IN THE SUPREME COURT OF FLORIDA

IN RE: REPORT AND RECOMMENDATIONS OF THE WORKGROUP ON IMPROVED RESOLUTION OF CIVIL CASES **CASE NO. SC22-122**

APPELLATE COURT RULES COMMITTEE COMMENT

Laura A. Roe, Chair of the Appellate Court Rules Committee ("ACRC"), and Joshua E. Doyle, Executive Director of The Florida Bar, file this comment addressing rule amendments proposed in the Final Report ("Report") of the Judicial Management Council Workgroup on Improved Resolution of Civil Cases ("JMC Workgroup"). The ACRC provides the following comments on the proposed amendments to Florida Rule of Civil Procedure 1.460 and to the newly-proposed Florida Rule of Civil Procedure 1.271 because both proposed rules impact appellate issues.

By a vote of 30 to 0, the ACRC recommends that the Court decline to adopt proposed subdivision (b)(10) of Florida Rule of Civil Procedure 1.460 and further recommends that the Court decline to adopt proposed Florida Rule of Civil Procedure 1.271(g). The Appellate Practice Section of The Florida Bar supports this comment.

A. Proposed Amendments to Florida Rule of Civil Procedure 1.460

The JMC Workgroup proposes extensive amendments to the Florida Rules of Civil Procedure, including amending rule 1.460 to add subdivision (b)(10), which mandates that appellate courts apply a gross abuse of discretion standard of review for orders granting or denying continuances of trial and a presumption that such orders are correct. As proposed, subdivision (b)(10) provides: "Orders 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." Report at p. 177. The ACRC disfavors including either an appellate standard of review or

an express presumption of correctness in any Florida Rule of Civil Procedure, including rule 1.460(b)(10).

1. The role of standards of review in judicial decision-making.

An appellate court's determination of the appropriate standard of review is part of the judicial decision-making process. An appellate court's "first obligation" is to articulate the applicable standard of review because "it informs the parties of the extent of the review and, most importantly, reminds the appellate court of the limitations placed on its own authority by the appellate process." *N. Fla. Women's Health & Counseling Servs. v. State*, 866 So. 2d 612, 626 (Fla. 2003). In that way, the standard of review expresses the nature of the relationship between the trial court and the appellate court. Philip J. Padovano, *Florida Appellate Practice*, Vol. 2, § 19:1 (2021 ed.).

The selection of an appropriate standard of review "centers on the type of decision made" rather than on a particular category of order. *See* Harvey J. Sepler, "Appellate Standards of Review," *Florida Appellate Practice*, § 6.2 (9th. ed. 2014); *see also* Padovano, *Florida Appellate Practice*, at § 19:1 ("the correct standard to be applied in reviewing the decision of a lower tribunal is determined primarily by the nature of the adjudication at issue"). Generally, the standard of review depends on whether the issue presented is an issue of law, an issue of fact, or a mix of both, and the appellate courts' deference to the trial courts will vary accordingly. Padovano, *Florida Appellate Practice*, at 19:3.

Thus, the evaluation of the type of issue presented is a key task in the appellate decision-making process. This concept is seen at the federal appellate level as well, where—if the standard of review is not set by express statutory command—the court looks to the "long history of appellate practice." *Pierce v. Underwood*, 487 U.S. 552, 558 (1988). When there is no long-standing precedent to serve as a guide, federal appellate courts analyze whether the issue to be decided is a question of law, a question of fact, or a mixed

question. *Id.* This process may require an intricate inquiry as courts have yet to find "a rule or principle that will unerringly distinguish a factual finding from a legal conclusion." *Miller v. Fenton*, 474 U.S. 104, 113 (1985) (citing *Pullman-Standard v. Swint*, 456 U.S. 273, 288 (1982)). Indeed, application of the wrong standard of review "may tilt the appellate playing field and irreparably prejudice a party's rights." *N. Fla. Women's Health*, 866 So. 2d at 626.

