

IN THE SUPREME
COURT OF FLORIDA

Case No.: SC22-122

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

COMMENT

This filing is in response to request for comment regarding the proposed revisions to the Florida Rules of Civil Procedure set forth within the Final Report and Recommendations of the Workgroup on Improved Resolution of Civil Cases (hereinafter referred to as “Final Report”). The Final Report, dated November 15, 2021, submits proposed recommendations for massive revisions to Florida’s legal system as a whole and is systematically overbroad in its implementation. The Final Report’s title makes clear that said recommendations are applicable to “Civil Cases.” Two hundred and eighty pages of changes to the longstanding Rules of Civil Procedure are detailed within the Final Report. The proposed recommendations unfortunately generalize “Civil Cases” and said generalization will unfortunately harm the citizens and businesses that call Florida home. Two hundred and eighty pages of proposed recommended revisions are simply

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not necessary for the Florida civil legal system to function. It is understandable that during the height of the long running pandemic, that locked down the legal system in early to mid-2020, new and different ways of streamlining cases was an important and necessary endeavor. However, it is now 2022 and the backlog of civil cases that occurred during the height of the pandemic has been reduced substantially. See *The Florida Bar News, Volume 49, Number 5, Chief Justice Canady says the courts are making a dent in case backlogs, Mark D. Killian, April 30, 2022, page 1 and page 5.* (“And through aggressive case management, **circuit civil and county civil have seen a 50% reduction in the backlog, and that far exceeds what we anticipated, and it is only happening because a lot of judges and a lot of lawyers are working hard to move those cases forward to resolution.**” Chief Justice Charles Canady, April 7, 2022 (emphasis added). The reduction in 50% of the backlog in civil courtrooms throughout Florida is no accident, as Justice Canady pointed out on April 7, 2022, it is due to civil court judges and attorneys working effectively and efficiently to move matters forward to conclusion. Through no fault of its own, the Workgroup on Improved Resolution of Civil Cases did not take into consideration how well the civil legal system under local case management plans/orders would work to significantly reduce backlog and allow for manageable dockets. Civil

circuit and county judges have been working tirelessly to move cases forward efficiently and effectively over the last year. Said effort by judges, combined with the tireless dedication of civil attorneys has worked to reduce the case dockets to very manageable levels. Sweeping revisions to the Rules of Civil Procedure at this time, put simply: are not necessary. The proposed recommendations are so voluminous that one cannot even begin to scratch the surface of their unintended negative impact. However, some of the proposed recommendations that will cause immediate negative issues for judge and attorneys alike are the following: 1) lack of discretion for judges; 2) motions to be decided without hearing or opportunity to be heard; 3) required sworn initial disclosures prior to any discovery being conducted; 4) narrow lack of prosecution timeline with no exceptions provided; 5) prevention of trial continuances for justifiable conflicts or lacking discovery; and 6) requiring hearings to be scheduled upon motions filed without regard for available hearing time on the court's calendar/docket and without regard for the attorneys' calendars. Due process is the cornerstone of our legal system in the State of Florida. In turn, due process requires that a person's rights not be trampled upon. A party must "be given ... a real opportunity to be heard and defend in an orderly procedure, before judgment is rendered against him." *See VMD Fin. Services, Inc. v. CB Loan Purchase Assoc., LLC,*

68 So. 3d 997, 999 (Fla. 4th DCA 2011). The far-reaching proposed recommendations of the Final Report will trample upon the due process rights of both citizens and businesses. Of important note, the proposed recommendations attempt to follow Federal Rules. Florida's legal system is in many ways far more complex than Federal Court. Meaning, Florida has a wide range of civil matters within our State Courts that require individualized management and wherein Federal Rules are unworkable. The generalized proposed recommendations unfortunately attempt to place all Florida's civil cases into one bucket. However, many civil cases, like first-party insurance disputes, are dramatically different than say a bodily injury case. Many first-party insurance disputes are discovery intensive and most resolve via summary judgment. Further, many of first party insurance disputes have similarly situated legal issues and move forward to summary judgment upon those legal issues at similar times. Therefore, the proposed recommendations in the Final Report would unnecessarily strain the legal system in many legal matters wherein the timeline is simply not practicable or workable considering available judicial and attorney resources and time.

The Florida Supreme Court should continue to allow the current system to work via local court management. Based upon the progress that

has been made to date regarding backlogs, a complete revision of the Florida Rules of Civil Procedure is simply not necessary at this time.

For the above-mentioned explanations, the Final Report's proposed recommendations/revisions to the Florida Rules of Civil Procedure will not benefit Florida's judiciary, citizens, or businesses. I therefore respectfully object to the proposed recommendations/revisions and implore The Florida Supreme Court not implement the proposed changes. Alternatively, if any proposed recommendations/revisions are made, said revisions should exclude civil matters that do not require such sweeping revisions (i.e., first-party insurance litigation). Alternatively, I respectfully suggest that The Florida Supreme Court should delay implementation of the proposed recommendations/revisions and allow for reassessment for the need for such sweeping revisions in twelve (12) months time. Said reassessment in twelve (12) months will allow local judges and attorneys to implement plans/orders that fit each case individually and continue to efficiently and effectively move matters forward to conclusion.

Comment respectfully submitted by,

/S/ David B. Alexander

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this comment was prepared in Arial 14-point font and complies with the font requirements in Florida Rule of Appellate Procedure 9.045.

/S/ David B. Alexander
David B. Alexander, Esquire

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by E-Filing Portal, with copies via U.S. Mail to Workgroup Chair, Chief Judge Robert Morris, 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, whitet@flcourts.org on May 2, 2022.

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