IN THE SUPREME COURT OF FLORIDA
Case No. SC22-122

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

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THE BUSINESS LITIGATION PRACTICE GROUP OF GUNSTER YOAKLEY & STEWART P.A.'S COMMENTS TO THE WORKGROUP ON IMPROVED RESOLUTION OF CIVIL CASES

Pursuant to the Florida Supreme Court's request, the Business Litigation Practice Group of Gunster Yoakley & Stewart P.A.[1] submits the following comments on the Final Report and Appendices of the Judicial Management Council Workgroup on Improved Resolution of Civil Cases (the "Workgroup"):

We acknowledge the challenges facing Florida civil practice and commend the Workgroup's tremendous effort to propose solutions. Public perceptions of runaway costs, delays, and complexity *should* be addressed. *See* Final Report at 18-19. This submission focuses on recommendations that, in our view, will reduce costs, promote predictability, and remove barriers to dispute resolution.

[1] The more than 85 members of this Practice Group are litigation and courtroom attorneys who handle a broad array of civil matters in the trial courts of Florida.

Among other things, we recommend the Workgroup embrace certain Federal e-discovery standards, exempt Eminent Domain proceedings from Case Management and Initial Disclosure protocols, and establish an automatic stay upon the filing of motions to compel arbitration and certain motions to dismiss.

Over the years, the Federal judicial system has tested and implemented numerous procedural changes. In doing so, the Federal judicial system's objectives have been aligned with the Court's objectives—to reduce cost and avoid delay. While a wholesale adoption of the Federal Rules Civil Procedure may not be practical, an alignment with Federal meet and confer requirements, initial disclosures, and proportionality standards will advance the Court's goals. Moreover, Federal magistrate and district judges have for years published opinions that provide continuing guidance and precedent on Federal standards. Among other things, Federal jurisprudence is grappling with novel challenges "big data" poses for the administration of justice. As the volume of potentially relevant electronically stored information ("ESI") mushrooms, one cannot overstate the value of such jurisprudence. A failure to align with Federal standards will force Florida to needlessly reinvent the wheel.

Like other commentators, we recommend the Court initiate pilot programs and implement the Workgroup's proposed changes in phases. Throwing judges, lawyers, and litigants into the proverbial "deep end" serves no purposes and could further rupture public trust in Florida's courts. In contrast, carefully examining key changes through pilot programs will allow the bench and bar to prepare for permanent implementation, illuminate policy drawbacks and opportunities for refinement, and create a context to secure the necessary resources and staff to administer a new model for Florida civil procedure. It is essential that the bench and bar work to ensure the allocation of sufficient resources—to, for instance, hire judicial law clerks—in advance of implementing changes proposed by the Workgroup.

I. *Meet and Confer regarding ESI*

In keeping with Federal standards, we recommend the Workgroup revise Proposed Rule 1.200(e)(3) to require (i) an early meet and confer relating to ESI and (ii) if applicable, for parties to address their ESI plan in their Joint Case Management Report. Notably, many cases do not involve substantial ESI. At the outset of a dispute, parties may therefore agree that no ESI plan is needed.

Our recommendation intends to draw early attention to ESI in disputes where one or more parties believe ESI may play a substantial role.

The Federal Rules of Civil Procedure require litigants to discuss "any issues about preserving discoverable information; and develop a proposed discovery plan." Fed. R. Civ. P. 26(f)(2). The parties' discovery plan must address "any issues about disclosure, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced." Fed. R. Civ. P. 26(f)(3)(C).

In contrast, for General Cases, the Workgroup requires only that the parties discuss and identify deadlines for "their anticipated disclosures of documents, including *any issues already known to them* concerning electronically stored information." Proposed Rule 1.200 (e)(3)(A)(ii) (emphasis added). Under this proposal, if a party has not assessed ESI issues, it is under no obligation to discuss them. *Id.* Likewise, the Workgroup's proposed Joint Case Management Report requires parties to address, as applicable, only "issues" associated with ESI. Proposed Rule 1.200 (e)(3)(C)(ix). Thus,

the Workgroup's proposals do not call for an ESI discussion or plan at the outset of litigation.

We recommend the Workgroup align Proposed Rule 1.200(e)(3) with Federal standards by requiring an early meet and confer regarding ESI. The parties may agree that their case does not involve substantial ESI and so indicate in their Joint Case Management Report. Alternatively, the parties should develop an ESI plan and address it in their joint report under Proposed Rule 1.200(e)(3)(C)(ix).

