Supreme Court of Florida

CORRECTED OPINION

No. 68,309

THE FLORIDA BAR
RE: AMENDMENT TO RULES OF
JUDICIAL ADMINISTRATION
RULE 2.050 (TIME STANDARDS)

[May 14, 1986]

PER CURIAM.

We have before us a proposed amendment to Rule of Judicial Administration 2.050 to establish time standards for disposition of cases in trial and appellate courts. The amendment, however, affects the administration of the district courts of appeal as well as the trial courts and should, therefore, be treated as a new rule rather than as an amendment to Rule of Judicial Administration 2.050.

By this rule we address the problem of court delay. Processing cases through our courts requires adequate time to resolve those cases in a contemplative, fair and just manner. We recognize, however, that the judicial process necessarily affects many aspects of the lives of our citizens. Enterprises are suspended and important personal and professional decisions must be deferred while litigation is pending. Courts must be deliberative, but the public is ill served by unwarranted delay. This concern impels the adoption of the rule we announce today. There are many avenues which can be explored to reduce court delay, but we must first establish a definition of delay and some standard for measuring it. Several national organizations concerned with the operation of the judiciary have in recent

years studied and discussed the issues surrounding court delay. In response to these studies, the National Conference of Chief Justices, the National Conference of State Trial Judges, the American Bar Association, and the National Conference of State Court Administrators, among other groups, developed time standards for the disposition of cases.

In Florida, the Court Efficiency Committee, created by Chief Justice Joseph A. Boyd, Jr. and chaired by Justice Ben F. Overton, reviewed the separate recommendations of these national organizations as well as the time standards established by the courts in Idaho, Iowa, Kansas, and Texas. As a result of its study, the Court Efficiency Committee recommended specific time standards for disposition of certain types of cases in the trial and appellate courts of Florida.

The Court Efficiency Committee was supplanted by the Judicial Council of Florida with an expanded membership, including the leadership of the Conference of District Court of Appeal Judges, the Conference of Circuit Judges, and the Conference of County Court Judges. In March 1985, the Judicial Council discussed the issue and unanimously endorsed the recommendation of the Court Efficiency Committee.

On April 12, 1985, Chief Justice Boyd adopted the time standards as recommended by the Court Efficiency Committee and the Judicial Council in an administrative order effective July 1, 1985. On September 20, 1985, Chief Justice Boyd required the clerks of the circuit and county courts to submit quarterly reports identifying the cases that exceeded the time standards. He also directed the Court Statistics and Workload Committee, chaired by Justice Rosemary Barkett, to draft a proposed Rule of Judicial Administration incorporating the time standards contained in the administrative order of April 12, 1985.

The proposed rule was submitted to The Florida Bar Board of Governors through the Committee on Rules of Judicial Administration and was endorsed with some minor modifications. The Judicial Council, whose membership had changed, reconsidered

the issue and the proposed rule presently before us and again unanimously endorsed the concept of time standards and urged the adoption of the rule.

We are aware that the standards we adopt herein must continue to be studied and evaluated. Moreover, we recognize that time standards are only one component which must be considered in developing an efficient court management system. Accordingly, we direct the Court Statistics and Workload Committee, in addition to its existing duties, to monitor and study the impact of this rule during the next two years. After the two-year study period is completed, the committee shall make its report and its recommendations on this issue to this Court. The committee is directed to solicit and review information provided by trial and appellate judges, committees and members of The Florida Bar, and any other interested parties, and to include in its study the following:

1. The appropriateness of the time frames within each standard;

2. The relationship between the time standards and optimum case load per judge;

3. Improvements in reporting methods and data collection; and

4. The fiscal impact of costs of equipment and additional personnel needed to acquire accurate information and to monitor the effectiveness of the standards.

We shall consider the committee's report in conjunction with our cyclical review of the Rules of Judicial Administration. Accordingly, we adopt the following Rule of Judicial Administration and approve its publication:

Rule 2.085. Time Standards for Trial and Appellate Courts

(a) Purpose. Delay causes litigants expense and anxiety. Judges and lawyers have a professional obligation to terminate litigation as soon as it is reasonably and justly possible to do so. However, litigants and counsel shall be afforded a reasonable time to prepare and present their case.

