

SUPREME COURT OF FLORIDA

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

CASE NO. SC22-122

COMMENT OF THE FLORIDA ASSOCIATION OF COURT CLERKS

The Florida Association of Court Clerks, Inc. d/b/a Florida Court Clerks & Comptrollers ("Association") submits this comment on the proposed rule amendments contained in the Final Report of the Workgroup on the Improved Resolution of Civil Cases ("Report").

The Association is a non-profit voluntary association whose membership includes each of the 67 elected clerks of the circuit and county courts ("Clerks") throughout Florida. Through the Association, the Clerks work together on issues of mutual interest and concern. The Association, at the direction of its Executive Committee and on behalf of the Clerks, reviewed the Report and the proposed amendments. The Association has no comment regarding the merits of the proposed amendments. However, because it appears that the implementation of the proposed amendments will significantly affect most if not all Clerks, the Association objects to such proposals and provides the following comment.

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I. Overview

The duties of the Clerks are set forth in the Florida Constitution and by Florida statute and in numerous court rules. Art. V, § 16, Fla. Const.; *See generally* ch. 28, Fla. Stat.; Fla. R. Gen. Practice Jud. Admin. To this end, Florida's Clerks are solely responsible for maintaining all court documents and filings, court case files, court progress dockets, and minutes of court proceedings. Clerks are otherwise responsible for providing services to the trial court at the designation and direction of the chief judge. § 43.26(6), Fla. Stat. ("The chief judge of each circuit, after consultation with the clerk of court, shall determine the priority of services provided by the clerk of court to the trial court. The clerk of court shall manage the performance of such services in a method or manner that is consistent with statute, rule, or administrative order."). The failure of "any . . . clerk . . . to comply with an order or directive of the chief judge . . . shall constitute neglect of duty for which such officer may be suspended from office as provided by law." § 43.26(4), Fla. Stat.

The duties imposed on the Clerks by Florida law establish the Clerk as a necessary, and indeed fundamental, component of court functions. The proposed amendments are replete with requirements of the court's management of a case including designation of a case track assignment,

classification of cases, setting deadlines, reporting, and other responsibilities. Indeed, by virtue of the nature and reality of how Florida courts operate, many – if not most – of the references to “court” in the new proposed rules pertaining to case tracking, processing, management, and reporting, will necessarily impact the Clerks. Many of the proposals lack specific language delegating the tasks to the courts and court staff versus Clerk staff, leaving it up to each circuit to determine where the responsibilities will fall. Depending on the individual chief judge in any given circuit and the directions and designations they give to a particular Clerk pertaining to the implementation of the new rules, some Clerks will be more impacted than others. That the Report specifically recognizes that Clerk staff will need training in case management to implement the proposed rule amendments (Report at 18, 121), clearly indicates acknowledgement that Clerks will bear responsibilities in the implementation.

Further, the Report states that the “rule proposals may entail the need for additional personnel (such as case managers), technology, and other resources in the trial courts.” (Report at 9, n. 14). This observation necessarily implicates the Clerks because certain responsibilities of trial court case management overlap with the Clerks’ responsibilities for case

maintenance in certain areas including technology. Significantly, each court in Florida is dependent on an individual Clerk's case maintenance system ("CMS"). A CMS is a system of networked software and hardware that receives, organizes, stores, retrieves, transmits, and displays all relevant documents and information in any court case. **Each CMS is maintained and funded by the individual Clerk out of his or her budget and available funds.** It is anticipated that the proposed rules will require changes and upgrades to each CMS, some of which will be, potentially, quite significant.

Although the Report states that the implementation of the proposed amendments will require training, more personnel, and upgraded technology, neither the Report nor the proposed amendments provide the necessary detail to quantify these resources. The Report and proposed amendments also lack guidance as to which entity within the court system would be responsible for supplying the additional personnel and technological upgrades. It is also unclear from what source the funding for these additional resources will come. Thus, while the Association has no objection to the proposed rule changes on the merits, the Association objects to the changes on the basis that further guidance is needed as to

the Clerks' role in the implementation of the changes and the ensuing fiscal implications.

II. Comments and Concerns Regarding Certain Proposed Rule Amendments

In addition to the general comment and concern provided above, the following comments pertaining to certain proposed rule amendments reflect suggestions and recommendations provided by various Clerks to the Association through its internal workgroup and committee process.

A. Rule 1.160. Motions.

The proposed amendments to this rule would require considerably more motions to be accompanied by a memorandum resulting in more filings and docketing to be handled by the Clerks. A significant increase in docketing could affect the staffing resources of a Clerk's office.

B. Rule 1.200. Case Management and Pretrial Procedures.

The proposed amendments to this rule create categories of case management tracks: "complex," "streamlined," and "general." To implement this rule, additional docket codes would need to be configured for each CMS to allow for the new designations. The rule also allows for changes in track assignment upon request by the party or by the court, a task that would likely be handled by the Clerk. Thus, in addition to the

expense of CMS modifications, the proposed amendment would potentially impact staffing requirements for the Clerk.

