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# Supreme Court of Florida

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NO.: SC22-122

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

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**COMMENTS OF LUKS, SANTANIELLO, PETRILLO, COHEN &  
PETERFRIEND**

My name is Janine Menendez-Aponte and I am submitting these comments on behalf of the law firm of Luks, Santaniello, Petrillo, Cohen & Peterfriend (“Luks Santaniello”), where I am a partner and Director of the firm’s Strategic Mentoring and Training Program. While Luks Santaniello supports reasonable and balanced efforts to improve the administration of justice in our state court system, we are not in favor of the proposed overhaul of the Florida Rules of Civil Procedure.

By way of brief background, Luks Santaniello is a Florida Corporate and Insurance Defense Litigation firm committed to securing equal justice in the courtroom for business owners. From eleven offices statewide, our more than 140 corporate and insurance defense attorneys defend professionals, corporations, and their

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insurance companies from liability and workers compensation claims throughout the state of Florida.

Our founding and managing partner, Daniel Santaniello, has more than thirty years of trial litigation experience and over 100 published jury verdicts. Additionally, Mr. Santaniello served as President of the Florida Defense Lawyers Association from 2013-2014, having served either on the board of directors or as an officer since 2007. He is also a member of the American Board of Trial Advocates.

The collective practice experience of our attorneys, as well as our prominent status within Florida's defense bar, provides Luks Santaniello with meaningful perspective into the impact of the proposed changes, including the significant risk of unintended consequences.

The Supreme Court appointed the "Workgroup on Improved Resolution of Civil Cases" ("Workgroup") on October 31, 2019, a few months before COVID-19 upended every aspect of our lives. The Workgroup's comprehensive final report dated November 15, 2021 contains recommendations to address the overwhelming pre-

pandemic bottleneck of civil cases in our state’s courts. Although the pandemic evolved and progressed over the course of the last two years, the realities of our post-pandemic world were absent from the Workgroup’s analysis, findings, and recommendations.

Instead, the Workgroup’s chair, Chief Judge Robert Morris, cautioned that the Bar and judges will share “the pain” that will accompany the transition to the proposed model.<sup>1</sup> Law firms are already experiencing pain. Now is not the time for an upheaval. Firms are battling a storm of factors that have drastically changed the business of law. The Georgetown University Law Center and the Thomson Reuters Institute reports “at the end of November 2021, all law firms were edging dangerously close to losing almost one-quarter of their associates in 2021.” The American Bar Association’s 2021 Nationwide Survey of the Legal Profession reports that the pandemic has influenced women, even more than has been usual, to consider

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<sup>1</sup> The Honorable Judge’s most sobering comment: “Are you going to fix the system and push people to the breaking point so the Legislature will change the dynamics?” Unfortunately, attorneys are already experiencing heightened levels of stress, anxiety, depression and substance abuse without being at the “breaking point” from a proposed massive overhaul to our practice and procedure.

whether to step back from or leave the profession. According to the U.S. Department of Labor, during April, May, and June 2021, a total of 11.5 million workers quit their jobs. This COVID-19 induced “great resignation” stems from many factors, including stress, burnout, lack of support and flexibility, or perceived better opportunities. For legal practice, this “great resignation” means that law firms are currently experiencing a hiring and retention predicament. Firms are struggling as workloads have increased but new hiring has lagged. Given the depth and magnitude of the proposed changes, there is real concern that firms will not have enough personnel to ensure essential quality representation of their clients.

While we recognize the extensive effort that went into the Workgroup’s proposal, eliminating delay in our civil courts does not require completely rewriting our rules. This is clear because the courts responded to the pandemic swiftly and deliberately with innovative practical solutions born of necessity without disturbing the rules.

Here are a few examples of such strides. According to Chief Justice Charles Canady, a Supreme Court order featuring “some

pretty aggressive case management” issued in April 2021, AOSC20-23, has resulted in “quite a dramatic reduction” in the backlog of cases. Notably, the Florida Bar News reports that between July and December 2021, the backlog in circuit civil fell 36% and county civil fell 26%. The Court’s adoption of the federal summary judgment standard is also easing the bottleneck of cases awaiting trial. Likewise, the widespread use of remote proceedings helps speed the resolution of cases. There is still more work to do; but imposing harsh and inflexible new rules that are unable to adapt to the ever-changing circumstances of our “new normal” is not the solution.

There has perhaps never been a worse time for Florida to adopt a wholesale rewrite of its rules of civil practice and procedure. Attorneys are already exercising heightened diligence to navigate the various disruptions and changes to the post-pandemic legal landscape. The proposed rewrite of our current system is a breeding ground for costly errors that will inevitably cause some to misunderstand its application, or otherwise miss one of the many rigid deadlines during this period of already intense transition.

We share many of the concerns articulated by the Florida Bar Civil Procedure Rules Committee, but wanted to highlight some of the most troubling to us.<sup>2</sup> These are:

- (1) the large scale prohibition on continuances;
- (2) the threat of sanctions at almost every juncture;<sup>3</sup>
- (3) the elimination of any meaningful judicial discretion;<sup>4</sup>
- (4) forcing trials to occur without a litigant's preferred choice of experts;
- (5) the inability to cancel a hearing without the court's approval;<sup>5</sup> and
- (6) motions dispensed on the papers without serious pause to recognize the critical lack of resources in our state court system and the impact on litigants access to courts.

While the proposal seeks to solve an immediate problem by taking a rigid hard line, it does not consider – or simply chooses to ignore – the far-reaching negative effects such changes would have on our state's system of justice.

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<sup>2</sup> We appreciate the opportunity to Comment regarding the proposed revisions; however, the abbreviated period does not lend itself to a significant degree of granularity.

<sup>3</sup> The word “sanction” appears over forty five times in the proposed rules.

<sup>4</sup> The word “discretion” appears only seven times in the proposed rules.

<sup>5</sup> As a practical matter, this is especially concerning for lawyers with young children who, as a result of the pandemic, regularly experience school closures or other childcare issues that disrupt work on a moment's notice.

The overall challenges brought by the pandemic provided an opportune moment for the Workgroup to consider the real impact their proposed changes would have on the law firms and lawyers that make up our state's Bar. Instead, the aggressive proposal would reshape and repackage Florida's legal system with dire consequences for the people and businesses that keep our system running day after day.

Given the above concerns, our primary recommendation is that the Supreme Court refrain from approving the proposed revisions.

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing was served on this 31 day of March 2022 to all parties on the attached Service List.

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**CERTIFICATE OF COMPLIANCE**

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

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