FLORIDA SUPREME COURT

SC22-122

IN RE: REPORT AND RECOMMENDATION
OF THE WORKGROUP ON IMPROVED
RESOLUTION OF CIVIL CASES
_____/

COMMENTS OF THE FLORIDA DEFENSE LAWYERS ASSOCIATION

The FLORIDA DEFENSE LAWYERS ASSOCIATION ("FDLA") hereby submits these comments on the report and recommendation of the workgroup:

1. The FDLA is a statewide organization of civil defense attorneys formed in 1967. It has over 1100 members and continues to grow each year. The goal of the FDLA is to "bring industry leaders and defense counsel together and form a strong alliance that promotes fairness and justice in the civil justice system for all parties." The FDLA actively participates in amicus briefing before this Court, and others, in cases with statewide impact on tort, insurance, litigation, and the fair administration of justice. It also submits comments on various jury instruction and rule amendment proposals.

2. Its members have an interest in the workgroup's report and recommendation as it will affect the litigation of their cases. The FDLA's members include trial attorneys, litigators, and appellate attorneys.

3. The FDLA recognizes the hard work of the workgroup that went into the report. The FDLA, along with other organizations, provided early comments to the workgroup. We thank them for that opportunity.

4. The FDLA would also like to recognize the joint collaboration efforts it undertook with the Florida Justice Association and its members, and members of FLABOTA, and its chapters. These organizations came together and exchanged ideas and thoughts throughout the process. They reviewed each other's drafts and comments. It is truly great when the plaintiff's and defense's bars come together on critical issues, such as this.

5. This comment is divided into sections. First, there are general comments to the proposed rules. Second, individual rules are addressed. Third, the FDLA has provided a few proposed amendments to one rule proposed by the workgroup to assist the workgroup and this Court.

I. GENERAL COMMENTS

A. Sanctions

The biggest concern of the FDLA is the extensive overhaul concerning sanctions. The word "sanctions" is mentioned over 50 times. A trial court already has inherent authority to sanction a party or attorney, and well-established case law controls those bounds. Given that authority already exists, this seems unnecessary and, frankly, overkill.

The FDLA is concerned that inclusion of proposed rule 1.275 will incentivize the imposition of sanctions more broadly. Sanctions should be the exception, not the standard. Sanctions should be reserved for egregious or obstructive behavior. Nevertheless, in 1.275(g), there is no requirement of a finding of willfulness before sanctions can be imposed. Unintentional or even accidental conduct can be sanctioned. That should not be so.

Notably, the text of proposed rule 1.275 also does not require a hearing. As a result, an attorney or client could be sanctioned without a meaningful opportunity to be heard on the issue. This will lead to due process issues. See Moakley v. Smallwood, 826 So. 2d 221, 227 (Fla. 2002) ("Moreover, such a sanction is appropriate only after notice and an opportunity to be heard--including the opportunity to present witnesses and other evidence."); S. Coatings, Inc. v. City of Tamarac, 943 So. 2d 948, 952 (Fla. 4th DCA 2006) ("The inherent authority of the trial court to assess attorney's fees against an attorney carries with it an obligation to provide due process. Accordingly, such a sanction is appropriate only after notice and an opportunity to be heard.") (internal citation omitted). A right to be heard is essential to due process.

FDLA also opposes the types of sanctions listed in proposed rule 1.275. Specifically, a trial court can prohibit a party from entering evidence

or strip them of their preemptory challenges. These potential sanctions go to the very heart of the jury trial and would deny a party due process and a fair trial.

In proposed rule 1.279, a trial court may impose sanctions "where a party or attorney frustrates the court's purpose or impairs the rights of others." This language is extremely broad and without limit. A solo practitioner who is suddenly hospitalized and unable to move the case to trial could be seen as frustrating the purpose of the court or impairing the rights of others, and therefore, exposed to sanctions. This broad language will encourage parties to seek sanctions against each other, prompting extensive litigation on this issue, and will likely have the opposite effect that the workgroup intends. It could be used as an undue sword to gain the advantage in the case or settlement negotiations one desires.

