

**IN THE SUPREME COURT OF FLORIDA**

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

**CASE NO. SC22-122**

**RULES OF GENERAL PRACTICE AND JUDICIAL  
ADMINISTRATION COMMITTEE COMMENT**

Stanford R. Solomon, Chair of the Rules of General Practice and Judicial Administration Committee (RGPJAC), and Joshua E. Doyle, Executive Director of The Florida Bar, submit this comment and proposed rule amendments for the Court's consideration in response to the Final Report of the Workgroup on the Improved Resolution of Civil Cases. The RGPJAC would like to express its sincere appreciation to the Workgroup for its ground-breaking work and, in particular, for the opportunity to review and provide studied input on an earlier version of the Workgroup's report. The Workgroup's thoughtful consideration and implementation of the RGPJAC's prior comments have resolved many of the RGPJAC's concerns and has narrowed the scope of this Comment.

In submitting this Comment, the RGPJAC has taken a specific and limited approach given its unique role as the rules coordinating committee. That approach is two-pronged.

In the first prong, the RGPJAC reviewed the Workgroup's proposals that involve those rules of court procedure other than the Rules of General Practice and Judicial Administration. The scope of the RGPJAC's role in reviewing other rules committee proposals is limited to assessing consistency and commonality. See *Fla. R. Gen. Prac. & Jud. Admin* 2.140(a)(6). The RGPJAC anticipates that the rules committees directly affected by the Workgroup's proposals will file separate comments to address the substance and the internal interplay of these rules proposals. Accordingly, the RGPJAC review of the proposals affecting rules outside of our own rule set was limited to whether the proposed rule amendments presented a potential conflict with or concern for the application of the Florida Rules of General Practice and Judicial Administration or implicated a matter that should be addressed in these rules.

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With respect to the substance of the new rules proposals, the RGPJAC has concerns about the advisability, scope, and effect of some of the proposed rules changes. In particular, RGPJAC members questioned whether the root causes of the current delays are clear; whether the solutions chosen are the most appropriate and least intrusive manner to address the causes of the delays; whether some proposals would greatly increase the administrative burden on courts, clerks, attorneys, and litigants without resulting in a proportionate reduction in delays; and whether some of the proposals would create unanticipated problems.

The RGPJAC notes that the Workgroup proposed amendments to several rules create a deadline of “within 5 days after” an event. Rule 2.514(a)(3) of RGPJA provides: “When the period stated in days is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.” Computation of the deadline in accordance with this rule would almost always<sup>1</sup> result in the deadline occurring 7 days, not 5, after the triggering event. Further, rule 2.110 provides: “These rules shall supersede all conflicting rules and statutes.” Thus, adoption of the proposed 5-day deadlines would likely cause unnecessary confusion about the actual deadline. The RGPJAC recommends that the Court reject the Workgroup’s proposed changes imposing 5-day deadlines. If the Court believes that shorter deadlines should be imposed, the Court should change the proposals to “within 7 days after” the triggering event. Those two days will not make that big a difference, but specification of the 7-day period will avoid the conflict between the Rules of General Practice and the Civil Procedure Rules, which is what rule 2.110 seeks to avoid.

Rather than comment on the wisdom or advisability of specific proposals for amendment of other rules sets, the RGPJAC believes that those comments and proposed edits are best addressed by the other Florida Bar rules committees. Therefore, the RGPJAC’s

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<sup>1</sup> The only exception would be when the triggering event is service of a document on a Sunday.

comment is limited to the specified purview of the RGPJAC's role as the *rules coordinating committee*.

The RGPJAC offers no analysis or comment on whether the Workgroup's proposal to reshape the Rules of Civil Procedure or the changes to the Small Claims Rules are advisable or whether the current funding for Florida's judicial branch can accommodate the requirements inherent in the changes, which would increase judicial workload. In addition, the RGPJAC is not commenting on whether the proposed rules conflict with existing case law. Nothing stated in or omitted from this comment should be construed as either endorsing or declining to endorse the Workgroup's overall approach or the substance of specific proposals other than as specifically addressed herein.

The RGPJAC's comments engendered by this limited review of the proposals regarding rules other than those housed in the Rules of General Practice and Judicial Administration appear in section I below.

In the second prong, the RGPJAC reviewed the Workgroup's proposals that involve changes to the Rules of General Practice and Judicial Administration. This review considered both the substance of the proposed rule changes and the conformity of the proposed amendments with other rules in the rule set. The RGPJAC's comments resulting from this review appear in section II below.

