

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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**COMMENTS REGARDING THE IMPROVED RESOLUTION OF CIVIL
CASES**

These comments are being filed in response to the Supreme Court's invitation to address the matter of the Improved Resolution of Civil Cases. Being an attorney who has practiced using the rules of procedure in both the courts of the State of Florida and the federal courts, I provide my available insight below.

Many attorneys are reticent to practice in the federal court system because of the often-perceived draconian rules regarding deadlines, and limitation of ability to conduct discovery. Discovery is ultimately an attempt to find the full truth of a matter. It is one of the most sacred duties in which attorneys are called to engage, perhaps even more sacred than the presentation of the trial itself. It is the activity wherein the truth is attempted to be found at all costs so that a civil matter can be fairly brought to conclusion. Oftentimes, matters discovered lead to additional discovery requests, as may be necessary and as is determined on a "case by case"

basis. Indeed, it is the principle that all cases are “case by case” that should encourage flexibility in our system, not rigidity in conforming all cases to a predefined set of stringent rules and dates.

Florida’s courts are filled with indigent litigants who are already struggling to hire attorneys. Many of the clients that come before the court, and are indigent, require as much time as possible to assemble resources for their cases. First, their circumstances and conditions prevent them from being able to quickly assemble required documents responsive to requests. Their conditions may also prevent them from hiring counsel right away when they are on the side of the defense. Their conditions may also prevent them from assembling the costs of the case, in those many instances where a larger law firm with substantial resources has determined they cannot or will not represent them and cover their costs. These cases, which at the beginning of the case may not seem as assured from an evidentiary perspective, but which could very well end up being **extremely** strong cases in favor of those indigent litigants after all discovery is completed, could effectively no longer be brought under newly proposed stringent rules and deadlines. Access to justice would be cut off and destroyed for many. Indeed, the Access to Civil Justice Commission that worked under this Supreme Court has often been presented with the

issue of providing access, when possible, through lawyers rather than other avenues. Yet, adopting these rules would cut off access to lawyers and force litigants to use non-lawyer avenues. Why? Because these clients would not have the time to provide their lawyers with the case costs and expenses that are necessary to adequately proceed with the case. Court reporters, expert witnesses, travel expenses, service of process, filing fees, and transcript production often cost thousands of dollars. Many litigants of modest means or who are indigent express a willingness to pay these costs, if only given the necessary time in the case to do what they can. Demanding all cases be resolved therefore, in less than two years, will cut off access for many in this community. In my view, it is a grave moral offense to cut off access in this matter. Given the new tight deadlines in their cases, lawyers would be forced to reduce their caseloads and cut off access.

Often we hear the retort- the Federal courts use this system so we must move to the same system, it is a matter of progress! But is it really? As stated earlier, why then do so many lawyers want to avoid federal court? Part of it includes the numerous malpractice pitfalls presented by the more draconian deadline requirements and reticence to grant extensions. Why would we subject our already stressed attorneys to these

additional unnecessary possible malpractice factors through artificially expanding deadlines? What genuine benefit will be gained that could not be resolved on a case by case basis?

Indeed, the stringent federal rules seem designed, in part, to discourage access to the courts! The reason seems manifest- because the federal government wants to prevent as many cases as possible that could be brought in state court to be filed in the federal system, to save money at the federal level regarding those claims capable of litigation at the state level. Why then would we want to emulate a system that has this as part of its implied policy? Promoting reduction of litigation time at the state level, would shut litigants off from every level, and access to justice is removed.

Even recently I spoke to a client about a pressing matter, and this client, of modest means, expressed that they wanted more time to think about what strategy to pursue. Due to a Covid-19 case management administrative order, they did not have the time they needed. Therefore, the litigant was put at a disadvantage. Litigants who are annoyed at the length of time it may take to resolve their case, often haven't had adequate communication from their attorney explaining to them all of the implications of moving forward with the case too quickly and hastily, and without all the preparation and attention to detail each unique case requires. The onus

then is on the lawyers themselves to explain to the litigants the importance of preparation, and lawyers should be educated to communicate this when necessary.

For those particular litigants that want expediency put before the certainty of preparation even after advice, and would like the reduction of cost associated with speedy litigation, these litigants need only inform their own lawyers of this, and their lawyers can notice the matter for trial, even without full preparation. Therefore, with the guidance of good counsel, this whole issue of whether a case should be moved expeditiously or more preparation should be given more priority, is left to the wise decision of counsel in each case.

Each case is unique, the discovery issues are unique, and judges are duty bound, if they are attempting to seek truth just like the lawyer, to open their court up to allow for this kind of discovery. As a general ethical principle, truth should be more important than expediency.

Finally, why in this proposal is there such an implied need for oversight into attorneys? Are they children, or are they rather established members of The Florida Bar, trained in three extra years of education, and having passed the stringent ethics requirements? Why are they being treated like infants, like children that need constant oversight? Why is

there language in recent orders stating that the caseload and schedule of attorneys will be given less weight than other factors, such as the schedule of the bureaucracy? For over one hundred years Florida has respected the right of independence in the practice of its counselors before the courts, and the right of counsel to determine the flow and priorities of their own litigation. This is a system of self-imposed responsibility that instills confidence in the attorneys that they will be able to use their professional judgment and be treated with the respect that professionals deserve and have earned. They are not mere bureaucratic cogs in an administrative wheel that are to robotically comply and be overseen. They are to be independent minded, advancing their cases in the style that is worthy of the name and designation attorney and counselor. This is why Florida has had its current system until now, and should continue to have the same system of independence in case management that has always been implicit there.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via United States first class mail upon the Honorable Robert Morris, Workgroup Chair, Second District Court of Appeal, P.O. Box 327, Lakeland, FL 33802 and OSCA Staff Liaison to the Workgroup, Tina White, 500 South Duval Street, Tallahassee, FL 32399 this 31st day of March, 2022.

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