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**IN THE  
SUPREME COURT  
STATE OF FLORIDA**

**CASE NO. 78,503**

.....	:
KEITH LEROY TONEY, ET. AL.,	:
	:
Petitioners,	:
	:
vs.	:
	:
NEBUCHADNEZZAR FREEMAN,	:
ET. AL.,	:
	:
Respondents.	:
.....	:

**ON APPEAL FROM THE FOURTH DISTRICT COURT OF APPEAL**

**PETITIONERS' REPLY BRIEF ON THE MERITS**

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## ARGUMENT

The central issue on appeal in the instant case is two-fold. First, whether the appropriate interpretation of Rule 1.420(e), Fla. R. Civ. P. requires "record activity" to be an affirmative act by a party directed toward the disposition of the case, or whether any activity regardless of its nature, or the identity of its proponent, is sufficient to satisfy the requirements of the rule.

Second, whether the well-reasoned interpretation of the 1.420(e), Fla. R. Civ. P. established in the First and Third Districts should be applied to this case.

The conflict between the courts of appeal requires a clear interpretation of Rule 1.420(e), Fla. R. Civ. P. Consideration of ancillary issues is not essential to the resolution of this conflict.

Rule 1.420(e), Fla. R. Civ. P. provides that "all actions in which it appears on the face of the record that no activity by filing of pleadings, order of court or otherwise has occurred for a period of one (1) year shall be dismissed by the court on its own motion or on the motion of any interested party . . . ."

The Fourth District Court of Appeal held that a status order and petitioners' response to that order constituted record activity. Petitioners assert that the definition of record activity adopted by the Fourth District Court of Appeal is too expansive. Record activity, as defined by this Court, requires "an affirmative act (by either party) directed toward the disposition

of the cause." Eastern Elevator, Inc. v. Paige, 263 So.2d 218, 220 (Fla. 1972).

A dismissal pursuant to Rule 1.420(e), Fla. R. Civ. P. for lack of prosecution is in no way a restriction on access to the courts but instead, seeks to deter needless delay within the court system. To this end, the rule requires meaningful activity designed to advance the case to fruition, which serves the interests of all parties in a fair and efficient administration of justice.

Passive action or case management activities by the trial court do not equate to "record activity." Caldwell v. Mantei, 544 So.2d 252 (Fla. 2nd DCA 1989); Norflor Construction Corporation v. City of Gainesville, 512 So.2d 266 (Fla. 1st DCA 1987). These cases are well-reasoned and should be followed.

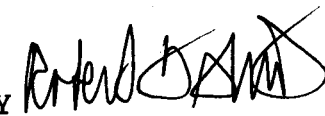
**CONCLUSION**

For all the foregoing reasons, the Petitioners respectfully request that this Court address the conflict between the district courts of appeal on the interpretation of Rule 1.420(e), Fla. R. Civ. P., and resolve the conflict consistent with the opinions of Norflor Construction Corporation v. City of Gainesville, 512 So.2d 266 (Fla. 1st DCA 1987) and Caldwell v. Mantei, 544 So.2d 252 (Fla. 2nd DCA 1989).

Petitioners respectfully request that the opinion of the Fourth District Court of Appeal be reversed and remanded with instructions that the order of the trial court dismissing the case be reinstated.

Respectfully submitted,

BY



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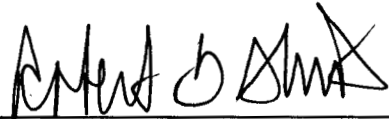
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to: GARY MARKS, ESQUIRE, Attorney for Respondents, 303 Southwest 6th Street, Fort Lauderdale, Florida 33315, this 5th day of March, 1992.

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