

IN THE SUPREME COURT OF FLORIDA

IN RE:

AMENDMENTS TO THE
FLORIDA RULES OF CIVIL
PROCEDURE
(TWO YEAR CYCLE)

Case No. SC05-179

**COMMENTS CONCERNING PROPOSED AMENDMENT
OF RULE 1.420, FLORIDA RULES OF CIVIL PROCEDURE**

The following comments regarding the proposed amendment of Rule 1.420, Florida Rules of Civil Procedure (Dismissal of Actions) are submitted for the Court's consideration:

1. Rule 1.420(e) requires the court to dismiss an action in which there has been no record activity for a period of one year in the absence of a showing of good cause for the failure to prosecute. The Civil Procedure Rules Committee proposes an amendment to the rule that would permit the court to dismiss an action for failure to prosecute only after 60 days notice to all parties that no record activity has occurred within the ten months preceding the notice.

2. Rule 1.420(e), in its present form, provides an incentive for plaintiffs to monitor and take affirmative steps to prosecute actions they have commenced. The rule also serves the purpose of removing from the courts' dockets old inactive cases in which plaintiffs have failed, without good cause, to

fulfill their responsibilities to move their cases toward conclusion. The rule itself provides clear and sufficient notice to parties initiating civil actions of their duties to actively prosecute their cases and of the consequences of failing to do so.

3. The amendment proposed by the Committee should be rejected. Plaintiffs who commence civil actions should be responsible for monitoring and prosecuting their cases. The amended rule would effectively relieve plaintiffs of this responsibility and shift it to opposing parties, other interested persons, or the court. The likely effect of the 60 day notice requirement in cases that have languished without good cause for more than ten months will be to generate perfunctory record activity for the sole purpose of avoiding dismissal. If Rule 1.420(e) is amended as proposed, plaintiffs will be less vigilant and attentive to their cases, knowing that a case cannot be dismissed for lack of prosecution until the plaintiff has first received a “reminder” of the duty to prosecute from the court or another party. If amended, the rule would most likely to fall into disuse. The number of cases dismissed for lack of prosecution would probably decline significantly. Relatively inactive cases, with occasional bursts of record activity, would likely remain on the dockets of the trial courts for longer periods of time.

4. The foregoing comments are the opinions of the individual undersigned attorney and do not represent positions of the law firm of Holland & Knight LLP.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was furnished by U.S. Mail to Robert N. Clarke, Jr., Ausley & McMullen, P.A., P. O. Box 391, Tallahassee, Florida 32302-0391, this ____ day of March, 2005.

Attorney