SUPREME COURT OF FLORIDA

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

CASE NO. SC22-122

COMMENT ON FINAL REPORT OF THE
WORKGROUP ON IMPROVED RESOLUTION OF CIVIL CASES

Lee L. Haas, B.C.S., of Haas & Castillo, PLLC, submits this comment in response to the proposed changes to the Florida Rules of Civil Procedure set forth in SC22-122, as follows:

Fla. R. Civ. P. 1.010 provides in part, "These rules shall be construed to secure the just, speedy, and inexpensive determination of every action." Unfortunately, I believe that adoption of the proposed changes to the Florida Rules of Civil Procedure might secure the speedy determination of every action, but not necessarily a just or inexpensive determination.

I have read many, but by no means all, of the comments filed in opposition to the proposed changes. I agree with the detailed comment filed by Attorney Maegen Peek Luka and will not repeat her excellent analysis of the proposed rule changes. However, I do wish

to offer a few specific comments based upon my personal experience litigating business cases for more than 38 years.

First, it does not appear to make sense, in multi-party litigation, to require a meet and confer within 30 days after initial service on the first defendant served. If a meet and confer is to be required, it should be, at the earliest, 30 days after service on the last defendant served or 10 days after the last defendant has responded or been defaulted, whichever is later.

Second, I do not see a sufficient justification for proposed Rule 1.275. Courts already have inherent authority to sanction attorneys for improper conduct. Otherwise, I believe the sanction provisions in Rule 1.380 are sufficient if they are followed. The solution to the problem is not to adopt more rules; it is to better enforce the rules already in place.

Third, although I agree that cases might move faster with initial disclosure requirements as proposed in the changes to Rule 1.280, I agree with Ms. Luka that the proposed language in the rule amendment runs directly contrary to this Court's precedent in *Northup v. Acken*, 865 So. 2d 1267 (Fla. 2004) regarding the work product privilege against disclosure of what constitutes "relevant"

information. Therefore, I believe any amendment to this rule should more closely parallel the initial disclosure requirements contained in Fed. R. Civ. P. 26.

Based upon personal experience, the proposed case resolution deadlines are unrealistic for small firm attorneys in document intensive cases. If the rules are adopted as proposed, small firm attorneys are going to be faced with the choice of substantially limiting their case load, trying to find the resources to hire additional staff, or join big firms that have the resources to commit numerous people to a single project. Unfortunately, none of these three alternatives will increase access to justice for the average citizen, nor will they serve to reduce litigation expense.

I believe a revision to either current Rule 1.351 or Rule 1.380 is necessary so that when a trial court overrules an objection to issuance of a subpoena under Rule 1.351, it has the ability to award fees under Rule 1.380, if it finds that the objection was not substantially justified. Rule 1.351 does not currently appear to provide for an award of attorney's fees and is not listed within Rule 1.380 as a motion for which attorneys' fees may be awarded.

Proposed Rule 1.460(b)(5)(F) appears indefensible. This rule appears designed to penalize small firm lawyers who are at risk of being set for trial in more than one case at the same time.

My concern with the revision to Rule 1.380 concerning sanctioning lawyers, or the parties, or both, is that it may increase a burden on the court system and put lawyers and clients potentially at each other's throats in much the same way that § 57.105, Florida Statutes, sanctions do.

Besides the proposal to have initial disclosures like the Federal Rule of Civil Procedure, I believe the following changes, many of which are issues discussed in the Florida Handbook on Civil Discovery Practice, if incorporated into the rules, might help streamline discovery and provide a more brightline rule for judges in discovery disputes. They are as follows:

A. Clearly state in the rules that general objections are improper and may expose an attorney to sanctions. Unfortunately, it has been my experience that it is routine for small and large firms alike to begin every discovery response with a lengthy set of general objections, followed by a response stating that if any documents responsive to a particular category of my request exist they will be

produced at a date that is mutually convenient, notwithstanding the fact that I have specified a time, date, and place for the production in the request.

B. Again, as stated in the Discovery Handbook, make clear in the rules that requests for production of every document that supports the party's claim or that is relevant to the case is not appropriate for discovery. The same is true of interrogatories asking for a recitation of every fact that supports or tends to disprove a claim. This might cause lawyers to stop making inappropriate boilerplate requests for production and interrogatories that are properly objected to and then called up for hearing, which wastes valuable trial court time.

C. Require trial courts to have a Uniform Motion Calendar, with a frequency appropriate to the particular circuit or county court. It shouldn't take four or five months to get 15-minute hearing times.

D. It is unrealistic to require an attorney to make 3 attempts at a meet and confer before filing several types of motions. Having litigated in state and federal court, I have frequently found that the meet and confer is essentially useless. I have found it to be the exception rather than the rule that a meet and confer with opposing

counsel will cause a lawyer to change his or her position and resolve the issue without court intervention. Furthermore, I have found that the lawyers that are the hardest to attempt to communicate with are also the hardest to try to work out whatever issue is the subject of the proposed motion.

In conclusion, although I welcome rules amendments that may help my efforts to get my clients' cases resolved sooner rather than later, particularly by getting faster rulings on discovery issues and pleading issues instead of having to wait months for hearings, I do not believe that the rule changes as proposed will result in a just and inexpensive determination of my clients' cases or, for that matter, anyone else's.

Respectfully submitted

/s/ LEE L. HAAS
Lee L. Haas, B.C.S.
FBN: 378119
Haas & Castillo, PLLC
19321-C U.S. Hwy 19 N., Ste. 409
Clearwater, FL 33764
Telephone: 727-535-4544
Lee@haas-castillo.com
service@haas-castillo.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been filed

and electronically served via the Florida Courts E-filing Portal this 1st day of June 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/ Lee L. Haas
LEE L. HAAS, B.C.S.

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/ Lee L. Haas
LEE L. HAAS, B.C.S.