IN THE SUPREME COURT OF FLORIDA

CASE NO.: 68,309

THE FLORIDA BAR RE:

AMENDMENT TO RULES OF JUDICIAL ADMINISTRATION RULE 2.050 (TIME STANDARDS)

_____:

BRIEF OF THE FAMILY LAW SECTION OF THE FLORIDA BAR AS AMICUS CURIAE

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STATEMENT OF THE CASE AND OF THE FACTS

On May 14, 1986, this Honorable Court rendered a decision proposing a new rule of Judicial Administration, Rule 2.085(a)-(c), which established time standards for Florida trial and appellate proceedings. The Florida Bar Re: Amendment to Rules of Judicial Administration Rule 2.050 (Time Standards) _____ So.2d _____, 11 FLW 216 (Fla. May 14, 1986). The decision was later the subject of a corrected opinion found in _____ So.2d _____, 11 FLW 234 (Fla. May 30, 1986). Proposed Rule 2.085 (d) established time standards for trial court cases. Pursuant to this Rule, contested Domestic Relations cases must be completed within 180 days from filing to final disposition. Other non-jury Civil cases are allowed 12 months for completion.

Pursuant to Rule 9.330, Florida Rules of Appellate Procedure, The Florida Bar filed a timely Motion for Rehearing. Subsequently, The Family Law Section of The Florida Bar, pursuant to Rule 9.310, Florida Rules of Appellate Procedure, requested permission to appear as amicus curiae and to file a brief in support of The Florida Bar's pending Motion for Rehearing. This Court granted permission to The Family Law Section to appear as amicus curiae and ordered that its brief be served on or before July 30, 1986.

STATEMENT ADOPTING BRIEF

The Family Law Section of The Florida Bar adopts the Amicus Curiae Brief of The Florida Chapter of Matrimonial Lawyers which addresses most of the issues and concerns raised by The Family Law Section in its Motion for Permission to Appear as Amicus Curiae and to File a Brief in this matter. This brief presents additional reasons for objection to proposed Rule 2.085(a)-(c).

STATEMENT OF THE ISSUE

A PROPOSED TIME STANDARD OF 180 DAYS FROM THE DATE OF FILING TO THE DATE OF FINAL DISPOSITION FOR A CONTESTED DOMESTIC RELATIONS (DISSOLUTION OF MARRIAGE) CASE IS INSUFFICIENT CONSIDERING THE EMOTIONAL AS WELL AS FINANCIAL COMPLEXITIES OF SUCH CASES.

SUMMARY OF THE ARGUMENT

A contested Dissolution of Marriage case is virtually always complex, if not financially, then emotionally. These complexities require sufficient time to be explored, discovered, and preferably resolved without trial. The proposed 180-day time standard does not provide the time needed by the parties to emotionally deal with the issues and work toward a successful settlement of the case. Nor do the time constraints allow sufficient time for the thorough preparation necessary for reaching a fair settlement or proceeding to trial, particularly considering the emotionally charged atmosphere which surrounds most Dissolution of Marriage cases.

Thus, the parties to a dissolution of marriage are short-changed and, in fact, may be adversely affected by the proposed time standards in Domestic Relations cases.

ARGUMENT

A PROPOSED TIME STANDARD OF 180 DAYS FROM THE DATE OF FILING TO THE DATE OF FINAL DISPOSITION FOR A CONTESTED DOMESTIC RELATIONS (DISSOLUTION OF MARRIAGE) CASE IS INSUFFICIENT CONSIDERING THE EMOTIONAL AS WELL AS FINANCIAL COMPLEXITIES OF SUCH CASES.

Dissolution of a marriage is an emotionally devastating process. Persons who once vowed to love and care for each other must come to terms with failure and broken promises. Children are forced to adjust to the destruction of the family unit and a life without the normal daily contact of one parent. Throughout this emotional turmoil financial issues loom. Questions of alimony, child support, special equities and property distribution must be resolved. It is the duty of the Bar and Bench to guide the litigants to a fair and just solution - a task of such enormity that it defies the time constraints proposed by this Honorable Court.

Virtually all contested dissolution of marriage cases are complex, if not financially, then in terms of human emotions and reactions. Litigants who initially refuse to negotiate the various issues may often reach a settlement after months of working with and through their attorneys. However, as settlement becomes eminent, memories of past injuries, real or imagined, after sabotage a tentative agreement so that settlement discussions must begin again. Thus, the negotiating process is time consuming but is surely worth concluding divorce litigation in this preferable manner. Most dissolution cases are presently

resolved by settlement. However, the settlement process is less likely to be successful under the proposed time constraints.