(b) Case Control. The trial judge shall take charge of all cases at an early stage in the litigation and shall control the progress of the case thereafter until the case is determined. The trial judge shall take specific steps to monitor and control the pace of litigation, including the following:

(1) Assuming early and continuous control of the court calendar;

(2) Identifying cases subject to alternative dispute resolution processes;

(3) Developing rational and effective trial setting policies;

(4) Giving older cases and cases of greater urgency priority in trial settings.

(c) Continuances. All judges shall apply a firm continuance policy. Continuances should be few, good cause should be required, and all requests should be heard and resolved by a judge. All motions for continuance shall be signed by the litigant requesting the continuance as well as the litigant's attorney.

(d) Time Standards. The following time standards are hereby established as a presumptively reasonable time period for the completion of cases in the trial and appellate courts of this state. It is recognized that there are cases that, because of their complexity, present problems that cause reasonable delays. However, most cases should be completed within the following periods:

(1) Trial Court Time Standards:

(A) Criminal

Felony - 180 days (arrest to final disposition)

Misdemeanor - 90 days (arrest to final disposition)

(B) Civil

Jury cases - 18 months (filing to final disposition)

Non-jury cases - 12 months (filing to final disposition)

Small Claims - 95 days (filing to final disposition)

(C) Domestic Relations

Uncontested - 90 days (filing to final disposition)

Contested - 180 days (filing to final disposition)

Temporary support and enforcement of support hearings - 14 days (from day of request)

(D) Probate

Uncontested, no federal estate tax return - 12 months filing to final discharge

Contested, or federal estate tax return - 24 months filing to final discharge

(E) Juvenile

Detention hearings - 24 hours (arrest to hearing)

Adjudicatory hearing (dependency) - 180 days filing of petition to final disposition

Adjudicatory hearing (delinquency) - 90 days filing of petition to final disposition

Adjudicatory hearing (child detained) - 21 days filing of petition to hearing

(2) Supreme Court and District Courts of Appeal Time Standards:

Rendering a decision - within 180 days of either oral argument or the submission of the case to the court panel for a decision without oral argument

(3) Florida Bar Referee Time Standards:

Report of referee - within 180 days of being assigned to hear the case

(4) Circuit Court Acting as Appellate Court:

Ninety days from submission of the case to the judge for review

(e) Reporting of cases. The time standards require that the following monitoring procedures be implemented:

(1) All pending cases in circuit and district courts of appeal exceeding the time standards shall be listed separately on a report submitted quarterly to the Chief Justice. The report shall include for each case listed, the case number, type of case, case status (active or inactive for civil cases and contested or uncontested for domestic relations and probate cases), the date of arrest in criminal cases, and the original filing date in civil cases. The Office of the State Courts Administrator will provide the necessary forms for submission of this data. The report will be due on the 15th day of the month following the last day of the quarter.

This rule shall become effective July 1, 1986.

BOYD, C.J., and OVERTON, McDONALD and BARKETT, JJ., Concur
OVERTON, J., Concurs specially with an opinion
EHRLICH, J., Concurs in part and dissents in part with an opinion, in which SHAW, J., Concurs
ADKINS, J., Dissents

OVERTON, J., concurring specially.

In view of my colleague's dissent, I must emphasize that this rule is not an untried or experimental program. We are adopting a program carefully designed to address delay in the courts, reduce costs to litigants, and identify the need for additional judges. The Conference of Chief Justices, the National Conference of Trial Judges, the American Bar Association, the American Bar Association Commission on Court Delay and Cost Reduction, and the National Conference on Court Delay Reduction have expressly adopted and approved basic principles consistent with this rule. The trial judiciary and the legal profession of this state have actively participated in this rule's development, and the Supreme Court Efficiency Committee and the Judicial Council of Florida have unanimously endorsed it.