C. Rule 1.271. Pretrial Coordination Court.

This proposed rule will create a new “Pretrial Coordination” division in each court. Changes would be required for each CMS to designate filings and cases placed in the new division. The rule would also require Clerk staffing for the new division to handle the additional motions and orders associated with the new division as required by the proposed rule.

D. Rule 1.420. Dismissal of Actions.

In addition to other criteria, the proposed amendment would require that the court dismiss a case if no “post-notice record activity” (as defined in the proposed amendment) occurs within the 60 days immediately following the service of the notice of no activity. Thus, the proposed amendment mandates an evaluation of each document filed in cases where there has been no activity for a period of time. In any given circuit, the chief judge could direct the Clerk to conduct such evaluation to determine whether each document filed should prevent dismissal. Such a delegation of duty to the Clerk could necessitate increased staffing in the Clerk’s office.

E. Rule 2.215. Trial Court Administration.

The proposed amendments create deadlines for judges to enter orders or judgments. Each judge must report to the chief judge when the deadlines have not been met. The chief judge must monitor the status of the matters, and status reports are required. Delays not rectified must be reported by the chief judge to the chief justice. The required reports must be filed with the Clerks. At a minimum, the reports mandated by the new rule would result in increased docketing. Additionally, without clarification in the rule, in any given circuit the chief judge could direct the Clerk to track the deadlines, and/or to run or provide the reports. In such case, this new responsibility would require CMS modifications and/or potentially necessitate additional staffing.

It is also noted that in the event the responsibility falls to a Clerk to create data points for closed motions, more structure in the rule would be required. For example, orders would have to clearly designate which motions before the court had been fully adjudicated. Also, in the jurisdictions where civil hearings are not staffed by the Clerk, it may not be clear whether a hearing was actually held. Therefore, some mechanism to inform the Clerk of the outcome would be necessary, such as a notice of cancellation of hearing in the record.

F. Rule 2.250. Time Standards for Trial and Appellate Courts and Reporting Requirements.

The proposed amendments create time standards for the different types of civil cases to be brought to conclusion. Also, the proposed amendments would require the chief judge of each circuit to serve on the chief justice and the state courts administrator an annual report listing the status of all active civil cases for the preceding fiscal year. The report must include a list of all civil cases pending in that circuit three years or more from the filing of the complaint or other case-initiation filing, a reference as to whether such cases appeared on the previous fiscal year's report, and whether the same or a different judge was responsible for the case as of the previous fiscal year's report. The proposed amendments also contain confidentiality requirements for the report.

Without clarification in the proposed amendments, in any given circuit the chief judge could direct the Clerk to track the new time standards, or to gather the data required for the report, or to provide the reports themselves. In such case, updates would be required in the CMS for new data entries to track the time standards, and/or run and provide updated reports. Further, the performance of such functions by the Clerk would potentially require additional staff.

G. Rule 2.546. Active and Inactive Case Status.

This proposed new rule sets forth requirements for the placement of a case in inactive status, and for removal of the inactive designation. The new rule requires that certain motions be filed, and orders entered, pertaining to a change of a case's status and requires the Clerk to promptly adjust the status in the docket. Although the actual volume cannot yet be determined, the new rule potentially increases the number of motions filed and orders entered. A significant increase in docketing has the potential of requiring additional staffing needs.

III. Conclusion

The proposed rule amendments are extensive and impose increased responsibilities on trial judges some of which, without modification, could ultimately fall to a Clerk depending on the directive of a chief judge. As set forth above, the delegation of new duties to the Clerk would increase workload and staffing requirements. Also, because of the discretion given chief judges, the potential for a different set of requirements for Clerks in each circuit could create difficulties in the creation of state-wide training protocols for Clerks. Likewise, varied judicial preferences and requirements among circuits and even counties would add to existing concerns by Clerks, attorneys, parties, and members of the judiciary about

a lack of uniformity in local practices. As such, the Association respectfully requests that the Court modify the proposed amendments to clarify that the new responsibilities given trial judges – including the monitoring/tracking and reporting of order and judgment deadlines and civil case time standards – are to remain with the judges rather than be passed on by delegation to the Clerks.

Also, in addition to the potential delegation of new functions to the Clerk, the implementation of the proposed amendments requires increased docketing, process changes, and necessary modifications to the CMSs (maintained and funded by Clerks), all of which would impact Clerks. However, the proposed amendments do not address the financial implications for implementation of such amendments. While the changes appear to place administrative and financial burdens on the Clerks, there is no corresponding funding source to accommodate the requirements inherent in the changes. Because the impact of the amendments' implementation on the Clerks cannot currently be determined or quantified, the Association urges the Court to refrain from adopting the proposed amendments until such time as the amendments' financial implications are addressed.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been filed and electronically served via Florida ePortal on this 31st day of May 2022, with a copy sent by U.S. Mail to Chief Judge Robert Morris, Second District Court of Appeal, P.O. Box 327, Lakeland, FL 33802, and by email to Tina White, 500 South Duval Street, Tallahassee, FL 32399 (whitet@flcourts.org).

/s/ Fred. W. Baggett

CERTIFICATE OF COMPLIANCE

Pursuant to Fla. R. App. P. 9.045, undersigned counsel certifies that this document complies with the appropriate font and word count limit requirements.

/s/ Fred. W. Baggett