2004-40

>>> "Honorable Judge W.W. Kent" <p79@voyager.net> 3/7/2005 5:41:56 PM >>>
I have read the proposed changes to 3.215 and make one suggestion. I believe that the proposed 3.215 (D)(4)(b) and (c) are clumsy and inappropriate as presently written.

De novo reviews have evolved into what is essentially an appellate process. The court is reviewing the referee's findings and recommendations for error (and also considering any NEW evidence which might be offered). Consequently, I predict that almost every do novo review will be based at least in part on the record of the referee's proceedings. Therefore, the party seeking review should be required to provide the court with a transcript to the referee proceedings at his/her expense unless excused by the court from doing so for good cause.

The party asking for review should also be able to seek contribution from the respondent for the cost of the transcript, but again, the decision should be made by the court only after motion and opportunity for both parties to be heard on the issue., There is no reason I can think of why the issue of contribution could not be heard at the same time the de novo review is being heard.

In sum, the rule should provide that an "appellant" who objects to the referee's findings and recommendations should make his/her objection on a timely basis as required by rule, and should then be required to order and pay in advance for a transcript of the referee's proceedings, unless excused fby the court from doing so. The transcript should be provided to the court for it's examination prior to hearing. Petitioner ("Appellant") could include in his/her prayer for relief a request for contribution for the cost of the transcript, and the court could take proofs and/or hear arguements at the de novo hearing on the issue of whether to order contribution or not.

Thank you for reviewing my comments.

W. Wallace Kent, Jr., Tuscola County Probate Family Court Judge