

SUPREME COURT OF FLORIDA

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

COMMENT BY LAIRD A. LILE

Laird A. Lile (“Lile”),¹ as a member of The Florida Bar, submits this comment to the Report and Recommendations of the Workgroup on Improved Resolution of Civil Cases (“Workgroup Report”). Reference is also made to the Comment filed by the Florida Probate Rules Committee (“Probate Rules Comment”) and the Comment filed by the Real Property, Probate and Trust Law Section of The Florida Bar (“RPPTL Section Comment”).

Lile applauds the overarching goals expressed in the Workgroup Report – the fair and timely resolution of civil cases through effective case management and the promotion of

¹ Although Lile is a member of (i) the Executive Council of the Real Property, Probate and Trust Law Section of The Florida Bar, (ii) the Board of Governors of The Florida Bar, and (iii) the Judicial Management Council, Lile files these comments only on behalf of himself.

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accountability. Lile also endorses the Probate Rules Comment and the RPPTL Section Comment and takes little exception with the observations and recommendations made by those two hard-working groups of volunteer lawyers.

I. REASON FOR LILE’S COMMENT.

Initially, Lile concluded that the changes to the Workgroup Report should have little application to routine and uncontested probate and guardianship proceedings. Rather, Lile believed the Florida Probate Rules would continue to govern those proceedings. However, the Probate Rules Comment raises the specter that Lile’s initial conclusion may be misplaced. (“The [Probate Rules Committee] is concerned about the application of the proposals to probate and guardianship proceedings.” Page 1, Probate Rules Comment.) Similarly, the RPPTL Comment posits the application of the Workgroup Proposal to these types of proceedings. (“...the Section is very concerned about the application of the Rule Revisions to probate, guardianship, and trust proceedings (the ‘PGT Proceedings’).” RPPTL Comment at page 12.)

Now that these concerns have been clearly articulated and well-reasoned in this rules case, Lile offers three additional comments to the Workgroup Report for consideration by this Court. These comments suggest structural changes that are appropriate because of the substantive differences between probate, guardianship, and trust proceedings on one hand, and civil litigation on the other.

II. PROBATE ADMINISTRATIONS.

The first, and most extreme, suggested structural change impacts the procedure for many probate administrations - not all probate administrations, but rather the significant subset of probate administrations that are uncontested and routine. Those that are contested or non-routine with disputes that rise to adversarial litigation should be governed more along the lines of civil litigation.

The vast number of probate administrations are uncontested and routine. With all due respect, the judiciary adds very little, if any, value to those proceedings.

A probate administration is commenced by a petition for administration, which sets forth information required by the Probate Rules. Based solely upon that filing and without a hearing or any other validation of the allegations in the petition, the court enters an order and issues letters of administration. The personal representative then files an inventory, which requires no action, or even review, by the court. The personal representative also addresses creditor issues by arranging for the statutory publication in a local newspaper, followed by filing a statement reflecting those who have been noticed of the need to file a claim. Again, no judicial action is required for that filing. Finally, the personal representative files receipts and waivers from the beneficiaries and petitions to be discharged. The court considers the petition, without any independent investigation or a hearing, and enters an order of discharge, based solely upon the allegations and representations in the filings.

In these uncontested and routine probate proceedings, the court performs no independent review of information provided by

the personal representative and the personal representative's attorney. Yet, the probate procedure under current law consumes precious judicial resources, and will continue to do so, perhaps at an increasing rate, even if the Workgroup Proposal is adopted.

A reimagining of the probate procedure would ease this burden on the judiciary. This reimagining will require structural changes, both to the court rules and also by the Legislature. A new, perhaps initially optional, procedure could be implemented to eliminate judicial involvement in uncontested and routine probate administrations. Of course, safeguards will be necessary to allow a beneficiary, creditor, or other interested person to invoke the jurisdiction of the court if the administration becomes contested or non-routine. In that event, a judicial-centric procedure continues to be needed to resolve disputes among parties - the task best suited for courts. This reimagined procedure would no longer force all probate administrations through the same construct. Instead, a new construct would exist for those probate proceedings that are

uncontested and routine, thereby eliminating significant workload presently borne by the judiciary.

III. TRUST RULES.

The second structural change addressed in this comment pertains to trust proceedings. Currently, nearly all trust proceedings are governed by the Florida Rules of Civil Procedure. Florida Statutes §736.0201(1). However, many trust proceedings are more akin to probate administrations than to civil lawsuits. The proffered change is to expand the application of the rule set currently governing probate and guardianship proceedings to also include certain trust proceedings.

The expansion of the current rule set in this manner will allow for more uniformity of procedure for tasks that are functionally equivalent. This uniformity will allow for a more efficient resolution of proceedings involving trusts.

IV. IN REM PROCEEDINGS.

The third, and final, observation pertains to the lack of rule-based and statutory guidance when pursuing relief founded on *in rem* jurisdiction. Many of the proceedings in probate and trust administrations are *in rem* proceedings. The reason is because at issue are rights in the property – property of the decedent or trust corpus – not an attempt to take property from a party, such as through a claim based in tort or contract.

Probate proceedings are styled as expected for an *in rem* proceeding – In Re Estate of John Doe. However, similar trust proceedings often are styled with a plaintiff and defendants (sometimes referred to as “nominal defendants”) even when personal jurisdiction is neither necessary nor sought.

The body of the Workgroup Report is silent regarding *in rem* proceedings. The only mention of *in rem* proceedings in the proposed rule changes is an exception from Rule 1.200 limited only to “a forfeiture action *in rem* arising from a state statute.” (Proposed Rule 1.200(b)(5))

The procedure for *in rem* proceedings, particularly those involving trusts, should be better developed and more clearly articulated in court rules. If Rule 1.200 is to be adopted as proposed in the Workgroup Report, the exception should be expanded to except, at a minimum, *in rem* proceedings involving estates and trusts.

V. CONCLUSION.

The goals described in the Workgroup Report should apply to all types of non-criminal proceedings, including those involving probate estates and trusts.

The Court should seize this opportunity to facilitate restructuring the procedure for uncontested and routine probate administrations.

The Court should also expand the scope of the Florida Probate Rules to include trust administrations.

The Court should adopt rule changes that allow for invoking *in rem* jurisdiction with more specific rules-based guidance.

These recommendations will most certainly require collaboration by subject-matter experts, including practicing lawyers, members of the judiciary, and clerks of courts. A new workgroup might be deployed, at least for the initial recommendation, and likely for all three.

Respectfully submitted on June 1, 2022.

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

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