Similarly, in proposed rule 1.335, "any violation" creates a presumption of prejudice and "will" result in sanctions. "Any violation" could be as simple as an attorney, who in good faith believes a line of questioning to be privileged under Florida law, simply being wrong. In other words, if a judge finds that the matter was not privileged or the privilege was waived, the attorney, client, or law firm could be sanctioned because it is presumed a violation prejudiced the other party. The overbreadth of this rule is

staggering. It does not further the protection of attorney-client or other privileged information. Instead, it promotes the waiver and destruction of that privilege. Attorneys and clients will be left with a Hobson's Choice—to assert privilege and risk sanctions if they are wrong or waive that privilege. These privileged are endorsed by this Court and should be protected, even against the ideal of expediency.

Notably, there are internal inconsistencies within these proposed rules, which will make application, compliance, and imposition a nightmare. For example, the following chart shows the inconsistencies present within the proposed rules for when sanctions will not be imposed:

Inconsistency For When Sanctions Will Not Be Imposed	
Rule 1.275(b)	a court may impose sanctions for inappropriate conduct unless the noncompliant party/attorney "**shows good cause**" AND the "**exercise of due diligence**"
Rule 1.275(e)	The court may not order the sanction of payment of reasonable expenses if noncompliance was "**substantially justified**"
Rule 1.380(a)(5)(A)	If a motion for sanctions is granted, the court shall impose sanctions against the losing party "unless" the court finds that "the opposition to the motion was **substantially justified**"
Rule 1.380(a)(5)(B)	If a motion for sanctions is denied, the court shall impose sanctions against the loser "unless" the court finds that "the making of the motion was **substantially justified**."

Rule 1.380(a)(5)(C)	If a motion for sanctions is denied in part and granted in part, the court shall "apportion the reasonable expenses incurred as a result of making or opposing the motion." ***There is no mention of conduct that is substantially justified not being sanctioned.***
Rule 1.380(b)(1)	If a party fails to comply with an order to provide or permit discovery, "the court shall…enter an order imposing discovery sanctions under subdivision (3)." ***There is no substantial justification safety valve.***
Rule 1.380(b)(2)	If a party misuses or abuses discovery rules, "[u]pon consideration of these factors, the court shall, ***if appropriate***, enter an order imposing discovery sanctions under subdivision (3)."
Rule 1.380(b)(3)(A)	If the court finds that a discovery violation or failure to obey a court order arising out of a discovery motion, the court shall order payment of reasonable fees "unless the court finds that the failure ***was substantially justified***."

Similarly, there is an inconsistency of when to issue sanctions and whether to include fees and costs:

Inconsistency as to When to Issue Sanctions and Whether Fees and Costs are Included	
Rule 1.275(a)	the "court **MAY** impose a sanction if a party or attorney fails to comply with these rules or any order"
Rule 1.275(b)	The court "**MAY** enter appropriate sanctions concerning such conduct unless the noncompliant party or attorney shows [the conduct was substantially justified]"

Rule 1.275(d)	If "reasonable expenses" are ordered as a sanction, then the court "**MAY**" include "attorney's fees…any out of pocket costs or travel expenses reasonably incurred, and any other financial loss reasonably arising as a result of the sanctioned conduct."
Rule 1.380(a)(5)(A)	if a motion to compel is granted… the court **SHALL** enter an order "**requiring**" the loser to pay "reasonable expenses, *including attorney's fees, AND COSTS*" unless the movant failed to make a good faith effort to obtain the discovery w/o court action or opposition to the motion was substantially justified.
Rule 1.380(a)(5)(B)	if a motion to compel is denied…the court **SHALL** enter an order "**requiring**" the moving party/atty/both to pay "reasonable expenses, *including attorneys' fees [NO MENTION OF COSTS]*" unless the court finds that the motion was substantially justified.
Rule 1.380(a)(5)(C)	Where a motion to compel is granted in part and denied in part… "the court **SHALL** apportion the reasonable expenses incurred…*including attorneys' fees and costs*." ***There is no mention of conduct that is substantially justified not being sanctioned.***
Rule 1.380(b)(1)	"If a party… fails to obey an order to provide or permit discovery … the court **SHALL**…enter an order imposing discovery sanctions under subdivision (3)."
Rule 1.380(b)(2)	"Upon consideration of these factors, the court **SHALL**, if appropriate, enter an order imposing discovery sanctions under subdivision (3)."
Rule 1.380(b)(3)(A)	If the court finds that a discovery violation or failure to obey a court order arising out of a discovery