2. An appellate standard of review should not be included in proposed rule 1.460.

The ACRC disfavors including an appellate standard of review in the civil rule set for several reasons. First, the Florida Rules of Appellate Procedure expressly govern "all proceedings" in the "supreme court, the district courts of appeal, and the circuit courts in the exercise of the jurisdiction described by rule 9.030(c)." Fla. R. App. P. 9.010. They are designed to "provide for a prompt and orderly disposition of appeals" so that "those 'delays' in the judicial process, so often lamented, may be eliminated insofar as conscientious lawyers and judges are capable." *Parada Holding Co. v. Sulkin*, 126 So. 2d 601, 602 (Fla. 3d DCA 1961). The Florida Rules of General Practice and Judicial Administration also expressly apply in appellate proceedings, except as otherwise provided in the Florida Rules of Appellate Procedure. Fla. R. App. P. 9.010; Fla. R. Gen. Prac. & Jud. Admin. 2.130.

The Florida Rules of Civil Procedure neither have the same express application in appellate proceedings nor are they given the same express scope of authority within the appellate rules set as the Florida Rules of General Practice and Judicial Administration. Given the express declaration in the rules that the appellate rules control in the appellate courts, a rule of civil procedure setting a standard for appellate review would appear to be nothing more than a legal nullity. Florida Rule of Civil Procedure 1.460 is not the correct place for an appellate standard of review, to the extent that such standards should be set forth in a rule set at all.

As discussed before, a court's determination of the standard of review is based on the nature of the issue presented, not the category of order on review. For example, an appellate court generally reviews an order on a motion for a continuance of a trial for an abuse of discretion, whereas de novo review is applied to a procedural due process issue. *See, e.g.*, *Vaught v. Vaught*, 189 So. 3d 332, 334 (Fla. 4th DCA 2016). Yet, both types of issues conceivably could arise within continuance orders under rule 1.460. By analogy, orders on motions to vacate defaults generally are reviewed for abuse of discretion; but, where the default was entered on a pure issue of law, review is de novo. *Mourning v. Ballast Nedam Constr., Inc.*, 964 So. 2d 889, 892 (Fla. 4th DCA 2007). It is the task of the appellate court to determine the precise nature of the issue on review in the particular case before it and thereafter apply the appropriate standard of review.

A rule-based standard of review will hinder the flexibility necessary for this kind of nuanced evaluation. Moreover, the inclusion of standards of review in rule sets ignores that they are not purely procedural, as evidenced in part by the fact that they are not universally codified, yet they also may not be derived entirely from substantive law. Standards of review have been developed in the common law and through long-standing appellate practice. Kelly Kunsch, *Standard of Review (State and Federal): a Primer*, 18 Seattle U. L. Rev. 11, 14 (1994). In fact, Florida courts have reviewed decisions granting or denying continuances as discretionary for more than a century. *See, e.g.*, *Ahren v. Willis*, 6 Fla. 359, 362 (1855).

The consensus of the ACRC is that the stated reasons for the creation of Florida Rule of Civil Procedure 1.460(b)(10) are not best resolved by the proposed solution. The Report states that the amendments to rule 1.460 are designed "to establish *disincentives* to continuances, especially the use of continuances as a means of circumventing deadlines set in the initial case management order." Report at p. 113 (emphasis added). And the proposed rule has the effect of eliminating the trial court's discretion even to grant

motions for continuances based on circumstances listed in subdivision (b)(5).

