GERALD T. BENNETT
AMERICAN INN OF COURT

Florida Supreme Court
Office of the Clerk
500 South Duval Street
Tallahassee, Florida 32399-1927

Dear Honorable Justices of the Florida Supreme Court and Workgroup on Improved Resolution of Civil Cases,

Thank you for the opportunity to comment on the proposed changes to the Florida Rules of Civil Procedure. Following multiple planning sessions, members of The Gerald T. Bennett Inn of Court devoted a meeting to presentations on the proposed changes and discussions thereon. Comments on specific, selected rule changes follow below. Generally, The Gerald T. Bennett Inn is supportive of the ethos and logos behind the proposed changes but has concerns as to unintended consequences which it believes will result from implementation of some of the proposed changes.

COMMENTS ON NEW RULE 1.160

- The Inn supports the goal of streamlining motion practice in order to facilitate the efficient administration of justice and specifically commends the committee upon the inclusion of a requirement to confer with opposing counsel in an attempt to resolve a dispute prior to the filing of a motion requesting action by a trial court.
- However, the time limits placed on the trial court in Rule 1.160 seem feasible only in circuits with manageable dockets. The Eighth Judicial Circuit would appear to be such a circuit, in that the judges in the circuit ordinarily issue rulings within a week of the date of a hearing (if not at the conclusion of a hearing) and generally issue written

orders within a week of ruling. It seems likely that judges with large dockets will struggle to meet the deadlines set for rulings on motions in this rule. For example, for a judge with a docket of 1,500 cases in any given year, if each case generated only one motion per year, the judge would be required to clear an average of over four motions per day—assuming the judge worked 365 days per year. Given that judges cannot work every day of the year and spend at least one, and often two or three, work weeks per month on the bench, to dispose of every motion on a judge's docket would require clearing over ten motions per day when off the bench, in addition to the judge's other duties.

COMMENTS ON NEW RULE 1.161

- The Inn supports the goal of expediting the scheduling of hearings. This is not an issue in the Eighth Judicial Circuit, where most of the Inn's members practice. As with the proposed amendments to Rule 1.160, the time limits placed on the trial court in Rule 1.161 seem feasible only in circuits with manageable dockets. It seems likely that judges with large dockets will struggle to meet the scheduling deadlines.

COMMENTS ON NEW RULE 1.279

- The new rule contains many terms which are susceptible to different interpretations, providing attorneys with a lack of clear guidelines to follow and leaving trial courts in the difficult position of devoting scarce resources to interpreting these terms. For example, new rule 1.279 (b)(2(B) states that an "attorney must not present discovery or responses for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation." Developing a factual record as to whether discovery has been sent for an improper purpose would necessitate an evidentiary hearing at which the lawyer propounding the discovery might be called to testify, thereby consuming scarce court time and potentially placing an attorney at odds with his or her own client. It seems to the Inn that the existing standard of relevance provides a more workable touchstone for determining

whether discovery is permissible.

- Proposed Rule 1.279(b)(3) seems to be the only portion of the new rule for which breach seems easily capable of determination – but accurate determination would require that the Court inquire into attorney-client communications.

COMMENTS ON EDITS TO RULE 1.280

- The Inn supports the duty to supplement discovery responses as a logical amendment designed to facilitate the administration of justice which brings the Florida Rules of Civil Procedure into line with the F.R.C.P. and the Fla. Fam. L. R. P.
- New proposed rule 1.280(a)(4) states that "[a] party must make its initial discovery disclosures *based on the information then reasonably available to it*." As to responses to standard interrogatories, this is sensible. Applied to documentary evidence, this new language could be interpreted as establishing a novel standard for the duty to obtain documents in response to a discovery request or rule. Indeed, the word "reasonably" supplies fertile ground for the growth of disputes over its meaning. As to documents, it might reduce confusion if the Rule instead used the established standard of "within a party's possession, custody, or control."
- The timing of disclosures set forth in 1.280(a)(3) allows plaintiffs more time than defendants, since the plaintiff has the additional time from the date of filing until the date of service upon the defendant. *Cf*. former version of Fla. Fam. L. R. P. 12.285, wherein the petitioner's initial disclosures were due 45 days after filing of the petition, and the respondent's initial disclosures were due 45 days after service of the petition.

COMMENTS ON EDITS TO RULES 1.340 & 1.350

- The Inn supports the proposed amendments clarifying the duty to respond to interrogatories and requests for production of documents and things/entry onto land for

which no objection is made as a logical amendment designed to facilitate the administration of justice.

COMMENTS ON EDITS TO RULE 1.351

- The Inn supports the aim of the proposed amendment requiring a response to items in a subpoena for which no objection is made. However, in its current form this well-intentioned and salutary amendment may cause substantial confusion and not function as intended.
- To wit, the proposed amendment to Rule 1.351 is in conflict with the existing language of 1.351: "[t]he subpoena shall be *identical* to the copy attached to the notice . . . ." An identical subpoena would include the items for which one or more parties has lodged an objection. The Rule should instead advise attorneys to delete the items objected to, redact them, or take other action so that the recipient of the subpoena need not suffer additional complexity and confusion. Recipients of subpoenas must already parse out issues of privilege, confidentiality, and relevance. Adding in another layer of inquiry—whether every item in a subpoena is actionable—places an unreasonable burden upon them.

COMMENTS ON EDITS TO RULE 1.460

- The Inn supports the goal of disfavoring continuances and supports the policy behind the committee's proposed edits to Rule 1.460. The edits to Rule 1.460 could, however, make the litigation process even more difficult for *pro se* litigants to navigate than it is at present. *Pro se* parties struggle to interpret and abide by the rules of procedure, seeing them as a thicket of contradictory instructions.

Again, the Gerald T. Bennett Inn of Court thanks the Honorable Justices of the Florida Supreme Court and Workgroup on Improved Resolution of Civil Cases for the opportunity to comment on the proposed rule amendments and hopes its comments are helpful to the Court and the Workgroup.

Respectfully,

Ronald Kozlowski
President