	motion, the court **SHALL** enter an order "**requiring**" the disobedient party, the party's attorney, or both to pay "reasonable expenses, *including attorneys' fees and costs*, unless the court finds the conduct was substantially justified. The description of "reasonable expenses" stated in subdivision (a)(5)(D) shall apply to this subdivision."

These internal inconsistencies are going to cause havoc when applied. The FDLA agrees with the Florida Justice Association and Maegen Luka, Esq., who first raised the inconsistencies, that if these rules are adopted, there must be consistency throughout.

In any event, there will be consequences flowing from the inclusion of these sanctions. The increase in the availability of sanctions will have a deleterious toll on the legal community. Requesting sanctions against opposing counsel will become the norm in every motion. It will become a legal strategy. Such strategy should not be promoted in a rule set. Such sanctions should be the exception.

As noted above, proposed rule 1.275 does not require the behavior to be willful to be sanctioned. So, a simple mistake can get one into hot water. This does not promote the mentoring or fostering of young lawyers in our profession. Young lawyers sometimes make mistakes. If we as a profession

remove that ability to the actual practice of law and make a simple error, that deletion will hamper learning. It is called "practice" for a reason.

Litigation will only get more contentious as parties will seek more and more sanctions against one another. There are already professionalism and mental health issues within the bar. See, e.g., Michael Higher, Mental Health: The Issue of Our Time, 92 Fla. Bar J. 4 (Apr. 2018); Scott M. Weinstein, Mental Health & Wellness: Promoting Solutions: Florida Lawyers Assistance: Saving Lives and Legal Careers, 92 Fla. Bar J. 20 (Jan. 2018); In re: Code for Resolving Professionalism Complaints, 116 So. 3d 280 (Fla. 2013). This will only intensify those issues. The proposed sanctions do not promote the resolution of cases, collegiality, or the wellbeing of the attorneys.

This Court has explained:

> [A] trial court possesses the inherent authority to impose attorneys' fees against an attorney for bad faith conduct. In exercising this inherent authority, an appropriate balance must be struck between condemning as unprofessional or unethical litigation tactics undertaken solely for bad faith purposes, while ensuring that attorneys will not be deterred from pursuing lawful claims, issues, or defenses on behalf of their clients or from their obligation as an advocate to zealously assert the clients' interests. The inherent authority of the trial court, like the power of contempt, carries with it the obligation of restrained use and due process.

Moakley, 826 So. 2d at 226-27. The FDLA is concerned that the workgroup's proposal oversteps these bounds.

It also does not appear that the workgroup considered some of the collateral or unintended consequences that will flow from its proposals. For instance, the FDLA is concerned about the potential loss of board certified attorneys. "Board certification recognizes attorneys' special knowledge, skills and proficiency in various areas of law and professionalism and ethics in practice."[1] These proposed rules increase sanctions. If there is an increase of sanctions, the number of attorneys who will become board certified or recertified will decrease. In the application, an attorney must disclose whether they have ever been sanctioned by the Court. This is one of the criteria that is evaluated.

Second, there will likely be an increase in legal malpractice premiums or a loss of malpractice insurance. Again, lawyers often must disclose whether a court has sanctioned them when applying for insurance. If there is an increase in sanctions under the proposed rules, it will be more costly to be a lawyer. If malpractice insurance is more expensive, this will either lead to an increase in hourly fees or forgoing that insurance all together. Neither of those options protect the public. There already exists a concern that legal services are too dear and not accessible to the general public.

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[1] Florida Bar Board Certification, https://www.floridabar.org/about/cert/ (last visited April 17, 2022).