II. Initial Disclosures

In keeping with Federal standards, we recommend that the Workgroup amend Proposed Rule 1.280(a)(1)(B) so that (i) a disclosing party be authorized to provide *or describe* documents, ESI, and tangible things that the disclosing party has in its possession, custody, or control, and (ii) limit the rule to information that a disclosing party *may use to support its claims or defenses*.

The Federal Rules of Civil Procedure call for initial disclosure of "a copy—*or a description by category and location*—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and *may*

use to support its claims or defenses, unless the use would be solely for impeachment" Fed. R. Civ. P. 26(a)(1)(A)(ii) (emphasis added).

In contrast, the Workgroup proposes the initial disclosure of actual documents, specifically: "a *copy* of *all* documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control (or, if not in the disclosing party's possession, custody, or control, a description by category and location of such information) and *that are relevant* to the subject matter of the action, unless the use would be solely for impeachment." Proposed Rule 1.280(a)(1)(B) (emphasis added). In large (or even medium) cases, this type of immediate production is nearly impossible and likely ill-suited to the needs of the case.

The Workgroup's Final Report does not address challenges relating to (i) the collection and production of documents and ESI in information intensive cases or (ii) the routinely undefined scope of "relevance" at the outset of a dispute. Indeed, although we have no objection to Federal initial disclosure standards, the Final Report does not present a compelling reason for initial disclosures at all.

The Final Report acknowledges a lack of uniformity in Federal and State initial disclosure standards but then conflates the diverse

standards. Final Report at 86-89. Moreover, the scholarship cited in the Final Report does not support any policy prescription whatsoever. Studies on the impact of initial disclosure standards on (i) time to disposition, (ii) the volume of traditional discovery, (iii) discovery disputes, and (iv) attorney work hours offer no clear recommendation. *Id.* at 91-94. Indeed, the Final Report acknowledges that "[r]esearch on initial fact disclosure . . . has produced mixed results." Final Report at 90.

Having acknowledged that the Workgroup is operating in a murky area, the Final Report recommends only a single substantive deviation from Federal Rule 26(a):

> The proposed rule requires early disclosure of the same categories of items listed in the federal rule, with the additional requirement that, if standard interrogatory forms exist for the category of case, responses to those interrogatories must be included as part of the initial disclosure.

Final Report at 94. Yet, contrary to the Final Report, Proposed Rule 1.280(a)(1)(B), deviates dramatically from Fed. R. Civ. P. 26(a) by requiring litigants produce a "*copy of all* documents, electronically stored information, and tangible things . . . *that are relevant* to the subject matter of the action" (emphasis added).

a. At the outset of a dispute, lawyers should not be compelled to determine what information is "relevant."

The Final Report acknowledges that the 1993 amendments to the Federal Rules of Civil Procedure were "extremely controversial," but does not discuss why. *See* Final Report at 87. Much of the debate turned on the 1993 amendments' requiring disclosing parties to provide "relevant" information at the outset of a dispute—a requirement that Justice Scalia firmly opposed:

> The proposed radical reforms to the discovery process are potentially disastrous and certainly premature—particularly the imposition on litigants of a continuing duty to disclose to opposing counsel, without awaiting any request, various information "relevant to disputed facts alleged with particularity." See Proposed Rule 26(a)(1)(A), (a)(1)(B), (e)(1). This proposal is promoted as a means of reducing the unnecessary expense and delay that occur in the present discovery regime. But the duty-to-disclose regime does not replace the current, much-criticized discovery process; rather, it adds a further layer of discovery. It will likely increase the discovery burdens on district judges, as parties litigate about what is "relevant" to "disputed facts," whether those facts have been alleged with sufficient particularity, whether the opposing side has adequately disclosed the required information, and whether it has fulfilled its continuing obligation to supplement the initial disclosure. Documents will be produced that turn out to be irrelevant to the litigation, because of the early

> inception of the duty to disclose and the severe penalties on a party who fails to disgorge in a manner consistent with the duty. See Proposed Rule 37(c) (prohibiting, in some circumstances, use of witnesses or information not voluntarily disclosed pursuant to the disclosure duty, and authorizing divulgement to the jury of the failure to disclose).
>
> The proposed new regime does not fit comfortably within the American judicial system, which relies on adversarial litigation to develop the facts before a neutral decisionmaker. By placing upon lawyers the obligation to disclose information damaging to their clients—on their own initiative, and in a context where the lines between what must be disclosed and what need not be disclosed are not clear but require the exercise of considerable judgment—the new Rule would place intolerable strain upon lawyers' ethical duty to represent their clients and not to assist the opposing side. Requiring a lawyer to make a judgment as to what information is "relevant to disputed facts" plainly requires him to use his professional skills in the service of the adversary. See Advisory Committee Notes to Proposed Rule 26, p. 96.

