

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC22-122

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

COMES NOW the undersigned law firm, Wicker, Smith, O'Hara, McCoy & Ford, P.A., by and through its undersigned Managing Partners, and hereby provides this comment to the proposed changes to the Florida Rules of Civil Procedure as reflected in SC22-122, and hereby states as follows:

The proposed changes to the Florida Rules of Civil Procedure offer a sweeping alteration of the manner in which civil cases are managed within the state courts of the state of Florida. The majority of the proposed changes will make the civil trial system in the state of Florida function more efficiently, and represent a positive change to case management. However, there is one glaring exception to the generally positive proposals: the proposed new Rule 1.460 governing continuances presents a radical and unwarranted shift in case management that should not be adopted.

RECEIVED, 03/31/2022 07:36:20 PM, Clerk, Supreme Court

The new proposed rule 1.460 addresses both trial and non-trial events. The proposed change to non-trial events found at rule 1.460(a) needlessly adds a requirement that the request for a continuance be signed by the client. Continuances of non-trial events are often necessitated by events that are outside of the control of counsel, but more importantly, continuances of non-trial events generally have no impact on the overall case management of a lawsuit. The proposed changes to continuances of non-trial events is unnecessary and should not be adopted.

The far more sinister proposal is found at proposed Rule 1.460(b), governing continuances of trials. The new proposed rule essentially deprives trial judges in the state of Florida of any discretion whatsoever to grant continuances of trial, “except for extraordinary unforeseen circumstances involving personal health of counsel or a party, court emergencies, or other dire circumstances that provide extraordinary cause.” This standard effectively strips trial court judges across the state of Florida of any authority to grant continuances, and is seeking to solve a problem that does not exist.

Circuit court judges throughout the state of Florida routinely schedule multiple trials for a single trial period. If the first trial on the list is unable to go forward, the court then moves on to the next case on the list.

The new proposed rule at 1.460(b)(5) explicitly identifies six different grounds that shall not form the basis of a continuance of trial. This proposed list ignores the reality of trial practice.

The overall improvement of the rules of civil procedure are generally consistent with an overarching theme of trial courts' desire to have more control over how their cases are managed. Proposed Rule 1.460 does the exact opposite in both letter and in spirit. The proposal almost completely eliminates any discretion on the part of trial judges across the state of Florida to grant continuances under appropriate circumstances. The proposed rule would do serious damage to the civil court system in the state of Florida. Undersigned counsel therefore encourage this Court to reject the proposed changes to rule 1.460, and leave the current version of the rule in place.

Respectfully submitted,

Wicker, Smith, O'Hara, McCoy & Ford, P.A.

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a copy hereof has been filed and electronically served via Florida ePortal on this 31st day of March, 2022, with a copy provided by U.S. mail to Chief Judge Robert Morris, Second District Court of Appeal, P.O. Box 327, Lakeland, FL 33802, and by email to Tina White, 500 South Duval Street, Tallahassee, FL 32399 (whitet@flcourts.org).

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the foregoing was prepared in compliance with the font requirements of Florida Rule of Appellate Procedure 9.045.

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