Third, if sanctions are imposed against an attorney due to a client's behavior, this will lead to strained relationships between the client and attorney. Counsel cannot control the ultimate behavior of their clients. If the clients' conduct is in contravention of the proposed rules, more attorneys will seek to withdraw as counsel of record—leaving parties without counsel. Conversely, the increase in sanctions against a litigant could have severe implications on low-income individuals or nonprofit entities. The sanctions could force them to lose their legal counsel and not be able to afford a defense. Then that becomes an access to courts issue. It could also lead to other collateral economic consequences, such as judgments and defaults.

Simply put, the FDLA strongly urges this Court to reject the broad sweeping sanctions that are being recommended. It will not further our profession in the long run. Instead, it will detrimentally affect all attorneys.

B. The Continuance Rule

The FDLA strongly objects to the proposed amendments to rule 1.460 for continuances. First, this rule removes discretion of trial judges to manage their docket. See Amendments to Fla. R. of Crim. Pro., 794 So. 2d 457, 458 (Fla. 2000) (recognizing the inherent authority of trial court judges to manage their own dockets and rejecting a proposal which would strip away that authority). Judges often schedule numerous trials for the same week, and

then bump the cases they do not reach. Under the proposed rule, that system will no longer function.

This rule will also deny defendants due process and their day in court. Indeed, often a trial must be continued for discovery purposes—often at no fault of the parties. For example, during the pandemic, CME doctors stopped performing examinations, and when they resumed, it was extremely difficult to obtain a date and time within the parameters of some case management orders. Yet, this new rule prohibits a continuance if such circumstances occur in the future. The parties would then be forced to try a case without crucial discovery and expert witnesses necessary to prosecute or defend the case. The jury would be deprived of the truth. And, the parties would be denied a fair trial.

Moreover, the proposed rule does not allow for continuances for outstanding dispositive motions. This oversight is extremely shortsighted and does not align with the case management orders currently being issued. Indeed, the case management orders allow discovery to be completed up to date near trial—and some of these orders are only allowing discovery to be considered for short periods of time, such as 4-6 months. The orders often similarly allow dispositive motions to be heard up until the pretrial conference. Sometimes, discovery is still pending when the parameters of

the case management order and rule require the motion for summary judgment to be filed. Given the short supply of hearing time from the backlog of our court system, hearings are often not available for months. This situation is unworkable. Plus, it is forcing a case to go to trial that otherwise would be disposed of pre-trial on the merits. This is wasting court, party, and jury resources that could be used for other trials and cases.

The FDLA further objects to the inclusion of proposed subsection 1.460(b)(10). Appellate standards of review are not appropriate in the Rules of Civil Procedure. A standard of review is based on the nature of issue presented—not a category of order. Inclusion of this standard in this rule set marks a drastic departure from the usual appellate judicial making process. Further, this changes the current standard of review. Usually, an order denying a motion for continuance is reviewed under an abuse of discretion; however, if the issue is one concerning procedural due process, it is reviewed de novo. See Vaught v. Vaught, 189 So. 3d 332, 334 (Fla. 4th DCA 2016); Geralds v. State, 674 So. 2d 96, 99 (Fla. 1996); A.P.D. Holdings, Inc. v. Reidel, 865 So. 2d 682, 683 (Fla. 4th DCA 2004); Lopez v. Lopez, 689 So. 2d 1218, 1219 (Fla. 5th DCA 1997).

The FDLA foresees an issue with the interplay of proposed amendments to rule 1.440 and rule 1.460. Proposed rule 1.440 removes the

"at issue" requirement for a case to be set for trial. "At issue" arguments often arises where a party amends to add a party or a claim to the litigation; as a result, the case is not "at issue" until pleadings are closed. The defendant then needs an opportunity to conduct discovery. In the comments of proposed rule 1.440, it notes that any amendment can be dealt with by a continuance, which is in the discretion of the trial court. However, proposed rule 1.460 removes that discretion and only allows continuances for "extraordinary unforeseen circumstances involving the person health of counsel or a party, court emergencies, or other dire circumstances that provide extraordinary cause."

The FDLA can foresee a situation where the complaint is amended close to trial and the defendant is not given a continuance to conduct the appropriate discovery. The trial court's hands will be tied by the interplay of these two rules. This will result in a denial of due process and a fair trial.