Amendments to the Federal Rules of Civil Procedure, 146 F.R.D. 401, 510-11 (Scalia, J. dissenting).

The Final Report observes that, to avoid the 1993 initial disclosures rule, "about half of the federal district courts had instituted opt-out provisions." Final Report at 87. In 2000, Rule 26

was amended to delete the local opt-out option but "the scope of the disclosure obligation [wa]s narrowed to cover only information that the disclosing party may use to support its position." Fed. R. Civ. P. 26 advisory committee's note to 2000 amendment.

The Final Report does not address that Proposed Rule 1.280(a)(1)(B) will (i) at the outset of litigation and based on limited information, require lawyers to determine what information is "relevant" or (ii) as litigation progresses, add a new layer of conflict when lawyers criticize their opponents for having failed to produce "relevant" information. Nor does the Final Report grapple with the challenge of obligating lawyers to, on their own initiative, disclose information damaging to their clients. As Justice Scalia warned, Proposed Rule 1.280(a)(1)(B) will place an "intolerable strain upon lawyers' ethical duty to represent their clients and not to assist the opposing side." 146 F.R.D. at 511 (Scalia, J. dissenting).

Likewise, the Workgroup does not address extensive scholarship and debate over the 1993 version of Fed. R. Civ. P. 26(a), which gave way to the 2000 amendments reflecting the current Federal standard. Setting aside that, at the outset of a dispute, (i) all defendants may not have received service of the complaint, (ii) one or

more defendants may not have answered the complaint, (iii) a plaintiff may have failed to state a cause of action, (iv) the court may not have personal jurisdiction over one or more defendant, and (v) the matter may be subject to mandatory arbitration, the question of whether disclosing parties should produce "relevant" information need not be revived. The matter was settled in the 2000 rules amendments to Fed. R. Civ. P. 26. We urge the Workgroup to embrace the Federal standard by limiting initial disclosures to information that a disclosing party "may use to support its claims or defenses." Fed. R. Civ. P. 26(a)(1)(A)(ii).

b. At the outset of a dispute, lawyers should not be compelled to produce copies of documents and ESI.

The Final Report recognizes that "most states, as well as the federal jurisdiction, do not require actual documents or other materials to be handed over; a description is sufficient at this stage." Final Report at 88. The Final Report does not present any policy reason for parties to provide actual documents, rather than a description. Yet, in stark contrast to the Final Report, Proposed Rule 1.280(a)(1)(B) requires litigants to actually *produce* "a copy of all

documents, electronically stored information, and tangible things." This again deviates from Fed. R. Civ. P. 26(a).

In an information intensive dispute, compelling litigants to rapidly scope, collect, review, and actually *produce* (rather than describe) ESI will place many lawyers in an impossible situation. The challenge will be greatest for defendants, who may not anticipate the service of a complaint and may take days to retain counsel. Under Proposed Rule 1.280(a)(4) defense counsel cannot avoid initial disclosure requirements because they have "not fully investigated the case." And they must rapidly produce documents and ESI under the threat of a motion to compel under Proposed Rule 1.380(a)(2)(A) and monetary exposure under Proposed Rule 1.380(a)(5)(A).

The challenge lies in the nature of ESI discovery. To ensure a positive outcome, parties must confer early and consistently throughout the process. Parties should attempt to agree on topics such as (i) where responsive information resides, (ii) steps to ensure preservation, (iii) an appropriate date range, search terms, and custodians, and (iv) the potential use of technology-assisted review. If the parties cannot agree, courts should assist parties in formulating a discovery plan.