The inclusion of the gross abuse of discretion standard and the presumption of correctness on appeal have not been shown as necessary, nor helpful, to achieve the goals of the Report. "[T]he reviewing attitude that [an appellate court] takes toward a [trial] court decision should depend upon 'the respective institutional advantages of trial and appellate courts, not upon what standard of review will more likely produce a particular substantive result.' " *E.A.R. v. State*, 4 So. 3d 614, 641 (Fla. 2009) (Canady, J., dissenting) (quoting *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 948 (1995)). The Report contains no evidence that Florida's appellate courts have contributed to any delay by employing established standards of review to trial court decisions granting a continuance. Nor does the ACRC believe that the JMC Workgroup could make such a showing, as interlocutory review of orders granting trial continuances is exclusively by writ of certiorari. The abuse of discretion standard of review would only be available to review such an order on plenary review of the final judgment. The ACRC obtained data regarding petitions for writs of certiorari from the Office of the State Courts Administrator for the years 2019 through 2021 for each district court of appeal.[1] The data reflects that the appellate courts granted less than 10 percent of all certiorari petitions filed during those years. There is no indication in the Workgroup's report or otherwise that even this small number of granted petitions concerns continuance orders; indeed, a review of published district court opinions indicates that it is uncommon for an appellate court to overturn a trial judge's decision to grant or deny a pretrial continuance under either standard of review and that generally such a reversal is based on the presence of highly prejudicial events beyond the movant's control. *See, e.g.*, *Ramadon v. Ramadon*, 216 So. 3d 26, 28–29 (Fla. 2d DCA 2017).

Moreover, since continuance orders generally are reviewable only by certiorari prior to final judgment, the inclusion of a gross

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[1] A table of the data provided by the Office of the State Courts Administrator is attached.

abuse of discretion standard in the rules of procedure would be inconsistent with the certiorari standard, which is both distinct from and more exacting than either an abuse or gross abuse of discretion standard. *See Fla. Gas Transmission Co., Ltd. Liab. Co. v. City of Tallahassee*, 230 So. 3d 912, 915 (Fla. 1st DCA 2017); *Higgins v. Johnson*, 422 So. 2d 16 (Fla. 2d DCA 1982). The inclusion of the standard in rule 1.460 may therefore lead to confusion.

To the extent federal appellate practice and procedures influenced the proposed rule amendments, it is worth noting that although federal appellate courts apply an abuse of discretion standard in their review of trial continuance orders, that standard is *not* articulated in the federal rules themselves. *See* Fed. R. Civ. P. 40; *see also*, *SEC v. Levin*, 849 F. 3d 995, 1000 (11th Cir. 2017) ("We review for abuse of discretion the district court's ruling on a motion for continuance . . . the denial of a request for continuance does not constitute an abuse of discretion unless it is arbitrary and unreasonable and severely prejudices the moving party") (internal citations omitted).

The ACRC is also concerned about potential conflicts between proposed Florida Rule of Civil Procedure 1.460(b)(10) and Florida Rules of General Practice and Judicial Administration 2.570 and 2.545(e), all of which address continuances that are likely to give rise to appellate issues. The Report does not address Florida Rule of General Practice and Judicial Administration 2.570 and describes Florida Rule of General Practice and Judicial Administration 2.545(e) as "aspirational." Report at p. 113. While that may be so, that rule was adopted for a reason and it should continue to be utilized by courts rather than disregarded for expediency's sake.

The ACRC respectfully submits that proposed Florida Rule of Civil Procedure 1.460(b)(10) should not include an appellate standard of review.

3. Florida Rule of Civil Procedure 1.460 should not include an express presumption of correctness.

To the extent that proposed rule 1.460(b)(10) includes an express presumption of correctness, the ACRC disfavors including the presumption in this rule. "It is a fundamental principle of appellate procedure" that trial court judgments generally are presumed to be correct. Padovano, *Florida Appellate Practice*, at § 19:2. The burden is on the appellant or petitioner to show otherwise through the record. *Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1979). In the absence of demonstrable reversible error in the record, the appellate court will assume there was evidence to support the judgment. *Id.*

Because the presumption of correctness "is a principle of appellate procedure, its applicability does not depend on the type of proceeding in the lower tribunal, … the subject matter of the litigation, … [or] the kind of order under review." Padovano, *Florida Appellate Practice* at § 19:2. It applies "to all trial level decisions." *Id.* Nor is the presumption of correctness necessarily the same in relation to all elements of review. For example, if the trial court's decision rests on documentary evidence, then the presumption of correctness is lessened, because the appellate court has everything the trial court had before it.' " *Deluca v. Hislop*, 868 So. 2d 1254, 1257 (Fla. 4th DCA 2004) (internal citations omitted).

