopt,
217 amend, reject, continue to another meeting, or return to the
218 rules committee for further consideration any proposal. Any
219 member of the judicial conference may object to a proposal, the
220 explanatory note, or the fiscal estimates by filing a minority

221 report with the judicial conference, which must be filed within
 222 20 days after judicial conference adoption.

223 (i) All meetings of the judicial conference, the rules
 224 committee, or a subcommittee shall be open to the public.

225 (6) The judicial conference shall submit proposed changes
 226 to general rules of court to the Supreme Court annually no later
 227 than August 1. The Supreme Court may adopt, modify, or reject
 228 any recommendation of the judicial conference. The Supreme Court
 229 shall submit a rule proposed under this section to the Speaker
 230 of the House of Representatives and the President of the Senate
 231 not later than the first business day of December of the year
 232 preceding the year in which the rule is to become effective.
 233 Such proposed rule shall take effect July 1 of the following
 234 year unless otherwise provided by law.

235 (7) Rules recommended by the Supreme Court do not have the
 236 force of law and are not effective unless affirmatively approved
 237 by the Legislature, with or without legislative amendment, or
 238 the Legislature, having met in regular session after the
 239 submission of the rule to the presiding officers, adjourned sine
 240 die without enacting legislation rejecting or amending the
 241 proposed rule. The Supreme Court may fix the extent to which a
 242 rule, once effective, applies to proceedings then pending,
 243 except that the Supreme Court may not require the application of
 244 such rule to further proceedings to the extent that, in the
 245 opinion of the court in which such proceedings are pending, the
 246 application of the new rule in such proceedings would not be
 247 feasible or would work injustice, in which event the former rule
 248 applies. However:

HB 7027

2011

249 (a) A rule of evidence is not effective unless the
250 Legislature affirmatively adopts the rule in general law.

251 (b) A rule may not require the payment of any court cost
252 or fee unless the Legislature affirmatively adopts the cost or
253 fee in general law.

254 (c) If the Legislature passes a bill amending or rejecting
255 a recommended rule, and the Governor vetoes the bill, the
256 recommended rule is not adopted. If the Legislature overrides
257 the veto, then the rule is as provided in the act.

258 (8) Local rules, administrative orders, forms, and jury
259 instructions are not required to be affirmed by the Legislature,
260 but may be repealed or amended by general law. Once repealed or
261 amended, they may not be re-amended or re-adopted unless in
262 conformity with the general law. Additionally:

263 (a) Local rules may be promulgated by inferior courts if
264 permitted by the judicial conference and the Supreme Court. A
265 local rule may not abridge, enlarge, or modify any substantive
266 right or conflict with general law. A local rule may not require
267 parties or attorneys to pay or incur any cost or fee unless such
268 cost or fee is authorized by general law.

269 (b) Administrative orders may be promulgated by inferior
270 courts if permitted by the judicial conference and the Supreme
271 Court. Administrative orders are not required to be submitted to
272 the Legislature or approved under this subsection. An
273 administrative order of any court may not abridge, enlarge, or
274 modify any substantive right or conflict with general law. A
275 rule of court may not be enacted in the form of an
276 administrative order. An administrative order may not require

HB 7027

2011

277 parties or attorneys to pay or incur any cost or fee unless such
278 cost or fee is authorized by general law.

279 (c) Advisory committees may recommend forms for use by the
280 courts. Forms are not required to be submitted to the
281 Legislature or approved under this subsection. A form may not
282 abridge, enlarge, or modify any substantive right or conflict
283 with general law.

284 (d) Advisory committees may recommend jury instructions
285 for use by the courts. Jury instructions are not required to be
286 submitted to the Legislature or approved under this subsection.
287 A jury instruction may not abridge, enlarge, or modify any
288 substantive right or conflict with general law.

289 (9) Matters related to the admissibility of evidence may
290 only be enacted by general law. Notwithstanding the foregoing, a
291 rule of court may prohibit the admission of certain evidence for
292 failure to comply with a court rule and a court may prohibit
293 admission of certain evidence in a case for failure to comply
294 with a court order that is specific to that case.

295 Section 5. Section 43.48, Florida Statutes, is created to
296 read:

297 43.48 Exceptions.—Provided they do not conflict with the
298 State Constitution or with general law, and subject to the
299 administrative supervision power of the Supreme Court, the
300 following areas are not prohibited or limited by s. 43.45, s.
301 43.46, or s. 43.47:

302 (1) Rules regulating the admission of persons to the
303 practice of law and the discipline of persons admitted, provided

HB 7027

2011

304 such rules are consistent with s. 15, Art. V of the State
305 Constitution.

306 (2) Internal operating procedures of a court, including
307 personnel rules and personnel actions, provided such procedures
308 and actions are consistent with general law.

309 (3) Administrative orders, policies, and procedures
310 related to the assignment of a case or cases to a judge or
311 panel.

312 (4) Rules, local rules, or administrative orders that are
313 limited to creation of an advisory committee.

314 Section 6. It is intent of the Legislature that court
315 rules as they read on the effective date of this act are
316 presumed valid. If a court determines that the amendment to s.
317 2(a), Art. V of the State Constitution has the effect of implied
318 repeal of all court rules, then the Legislature hereby, as of
319 the effective date of this act, provides that:

320 (1)(a) The following court rules as they read on the day
321 before the effective date of this act are specifically adopted,
322 shall have full force and effect, and shall remain in effect
323 unless subsequently repealed or amended by general law: rules
324 2.410, 2.420, 2.430, 2.440, and 2.450, Florida Rules of Judicial
325 Administration.

326 (b) It is the intent of the Legislature by this section
327 that all public records laws affecting the courts, including
328 those grandfathered in at the adoption of s. 24, Art. I of the
329 State Constitution, shall remain in effect unless amended or
330 repealed by general law enacted after the effective date of this
331 act.

HB 7027

2011

332 (2) Other than those rules specified in subsection (1),
333 all court rules, local rules, administrative orders, forms, and
334 jury instructions that were in effect on the day before the
335 effective date of this act and that are not otherwise in
336 conflict with general law shall be deemed adopted, shall have
337 full force and effect, and shall remain in effect unless
338 subsequently repealed or amended by general law.

339 Section 7. This act shall take effect on the effective
340 date of House Joint Resolution 7025, or a similar joint
341 resolution having substantially the same specific intent and
342 purpose, if that joint resolution is approved by the electors at
343 the general election to be held in November 2012.