Critically, every step of the e-discovery process calls for judgment and is highly iterative. The omission of a device, search term, or custodian can have a dramatic impact on search results. Attorneys and clients should not be subjected to sanctions because, after the fact, it is determined that they (in good faith) failed to capture the full scope of relevant ESI at the very beginning of the case.[2]

We recognize that, under Proposed Rule 1.280(a)(1), a party may seek a Court order to exempt itself from initial disclosure requirements. In information intensive cases, such motions will be filed as a matter of course and, because a mutually agreeable ESI protocol cannot be designed and completed in a matter of weeks, such motions will have merit. The ultimate result of forcing parties to rapidly produce (rather than describe) ESI will be unnecessary motion practice, uncertainty around whether or when motions will

[2] Generally, we recommend the Workgroup articulate a single standard for sanctions in Proposed Rule 1.275 and delete redundant references to sanctions throughout the Workgroup's proposed rules. As noted by other commentators, there are inconsistencies between the standards in the Workgroup's proposed rules. We express no opinion on the standard currently articulated in Proposed Rule 1.275.

be granted, fear that good faith errors or omissions in a hasty ESI collection may result in sanctions, and significant expense and delay when ESI protocols are inevitably repeated under a mutually agreed framework that should have been formulated at the outset.

Accordingly, we urge the Workgroup to embrace the Federal standard by allowing parties to provide "a copy—or a description by category and location" of pertinent documents, ESI, and tangible things. *See* Fed. R. Civ. P. 26(a)(1)(A)(ii). In conjunction with an early meet and confer requirement, these material document descriptions will aid the parties in executing their discovery plans.

III. *Proportionality*

We recommend that the Rule 1.280(b), Florida Rules of Civil Procedure, be aligned with Fed. R. Civ. P. 26(b)(1). The Federal Rules generally limit discovery to "any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case." Fed. R. Civ. P. 26 (b)(1).

In contrast, Rule 1.280(b), Florida Rules of Civil Procedure, which the Workgroup proposes to leave unchanged, does little to rein in the broad scope of discovery:

> Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Rule 1.280(b)(1), Florida Rules of Civil Procedure.

The Final Report explains that the Workgroup did not propose to add the concept of proportionality to Rule 1.280(b)(1) because "the net impact of adding the term would be to create yet another trigger point for discovery litigation—over what counts as 'proportional.'" Final Report at 84. We respectfully disagree.

Failure to revise Rule 1.280(b)(1) invites confusion. The Workgroup's Proposed Rules 1.200(a)(4), (5), and (8) speak directly to the concept of proportionality. Litigants will argue these standards notwithstanding the broad language of Rule 1.280(b)(1), Florida Rules of Civil Procedure. Moreover, comments to Rule 1.280(d)(2), Florida Rules of Civil Procedure, list "proportionality and

reasonableness factors" for ESI whereby the "court must limit the frequency or extent of discovery if it determines that the discovery sought is excessive in relation to the factors listed." *See* Rule 1.280, Florida Rules of Civil Procedure, advisory committee notes to 2012 amendment. By referencing proportionality, but not establishing a clear standard, the Rules and Proposed Rules invite dispute. Unless Rule 1.280(b)(1), Florida Rules of Civil Procedure, is aligned with Fed. R. Civ. P. 26(b)(1), the Florida Rules of Civil Procedure will remain internally inconsistent.

By failing to align the standards, the Workgroup is also forfeiting extensive Federal jurisprudence. Where the rules are similar, Florida courts look to the federal case law for guidance in interpreting Florida rules of civil procedure. *See Gleneagle Ship Mgmt. Co. v. Leondakos*, 602 So. 2d 1282, 1283–84 (Fla. 1992) ("[W]e look to the federal rules and decisions for guidance in interpreting Florida's civil procedure rules."); *Wiggins v. Tigrent, Inc.*, 147 So. 3d 76, 82 (Fla. 2d DCA 2014) (where Federal Civil Procedure Rules were "substantially similar" to Florida rules, "federal decisions are highly persuasive in ascertaining the intent and operative effect of various provisions of the [Florida] rules.").

Under Federal jurisprudence, the concept of proportionality is evolving. The Workgroup's Final Report argues it is unclear "[w]hether the addition of the word 'proportional' to the federal rule actually changed anything." Final Report at 83. But, in point of fact, Federal magistrate and district judges will continue to apply proportionality to resolve novel and nuanced discovery issues.

Forfeiting national jurisprudence comes at a cost. Florida attorneys may be unsure whether on-point Federal authority that turns on the issue of "proportionality" controls their issue. One side may argue that Rule 1. 280(b)(1), Florida Rules of Civil Procedure, entitles them to any information "relevant to the subject matter of the pending action" and/or "reasonably calculated to lead to the discovery of admissible evidence." The other side may look to Rule 1.280(d), Florida Rules of Civil Procedure, and related committee notes, to argue that proportionality should govern the dispute. When the parties inevitably fail to see eye-to-eye in a meet and confer, they will bring the question to a Florida judge to argue, specifically, the differences between Rule 1.280(b), Florida Rules of Civil Procedure and Fed. R. Civ. P. 26(b)(1). All of this can be avoided.

