IN THE SUPREME COURT OF FLORIDA

Case No.: SC21-929

In Re: Amendments to Florida Rule of
Civil Procedure 1.280
_____/

FLORIDA DEFENSE LAWYERS ASSOCIATION'S COMMENT IN SUPPORT

The FLORIDA DEFENSE LAWYERS ASSOCIATION (FDLA), hereby comments in support of the amendment and states as follows:

1. The FDLA is a statewide organization of civil defense attorneys formed in 1967, and it has over 1,100 members. The goal of the FDLA is to "bring industry leaders and defense counsel together and form a strong alliance that promotes fairness and justice in the civil justice system for all parties." The FDLA actively participates in amicus briefing before this Court in cases with statewide impact on tort, insurance, litigation, and the fair administration of justice. It submits comments on various jury instruction and rule change proposals.

2. The FDLA filed an amicus brief in Suzuki Motor Corp. v. Winckler, SC19-1998, in support of this Court's adoption of the Apex doctrine in the private sector.

3. The FDLA similarly comments in support of the proposed amendment to Florida Rule of Civil Procedure 1.280 incorporating the doctrine.

4. The FDLA's members regularly defend corporations in litigation and defend the depositions of high-ranking executives.

5. These depositions are highly disruptive for a corporation. The executive must step away from running the corporation and doing their job duties. The executive must turn their attention to a case, which she or he know nothing about. Indeed, these high-ranking executives generally have no personal knowledge of the subject or issues of the litigation.

6. Due to their position, their testimony carries great weight before a jury.

7. Unfortunately, the depositions of high-ranking executives are often requested as a means of harassment and as a weapon to leverage the case into a higher settlement. They are sought in the hopes that the corporation will not want to submit their executives to deposition, will not spend resources fighting the request, and will simply settle the case. There usually is no legitimate reason for the deposition request.

8. The information sought can be obtained through less intrusive means—through depositions of subordinates who are directly involved and who have personal knowledge of the issues at hand.

9. The rule will allow the high-ranking executive to do their job—run the corporation—without the fear or worry that their deposition will be sought in every case. They will now only lose valuable work time and production where their deposition is truly necessary—where they have personal, unique knowledge, the opposing party has exhausted other means of discovery, and that discovery is inadequate.

10. The rule should shield corporate officers and the corporation from the annoyance, undue burden, and expense of this unnecessary deposition.

11. Additionally, the FDLA fully supports the inclusion of former officers within the context of the rule. With the ever-changing business landscape, this protection is necessary for those who no longer serve the corporation and are often high-ranking executives in other non-related corporations.

12. In any event, the rule contains "burdens" for both parties that are fair. It will promote an atmosphere where these depositions are conducted

where they are truly necessary. It also allows the option of proceeding under rule 1.280(c).

13. Accordingly, the FDLA supports the rule and this Court's adoption thereof, so that the Apex doctrine can be applied in the private sector.

Submitted on November 8, 2021.

BOYD & JENERETTE, PA

/s/ Kansas R. Gooden
KANSAS R. GOODEN
Florida Bar No.: 58707
kgooden@boydjen.com
11767 S. Dixie Hwy, #274
Miami, FL 33156
Tel: (305) 537-1238
President of the Florida Defense Lawyers Association and Chair of its Amicus Committee