

**In the Supreme Court of
The State of Florida**

Case No. SC22-122

**In Re: Report and Recommendations
of the Workgroup on Improved
Resolution of Civil Cases**

COMMENT OF PAUL R. REGENSDORF, ESQ.

Paul R. Regensdorf, in his individual capacity and not on behalf of any organization, and specifically not on behalf of the Florida Bar's Civil Procedure Rule Committee [CPRC] on which he sits as an active member, files this Comment to assist the Court in its consideration of the Report of the Workgroup on Improved Resolution of Civil Cases [the Report], and would show the Court as follows:

1. Paul R. Regensdorf is an active member of the Florida Bar and has been for 50 years. He is also an active member of the CPRC and in that capacity has been an active participant in the CPRC's review of the Draft Report and of the Final Report, has chaired the CPRC's review efforts of this developing Report, and has been a principal drafter of the CPRC's

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comments on the Workgroup's Draft **and** Final Reports. As such he is both familiar with, and fully supportive of the detailed comments and suggestions contained in the CPRC's Comment filed in this rules case.

2. The undersigned's experience in rulemaking for the court system, however, is not limited to his tenure on the CPRC for the last three years. Rather he has worked consistently and continuously for the last 46 years – since 1976 – on one or more rules committees of the Florida Bar. This has included long and usually overlapping memberships on the Appellate Court Rules Committee and the Rules of Judicial Administration Committee [now Rules of General Application and Judicial Administration] each of which committees I have previously chaired.

3. In addition to serving on the Florida Bar's various rules committees for 46 years, I also actively served for years on the Florida Courts Technology Commission and the Access to Court Records Committee which collectively wrote the rules and procedures that were needed to bring our court system out of the paper world 12 years ago and into the electronic

age. I was a principal drafter of many of the rules that regulate our electronic court system today.

4. This record of continuous service in trying to make the rules applicable to the Florida court system better is longer than any member of the current Court has been an attorney, and is even longer than some members of the Court have been alive.
5. This length of service does not automatically render my opinions on the Report before this Court valid or even intelligent, but it does give the undersigned some colorable standing to at least offer his personal thoughts on this Report and to have a small seat at the table when this matter is argued before the Court.

Broad Observation of this Rules Making Process

I. There is no present crisis sufficient to warrant the simultaneous changes to many rules using as yet untested proposals

6. It takes no great insight to realize that the Report recommends massive changes to the rules and to the underlying procedures that govern and control our civil justice system. There simply has never been a proposal before the Court this extensive. The

Workgroup's mission was started before the Covid disruption, and was based on concerns for court efficiency at that time.

7. Nevertheless, while this Court had concerns about the system before Covid, those concerns have been combined now with the scheduling issues that the system has had impressed upon it in the last two years.

8. Despite the confluence of those factors, according to reports from this Court and OSCA, the system's backlog of cases has already been reduced substantially by approximately 40% in less than a year. While the exact cause(s) for this substantial improvement are not perfectly clear, it seems probable that this Court's substantial revision of the case management system in Florida through Administrative Orders put in place in the last months has been a significant driver. What is also important is to note that all of the docket improvement came with the current set of procedural rules otherwise in place. It raises questions about the wisdom, or need, to effectuate the proposed massive set of changes, all at once.

9. While certain incremental improvements can be made, it does not appear that the courts are in "crisis mode" sufficient to

require the imposition of major and often untested changes to the system. Numerous commentators, judges and lawyers alike, have already commented on the risks of forcing a wholesale set of changes. Instead, it is the opinion of the undersigned that the Court should take a decidedly more measured approach and implement only certain proposals now, referring the others to the CPRC for refinement and possible later adoption.

10. As an example of this approach, the Workgroup's new proposed rules 1.160 [Motions] and 1.161 [Hearings] have been seriously questioned as to their practical feasibility, despite the general benefit in the Rules of Civil Procedure for rules on these topics. The principal criticism of these rules is that they are far too cumbersome and require far too many "touches" by the court and court staff between the start of the process and the end of it. Without further staffing [an unlikely prospect] most judges seem to feel that the current proposals are unrealistic and unworkable.

11. The undersigned and two other members of the CPRC took it upon themselves to drastically simplify these two rules

and combine them into one. This new proposal [endorsed by the full CPRC] is a significant improvement over the Workgroup detailed version, but it has not yet been vetted with all of the various groups interested in our civil justice system. If the Court feels that it must have such a rule now, the CPRC proposal is a significant improvement. But an equally good if not better plan would be to carve out these two rules from the Workgroup's proposal and refer them to the CPRC for immediate attention in consultation with interested groups, especially those who have commented in this process. This new consolidated rule still allows for judges to rule on the papers, but creates that power in a way that allows the system to function more smoothly while the trial judges decide whether to so rule.

