

**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 OF NFIB FLORIDA**

The National Federation of Independent Business (NFIB) is the nation's oldest and largest organization dedicated to representing the interests of small-business owners throughout the United States. NFIB Florida is the voice of small business in Florida. Its members own a wide variety of independent businesses from manufacturing firms to hardware stores, and its mission is to promote and protect the right of its members to own, operate and grow their businesses.

NFIB Florida submits this comment because improving the resolution of civil cases is vital to small businesses. The filing of a lawsuit against a small business—many of which operate on razor-thin margins—can threaten the viability of that business. It can exhaust the business's limited resources, even if claims are later determined to be meritless. Further, a lawsuit often requires the business owner to devote substantial time away from the business.

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We applaud the Court for establishing the Workgroup on Improved Resolution of Civil Cases. The Workgroup's report identifies a number of concerns that have long been expressed by our members about the delays and high costs associated with civil litigation in Florida.

The Workgroup report, however, fails to deliver on its potential in our opinion because it does not include reforms to curb unduly burdensome discovery costs that negatively affect small businesses.

Other stakeholders have highlighted this deficiency in the Workgroup's report. For example, the Business Section of the Florida Bar stated in its comment that the Workgroup's recommendations "ignore the elephant in the room, which is the massive delays, costs, and inefficiency brought on by lawyers using old-time advocacy tactics and boilerplate requests in discovery and motion practice." The Business Section urges the Court to amend Rule 1.280 "to apply the same standards of proportionality to the scope of all discovery as under Federal Rule 26(b)."

The International Association of Defense Counsel's (IADC) comment likewise recommends specific discovery rule changes, including proportionality, "to better effectuate the goals of the

Workgroup.” The Federation of Defense & Corporate Counsel commented, “The Workgroup noted its concerns about the high costs associated with discovery; the concept of proportionality is an obvious solution to this identified problem.”

NFIB Florida strongly supports discovery rule reforms that address unwarranted discovery costs. Two reforms, in particular, are of major importance to our small business members. First, we join the chorus of groups that urge the Court to adopt proportionality in Rule 1.280(b)(1). We believe amending this rule to reflect its federal counterpart will help prevent small businesses from incurring unjustified costs they cannot absorb. Proportionality in discovery will promote the overarching goal of the Florida Rules of Civil Procedure “to secure the just, speedy, and inexpensive determination of every action.” Fla. R. Civ. P. 1.010.

Second, the 2015 FRCP amendments that adopted proportionality added an express recognition of protective orders that allocate discovery expenses. We believe this rule, which is also included in the IADC’s proposal, would improve the efficient resolution of civil cases involving small businesses. A clear rule stating that courts may issue protective orders under Rule 1.280(c)

to allocate discovery expenses to the party requesting discovery would place an incentive on requesting parties to more narrowly tailor their discovery requests without sacrificing the party's opportunity to obtain discoverable information.

In lawsuits involving small businesses, these relatively modest changes matter. Claimants will no longer be able to exploit Florida's civil rules to pursue disproportionate discovery as a litigation tactic, such as in an effort to inflate costs and coerce an unjust settlement. The clear availability of protective orders to allocate discovery costs may also help curb improper "fishing expeditions."

The Court has an opportunity, by virtue of the Workgroup's efforts to identify inefficiencies in Florida civil litigation, to significantly improve the resolution of civil cases. NFIB Florida believes rule reforms focused on reducing the high costs of discovery provide the best approach to do so. We appreciate the Court's consideration of the interests of small businesses.

Dated: May 19, 2022.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that, on May 19, 2022, the foregoing was electronically filed via the Florida Courts E-Filing Portal and a copy was sent by first class U.S. Mail, postage prepaid, addressed to the following:

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**CERTIFICATE OF COMPLIANCE**

I certify that this comment was prepared in Bookman Old Style 14-point font and complies with the font requirements in Florida Appellate Rule of Procedure 9.045(b).

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