IN THE SUPREME COURT OF FLORIDA

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

CASE NO. SC22-122

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COMMENT

Undersigned counsel, an attorney in good standing with the Florida Bar, submits to the Florida Supreme Court his comments on the Judicial Management Council's Workgroup on Improved Resolution of Civil Cases Report, and states as follows.

Initially, the undersigned 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 busy practitioners that will be directly affected by such overwhelming and broad proposed rule changes. For such a significant change of the civil trial and case management 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.

Rules 1.161, 1.200, 1.440, and 1.460

Secondly, the Florida Rules of Civil Procedure, as currently drafted, allow for the more sound and more timely resolution of civil cases through effective case management and well-vetted and litigate procedures. The above rules should be left as is. The new and revised rules are problematic, as the current framework is more than adequate, and lawyers have become accustomed to the existing set of rules. In addition, the new and revised rules interfere with a litigant's access to courts with additional requirements, limitations, and obligations.

Next, the motivation for many of the new rules appears to be, at least according to one presentation that I saw from a member of the Judicial Management Counsel, is that judicial filings are "trending downward" and that judges are "losing the battle" to decide cases to mediators and arbitrators. Such an adversarial position between Florida's courts and alternative dispute resolution is dangerous and askew from the letter of the law. Florida courts have long recognized the salutary effect of alternative dispute resolution, and have long encouraged, not discouraged, such efforts

by parties to litigation. *E.g., Seifert v. U.S. Home Corp*., 750 So.2d 633, 636 (Fla. 1999) ("Florida law and public policy strongly favor arbitration and are encouraged to resolve doubts in favor of arbitration"); *Griffith v. Griffith*, 860 So. 2d 1069, 1073 (Fla. 1st DCA 2003) (mediation and settlement of disputes is highly favored in Florida law). "As a matter of public policy, Florida law favors arbitration as an efficient means of settling disputes because it avoids the delays and expenses of litigation." *Timber Pines Plaza, LLC v. Zabrzyski*, 211 So. 3d 1147, 1150 (Fla. 5th DCA 2017). The rules of Florida's civil courts should look for additional ways to encourage alternative dispute resolution and not compete with them. If the current rules are viewed as having encouraged more attorneys to settle cases, then they should be lauded and not criticized.

Another significant concern is the effect these rule changes will have on the mental and emotional well-being of Florida's attorneys and jurists. Not once in the 185 pages of proposed rules, discussion, and justification for these wholesale changes does the committee discuss the new rules' potential effect on wellness for Florida's attorneys and trial court judges. In fact, wellness is not discussed once.

I viewed a presentation on the new rules that was made to the American Board of Trial Advocates, Central Florida Chapter, at the

University of Tampa by a member of the Judicial Management Council that is partially responsible for the proposed changes.[1] In his presentation on the rule changes, the representative stated that under the new rules, courts would not be concerned if trial were set when an attorney had a preplanned, prepaid vacation that conflicted with court deadlines. He also stated that it would not matter under the new rule pertaining to trial continuances if an attorney had two trials set for the same week. Further, it would not be dispositive if an attorney had to try two cases in one week, because that is what was done in the 1980s and 1990s.

While I have the utmost respect for trial attorneys and the conditions upon which they practiced in the past, the Supreme Court should take more time to consider the effect that compressing fact discovery, dispositive motions, and trials in every single Florida case – and coupling this with a near impossible standard to obtain a continuance of trial – will have on Florida's bar and bench. At a time where attorney burnout, substance abuse, mental illness, and defection from the practice of law has been recognized as present at extremely high levels by the Florida Bar,[2] additional

[1] https://www.dropbox.com/s/ld7ptookb77lc8w/TB%20ABOTA%202-18-22%20Judge%20Robert%20Morris.mp4?dl=0 (last accessed March 31, 2022).
[2] https://www.floridabar.org/member/healthandwellnesscenter/ (last accessed March 31, 2022).

deliberation should take place as to whether such exacting changes are a good idea, particularly after a global pandemic.

Such a rigid framework should not be standard practice when the factual reasons for an extension of time and/or a continuance in each case are unique and should be left to the discretion of the trial judge. It should not be based on a rule that makes a court's ability to grant a continuance on a trial almost impossible.

Respectfully submitted this 31st day of March, 2022.

s/Michael S. Vitale
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 31, 2022, a copy of the foregoing was electronically filed via the Florida Courts E-Filing Portal, which will transmit a copy to the Florida Supreme Court and 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.

s/Michael S. Vitale
Michael S. Vitale