Of course, both the effective negotiation and trial of a dissolution of marriage case require that the parties, through their attorneys, be thoroughly prepared with complete information. Issues such as the need of one spouse for permanent or rehabilitative alimony (or both) and the ability of the other spouse to pay the needed alimony often require the services of accountants, mental health professionals, medical doctors, and career or vocational counselors. Sufficient time for evaluating the circumstances is necessary for use of these services in assisting a litigant in presenting settlement demands or evidence at trial. Further, the opposing party is entitled to depose and otherwise utilize discovery procedures to ascertain the knowledge and opinions of these experts.

In fact, it is imperative that the financial circumstances of a litigant's spouse, particularly as reflected in his or her financial affidavit, undergo intense pre-settlement or pre-trial scrutiny. The filing of a false financial affidavit is not a sufficient ground for attacking a final judgment of dissolution on the basis of fraud more than one year from entry of that judgment. DeClaire v. Yohaman, 453 So2d 375 (Fla. 1984). Therefore, a hurried examination of finances even when they appear to be simple and straight forward could result in a lasting injustice to a litigant.

Cases in which child custody, physical residence or visitation rights are disputed inject additional complicated and emotionally charged issues. Often a judge will deem home studies or mental health evaluations of the parties as necessary consideration in determining these questions. The evaluations are time consuming and, of course, the litigants may need to question the data used or the conclusions drawn. Again, time is required to assure that the children are protected and the parents are treated fairly.

Further, parties often decide to work through counselors, mental health professionals or clergy in an attempt to fashion a satisfactory parenting arrangement. When the fate of children are at issue, emotions run particularly high and negotiating a parenting arrangement is a slow and painful process. Nevertheless, an agreement between the parents is far better than having a Court impose custody and visitation.

Throughout the preparation for legal issues in a dissolution case, the parties usually need emotional support and guidance. Although family, friends, clergy, or mental health professionals provide help for some of these emotional needs, a litigant will inevitably turn to his or her attorney for advice and support in areas outside of the legal questions involved. Thus, a competent dissolution lawyer must also devote time and energy to the client's nonlegal needs - time that will no longer be available under the proposed Rule of Judicial Administration.

Dissolution of Marriage cases require thorough preparation and careful attention. Although some cases can be quickly resolved within the proposed time-frame, effective handling of many divorce cases simply cannot be rushed. Thus, the public, particularly the litigants and family, are ill served and, in fact, adversely affected by the time constraints proposed by this Honorable Court.

CONCLUSION

The dissolution of a marriage, involving, as it does, the termination of a relationship so important that it must be sanctioned by the State, is often surrounded by an emotionally charged atmosphere. The time necessary for the parties to look beyond the hurt and pain of a destroyed marriage and begin to think rationally in order to address the issues or negotiate a settlement.

The standards proposed by this Honorable Court, likewise, preparation of financial, custody, and property issues for negotiation or, if necessary, trial, require an amount of time not contemplated by the proposed standards.

Accordingly, The Family Law Section of The Florida Bar, requests this Court to at least allow as much time for resolution of contested Domestic Relations cases as for other non-jury Civil cases. Alternatively, The Family Law Section of The Florida Bar requests that this Court not adopt proposed Rule 2.085, Rules of Judicial Administration.

RESPECTFULLY SUBMITTED this 30th day of July, 1986.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States Mail to MIRIAM E. MASON, Chairman of The Family Law Section, The Florida Bar, Post Office Box 2409, Tampa, Florida 33601-2409; STEPHEN A. RAPPENECKER, Chairman, Rules of Judicial Administration Committee, Post Office Box 566, Gainesville, Florida 32602; JOHN F. HARKNESS, JR., Executive Director, The Florida Bar, Tallahassee, Florida 32301-8226; MICHAEL NACHWALTER, Board of Governors, 400 Edward Ball Building, 100 Chopin Plaza, Miami Center, Miami, Florida 33131; and MICHAEL R. WALSH, 326 North Fern Creek Avenue, Orlando, Florida 32803, this 30th day of July, 1986.

ELAINE N. DUGGAR