

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO

CASE NO. SC08-1141

THE FLORIDA RULES OF

CIVIL PROCEDURE – MANAGEMENT

OF CASES INVOLVING COMPLEX LITIGATION.

COMMENT OF THE FAMILY LAW SECTION OF THE FLORIDA BAR

THE FAMILY LAW SECTION OF THE FLORIDA BAR, by and through its Chair, Scott Rubin, and the Chair of its Rules and Forms Committee, Ronald L. Bornstein, hereby files this Comment of the Family Law Section of The Florida Bar to proposed Amendments to the Florida Rules of Civil Procedure – Management of Cases Involving Complex Litigation, and states:

A. POSITION

A Fast-Track Sub-Committee of the Rules and Forms Committee of the Family Law Section of The Florida Bar was appointed to consider matters requiring comment and/or action relating to proposed Amendments to the Florida Rules of Civil Procedure – Management of Cases Involving Complex Litigation. The Sub-Committee presented its recommendation to the Executive Council of the Family Law Section on September 11, 2008, which voted to request that proposed Florida Rule of Civil Procedure 1.201 not apply to family law matters if it is enacted and to oppose the removal of family law matters from the Civil Cover Sheet until or unless a separate Family Law Cover Sheet is created. Thus, **the Family Law Section of The Florida Bar responds to proposed Amendments to the Florida Rules of Civil Procedure –**

Management of Cases Involving Complex Litigation as more particularly set forth herein.

B. DISCUSSION OF CONCERNS AND RECOMMENDATIONS

- 1. Whether the proposed rule 1.201, Complex Litigation should be adopted for use in family law matters or if it would be more appropriate for said rule not to apply to matters covered by the Family Law Rules of Procedure.**

While the Family Law Section is in agreement with the concept of a proposed rule for complex litigation, it is the recommendation of the Section that it not apply to family law actions. The Rule, as proposed, is not written to adequately describe the factors which make a particular family law action “complex.” The proposed rule defines a complex case as one “that is likely to involve complicated legal or case management issues and may require extensive judicial management to expedite the case, keep costs reasonable, or promote judicial efficiency.” Family law cases frequently involve the court making legal and factual determinations related to a course of conduct between the parties that spans numerous years, contains allegations of domestic violence and other tortious conduct between the parties, deals with real property in multiple jurisdictions, raises complicated issues involving valuation of assets, division of property and the various consequences of a particular division of property and requiring a determination of the best interests of the parties’ children. While many family law cases could fit the definition as presented in the proposed rule, that definition does not adequately describe the factors which would make a specific family law case “complex”.

The proposed rule recognizes other litigation which may be occurring in other counties, states, or countries, or in federal court as one factor to be considered when determining if a case is complex; however, it fails to recognize that there may be additional actions involving the

parties within that jurisdiction that may be before other divisions of the Court. For example, it is certainly possible for the parties to be involved in a title IV-D action, dependency action, and a domestic violence action as well as their dissolution of marriage action and other possible civil counts included in that action. The existence of these other actions should certainly be considered when determining whether a family law case would be “complex”. Other consideration may also be warranted as to the priority of and consolidation of actions to reach the goal of not only of the unified family court but also expedite the case, decrease the cost of litigation to the parties, and promote judicial economy.

Finally, it appears that the authors of this proposed rule did not intend to encompass family law actions into the ambit of the complex litigation rule. This proposal suggested revision to Florida Rule of Civil Procedure 1.200 Pretrial Procedure, but failed to include a similar proposal to alter its Family Law Rule counterpart Rule 12.200. If the proposed complex litigation rule were to apply to proceedings that are governed by the Family Law Rules, Family Law Rule 12.200 would need to be modified as has been proposed for Florida Rule of Civil Procedure 1.200. The proposed rule 1.201 (a) only references “defendants” and a “complaint”. That terminology is not used in actions governed by the Family Law Rules.

At this time, the Family Law Section of The Florida Bar respectfully requests that proposed rule 1.201, Complex Litigation not apply to cases governed by the Family Law Rules of Procedure.

2. Whether the Family Law Section supports the removal of family law actions from the Civil Cover Sheet as recommended by the Petition.

Actions governed by the Florida Family Law Rules of Procedure are and remain civil

law. As such, they should remain included in the Civil Cover sheet. Rule 1.100 (c)(2) is the rule that requires the use of the civil cover sheet. There is not a Rule in the Family Law Rules of Procedure which corresponds to Rule 1.100 of the Rules of Civil Procedure. The Petition's proposed removal of family law actions, title IV-D cases, and domestic violence cases would necessitate the creation of a new cover sheet to address the areas removed as well as the creation of a new rule in the Family Law Rules of Procedure. Further, the proposal makes no provision for a replacement, but continues the requirement of family law cases being reported by the clerk as required by law. To reach the goals expressed in the petition, family law cases should be returned to the form and expanded as proposed for other civil cases. For example, the addition of paternity as a type of family case as well as dividing up domestic violence to be domestic violence, repeat violence, dating violence and sexual violence would better serve the goals presented in the petition than their removal, especially in the absence of an alternative form for the use in the deleted matters.

For the reasons stated above, the Family Law Section of The Florida Bar opposes the changes to the civil cover sheet as recommended by the petition.

WHEREFORE, THE FAMILY LAW SECTION OF THE FLORIDA BAR respectfully files this Comment, requesting that the proposed rule on complex litigation not apply to family law matters if adopted and that family law matters not be removed from the civil cover sheet.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the original and nine copies of the foregoing Comment has been furnished to the Clerk of the Supreme Court and that a true and correct copy of the foregoing has been served upon The Honorable Thomas H. Bateman, III, Task Force Chair, Leon

County Courthouse, Room 365C, 301 South Monroe Street, Tallahassee, Florida 32301-1861,
and to Robyn Vines, Esquire, Chair, Family Law Rules Committee, Ruden McClosky, 200 East
Broward Boulevard, Fort Lauderdale, Florida 33301-1963, by U.S. mail this _____ day of
September, 2008.

Respectfully submitted,

FOGEL RUBIN & FOGEL
44 West Flagler Street
Miami, Florida 33130
Telephone: (305) 577-4905

By: _____
SCOTT L. RUBIN, Chair
Family Law Section

-and-

HODGSON RUSS, LLP
1801 North Military Trail, Suite 200
Boca Raton, Florida 33431-1810
Telephone: (561) 394-0500

By: _____
RONALD L. BORNSTEIN, Chair
Rules and Forms Committee,
Family Law Section