

IN THE SUPREME COURT OF THE STATE OF FLORIDA

IN RE AMENDMENTS TO )  
FLORIDA RULES OF )  
CIVIL PROCEDURE )

CASE NO.: SC05-179

COMMENT ON PROPOSED AMENDMENT TO RULE 1.420(E)

The Legislation Committee and the International Litigation & Arbitration Committee of the International Law Section of The Florida Bar ("Committees"), by and through their respective chairmen, hereby submit the following comment on the proposed amendment to Fla. R. Civ. P. 1.420(e) (dismissals for failure to prosecute) which was also filed in letter form on April 15, 2005.

The Committees respectfully object to the amendment. Since 1976, Rule 1.420(e) has urged the dilatory plaintiff to act and not to litigate out of a motivation to glean a "nuisance value" settlement from a litigation-averse defendant. It has helped to clear the courts' dockets of cases that are not being pursued in earnest and potentially not in good faith. The amendment would completely remove the onus presently on plaintiffs to file one document within one year to keep a case pending and instead would place that onus on other parties to remind the plaintiff of its obligations. The Committees acknowledge the appropriateness of erring on the side of giving plaintiffs their day in court. However, if a plaintiff neglects to move its case

in the direction of trial by filing a document within an entire year, the Committees submit that it is reasonable to allow the court conclude that the plaintiff is dilatory and to be able to dismiss the case, notwithstanding applicable statutes of limitation that may have run in the interim.

The amendment would increase the litigation cost, not decrease it. It would delay resolution of cases, not expedite it. It is not too burdensome on plaintiffs or their counsel at a bare minimum to ensure that they are interested enough in pursuing the litigation that has been filed by them to file a single document within a year's time.

The Committees respectfully object to the proposed amendments to Fla. R. Civ. P. 1.420(e).

Respectfully submitted,

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J. Brock McClane  
Chairman  
Legislation Committee of  
the International Law Section

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Michael A. Tessitore  
Chairman  
International Litigation &  
Arbitration Committee of the  
International Law Section

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was furnished by United States mail to: Hon. Ralph Artigliere, P.O. Box 9000, Drawer J-154, Bartow, FL 33831-9000; Bruce Berman, 201 S. Biscayne Blvd., 22 Fl., Miami, FL 33131-4336; William Dufoe, P.O. Box 32092, Lakeland, FL; Joseph Summonte, 2940 S. Tamiami

Trail, Sarasota, FL 34239; Henry Trawick, P.O. Box 4009, Sarasota, FL 34230; John Graves, 200 S. Washington Blvd., Suite 7, Sarasota, FL 34236; and Madelon Horwich, 6651 E. Jefferson St., Tallahassee, FL 32399-2300 on this the 25th day of April 2005.

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