IN THE SUPREME COURT OF FLORIDA

CASE NO. SC22-122

IN RE: REPORT AND RECOMMENDATIONS
OF THE WORKGROUP ON IMPROVED
RESOLUTION OF CIVIL CASES
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COMMENT TO PROPOSED RULES 1.160 AND 1.161

The undersigned attorney, Dan Cytryn, provides this comment to proposed Rules 1.160 and 1.161 to the Florida Rules of Civil Procedure.

I have been a practicing trial lawyer in Florida for more than 40 years and have been a Florida Board Certified Civil Trial Lawyer for more than 30 years. I have tried 105+ jury trials and have argued before this Court on three occasions.

Incredibly, in the proposed Rules 1.160 and 1.161, there are what appear to be at least 7 pages regarding motions and how to set a motion for hearing.

As things exist now in the current rules, there are essentially zero pages dealing with those issues and no rules. And everything is working fine. It's hard just to *read* the 7 pages, never mind to ultimately have to apply them to everyday practice.

Under the proposed rules, we are looking to discard a process that works well, and in its place create a series of steps that are required to be taken whereby lawyers and their staff, and judges and their judicial assistants, are going to have to go through a mindboggling maze of rules and steps in order to obtain a simple five-minute hearing.

The amount of work that the judges are going to have to do - forcing them to read extensive motions (and additionally, potentially memorandum filed by each side), instead of simply listening to argument for a few minutes and asking pertinent questions and making a decision - is an immense and unworkable task.

Many circuits already have uniform motion calendar rules that are efficient and effective. The new proposed motion and hearing rules will substantially (and negatively) alter the standard uniform motion calendar procedures that many circuits have. Setting hearings now is generally not a problem.

Having a uniform motion calendar in many counties has been a blessing (it would make a lot more sense for somebody to study the most efficient county's uniform motion calendar, and adopt that system statewide).

In the mid-1980s, certainly in order to ensure the "just, speedy, and inexpensive determination of any action" (Fla. R. Civ. Proc. 1.010), in

Broward County, 17th Judicial Circuit now-retired Judge Miette Bernstein decided to create what is now known as the "uniform motion calendar." These uniform motion calendars were implemented in many circuits throughout the state. Most hearings at uniform motion calendar were (and still are) for 10 minutes or less. Usually, neither side is entitled to argue for more than 5 minutes.

What this uniform motion calendar did is it *simplified* the entire process. Now the process generally is that the judges have their dates of availability for hearing posted on the court website. The dates are cleared with opposing counsel. The hearing is scheduled online on the court website without the necessity of disturbing the judge or her judicial assistant. The hearing documents are uploaded directly to the judge's portal in many circuits, including, for example, the 17th Circuit (Broward), 11th Circuit (Miami-Dade) and the 15th Circuit (Palm Beach).

Each circuit that has a uniform motion calendar does have its own variation, but they all share the same quality: It works, and it works well.

Without a uniform motion calendar, historically, an attorney might have had to wait two months or even longer (that's exactly what happened in the 1980s before we had these uniform motion calendars) in order to get a hearing on a motion to compel an answer to interrogatories or a motion to

compel a request for production or any other matter that should take a few minutes for a judge to handle. The uniform motion calendar resolved that problem. In most cases, we can get a hearing set, on average, about 2-4 weeks down the road.

At the motion calendar hearing, the judge who hears the motion is, of course, entitled to ask further questions. Everybody is entitled to an oral argument. But having a "briefing schedule" (per proposed Rule 1.160) for what should be a simple motion calendar hearing is unnecessary. At best, we're regressing back in time 40 years, creating more unnecessary work for the lawyers and more work for the judges. A judge is more than capable of stating to the parties after a hearing: "please file a memorandum on this, I cannot decide this on oral argument." Many of these things that appear before the judge on motion calendar are things that they have seen before, and the trial judges know the law, and they know how to rule on those issues.

These proposed rules will strangle and frustrate the entire judiciary. Judicial assistants will be overwhelmed. The fallback on the judges will be intolerable.

I understand that the Committee has put a lot of work into this. However, all the Committee has done with regard to proposed Rules 1.160 and 1.161 is create a lot more work for everybody associated with litigation:

the judges, the judicial assistants, the lawyers, and the lawyers' entire staffs. Everybody will be frustrated. The same thing was already being accomplished with less work and less effort AND LESS RULES.

Chief Judges in most circuits implement procedures for setting hearings. Judges should be allowed to do basically whatever works for them with regard to hearings, as long as what they do is working. And right now, it seems as though whatever these judges are doing is working to move their cases rapidly forward and dispose of the backlog. Justice Canady recently stated that "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."[1]

Conclusion: 'Ixnay'[2] these burdensome rules. They won't make anything easier and will only frustrate the entire bar and the judiciary.

Please don't 'fix' what isn't broken.

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[1] Killian, Mark. CHIEF JUSTICE CANADY SAYS THE COURTS ARE MAKING A DENT IN CASE BACKLOGS. The Florida Bar News, April 11, 2022 (available at https://www.floridabar.org/the-florida-bar-news/chief-justice-canady-says-the-courts-are-making-a-dent-in-case-backlogs/)

[2] Ixnay: to reject or put a stop to (something) **:** NIX (https://www.merriam-webster.com/dictionary/ixnay).

Dated May 24, 2022,

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 24, 2022, a copy of the foregoing was electronically filed via the Florida Courts E-Filing Portal, with a copy provided by U.S. Mail 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 document was prepared in Arial, 14-point font, in compliance with Florida Rule of Appellate Procedure 9.045.

/s/ Dan Cytryn, Esquire
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