At bottom, in our view, the Final Report draws the wrong comparison. It compares (i) the (allegedly limited) legal significance of the term "proportionality" against (ii) the cost of litigation over "what counts as proportional." Final Report at 84. It does not compare (i) the cost of defining proportionality[3] against (ii) the cost of litigating whether, when, or how to scope, collect, process, review, and produce ESI. It is the latter that will drive expense, delay, and complexity in our court system.

The volume of data relevant to any transaction, event, or occurrence is growing exponentially. Unless attorneys have effective tools to place reasonable limits on ESI discovery, the costs they will incur in attempting to comply with confusing discovery standards will far outstrip the cost of defining the term "proportionality"—particularly in that Federal jurisprudence is already lighting the path.

IV. Eminent Domain Actions

Proposed Rule 1.200(b), titled "Case Management; Pretrial Procedure," contains a list of civil actions that are exempt from the

[3] An effort aided by Federal jurisprudence.

requirements of the rule. We recommend eminent domain actions—specifically "an action proceeding under Chapters 73 and 74, Florida Statutes"—be added to the list.

The vast majority of the eminent domain cases filed in Florida are brought under Chapters 73 and 74 seeking a "quick take." These actions are essentially three cases in one: (1) request for entry of an order of taking; (2) determination of full compensation; and (3) apportionment, if needed. The first part of the case, the request for entry of an order of taking, is an evidentiary hearing before the trial court usually occurring between three and eight months after the action is filed. This phase includes discovery relating to public purpose, reasonable necessity, and any defenses raised to the taking. Under a "quick take," the trial court may grant the condemning authority the title or interest sought in the petition prior to the determination of full compensation required by the Florida Constitution and the entry of final judgment. *See* § 74.051, Florida Statutes (2021). In a "quick take," title to the property sought to be acquired is transferred by operation of law after entry of an order of taking and upon deposit of the condemning authority's good faith

estimate of value into the Court Registry. *See* §74.061, Florida Statutes (2021).

If the taking is granted, and the condemning authority deposits the good faith estimate, the parties proceed to the second part of the case which is the determination of full compensation. The date of the deposit into the Court Registry establishes the date of value for determining the full compensation due the owners. Once that date is known, the parties can further engage with their experts and move the valuation case forward for negotiation, mediation and ultimately a 12 person jury trial if a settlement is not reached. This phase of the case requires its own discovery relating to the value of the property taken and severance damages, if any, to the remainder property.

After full compensation is decided, the third part of the case, the apportionment proceeding, begins if needed. This phase involves a determination of how a condemnation award is to be divided among competing claimants; it can include a new scope of expert opinions in that regard as well as related discovery. Apportionment is decided by the trial judge after an evidentiary hearing.

Given the phases and necessarily sequenced nature of an eminent domain action under Chapters 73 and 74, requiring the

parties under the proposed rule to begin work on the valuation and apportionment parts of the case before even knowing if the taking will be granted, and if granted the operative date of value, will be largely impracticable and, where possible, will result in the expenditure of unnecessary time and expense. Under Florida law, the condemning authority is required to pay the expert fees and litigation costs for both sides. Imposing the case management framework and deadlines of Proposed Rule 1.200 on eminent domain actions will increase these costs and expenses, ultimately impacting the taxpayer or rate-payer of the particular condemning authority.

We represent both property owners and select condemning authorities. Based upon our experience, the trial judges work with eminent domain counsel to advance these cases on schedules customized to the facts of a given case. For example, it may be important in a particular case that construction of the public project be completed before the valuation trial, so that the actual impacts of a project on an owner's remaining property can be ascertained and reflected in the expert testimony and required jury view. We recommend that the status quo on case management in this field of practice, which is working well now, be maintained by exempting

eminent domain actions from any version of Proposed Rule 1.200 that is adopted.

V. *Case Management Deadlines*

To balance the need for consistency against practical considerations at the outset of litigation, we recommend an automatic stay of case management and initial disclosure protocols when a party files (i) a motion to compel arbitration,[4] (ii) a motion to dismiss for lack of jurisdiction or improper venue, or (iii) a motion based on bars to litigation such as statutes of limitations, statutes of repose, or a contractual release. While Proposed Rule 1.200(b) exempts certain *actions* from case management protocols, the Workgroup's proposals do not address common scenarios where it would be unjust and burdensome for parties to engage in time consuming and potentially costly case management and initial disclosure efforts.