The RGPJAC recommends some revisions to the rule amendments proposed by the Workgroup. The proposed changes are explained below and presented in legislative format, indicated by double-underline and double-strikethrough, in Appendix A. The RGPJAC voted 35-0 to approve this Comment and 35-0 to recommend the proposed revisions to the rule amendments proposed by the Workgroup. The Board of Governors voted unanimously to accept this Comment.

## **I. The RGPJAC's Comments on Rule Amendments proposed for Other Rules Sets.**

The RGPJAC has reviewed the proposed changes to assess whether any of the proposed rules or subdivisions thereof should be incorporated into the Rules of General Practice and Judicial Administration and whether concerns still exist regarding consistency and uniformity.

Initially, the RGPJAC recommends moving to RGPJA rule 1.161(b)(3), Reasonable Time for Scheduling Hearing, or having a corollary rule in the RGPJA because this rule is a directive to the trial court and such directives are traditionally housed in the RGPJA.

There are also other portions of the proposed amendments to the Rules of Civil Procedure that give directives to the trial court that should be moved to the RGPJA, or corollary rules should be placed in the RGPJA. A few of these directives would represent a change that is inconsistent with current case law favoring resolution of cases on their merits. The specific subdivisions include:

- Rule 1.160(c)(2)(B);
- Rule 1.160(g);
- Rule 1.160(h);
- Rule 1.161(b)(3);
- Rule 1.200(g);
- Rule 1.200(h)(6)(A); and
- Rule 1.200(h)(9).

The RJPJAC recommends moving rule 1.271 into the RGPJA because it creates a new division of the trial court and should be placed in the "State Court Administration" part of the RGPJA. Alternatively, the portions of the rule giving directives to the trial court should be moved to the RGPJA, and the portion of the rule giving directives to the parties and attorneys could remain in the Rules of Civil Procedure.

In compliance with the Supreme Court's Guidelines for Rules Submissions, *In re Guidelines for Rules Submissions*, AOSC06-04 (Fla. 2006), the RGPJAC recommends following the Guidelines' suggestion to use "must" in place of "shall". There are cases interpreting the word "shall" as permissive rather than mandatory. The word "shall" is used throughout the Workgroup's proposed rule amendments instead of the word "must" (mandatory) or "may" (permissive). This inconsistency within the rules will create unnecessary ambiguity.

Although the RGPJAC has not reviewed or analyzed the capacity of the various civil divisions, the RGPJAC recommends that a comprehensive analysis of the civil and county court divisions' capacities be conducted before the proposed changes are adopted in order to determine whether civil trial divisions have or may be provided the enhanced capacity (in terms of technology, staffing, caseloads, etc.) to comply with the proposed new deadlines and requirements embodied in the proposed rules.

The proposed changes to the Small Claims Rules and the Rules for Certified and Court-Appointed Mediators do not present a potential conflict with or concern for the application of the RGPJA nor do they implicate a matter that should be addressed in the RGPJA. Accordingly, the RGPJAC has not suggested any changes in the Workgroup's proposed amendments to those rules.

## **II. The RGPJAC's Comments to Rule Changes to the Rules of General Practice and Judicial Administration.**

The RGPJAC carefully reviewed the Workgroup's proposed amendments to the RGPJA. This review was more substantive. The RGPJAC's comments to those proposals are explained below and are attached as Appendix A.

**a. General Comment Regarding Language Consistent with the Court’s Style Guide for Rules – – All Proposed Rules of General Practice and Judicial Administration**

In its proposals, the Workgroup has proposed some language that does not align with the Supreme Court’s Guidelines for Rules Submissions. The difference in wording would create discrepancies and inconsistencies in the use of language, without any apparent recognized distinction or other cognizable benefit. For example, the Workgroup consistently uses the word “shall” throughout its proposals. The RGPJAC and the existing rules, however, routinely use the word “must” instead of “shall,” consistent with the Guidelines. The Workgroup also uses the word “after” instead of “of” when denoting a time frame, *i.e.*, “within 60 days after” instead of “within 60 days of.”

The Workgroup’s report notes that the RGPJAC previously proposed amending the Workgroup’s draft to make some of these changes to rule 2.250(b)(1). See *Final Report*, p. 118 n. 594. The Workgroup recognized the validity of the suggestion, but concluded that the changes were “technical” and best left to “the respective committees’ amendment processes.” The RGPJAC believes the changes are best addressed now because (a) they are not substantive changes that would or should require further discussion among the rules committees and (b) submitting a separate proposal when one is already pending before the Court could create confusion or delay in adoption.