12. Similarly, the Court and circuit courts, through a series of AO's, mirrored by AO's in the 20 circuits, have made significant progress in case management. While the undersigned would prefer a standardized set of procedures to be included in the Rules of Civil Procedure rather than in 20 local AO's, the Workgroup's well-intentioned proposal adds far

greater complexity and substantially greater hands-on involvement by the trial judges at the very outset than seems prudent. Many judges and lawyers see little marginal benefit from the greater granularity and mandated judicial activity at the very start of a case. Instead, the CPRC has already passed an alternative plan for amending rule 1.280, following more closely the federal practice in rule 26 as the way to begin case management. This proposal includes increased judicial involvement early on, but the very early impetus is much more on a lawyer-centric system to get cases moving at the very start. Again it is suggested that rather than implementing the detailed judge-centric proposal from the Workgroup, it may be advisable to either adopt the CPRC rule 1.280 proposal instead, or refer this issue back to the CPRC for further work and consultation with the interested groups and individuals who have commented. The new rule 1.280 has not yet been released for public comment.

II. It may well be time for the Court to consider a significant overhaul to the systems being used to prepare and revise proposed changes to all rules sets, but at least to the Civil Rules.

13. For many years, the principal organization charged with and used for the review and updating of the Rules of Civil Procedure has been the CPRC. Other rules sets have corresponding committees. The CPRC has developed a significant expertise in identifying needed rules changes and in drafting and proposing those changes to the Court in a logical and form-sensitive format. The Court has not always received what it wants, but the best of systems is never perfect.
14. For a variety of reasons known principally to this Court, that committee system has been effectively by-passed in recent years as the Court has often chosen to appoint ad hoc Workgroups to address particular problems that the Court identifies with our court and rules system. In the main, these workgroups have worked outside the Florida Bar's committee structure and have made no consistent effort to appoint members of the CPRC or the other rules committees, nor to invite those committees to collaborate in the planning sessions

for the ultimate reports.¹ Also, in many situations, these workgroups are provided paid staff assistance from OSCA and are allowed what is perceived as far greater access with and to the Court and the Justices than has traditionally been allowed with rules committees.

15. These workgroups all work diligently in their format, but they seldom receive any “benefit” from the rules committees, with the years of experience in the rules being considered.

16. If this new trend to use workgroups is a conscious decision of the Court, then I suggest that it is time to reevaluate the whole process by which the Court receives input on proposed rules changes.

17. The workgroup process seems to have some advantages which could easily be incorporated into the rules committee structure.

a. First and foremost, the Court consultations with the workgroups seem to have led to a decidedly more

¹¹ It should be noted that this Workgroup did share its Draft Report with the CPRC and others and was receptive to the several comments that it received in that process. There were no joint meetings or representation on the Workgroup, but it supplied its draft and listened to, and in a number of respects, reacted favorably to the CPRC’s suggestions.

collaborative approach to rule-writing than the rules committees are allowed to use. To date, the Bar's committees function essentially in an "adversarial" system where contact with the Court is improper² until a usually short oral argument of 15 or 30 minutes for the first time exposes the Court to the new proposal and the committee to the exact interests that the Court has. This "never the twain shall meet" approach seems decidedly inefficient if the goal is for all of us – lawyers and judges – to exchange ideas and come up with the best rules we can for the court system.

- b. The ability of the Workgroups to draw upon the staff support from OSCA for research and drafting also adds a substantial level of professional assistance unavailable to the CPRC. While the CPRC members [for 3 or 6 years] do develop some distinct expertise in this area, drafting rules is not their "day job" and every committee would

² The system of Court liaisons has not created an effective two-way system of communication to allow the Court and the CPRC to exchange ideas informally before proposals are sent to the Court.

substantially benefit if OSCA staff were more uniformly available.

- c. The undersigned has personally felt for years that the forced formality of our adversarial system handicaps effective communication among the partners in this process – the Court and the Bar. But the recent spate of Workgroups working directly under the Court has highlighted how the system that I grew up with since 1976 is simply not working effectively for the Court.
- d. The Court is the collective leader of the Bar and is fully entitled to seek assistance in writing rules or in performing its other functions in anyway it sees fit. The current reliance on ad hoc workgroups, however, diminishes the role of a significant and valuable partner that the Court has used for years, the Bar and its various rules committees.
- e. The undersigned, as well I am sure as many experienced Bar rules committee members and leaders, would welcome an open and candid discussion with the Court and other judicial officers in Florida to identify rough

spots or areas of contention in the current system, so as to allow all of us to work together and create a more collaborative and efficient system of reviewing and writing rules of procedure.

Respectfully submitted,

/s/ Paul R. Regensdorf

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CERTIFICATE OF SERVICE

I hereby certify that I have this day, the 2nd day of June 2022, filed a copy of the attached Comment with the Florida Portal and directed that the Portal serve all parties and counsel to this rules case.

/s/ Paul R. Regensdorf