For these reasons, it is unnecessary to state in proposed Florida Rule of Civil Procedure 1.460(b)(10) that orders on a motion to continue a trial shall have the benefit of a presumption of correctness. Regardless, the Report does not show why its inclusion is necessary to achieve the stated goals.

Additionally, the ACRC is concerned that the presumption's presence in one subdivision of the civil rules may result in confusion or tension with existing law. The inclusion of this specific presumption in one subpart—when it is not included in others—could be interpreted to have meaning and significance not addressed by the Report. Several canons of statutory construction could be applied to figure out meaning in such circumstances and possibly lead to unintended consequences. *See* Antonin Scalia and

Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, pp. 93, 107, and 174 (2012 ed.) (discussing the omitted case canon, in which a matter that is not covered in a statute is deemed not covered; the negative implication canon, in which the listing of some things implies the deliberate exclusion of others; and the surplusage canon, in which every word is given effect and none is deemed meaningless). The ACRC recommends that rule 1.460(b)(10) not include the presumption of correctness.

4. The standard of review found in Florida Rule of Civil Procedure 1.061 on choice of forum does not support the inclusion of a standard of review in proposed rule 1.460(b)(10).

The ACRC recognizes that there is a standard of review found in Florida Rule of Civil Procedure 1.061(a)(4) on choice of forum. It provides in relevant part that: "The decision to grant or deny the motion for dismissal rests in the sound discretion of the trial court, subject to review for abuse of discretion." The Court adopted this rule immediately upon issuing its decision in *Kinney System, Inc. v. Continental Ins. Co.*, 674 So. 2d 86, 93, n.6 (Fla. 1996), after committees and members of the public recommended implementation of a permanent rule. But the reasons for doing so there were based on considerations not at issue here.

Kinney altered Florida's common law in a drastic manner, comparable to the Court's recent revision of Florida's summary judgment procedures. In each circumstance, the Court imposed an entirely new standard to be applied by the lower courts and litigated by practitioners, and in each situation took prompt steps to codify the "significant departure in existing court procedure." *Kinney*, 674 So. 2d at 93, n.6. Similarly, in recently revising rule 1.510(a) and (c), the Court inserted language in subsection (a) that: "The summary judgment standard provided for in this rule shall be construed and applied in accordance with the federal summary judgment standard."

In *Kinney*, the Court's modification of Florida's common law, by adopting much of the federal standard of *forum non conveniens*, directly implicated a new standard of review in appeals challenging the trial court's ruling. Previously, there was essentially no factual issue under Florida law. If any party filed suit in Florida and either party was a Florida resident, assuming personal and subject matter jurisdiction were established, a dismissal could never be based on choice of law principles. *Houston v. Caldwell*, 359 So. 2d 858 (Fla. 1978). Any ruling by a trial court on the issue was essentially subject to de novo review.

Consequently, the adoption of this new procedure for trial courts also encompassed a new standard of review for district courts of appeal because the trial court's resolution of disputed elements in the choice of forum analysis were now principally factual in nature. The new standard of review that would apply to such trial court decisions when implementing rule 1.061 marked a watershed change in Florida's common law resulting from the *Kinney* decision. However, the ACRC questions whether there is a continued need for the inclusion of this standard of review in the Civil Rules of Procedure; as a result of drafting the present comment, Chair Roe has asked that the Civil Procedure Rules Committee reconsider the inclusion of a standard of review in the Civil Procedure rule set in light of the concerns herein identified.

Regardless, the same considerations before the Court in *Kinney* are not attendant here. The proposed amendment to rule 1.460(b)(10) does not arise from a drastic change in Florida's common law and, thus, inserting a standard of review therein is unnecessary and unwarranted.