The RGPJAC believes that the use of the word “must” to denote a mandatory requirement and the use of the word “of” to denote the start of a time period are preferable. Without expressing an opinion on which word-choices should be adopted, the RGPJAC favors consistent wording throughout to avoid arguments that different phrasing means different things. In addition, if the Court prefers a different word-choice methodology, the Guidelines should be revised to reflect the Court’s preferences and to ensure that future amendments are consistent therewith. The RGPJAC’s proposed revisions to the Workgroup’s proposals in Appendix A

include suggestions to amend the language to reflect the current Guidelines and to maintain consistency.

In addition, in the proposed revisions to rule 2.215(f)(1)(B), the RGPJAC suggests separating subdivisions (i) to (iv) to comply with the typical format of the rules.

**b. Proposed Revisions to Rule 2.250, Time Standards for Trial and Appellate Courts and Reporting Requirements.**

The Workgroup has proposed changes to rule 2.250 regarding time standards and reporting requirements. Those changes do not include any changes to the language currently in rule 2.250(b) regarding the quarterly reporting of cases. However, the information required in the quarterly reports does not align with the information needed to assess compliance with the time standards in rule 2.250(a)(1).

Although the Workgroup's proposals did not create this misalignment, the RGPJAC believes it should be addressed if rule 2.250 is to be amended. As a result, the RGPJAC recommends that rule 2.250(b)(1) be amended to better align with rule 2.250(a)(1) so the two subdivisions are parallel. The proposed amendment would require quarterly reports to include the dates pertinent to determining whether the time standards in 2.250(a)(1), both existing and as the Workgroup proposes, are met.

The Workgroup notes that the RGPJAC raised this concern in response to the Workgroup's draft report. See *Final Report*, p. 62-62, n. 245, and suggests that these changes could be made separately through the respective committees' rules process. The RGPJAC believes the changes would be better made now because they are not substantive changes that would justify awaiting further input by the various rules committees.

The RGPJAC's remaining proposed revisions to the Workgroup's proposed rule amendments relate to compliance with the Court's Guidelines.

**c. Proposed New Rule 2.546, Active and Inactive Case Status**

The Workgroup has proposed new rule 2.546 to determine when cases can be placed on inactive status so that a delay does not result in a violation of the time standards. The RGPJAC previously provided suggestions to the Workgroup regarding this proposal and appreciates the efforts made to address the RGPJAC's concerns.

The RGPJAC suggests rewording part of proposed rule 2.546(a) to enhance readability and to clarify the standard for placing a case on inactive status for "other reasons." In this regard, the Workgroup proposes that a pending appellate ruling in another case would not be grounds for inactive status unless that other ruling would be dispositive of the subject trial court case or other "extraordinary circumstances" existed to do so. In contrast, an earlier sentence states that a party could move to place a case on inactive status "for other reasons" but does not specify a requirement that the "other reasons" present or constitute "extraordinary circumstances." The RGPJAC surmises that the Workgroup may have intended that legally-sufficient "other reasons" will always present "extraordinary circumstances." The RGPJAC's recommended change in Appendix A would apply that standard to all requests for inactive status.

The Workgroup's proposal also permitted a case be placed on inactive status only if the parties "stipulated" that a separate case pending on appeal would be dispositive of the subject trial court case. Presumably, a trial court could make this determination even if one or more parties disagreed. The RGPJAC has suggested rewording the proposal to permit the trial court to make that decision over objection.

The Workgroup has also proposed commentary to rule 2.546 that includes a reference to Administrative Order AOSC14-20 (Mar. 26, 2014). The reference does not appear necessary to explain the rule's intent. The reference notes that the Administrative Order includes definitions for case events and statuses; however, the wording of proposed rule 2.546 does not



appear to need definition. If the Workgroup or the Court believes that a definition found in the Administrative Order is critical to understanding the rule, that definition should be recited (not referenced) in the rule. The reference to the Administrative Order should be removed from the commentary because a change in the Administrative Order might affect its application to the rule and, more importantly, might not be identified timely and addressed appropriately in the rule or in its commentary. At a minimum, that reference could be followed by the phrase “or a subsequent administrative order,” as it is in the one other place in the Rules of General Practice and Judicial Administration that a reference is made to an administrative order. Also, the RGPJAC suggests rewording the first sentence of the proposed commentary to remove the unnecessary verbiage of “the respective players.”

The remaining suggested revisions to the Workgroup’s proposed new rule 2.546 attempt to effect compliance with the Court’s Guidelines.

The RGPJAC respectfully requests the Court to consider and to adopt its proposed revisions to the Workgroup’s proposed amendments to the rules of procedure.

Respectfully submitted on this 26 day of May 2022.

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