The dissent takes issue with the accepted principle that the judiciary should control its cases. Standard 2.50 of the ABA Standards Relating to Trial Courts, modified in 1984, states in part:

> To enable just and efficient resolution of cases, the court, not the lawyers or litigants, should control the pace of litigation. A strong judicial commitment is essential to reducing delay and, once achieved, maintaining a current docket.

The commentary to this standard explains:

> Eradicating delay depends on adherence to this one axiom: The court must take the initiative to eliminate the causes of delay. Since the American Bar Association enunciated this conclusion in its 1976 Trial Court Standards, a sizable body of research has established that the leading cause of delay has been the failure of judges* to maintain control over the pace of litigation.

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*The articles cited for this statement are:

> Friesen, Cures for Court Congestion, 23 The Judges' Journal 4 (Winter, 1984); Flanders et al., Case Management and Court Management in United States District Courts (Federal Judicial Center: 1977); Friesen et al., Justice in Felony Courts: A Prescription to Control Delay, 2 Whittier Law Review 7 (1979); Sipes et al., Managing to Reduce Delay (National Center for State Courts: 1980); Trotter and Cooper, State Trial Court Delay: Efforts at Reform, 31 American University Law Review 213 (1982); Sipes, The Journey Toward Delay Reduction in Trial Courts: A Traveler's Report, 6 State Court Journal 5 (Spring 1982). See also Church, Who Sets the Pace of Litigation in Urban Trial Courts?, 65 Judicature 76 (1981).

I fully recognize that in assuming early control of cases trial courts must be careful to afford attorneys a reasonable period to prepare and present their case, and, in addition, provide a means for the trial bar to communicate administrative problems to the court.

The time standards set forth in this rule in some instances provide greater periods of time than those established by the ABA standards. These time standards suggest goals that will enable us to identify delay problems and provide a means to identify the need for additional judges.

Neither statutes nor rules make a system work effectively and efficiently. The participants, in this instance the trial judiciary and trial bar, do. This rule is a tool to improve the administration of justice within our state, and, with communication and cooperation between the trial courts and bar, I firmly believe that this rule will accomplish its purposes.

Additional recent articles on this subject are: Myers, Delay: How Phoenix is Making it Disappear, 23 Judges J. 1 (Winter 1984); Peckham, A Judicial Response to the Cost of Litigation: Case Management, Two-Stage Discovery Planning and Alternative Dispute Resolution, 37 Rutgers L. Rev. 253 (Winter 1985).

EHRLICH, J., concurring in part and dissenting in part.

My dissent is directed to two portions of the proposed rule. I do not believe that trial judges should "take charge of all cases" and should "control the progress of the case thereafter . . ."

In my view, the State of Florida has absolutely no interest in a law suit between two or more civil litigants, except to provide a forum and a procedure for fairly adjudicating conflicts between those parties. The parties should control the progress of the litigation. The system has worked admirably without the intercession of the state since the founding of the Republic. I see no reason to have "Big Brother" with a cattle prod goading the parties along in a case that the parties know far more about than the trial judge. I have yet to be given a good solid reason for this significant innovation. I am told that the state does indeed have an interest in civil litigation to make certain that the parties themselves are not shortchanged timewise by their lawyers. I recognize that there are lawyers who will and do put a case on the "back burner" in order to pursue more desirable and perhaps lucrative legal business, and that there are clients who are thus damaged in their legal representation. We are not told how prevalent the practice is, or to what extent, if any, such unlawyerlike activity impedes the progress of those who desire an early resolution of their case. Of course, every court docket contains old cases that seemingly never move to conclusion. I have never been shown that such "old dogs" clog the docket and prevent other litigants who want to get on to trial from achieving that objective. Be that as it may, our Rules, and the inherent power that the trial judge has, can take care of any cases that have really been around too long. In short, there are far less intrusive means for preventing the undue crowding of the court calendar than those contemplated by the new rule.