5. If Florida Rule of Civil Procedure 1.460 must include a standard of review, it should be the abuse of discretion standard.

Section (b)(10) of proposed Florida Rule of Civil Procedure 1.460 would impose a "gross abuse of discretion" standard for review of orders granting or denying motions to continue. The abuse

of discretion standard is the most commonly applied standard of review to orders granting or denying trial continuances. *See Leal v. Benitez*, 275 So. 3d 774, 775 (Fla. 3d DCA 2019) (noting that "appellant has failed to demonstrate any abuse of discretion by the lower tribunal in denying its motion for continuance"); *Fry v. Fry*, 255 So. 3d 873, 875 (Fla. 4th DCA 2018) (applying abuse of discretion standard).[2] In fact, all of the district courts of appeal have utilized the abuse of discretion standard of review.[3] It is true that there are a few cases recognizing the gross abuse of discretion standard in this context, but most reference an outlier district court decision from 1976. *See Edwards v. Pratt*, 335 So. 2d 597, 598 (Fla. 3d DCA 1976) ("The granting or denying of a motion for continuance is within the discretion of the trial judge and a gross or flagrant abuse of this discretion must be demonstrated by the complaining party before this court will substitute its judgment for that of the trial judge.").[4]

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[2] Occasionally courts have added language that the abuse of discretion must "clearly" appear in the record, *Cargile-Schrage v. Schrage*, 908 So. 2d 528, 529 (Fla. 4th DCA 2005), or be a "palpable abuse of discretion." *Beachum v. State*, 547 So. 2d 288, 289 (Fla. 1st DCA 1989). But the ACRC does not believe there is any meaningful distinction in how the abuse of discretion was applied in these cases.

[3] *See Fla. Gas Trans. Co., LLC v. Cty. of Tallahassee*, 230 So. 3d 912, 915 (Fla. 1st DCA 2017) (noting that "denial of a motion to continue is reviewed under the abuse of discretion standard"); *Fisher v. Perez*, 947 So. 2d 648, 653-54 (Fla. 3d DCA 2007) (applying abuse of discretion standard to reverse denial of motion for continuance); *Myers v. Siegel*, 920 So. 2d 1241, 1245 (Fla. 5th DCA 2006) (abuse of discretion to deny trial continuance); *Michigan Nat. Bk. v. Ibis Landing Venture, Ltd.*, 899 So. 3d 328, 331 (Fla. 4th DCA 2005) (same); *Outdoor Resorts at Orlando, Inc. v. Hotz Mgmt. Co., Inc.*, 483 So. 2d 2, 23 (Fla. 2d DCA 1985) (same); *Ware v. Ware*, 394 So. 2d 235, 236 (Fla. 1st DCA 1981) (applying abuse of discretion standard to affirm denial of trial continuance, where appellant contended that denial of its continuance was gross abuse of discretion).

[4] *See, e.g., Vella v. Salaues*, 290 So. 3d 946, 948-49 (Fla. 3d DCA 2019); *Leal v. Benitez*, 275 So. 3d 774 (Fla. 3d DCA 2019) (recognizing *Pratt* district precedent but applying and finding no demonstrable "abuse of discretion"); *Thompson v. Gen. Motors Corp., Inc.*, 439 So. 2d 1012, 1013 (Fla. 2d DCA 1983) (citing *Pratt* but not its standard, and finding abuse of discretion in denial of continuance);

There are several reasons why it would be improper to embed the gross abuse of discretion standard in rule 1.460(b)(10).

