

**SUPREME COURT OF FLORIDA**

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

CASE NO. SC22-122

**COMMENT BY ATTORNEY JAMES L.S. BOWDISH TO THE  
REPORT AND RECOMMENDATIONS OF THE WORKGROUP ON  
IMPROVED RESOLUTION OF CIVIL CASES**

The undersigned, attorney James L.S. Bowdish, hereby submits the following comments to the Judicial Management Council's Workgroup on Improved Resolution of Civil Cases regarding their Report and Recommendations on Improved Resolution of Civil Cases, and states as follows:

1. The Judicial Management Council's Workgroup on Improved Resolution of Civil Cases (Workgroup) has submitted to the Florida Supreme Court a report recommending amendments to the Florida Rules of Civil Procedure, the Florida Rules of General Practice and Judicial Administration, the Florida Small Claims Rules, and the Florida Rules for Certified and Court-Appointed Mediators. The proposed amendments would require civil trial judges to actively engage in case management, promote adherence to the timetable set in initial case management orders, promote professionalism among practitioners, and would require case reporting by the chief judges of each circuit.

2. With due respect to those who have put much time and energy into solving a significant problem, namely moving cases along

to settlement and trial, the fact is that the new system is not working and will not work because we have too few judges to oversee and engage in the active management of civil cases. Such active participation by a judge is pipe dream. It will not and cannot happen.

3. The program assumes that attorneys handling civil cases are causing them to not be resolved in a timely manner. This assumption is false. The reasons that cases are not resolved in a timely manner is the fault of the court system, which is the fault of the Florida legislature. There are simply not enough judges to handle the case load. It does not take statistics to know that Florida is a very attractive state to live in. Low taxes, good weather, good everything. Everyone loves to come here and people need and use the court system more and more.

4. Let me give you a good example. I am an AV rated attorney who has been practicing general civil litigation for nearly 50 years at both the trial and appellate levels. Each year it appears to me that it is becoming more difficult to use the court system. The latest example is mine. My case was a so-called "streamlined" case which should have gone to trial months ago. The attorneys representing my client withdrew in October of 2021. I was substituted in for the lawyers who withdrew. I represent an elderly lady client trying to get a judgment of ejectment on a home she owns where a police officer/tenant refuses to vacate his rental home after his lease was terminated. I noticed some time after reviewing the pleadings that former counsel representing my client had failed to

raise a number of very valid affirmative defenses, one of which was that oral loan agreements are not enforceable under Fla. Stat. 687.0304 which requires those agreements to be in writing and signed both by the debtor and creditor. Few lawyers are aware of this statute. The police officer's complaint against my client alleged and sought enforcement of an oral loan agreement allegedly between my client and him, which my client denies. The police officer claimed that the payments he was making to my client were payments on an oral loan my client made to him to purchase the property, not payments of rent. My client denied any such loan.

5. So, I filed among other things, a motion to amend my answer to allege this statute and other defenses as an affirmative defense. The civil rules allow pleadings to be amended liberally on the basis of justice, etc. It took me three weeks to get a 30-minute hearing on the issue which opposing counsel demanded. Opposing counsel naturally opposed the motion because allowing the amendment would destroy his case. When we appeared in court for the specially set hearing about a month ago, the judge remarked that he did not usually get around to reviewing the motions until about a half hour before the hearing. He then noticed that morning after reviewing my motion before the hearing, that Plaintiff was a police officer who had appeared before him many times. Mind you that the judge's requirements for motion hearings required me to send the motion and supporting materials to his office two weeks ahead of time. I did that. In any event, the judge announced to me and opposing counsel at the hearing that he was recusing himself. That

was a proper ruling, but it could have been made two weeks before the hearing had the judge simply looked at the caption of the case when my motion arrived at his office. That would have been active case management. I had to drive 20 miles to attend the hearing, wait an hour, attend the hearing and then return to the office—3 hours of work for which I had to charge my client for 2 minutes of hearing time which resulted in further delays in the case.

6. A new judge was appointed to the case promptly. However, the new overworked judge had no time for a hearing until June, three months away. I tried getting a UMC hearing which opposing counsel opposed. By the time I tried to grab a further UMC hearing, those hearings were gone with the result that as of today, March 23, 2022, the judge has absolutely no available specially set or UMC hearing time through the month of May, 2022, and the judge has not yet posted her available hearing times for June. So as of this moment, I have no way of scheduling a hearing at all on the pending motion.

7. I was appointed new counsel at the end of October, 2021. We have mediated this case unsuccessfully, and opposing counsel has noticed the case for trial as he should. In a nutshell, I cannot get a contested hearing before the court that may require more than a 5-minute UMC hearing until some unknown time, perhaps in June but the judge has not announced her calendar yet for June.

8. I do not criticize the judges. I criticize the court system that does not serve the people as it should. There is no reason that the court system through its lack of sufficient judges to handle the

workload should allow a tenant to remain in a dwelling my elderly client needs for her rental income.

9. Yes, I favor the judges managing cases, but that is not going to happen until there are enough of them to efficiently manage their own calendars and devote the time to handle hearings and to discuss with the attorneys how the case can be efficiently handled.

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was E-filed with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, with a copy provided by U.S. Mail to Chief Judge Robert Morris, Workgroup Chair, Second District Court of Appeal, P.O. Box 327, Lakeland, Florida 33802 and by U.S. Mail and email to Tina White, 500 South Duval Street, Tallahassee, Florida 32399 at [whitet@flcourts.org](mailto:whitet@flcourts.org) on this 31st day of **March, 2022**.

**CRARY BUCHANAN, PA**

*/s/ James L.S. Bowdish* \_\_\_\_\_

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