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October 2, 2008 Via: Federal Express and U.S. Mail

The Supreme Court of Florida
Supreme Court Building
500 South Duval Street
Tallahassee, FL 32399-1925

Re: Proposed Amendments to the Florida Rules of Civil Procedure Case No. SC08-1141

Dear Supreme Court Justices:

The Law Firm of Levin Tannenbaum ("Firm") has reviewed and discussed the proposed amendments to the Rules of Civil Procedure regarding management of complex cases. In general, this Firm agrees with the concept of the proposed rules and believes that the purpose and intent of the proposed amendments should serve to improve the management of complex cases.

However, this Firm is of the opinion that some of the proposed amendments may serve to increase the time and expense in handling these type of cases for all parties. These comments have been prepared to address those issues.

1.201(a) Complex Litigation Defined:

This proposed provision requires service on ***all*** defendants **and** an ***appearance*** having been entered by ***each*** party, **before** any party or the court may move to have the case determined as a complex case.

It is this Firm's opinion that there has been no abuse in seeking determination of a complex case. Typically, the parties can present sufficient information to the court in the course of a case management conference to permit the court to determine whether the case is or is not complex. The proposed language set forth in Rule 1.201(a) appears to add significant time and expense to the marshaling of the case by counsel for all parties.

At a minimum, this provision should address the following:

1. All parties may not need to be served and/or have filed an appearance before a party or the court may move to have the case declared complex. Factors such as inability to effectuate service and default by a served defendant will serve as a basis for a party to object to determination of the case as complex, as premature.

2. A process by which the parties may stipulate to the case being a complex case, thereby avoiding the need for a hearing.

3. A defined standard for presumption of complexity (i.e. five or more named and unrelated defendants), requiring a party to affirmatively move to demonstrate it is not complex within a specified amount of time, or waive any objection to such determination.

1.201(b) Initial Case Management Report and Conference:

This Firm recognizes and applauds the intent of this section. However, issues for clarification or simplification are as follows:

1. 1.201(b)(1) requires ***attorneys*** for the parties to ***"meet"*** to prepare a joint statement.

a. There is the likelihood that attorneys have conflicting schedules and will not be able to set up the meeting.

b. This provision does not define "meet". Are attorneys required to meet personally, via telephone conference, etc.?

c. The provision does not address whether or not a *pro se* defendant is required to participate and, if not, that may be prejudicial to that defendant.

d. Subsections 1.201(b)(1)(A) through (C) do not seem necessary. The pleadings should provide sufficient information to state the factual statement of the case and the theory of damages (1.201(b)(1)(A) and (B)). This Firm is of the opinion that requiring parties to state the likelihood of settlement will be used more as a strategical statement and may not serve as anything truly meaningful to the management of the case.

e. There are no provisions for penalty for failure to abide by the terms of this provision. While it may be assumed that the order declaring the case complex may specifically order that the parties and/or their counsel comply with Rule 1.201(b), thereby creating the potential for a claim for sanctions for violation or failure to comply with the order that is speculative and could create inconsistency in addressing such failures from judge to judge.

This Firm proposes a minimum requirement that the plaintiff's counsel certify that counsel has made a good faith attempt to speak with all opposing counsel and pro se defendants to prepare a joint proposed case management order and has discussed

proposed language addressing: discovery; non-expert and expert deposition dates and locations; expert designation, preparation and disclosure; deadline for motions addressed to pleadings; witness and trial exhibit designation/disclosure; mediation date or procedure to select mediation date; date for second or final case management conference; and any other matters relevant to the case (i.e. procedure and notice for inspections of sites or evidence, destructive testing procedures and notice, etc.).

Thereafter, this Firm proposes that:

1. If the parties have agreed to all terms, then the plaintiff's counsel submit a proposed case management order to the court, incorporating all terms upon which all parties have agreed, with a copy to all parties.

2. If the parties have not agreed to all terms, then the plaintiff must and all other parties may submit their own proposed case management order to the court, identifying which terms have been agreed to by all parties, if any, and which terms are proposed by submitting counsel. The terms of the case management order may be debated at the case management conference.

This Firm submits that court would acquire enough information via submissions and oral argument at the case management conference to decide upon appropriate terms for the case management order. This Firm has experienced that a case management conference between 30 to 60 minutes is sufficient.

1.201(b) Initial Case Management Order:

In general, this Firm agrees with the proposed terms of this subdivision. However, this Firm would prefer to avoid using the term "meet" and use the term "confer", only.

In addition, this Firm cautions inclusion of provisions authorizing sanctions. The power to sanction is already well within the authority of the court. To identify that sanctions "may" result could serve to create an increase or inconsistency in sanctioning parties or their attorneys.

Respectfully submitted,
/s/ Salvatore G. Scro
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