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IN THE SUPREME COURT OF FLORIDA

CASE NO. SC22-122

IN RE: REPORT AND RECOMMENDATIONS OF THE
WORKGROUP ON IMPROVED RESOLUTION OF CIVIL CASES
_____/

RECEIVED, 03/30/2022 01:54:20 PM, Clerk, Supreme Court

The attorneys at Williams, Leininger & Cosby, PA (hereinafter WLC) submit to the Florida Supreme Court their comments on the Judicial Management Council's Workgroup on Improved Resolution of Civil Cases Report.

WLC is a full service law firm that primarily handles civil cases that includes claims for PIP, homeowners insurance property damage, personal injury, automobile accidents, employment discrimination, and governmental liability. In the past years, attorneys at WLC have tried over 10 civil jury trials. The new and revised Rules of Civil Procedure will impact every case that this firm handles.

Initially, WLC objects to the extremely limited window for comments to be accepted by the Florida Supreme Court. A letter from the Florida Supreme Court dated February 10, 2022, allowed for the rules to be published in the Bar News on March 1, 2022, with comments to be filed 30 days later. Such a limited window for comments prejudices practitioners that will be directly

affected by the proposed rule changes. For such a significant change in the civil procedures in Florida, the Florida Supreme Court should have allowed sufficient time for a more thorough vetting and review of the proposed rule changes by those that will be directly impacted by the changes.

The Florida Rules of Civil Procedure, as currently drafted, allow for the far and timely resolution of civil cases through effective case management and the promotion of accountability. The new and revised rules are problematic initially as the current framework is more than adequate. Secondly, the new and revised rules may interfere with a litigant's access to courts with additional requirements, limitations, and obligations.

Another significant concern is the ability for these rules to be complied with due to the lack of staff available in the State court system at the disposal of each trial judge to assist in managing the cases they are assigned. In the Federal system much of what is attempting to be implemented at the state level in these new rules works because the Federal judges have significantly more staff available to them to assist in management of cases. Additionally, federal judges on the whole have a reduced case load compared to state court judges.

Below are more specific objections:

Rule 1.160

There should not be a limit on the number of pages for memorandum, responses, and replies explicitly stated in the rules of civil procedure. This should be left to each individual judge (which many already do). By creating a set page limitation, a party would be required to file a motion for leave to go beyond that page limitation, which may require a hearing and additional work for the parties and the court. This would be contrary to judicial economy and impair access to the courts for some litigants.

Most local jurisdictions already have meet and confer requirements and there is no need to have additional meet and confer requirements in the civil rules. In this rule, the process to request a hearing from the Court appears to be more arduous with more obligations of the parties as to timing. Such additional obligations and responsibilities of parties for scheduling of hearings could impair access to the courts for some litigants.

Rule 1.161

There should not be a requirement in the rules as to the reasonable time frames from date of scheduling a hearing to date of the hearing. Again, this goes back to one of our primary objections as to the availability of staff to assist judges in managing caseloads. As well, there are trial judges who

do not have available hearing time for numerous months no matter the length of the hearing. This is in large part due to the volume of cases that civil judges are dealing with which can only be cured through additional judges being allocated for judicial circuits and lower caseloads. These rules would not alleviate that issue and, if anything, may compound the scheduling backlog that some trial judges face.

Rule 1.200

The meet and confer requirements for the general case track are concerning as the meet and confer is required to take place after the first defendant is served. If there are multiple defendants on a case, and they are not served within a reasonable time after the first defendant, they will be left out from the conferral and will not have a say initially on deadlines for the litigation. While there is in the new rule a mechanism for a party to seek extensions on dates that do not affect the ability to comply with the remaining dates in the case management order, there does not appear to be a mechanism to change other dates in the case management order for a late served Defendant Additionally, Courts generally grant additional time for a Plaintiff to serve a Defendant which would be to the detriment of the unserved and late served Defendant under this rule.

Each individual judge should be allowed to determine whether a trial that is not reached on a docket is to be reset on the immediately available trial period or some later period. If the purpose of the new rule is to improve overall case management, the judge who is managing the case should be allowed to move it to a docket that may not be as full to ensure that the case that is not reached goes to trial in the near future. Making this a rule of civil procedure takes away from the trial judge the ability for them to personally manage their case load.

Rule 1.279 and 1.280

There is already a duty for parties to timely comply with discovery rules in good faith without gamesmanship and delay. This does not need to be written into the rules of civil procedure.

Rule 1.380

When a party is filing a motion for sanctions against a party that has been non-compliant with these rules, there should be no requirement for a meet and confer prior to the filing of the motion.

Rule 1.420

We agree with the changers to this rule and the reduction of time from 10 months to 6 months for lack of prosecution of a case.

Rule 1.440

Allowing a judge to set a case for trial at just over 30 days from the date that they send a trial Order is far too short a period of time for general track cases. With the new rule on continuances, an argument that the trial order does not provide enough time to be prepared is not deemed "extraordinary unforeseen circumstances". A party should be given ample time, more than 30-45 days, to know that it is going to trial so that it is not prejudiced and can be fully prepared when the trial starts.

Rule 1.460

Each individual Judge should have control over their docket and the discretion to grant or deny a continuance for any reason they see fit. This new rule is not workable and will greatly prejudice parties in not allowing continuances unless there are "extraordinary unforeseen circumstances." The Rule uses this phrase but it is not defined. The rule lists out only what it is not. One of the reasons that a continuance cannot be granted is for "outstanding dispositive motions".

One example of how this will cause problems and issues is related to summary judgment motions. Summary Judgment motions are generally not filed until discovery has been completed. If a party files a summary judgment motion within the deadlines set by a case management order, the hearing cannot be set out for 40 days after per Rule 1.510 (summary judgment). If the Court has no available hearing time before a trial docket, this new rule would not allow a party to seek a continuance of the trial for the dispositive motion to be heard. This appears contrary to judicial economy principles if there is the ability o resolve a lawsuit through summary judgment rather a jury trial.

Every case is different and such a rigid framework cannot be used when the factual reasons for a continuance in each case are unique and should be left to the sole discretion of the trial judge and not based on a rule that makes a court's ability to grant a continuance on a trial almost impossible, even if one is warranted.

Respectfully submitted by

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 30, 2022, a copy of the foregoing was electronically filed via the Florida Courts E-Filing Portal, with a copy provided by U.S. Mail to Chief Judge Robert Morris, Second District Court of Appeal, P.O. Box 327, Lakeland, Florida 33802, and by email to Tina White, 500 South Duval Street, Tallahassee, Florida 32399 (whitet@flcourts.org).

CERTIFICATE OF COMPLIANCE

I certify that this response was prepared in compliance with the font requirements of Florida Rule of Appellate Procedure 9.045.