It is also difficult to see how this proposed rule will interact with the parental leave rule that many worked so hard for years to achieve. See Fla. R. Gen. Prac. & Jud. Admin. 2.570. Rule 1.460 does not mention it all. Rule 1.460 seems callous and without any due regard to the wellbeing of the attorney, while rule 2.570 is concerned about the wellbeing the family. They cannot be reconciled.

Lastly, Rule 1.460(a) is virtually identical to Rule 1.200(f). As a result, it appears redundant and unnecessary.

As a result, FDLA believes that rule 1.460, as written, should be rejected. At the end of this comment, FDLA has provided a proposal.

C. Abandonment of Motions

The FDLA is concerned about proposed rule 1.160(k) which states that motions are abandoned if a hearing is not timely scheduled or not submitted for determination within a short time frame. If an argument is abandoned, it will not be preserved for appeal. This will lead to numerous items not being preserved for appeal, which could infringe or deny parties' rights. Public policy promotes cases being decided on their merits and this does not further that goal. This rule may lead to the increase of legal malpractice claims against attorneys, which will increase insurance premiums and the cost of doing business. This increase of cost of business will be passed on the public as attorneys will likely raise their rates. This is the opposite of what the workgroup intended.

Trial court schedules are full, and counsels' schedules also may not permit a "timely" scheduling. There also exists potential for gamesmanship by opposing counsel in claiming they are unavailable.

If the Court allows this portion of the rule to remain, the FDLA requests that it be amended to include a sentence that any abandoned motion may be refiled or renewed. This will ensure constitutional rights and appellate arguments are preserved.

D. Rule 2.215

FDLA has serious concerns about Rule 2.215(f)(1), which sets specific timeframes for a trial court to enter a judgment. While it sounds good, it will not be workable in practice. Often parties cannot obtain hearing time within 60 days of filing their post-trial motions, which include motions for collateral source setoffs and motions for fees and costs, which would dictate the proper amount of the judgment. This section requires a trial judge to enter a judgment regardless of those motions. It also ignores the realities of the workplace and short-staffed chambers.

There will be numerous judgments for plaintiffs entered in the wrong amount that will ultimately need to be vacated and become judgments in favor of the defendant. This should not be taken lightly. Judgments should not be entered haphazardly without full consideration to make them final.

A judgment has several implications that impacts a defendant. See Curry v. Lehman, 47 So. 18, 23 (Fla. 1908) ("The judgment of the defendant, being a debt of record, was notice of that right to all the world."). "Note that

a damaged credit rating does more than merely raise the consumer's cost of credit. A damaged credit score can make it difficult to rent an apartment, find a job, or even purchase automobile insurance." Richard M. Hynes, Broke but Not Bankrupt: Consumer Debt Collection in State Courts, 60 Fla. L. Rev. 1, 20 (2008).

If the defendant is an insurance company, it can even lose its certificate of authority to do business in this state. § 627.427, Fla. Stat. The loss of the certification of authority to do business in the state should be especially concerning right now in light of the current insurance crisis.

Notably, section 627.427, Florida Statutes, requires an insurance company to pay all judgments against it within 60 days—if appeal has not been taken. Id. If a hearing cannot be obtained during that timeframe to vacate or amend that judgment, an insurance company is going to be forced to pay a judgment in an amount it does not owe. If payment is made, it could be deemed a waiver to appeal.

As a result, this proposed rule is unnecessary and ignores the effects of a judgment in litigation. The workgroup does not appear to have considered the implications of a judgment on a defendant or an insurance company. Surely, it was not their intent to have numerous insurance companies lose their certificate of authority to transact business in this state.

E. Rule 1.190

The FDLA objects to the deadline of 15 days for a defendant to amend its answer to add a Fabre defendant. The FDLA does not believe that this is feasible—especially in document intensive cases. For example, if 20,000 pages were produced in discovery, the proposed rule would require counsel to review those 20,000 pages, investigate the potential Fabre defendant, possibly hire a private investigator, and speak with the client about the potential Fabre—all within 15 days. If counsel was scheduled for trial in another case, this time is cut even shorter. This deadline will place great burdens on defense counsel—especially those who are solo practitioners or small law firms. It will promote gamesmanship and papering of an opponent discovery responses.