First, it is ambiguous and confusing, as three district courts have recognized. *See Purdue v. R. J. Reynolds Tobacco Co.*, 259 So. 3d 918, 924 n.4 (Fla. 2d DCA 2018) ("We have no definition of what a 'gross' abuse of discretion includes or how it differs from an abuse of discretion. We can only assume it is more egregious than a typical abuse of discretion."); *In re Doe*, 136 So. 3d 723, 740 (Fla. 1st DCA 2014) (citing Laura Whitmore, *Abuse of Discretion: Misunderstanding the Deference Accorded Trial Court Rulings*, 79 Fla. B.J. 83 (2005) (urging elimination of the gross abuse of discretion standard post-*Canakaris*); *Bethesda Mem'l Hosp., Inc. v. Laska*, 977 So. 2d 804, 806 (Fla. 4th DCA 2008) ("We agree with the Second District that it is well-nigh impossible to define any meaningful difference between a simple abuse of discretion and one that is gross.").

Second, it was never in widespread use. Indeed, even *Pratt* relied upon three decisions to enunciate the standard of review as gross abuse of discretion, but only one of them identified that standard and it did so in the context of an order disposing of proceeds in a quiet title action, which may not have been a full trial proceeding. *Williams v. Gunn*, 279 So. 2d 69, 70 (Fla. 1st DCA 1973). The other two decisions cited by *Pratt* in support of the gross of abuse of discretion standard actually applied a typical abuse of discretion standard. *See S&S Pharma., Inc. v. Hirschfield*, 226 So. 2d 874, 875 (Fla. 3d DCA 1969) (noting that "no abuse of discretion is demonstrated in this record in refusing to continue the trial after it had been set four months in advance of the trial date"); *McWhorter v. McWhorter*, 122 So. 2d 504, 506 (Fla. 2d DCA 1960) (applying abuse of discretion standard to denial of trial continuance).

Padgett v. First Fed. Sav. & Loan Ass'n of Santa Rosa Cty., 378 So. 2d 58 (Fla. 1st DCA 1979) (citing *Pratt* for "gross or flagrant abuse of … discretion" standard), *receded from on other grounds by Bennett v. Cont. Chems., Inc.*, 492 So. 2d 724, 727 (Fla. 1st DCA 1986).

Third, the gross abuse of discretion standard is an artifact of a time before the Court defined the abuse of discretion standard in *Canakaris v. Canakaris*, 382 So. 2d 1197 (Fla. 1980). *Pratt* preceded *Canakaris* by four years and *Gunn* preceded it by seven. *Canakaris* leaves no intelligible space for insertion of a gross abuse of discretion standard in the rules of civil procedure.

Fourth, the ACRC asserts that the gross abuse of discretion standard could be construed as intentionally demanding more deference in review of trial court rulings than is justified by the existing case law. The abuse of discretion standard has been effectively utilized to reverse orders where the reviewing court determined that the trial court essentially denied the due process of law by virtue of its ruling on the motion. Application of the abuse of discretion standard has permitted reviewing courts to preserve the interest of justice in a variety of circumstances, both on plenary appeal and certiorari review.[5] The insertion of a gross abuse of discretion standard in the rule could impose unnecessary constraints on this essential appellate function, properly tethered to application of the law to the facts in the crucible of specific cases and controversies.

Accordingly, the ACRC respectfully submits that proposed Florida Rule of Civil Procedure 1.460(b)(10) should not include an appellate standard of review or an express presumption of correctness. However, if the Court concludes that the rule should

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[5] *See, e.g.*, *Daher v. Pacha NYC*, 194 So. 3d 456, 459-61 (Fla. 3d DCA 2016) (holding that inability of key witness to attend trial was an injustice to party moving for continuance that was not of her making and that outweighed traditional application of standard of review deferring to trial court's discretion); *Fisher v. Perez*, 947 So. 2d 648, 653 (Fla. 3d DCA 2007) (holding that trial court abused its discretion by denying continuance where party was injured one week before but counsel was unaware until one day before trial, which did not comport with fairness and due process); *Fasig v. Fasig*, 830 So. 2d 839, 841–42 (Fla. 2d DCA 2002) (holding that denial of continuance worked an injustice for a variety of reasons effectively denying party the due process right to be heard).

include a standard of review, that standard should be the typical abuse of discretion standard.

