FLORIDA SUPREME COURT

CASE NO. SC22-122

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

**COMMENTS OF CHARLES S. STRATTON, JOSHUA S. STRATTON, AND SIDNEY C. BIGHAM III REGARDING PROPOSED RULE 1.200**

Charles S. Stratton, Joshua S. Stratton, and Sidney C. Bigham III provide these comments to the November 15, 2021 Final Report of the Judicial Management Council's Workgroup on Improved Resolution of Civil Cases (the "Report"). These comments consist of a specific recommendation for the Court to consider in deciding whether, or how, to adopt the Report's proposals, and of justification for the recommendation.

In considering proposed changes to Rule 1.200, Florida Rules of Civil Procedure, the Court should add eminent domain suits to the list of exemptions from Rule 1.200 located at R. 1.200(b). The additional exemption should read:

> (4) an eminent domain action under article X, section 6 of the Florida Constitution, Chapter 73, and/or Chapter 74, Florida Statutes;

Although this Court has held the Florida Constitution's eminent domain clause to be self-executing, *see Department of Agriculture & Consumer Services v. Mid-Florida Growers, Inc.*, 521 So. 2d 101, 103 n.2 (Fla. 1988), the overwhelming majority of eminent domain suits in Florida are brought pursuant to Chapters 73 and 74, Florida Statutes. Chapter 73 sets forth the basic law for eminent domain suits (also called 'slow takes'), and Chapter 74 adds supplemental law for so-called 'quick take' suits in which the condemnor seeks title and possession in advance of full compensation.

Both chapters include special procedures for eminent domain which may depart from the norm, *see* § 73.012, Florida Statutes, in recognition of the *sui generis* nature of eminent domain in the law. *See, e.g., Wilkerson v. Div. of Admin, State Dep't of Transp.*, 319 So. 2d 585, 586 (Fla. 2d DCA 1975) (expressly recognizing departure from the norm in permitting verdict to exceed petitioner's valuation).

Because quick take suits are much more typical, this comment will focus primarily on that type of condemnation.

In a quick take condemnation suit, the trial court must determine (1) Whether the taking is lawful; (2) How much money

must be paid as full compensation for the property (and/or business damages); and (3) Amongst whom to apportion the proceeds.

After the suit is filed, the first phase concerning the legality of the condemnation begins. This generally involves anywhere between three to nine months of preparation, including discovery. While the issue is legality, not valuation, valuation does play a role in certain defenses even at this phase. A typical defendant property owner or business owner will engage in substantial discovery in order to identify defects in the petitioner's prima facie case or to substantiate affirmative defenses. Ultimately, this culminates in an evidentiary hearing before the trial judge who determines whether or not to grant the taking (which further requires timely deposit of funds with the trial court registry in order to be effective). *See* §§ 74.051-74.061, Fla. Stat.

If the taking occurs, the second phase concerning valuation begins. This phase literally begins with the deposit of funds, thereby establishing the date of value for the property. In order to avoid wasted but costly effort, defense appraisers typically do not even begin to appraise the property until the second phase. This phase requires perhaps the greatest amount of discovery as valuation is

typically the central issue in any eminent domain suit, and the defense counsel must work closely with a number of expert witnesses including appraisers, fixture appraisers, arborists, engineers, surveyors, land planners, hydrologists, and certified public accountants, who in turn may need to sequence their work so that one expert can rely upon the opinion of another. Ultimately, a twelve-person jury trial is held and the verdict is the amount of compensation that must be paid.

Note that in a slow take legality and valuation issues are combined into a single phase (although still divided between the judge and jury), and rather than a quick take condemnor taking title early but being committed to pay the full amount, a slow take condemnor can find out the price of the property before being committed.

Once the jury has rendered its verdict as to the total amount of full compensation owed, the final phase of apportionment begins in both quick takes and slow takes. The jury only determines the full amount of compensation for the entirety of the condemnation. Where there are multiple claimants (e.g. joint owners, tenants, etc.) they may each claim a share, and further discovery and expert opinions

are needed to establish their competing claims. It is also notable that because of the constitutional mandate of full compensation, a previously missing claimant need not even join the litigation as a party until the apportionment phase. *See, e.g., Jack Bakery Svcs., Inc. v. W. Treats Meat Market, Inc.*, 530 So. 2d 447, 447-448 (Fla. 4th DCA 1988) (although party that does not pursue claim for disbursement of initial deposit at end of legality phase waives that claim, same party may still pursue claim for full amount owed to it in apportionment phase). The trial judge holds an evidentiary hearing in order to apportion the proceeds.

Proposed Rule 1.200 is ill-suited for even the most typical eminent domain suit. It would force parties to begin work on valuation and apportionment before the legality of the taking had even been ruled on and before the date of value was known. This would risk substantial unnecessary, excessive litigation, an evil which this Court has discussed at length in the past in the context of eminent domain, including the need for condemnors to pay additional attorneys' fees in order to avoid the risk of unreasonably low fees, in violation of the Florida Constitution. *See Joseph B. Doerr*

*Trust v. Cent. Fla. Expressway Auth.*, 177 So. 3d 1209, 1214-1217 (Fla. 2015).

The undersigned counsel represent property and business owners, and have substantial combined experience in eminent domain litigation. Counsel for condemnors and property owners routinely collaborate to resolve cases efficiently, whether through settlement or through contested legality, valuation, and apportionment phases as dictated by their respective clients. Counsel on both sides also work together with trial judges to set up schedules which suit the needs of any given condemnation suit as well as the *sui generis* nature of condemnations generally. As such, the undersigned counsel advise this Court to exempt eminent domain suits from Proposed Rule 1.200 so that the current practices of attorneys and courts in this field, which have worked well and have not clogged the courts, can continue.

Respectfully submitted this 1st day of June, 2022.

//s/CHARLES S. STRATTON
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## CERTIFICATE OF SERVICE

In accordance with Rules 2.140(b)(6) and 2.140(d), Florida Rules of General Practice and Judicial Administration, the undersigned has filed this comment with the clerk of the Florida Supreme Court via the Florida Courts E-Filing Portal and served a copy via U.S. Mail to Workgroup Chair, Chief Judge Robert Morris, Second District Court of Appeal, P.O. Box 327, Lakeland, FL 33802, and via e-mail to OSCA Staff Liaison to the Workgroup, Tina White, 500 South Duval Street, Tallahassee, FL 32399, whitet@flcourts.org, this 1st day of June, 2022.

//s/CHARLES S. STRATTON
Charles S. Stratton

## CERTIFICATE OF COMPLIANCE

In accordance with Rules 9.045 and 9.210(a)(2), Florida Rules of Appellate Procedure, the undersigned counsel hereby certifies that this comment complies with the font and word count requirements of the Rules: Bookman Old Style 14-point font and under 13,000 words or 50 pages.

//s/CHARLES S. STRATTON
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