FDLA recommends the 15 days be replaced with the word "a reasonable time." FDLA believes a reasonableness standard would allow a trial judge to evaluate the amount of work that needed to be done to uncover that Fabre defendant. Indeed, in some cases it is not readily apparent who would be considered a Fabre defendant.

F. A Phased Rollout Would be Preferable

The FDLA is in alignment with the Florida Justice Association and FLABOTA in that, given this is such a massive overhaul of the rules, it would

be more palatable and preferable for the rules to be phased in over time. Some of the proposed rules fundamentally change how we practice law. Incremental changes will lead to less confusion and stress. This is a radical overhaul, and all attorneys will struggle to learn and abide by these new rules.

Additionally, some of the proposed rules do not appear to be ready for prime time and still need work. Proposed rules 1.160 and 1.161 are prime examples of concept. Deferral will allow additional work to be done to refine those rules.

G. Lack of Funding

While the FDLA supports case management and applauds the efforts, it is concerned about the funding for our court system. It appears the case management overhaul appears to be modeled after our federal counterpart. However, there is a stark difference between our Florida courts and the federal system—funding and availability of resources. Each federal judge has magistrate judges, three law clerks, and staff to help them administer case management tools. On the other hand, our trial court judges do not have these same means. Several circuits do not have any law clerks or only have one or a few to assist numerous judges. Further, the caseload of a

federal judge is often less than a state court judge—especially those in the larger counties.

These expectations on trial court judges will cause them undue stress and put them in a no-win situation. FDLA fears that this may result in a mass exodus of experienced trial court judges from the bench. This exodus will lead to backlog of cases and an increase of appeals—and more importantly, lead to a less experienced bench.

H. Complexity

The proposed rules are more complex than necessary. For instance, proposed rule 1.160(a) requires a reader to refer back and forth between that rule and several other rules with noted possible contradiction. Proposed rule 1.161 is equally complex and lengthy. It is difficult to understand what is necessary under both of these rules as written.

We all need to be mindful that pro se litigants are also required to follow the Florida Rules of Civil Procedure. The FDLA is highly concerned that a pro se litigant would not understand the complexities of these proposed changes. The FDLA is concerned that the complexity of these rules will lead to access to justice issues.

I. One-Size-Fits-All Approach

Our state is very large and diverse. We have large counties like Miami-Dade, Broward, and Hillsborough. On the other hand, we have small counties, such as Liberty, Lafayette, and Franklin. Practicing law in north Florida is very different than practicing law in south Florida. These rules are written as a one-size-fits-all approach. The FDLA agrees with Florida Justice Association that proposed rules 1.160 and 1.161 would benefit from language that allows a circuit to modify certain rules.

J. Inclusion of Professionalism or Ethics in the Rules

In several proposed rules, the workgroup included rules of professional conduct or ethics. The FDLA believes these references are more appropriate in the Rules Regulating the Florida Bar. These references do not belong in the Rules of Civil Procedure. The FDLA believes these references should be eliminated throughout.

K. Divesting the Trial Court of Discretion

The FDLA believes that giving a trial judge the discretion to manage her or his own docket is of the utmost importance. Many of these rules strip that discretion from the judge. These individual judges are in the best position to know what each case needs. This Court has previously rejected attempts to deprive trial court judges of their inherent authority to manage their own dockets. See Amendments to Fla. R. of Crim. Pro., 794 So. 2d

457, 458 (Fla. 2000) (recognizing the inherent authority of trial court judges to manage their own dockets and rejecting a proposal which would strip away that authority). This Court should similarly do so here.

II. INDIVIDUAL RULES

The below chart contains the proposed rule on the left and FDLA's position on each on the right.