B. Proposed Florida Rule of Civil Procedure 1.271(g)

The JMC Workgroup also proposes an entirely new rule, Florida Rule of Civil Procedure 1.271, which purports to "creat[e] in each circuit a 'pretrial coordination court' (PCC) … to coordinate pretrial procedure in multiple lawsuits filed around the same time in a given court over similar issues of law or fact, such as tobacco litigation or suits over a certain construction defect." Report at p. 14. Proposed rule 1.271(g) requires appellate courts to prioritize review of PCC decisions: "An appellate court shall expedite review of an order or judgment in a case pending in a PCC." Report at 148. The ACRC disfavors including an appellate case load management directive in rule 1.271.

First, as discussed before, the Florida Rules of Appellate Procedure expressly govern appellate matters and, in the absence of a specific directive in that rule set, the Florida Rules of General Practice and Judicial Administration control. Fla. R. App. P. 9.010; Fla. R. Gen. Prac. & Jud. Admin. 2.130. Because the Florida Rules of Civil Procedure do not contain a similar expression of authority in appellate matters, that rule set is not the proper place for an instruction to expedite appellate matters.

Furthermore, the requirement to expedite is quite broad—it applies to any order on review from a PCC. The types of cases that will be litigated in a PCC are not defined in the proposed rule and are only suggested through examples in the Report's commentary. *See* Report at p. 14 ("The purpose of the PCC is to coordinate pretrial procedure in multiple lawsuits filed around the same time in a given court over similar issues of law or fact, such as tobacco litigation or suits over a certain construction defect."). The Report has not established that expediting review in PCC cases is warranted, which is critical because requiring PCC cases to be expedited will divert the resources of appellate courts. The appellate courts will not only be diverted from their general case load, but

also from cases in which expedited review already has been deemed necessary.

There are only a handful of situations in which the rules of procedure require appellate courts to expedite review, and those situations involve highly-sensitive, specifically-defined interests. Fla. R. App. P. 9.147(d) (requiring expedited review of certain orders in cases involving parental rights to consent to terminations of pregnancy); Fla. R. App. P. 9.100(d)(3) (requiring expedited review of orders denying or granting access to press or public); Fla. R. App. P. 9.146(g) and (h) (providing for a special briefing schedule and requiring the prioritizing of review in cases involving juvenile dependency and termination of parental rights); Fla. R. App. P. 9.190(e)(2) (requiring expedited review of stay orders in cases involving licensure cases); Fla. R. App. P. 9.110 (requiring expedited review in bond validation proceedings); Fla. R. Gen. P. & Jud. Admin. 2.420 (requiring expedited review of orders on access to public records); Fla. R. Crim. P. 3.131(d)(3) (requiring that proceedings for the review of bail reduction orders "shall be determined promptly"); Fla. R. Crim. P. 3.691(c) (requiring expedited review of certain orders regarding post-trial release). The existing expediency mandates pertain to cases that inherently implicate the constitutional rights of the parties involved or other sensitive rights for which swift resolution is necessary to minimize the amount of harm that could be inflicted if the matter proceeded through the ordinary appellate procedure. Often, imposing expedited review is required by statute or constitutional provision.

The stated purpose of proposed Florida Rule of Civil Procedure 1.271(g) is "to enhance case management in the trial court … as one means of 'secur[ing] the just, speedy, and inexpensive determination' of similar lawsuits." Report at p. 73-74. While this purpose is one of great import, the ACRC does not believe that it rises to the same level as those set forth in the existing rules requiring expediency.

C. Conclusion

For the reasons stated above, the ACRC respectfully recommends that the Court decline to adopt proposed Florida Rule of Civil Procedure 1.460(b)(10) and that it also decline to adopt proposed Florida Rule of Civil Procedure 1.271(g) as set forth herein.

Respectfully submitted this 27th day of May 2022.

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