[4] With respect to motions to compel arbitration, implementing an automatic stay would align the Florida Rules of Civil Procedure with Chapter 682 of the Florida Statutes. *See* § 682.03(6), Florida Statutes ("If a party makes a motion to the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section.").

Next, if the Court aligns Proposed Rule 1.280(a)(1)(B) with Fed. R. Civ. P. 26(a)(1)(A)(ii), a 45-day deadline for initial discovery disclosures under Proposed Rule 1.280(a)(3) may be manageable. If the Workgroup does not amend its proposal to allow a *description* of information a disclosing party *may use*, we recommend each party's deadline for initial discovery disclosures be 45 days after the party serves it initial pleading.

Relatedly, in cases involving multiple defendants, we recommend that Proposed Rule 1.280(a)(3) make explicit that every defendant's 45-day deadline to make initial disclosures is triggered by the date a plaintiff served a complaint on *that* defendant.

Finally, we recommend a revision to Proposed Rule 1.200(f)(2) to better reflect the proposal's intent and avoid the adverse consequences of inflexible language. Broadly, the Workgroup recommends that a trial court manage the timeline of a proceeding under Proposed Rules 1.200(f) and 1.460. Before a trial or trial period is set, parties may seek to modify a case management order for good cause shown:

> (1) Modification of Dates Established by Case Management Order. The parties may seek by motion to modify the deadlines established in

> the case management order that govern court filings or hearings only by court order for good cause.

Proposed Rule 1.200(f)(1). In contrast, before a trial or trial period is set, the proposed rules are overtly hostile to parties mutually agreeing to extend individual deadlines:

> (2) Individual Deadlines. Parties may not extend deadlines by agreement if the extension affects their ability to comply with the remaining dates on the schedule. Any motion for extension of time to comply with a deadline must specify the reason for noncompliance and the specific date by which the activity can be completed, including confirming availability and cooperation of any required participant such as a third-party witness or expert, and must otherwise comply with rule 1.460(a). Motions for extension of time shall not be granted if the effect is to delay the case or if the extension affects the remaining deadlines, in the absence of extraordinary unforeseen circumstances. If the problem affects a subsequent date or dates, parties must seek an amendment of the case management order as opposed to an individual motion for extension.

Proposed Rule 1.200(f)(2). The Workgroup's proposal (i) does not address deadlines that will not impact a case management order or otherwise delay a case, (ii) appear to require a motion to extend ***any*** deadline, (iii) creates numerous requirements for the motion, (iv)

incorporates Proposed Rule 1.460(a), and (v) absent "extraordinary unforeseen circumstances," preemptively denies the motion. *See Id.*

Only the final sentence of Proposed Rule 1.200(f)(2) appears to reflect the proposal's objective: "If the problem affects a subsequent date or dates, parties must seek an amendment of the case management order."

We recommend the Workgroup consider the following revision to Proposed Rule 1.200(f)(2):

> The parties may, by mutual written agreement, modify any individual deadline that is not provided in the case management order, will not affect a subsequent deadline in the case management order, and is not governed by Rule 1.460. For good cause shown and provided the movant(s) affirm that the extended deadline will not affect the parties' ability to comply with the remaining deadlines in the case management order, the parties may move to modify a deadline established in a case management order. If extending an individual deadline may affect a subsequent deadline in the case management order, parties must seek an amendment of the case management order.

Conclusion

For the reasons presented in this brief, the Business Litigation Practice Group of Gunster Yoakley & Stewart P.A. respectfully requests that the Workgroup and the Court consider and adopt the changes shown in Appendix A.

Dated: June 1, 2022

GUNSTER, YOAKLEY & STEWART, P.A.

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CERTIFICATE OF COMPLIANCE

I hereby certify that that document was prepared in Bookman Old Style, 14-point font, in compliance with Rule 9.045(b) of the Florida Rules of Appellate Procedure, and does not exceed 13,000 words, in compliance with Rule 9.210(a)(2)(B).

/s/ Asghar A. Syed
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CERTIFICATE OF SERVICE

I certify that on June 1, 2022 a copy of the foregoing was electronically filed via the Florida Courts E-Filing Portal, with a copy provided by U.S. Mail to Chief Judge Robert Morris, Second District Court of Appeal, P.O. Box 327, Lakeland, Florida 33802, and by email to Tina White, 500 South Duval Street, Tallahassee, Florida 32399, whitet@flcourts.org.

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