

IN THE SUPREME
COURT OF FLORIDA

Case No.: SC22-122

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

COMMENT

This filing is in response to request for comment regarding the proposed revisions to the Florida Rules of Civil Procedure set forth within the Final Report and Recommendations of the Workgroup on Improved Resolution of Civil Cases (hereinafter referred to as “Final Report”). The Final Report, dated November 15, 2021, submits proposed recommendations for massive revisions to Florida’s legal system as a whole and is systematically overbroad in its implementation.

While the aspirational goal of a more efficient and effective judicial system is something everyone in our profession should strive to accomplish, the Final Report creates an untenable legal environment for the judiciary, attorneys, clients, and citizens of the State of Florida.

The Final Report’s title makes clear that said recommendations are applicable to “Civil Cases.” Hundreds of pages of changes to the

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longstanding Rules of Civil Procedure are detailed within the Final Report. The proposed recommended revisions are simply not necessary for the Florida civil legal system to function.

A one size fits all approach to correct a perceived backlog is untenable for many of the parties who routinely and actively litigate matters in the State of Florida. While it is understandable that during the height of the long running pandemic, which locked down the legal system in early to mid-2020, new and different ways of streamlining cases was an important and necessary endeavor. However, the backlog of civil cases that occurred during the height of the pandemic has been reduced substantially. According to comments by Chief Justice Canady in April of 2022 “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.”

The reduction in 50% of the backlog in civil courtrooms throughout Florida is no accident. The actions already taken by civil court judges and attorneys working effectively and efficiently to move matters forward to conclusion can continue without sweeping reform to the rules of procedure.

As judicial officers, with strong authority to control their dockets, the Judiciary is in a unique (and best) position to ensure timely due process and fairness to all parties seeking justice within the Court system. The prevalence of judicial case management orders since the pandemic has achieved its primary goal of facilitating and encouraging collaboration amongst the parties for timely resolution of civil cases.

Handcuffing litigants with extra steps, requirements, or conflicting deadlines, which at times are unachievable will not create a more efficient system; rather it will create new backlog and bogging down the courts with requests for extensions, leave of Court and seeking of concessions via coordination with multiple parties involved in the litigation. The necessary monetary costs and resources expended by the clerks and courts of this state to comply and enforce these proposed changes will be substantial. This unintended effect will reduce the opportunity for the true legal issues to be addressed in accordance with the intent of the legal system.

Sweeping revisions to the Rules of Civil Procedure at this time, put simply are not necessary. The time, dedication and goals of the Workgroup is appreciated by the undersigned, however, the proposed recommendations are so voluminous that one cannot even begin to imagine their unintended negative impact. The potential gotcha litigation tactics that will arise given

the new amendments to the rules are all but certain to increase hostility and animosity among lawyers. The current procedure using case management orders leaves each Court with the necessary discretion to support and manage each unique case as the particular court sees fit and facilitates a working relationship among adversarial litigants.

The practice of law is more important today than at any time in our state (or country's) history. While practicing law takes a constant effort to learn and adapt; the system was designed to be incremental, and it is the incremental changes that allow all parties involved to understand the potential outcomes of possible litigation. As incremental changes within the law occur each attorney, court, litigant, client, and citizen's awareness of the change allows them to adjust their actions and expectations accordingly. A sweeping reform of the rules at play for litigants and the judiciary will create less discretion, less time for substantive issues and subject many to losing faith in the ability of the system to consider and protect their interests.

The Florida Supreme Court should continue to allow the current system to work via local court management orders. The constitutional officers elected or appointed to the trial benches throughout this state understand their dockets, communities, and the parties before them better than a one size fits all approach. Allowing procedural changes to start at the

local level allows a proof of an effective concept before implementation at the statewide level. Based upon the progress that has been made to date regarding backlogs, a complete revision of the Florida Rules of Civil Procedure is simply unnecessary.

The Final Report's proposed recommendations/revisions to the Florida Rules of Civil Procedure will slow down the procedural process, will create delays in the courtrooms, creates impossible deadlines, and will not foster a cordial adversarial process. This comment is intended to respectfully express my significant concerns to the proposed recommendations/revisions and request The Florida Supreme Court not to implement the extensive and untested proposed changes. If a consensus has been reached as to some limited changes as proposed within the recommendations/revisions, then let's focus efforts on those specific items and see if the desired result can be achieved without throwing out the system that has served this State and its citizens for decades.

Comment respectfully submitted by,

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this comment was prepared in Arial 14-point font and complies with the font requirements in Florida Rule of Appellate Procedure 9.045.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by E-Filing Portal, with copies via U.S. Mail to Workgroup Chair, Chief Judge Robert Morris, Second District Court of Appeal, P.O. Box 327, Lakeland, FL 33802; and OSCA Staff Liaison to the Workgroup, Tina White, 500 South Duval Street, Tallahassee, FL 32399, whitet@flcourts.org on May 31, 2022.

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