Proposed Rule	FDLA's Position
Rule 1.090 Time	No Objection
Rule 1.100 Pleadings	No Objection
Rule 1.160 Motions	FDLA believes this rule is overly complex and will lead to confusion. A pro se litigant will be unable understand its intricacies. FDLA objects to the inclusion of page limits. There are some cases which are complex, and more than 15 pages may be necessary to explain a legal issue. The FDLA objects to section(k), which is addressed above.
Rule 1.161 Scheduling Of Hearings On Motions	FDLA believes this rule is overly complex and will lead to confusion. A pro se litigant will be unable to understand its intricacies. The timeline set forth in in (b)(3) is unworkable in today's current climate.
Rule 1.190 Amended and Supplemental Pleadings	FDLA objects to the 15-day deadline. FDLA recommends replacing it with "a reasonable time."

Rule 1.200 Case Management; Pretrial Procedure	FDLA overall supports this rule. However, FDLA objects to the preclusion of modification or extension of time in most circumstances. FDLA believes there is need for some flexibility and for the trial court to have the discretion to do so. FDLA further objects to (f)(5) with regard to personal injury cases. If the Plaintiff is still undergoing treatment for his or her injuries, this preclusion of doing any type of discovery may deny defendants from crucial discovery as to the status of the injury or damages. This would result in an unfair trial and possibly a denial of due process. FDLA objects to (6)(A). Again, the inclusion of sanctions is unnecessary. Inability to comply may be for reasons outside of counsel's control. Further, this section removes notice—a crucial part of due process. In order to sanction any person, a court must provide notice and an opportunity to be heard. The fact that the workgroup has removed these constitutional safeguards is disturbing.
1.201 Complex Litigation	No Objection
1.271 Pretrial Coordination Court	No Objection
1.275 Sanctions	As set forth above in more detail, FDLA objects to this rule in full.
1.279 Standards of Conduct for Discovery	FDLA objects to this rule as it believes this is more appropriate in the Rules Regulating the Florida Bar—not the Rules of Civil Procedure.

	In addition, its objection to (c) is noted above in more detail.
1.280 General Provisions Governing Discovery	No Objection
Rule 1.310 Depositions May Be Taken	No Objection
Rule 1.320 Depositions Upon Written Questions	No objection
Rule 1.335 Standards for Conduct in Depositions, Objections of Privilege, Termination or Limit, Failure to Appear, and Sanctions	As set forth above in more detail, FDLA objects to sanctions. FDLA has no objections to the remainder of this rule.
Rule 1.340 Interrogatories to Parties	No Objection
Rule 1.350 Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes	No Objection
Rule 1.351 Production of Documents and Things Without Deposition From Nonparties	No Objection
Rule 1.370 Requests for Admission	No Objection
Rule 1.380 Failure to Make Discovery; Sanctions	Please see FDLA's comments on sanctions above.

	FDLA objects to the fact sanctions are required even though a party had a reasonable basis to object to the discovery and was substantially justified in doing so but was simply wrong.
Rule 1.410 Subpoena	No Objection
Rule 1.420 Dismissal of Actions	No Objection
Rule 1.440 Setting Action for Trial	Please see FDLA's comments noted above Other than what is noted, no objection.
Rule 1.460 Continuances	As noted above in more detail, FDLA objects to this rule.
Rule 1.650 Medical Malpractice Presuit Screening Rule	No Objection
Rule 1.820 Hearing Procedures for Non-Binding Arbitration	Please see FDLA's comments concerning the interplay between Rule 1.440 and Rule 1.460. Other that what is noted, no objection.
Rule 2.215 Trial Court Administration	As set forth in more detail above, FDLA objects to (f).
Rule 2.250 Time Standards for Trial and Appellate Courts and Reporting Requirements	No Objection
Rule 2.546 Active and Inactive Case Status	No Objection
Rule 2.550 Calendar Conflicts	No Objection

Rule 7.070 Method of Service of Process	No Objection
Rule 10.420 Conduct of Mediation	No Objection

III. RULE PROPOSALS

FDLA recommends that Rule 1.460 be reworded as follows:

RULE 1.460 CONTINUANCES

(~~a~~) DELETED SUBSECTION IN ITS ENTIRETY

(~~b~~) Motions to Continue Trial

(~~1~~)(a) Motions to continue trial are disfavored. Once the case is set for trial, no continuance may be granted except for good cause shown ~~extraordinary unforeseen circumstances involving the personal health of counsel or a party, court emergencies, or other dire circumstances that provide extraordinary cause~~. Lack of preparation is not grounds to continue the case. Where possible, trial dates shall be set in collaboration with counsel and self-represented parties as opposed to the issuance of unilateral dates by the court.