The one thing that I am certain of is that a great deal of judicial labor, that could otherwise be utilized trying cases, will be expended by trial judges in what is euphemistically called case control further exacerbating the need for additional

trial judges. Of equal certainty is the fact that countless and needless hours will be expended by lawyers reporting to trial judges the progress of their case and explaining why their case is not progressing to suit the judicial fancy, and the client for whose benefit the rule is ostensibly being promulgated will be bearing the expense of the reporting sessions, because the lawyer must still charge for his time.

Of critical importance to me as a former trial lawyer, and now as a jurist, is the length of time it takes to get a case on the trial calendar after the parties have asked to set it for trial. That, in my opinion, is the true test of how current the caseload of a trial judge is. If a litigant can get on the trial calendar within three to six months of a request to do so, then that trial docket is in good shape, and I care not, and properly so, how long other cases have been pending in that trial division. If it takes longer than six months to have a trial request honored, then I say that that particular docket is retrogressive, irrespective of whether it is meeting the eighteen month disposition schedule, and needs to be scrutinized to determine if the problem is the work habits of the trial judge, or perhaps better stated, his lack of work habits, or his undue caseload. We have not been shown that statewide it is not possible to get a trial date within six months after requesting one.

Finally, my dissent is directed to the time standards of civil litigation. I think that these time standards should be directory rather than mandatory. At the trial level I have not been shown that there is a direct relationship between the proposed time standards and how long it takes to get a case docketed after it has been noticed for trial, and that if we do not have such time standards, that the length of time it takes to get a case on the trial docket after being noticed therefor will be lengthened beyond the six month figure that I have suggested as reasonable.

At the appellate level, I am apprehensive that some judges may well sacrifice quality of work to conform to the six months schedule. Peer pressure is a thing of reality. How easy it may be for a judge to recommend a per curiam affirmed, rather than take the time to author a well-deserved opinion, in order to stay within the time standards. I cannot subscribe to the premise that the time within which it takes to get an opinion published is more important than the decision itself and the judicial scholarship of the written opinion. Chances are judges will not succumb to the easy way of conforming to the time standards, but the temptation is there. The motto on the great seal of this Court is Sat Cito Si Recte which translates, I am told, to "soon enough if correct." That motto is timeless and still rings true.

In registering my dissent, I do not intend to belittle or demean the good motives or the earnest and sincere efforts of those who have worked long and hard on the various committees to come up with what they perceive to be a solution to the eternal problem of court delay. Their effort may well turn out to be a little or a giant step in the proper direction. While I salute their good intentions and will of course lend my every effort to a suitable working of the rule, I do not, at this point, believe it is the panacea that many of its vocal proponents proclaim it to be.

I would be less than honest and candid if I did not recognize that there are trial and appellate judges who do not bear their fair share of the judicial labors. Unfortunately, these few seem to stand out in the public view and tarnish the public image of the overwhelming majority of the judiciary who labor long and hard in the judicial vineyard, and at salaries totally incommensurate with their skills and responsibilities, because of their love of the law and because they believe with their heart and soul in the rule of law and know and appreciate all too well the great responsibilities of the members of the third branch of government. Those few who do so much harm to the

public standing of so many can, and should be appropriately dealt with, and there are present means to do so, but let us admit that they alone do not account for all of the so-called delays in the judicial process. As long as our state is growing with new people, new businesses and new relationships, the teachings of history leads me to the belief that there will always be a hiatus between the manpower and material needs of the judiciary and what the legislative branch of government is willing to recognize and provide. We shall continue to have judicial delays in our state as long as it continues to grow, because the state needs and will need more judges than the legislature is willing to provide. There will never be a proper balancing of the judicial needs, in my view, so long as the state grows and the people continue to become increasingly cognizant of and assertive of their rights under the law.

All of this discussion leads me full circle to the view that the proposed rule may well be in the long haul counter-productive. This is one occasion where I sincerely hope that I am in error.

SHAW, J., Concurs

Original Proceeding - Florida Bar Rules of Judicial Administration

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