(~~2~~)(b) A motion to continue trial shall be in writing and signed by the client.

(~~3~~)(c) Any motion to continue trial must be filed within 14 days after the appearance of grounds to support such a motion.

(4)(d) The motion shall state with specificity:
(1) the factual basis of the need for the continuance;
(2) the proposed date by which the case will be ready for trial; and
(3) the proposed action and schedule that will enable the movant to be ready for trial by the proposed date.

~~(5) No motion to continue shall be granted upon any of the following grounds:~~

~~(A) failure to complete discovery;~~

~~(B) failure to complete mediation;~~

~~(C) outstanding dispositive motions;~~

~~(D) counsel or witness unavailability except where the record demonstrates new circumstances beyond counsel or witness control;~~

~~(E) withdrawal of counsel within 60 days of trial; or~~

~~(F) trial conflicts, which are subject to resolution under Florida Rule of General Practice and Judicial Administration 2.550.~~

(~~6~~)(e) If amendment of pleadings or affirmative defenses is ~~required~~ permitted under the relevant rules within 60 days of trial, ~~due to extraordinary unforeseen circumstances supporting an order permitting such amendment within 60 days of trial, the amendment shall not serve as grounds for continuance where no additional discovery is required. If additional discovery is required, continuance shall not be granted except where cure is impossible. If discovery is required,~~ it is the responsibility of the party seeking amendment to facilitate any additional discovery necessary due to the amendment. If the party fails to do so, the Court may deny the amendment due to the interference with the trial date and the orderly progress of the case.

(~~7~~)(f)Trial courts should utilize all remedies available to cure issues to avoid continuances if possible, including requiring depositions to preserve testimony, remote appearance, and conflict consultations with other judges.

(~~8~~)(g) All orders granting motions to continue shall state the factual basis, including the reason for the continuance, shall schedule the action required to resolve the need for the continuance, and shall set a new trial date. Counsel shall serve all orders granting continuances upon counsel's clients. Counsel and self-represented parties shall be prepared to try the case on the trial date reset by the court.

(~~9~~)(h) No case may be continued for a duration exceeding 6 months from its original trial date, except where the action required to cure the need for the continuance cannot be completed within 6 months. Findings regarding same shall be made on the record in any order of continuance.

~~(10) Order granting or denying motions to continue shall benefit from presumption of correctness on appeal where the trial court has made factual findings regarding its ruling and shall only be reversed upon a finding of gross abuse of discretion.~~

IV. CONCLUSION

Overall, the FDLA and its members support many of the suggestions of the workgroup. However, as set forth above, the FDLA has specific concerns as to certain rules.

BOYD & JENERETTE, P.A.

/s/ Kansas R. Gooden
KANSAS R. GOODEN
Florida Bar No. 58707
kgooden@boydjen.com
11767 S. Dixie Hwy, #274
Miami, FL 33156
(305) 537-1238
President of the FDLA and Chair of its Amicus Committee

CERTIFICATE OF SERVICE

The undersigned has filed this comment via the eportal and served a copy via ***U.S. Mail*** to Workgroup Chair, Chief Judge Robert Morris, Second District Court of Appeal, P.O. Box 327, Lakeland, FL 33802, and via ***email*** to OSCA Staff Liaison to the Workgroup, Tina White, 500 South Duval Street, Tallahassee, Florida 32399, whitet@flcourts.org; this 16th of May, 2022.

/s/ Kansas R. Gooden
KANSAS R. GOODEN

CERTIFICATE OF COMPLIANCE

In accordance with Florida Rules of Appellate Procedure 9.045 and 9.210(a)(2), the undersigned counsel hereby certifies that this comment complies with the font and word count requirements of the Rules: Arial 14-point font and under 13,000 words.

/s/ Kansas R. Gooden
KANSAS R. GOODEN