IN THE SUPREME COURT OF FLORIDA

IN RE AMENDMENTS TO THE FLORIDA RULES OF CIVIL PROCEDURE - MANAGEMENT OF CASES INVOLVING COMPLEX LITIGATION

CASE SC 08-1141

COMMENTS ON PROPOSED RULE CHANGES BY HENRY P. TRAWICK, JR.

Henry P. Trawick, Jr. is a member in good standing of The Florida Bar, is a former member of the Civil Procedure Rules Committee and was responsible initially for determining the style of the present rules. He has the following comments set opposite each of the rules described below:

Rule 1.100(c)(3)	The addition in the last sentence of “by court order” is unnecessary. No action can be dismissed for lack of prosecution, except by court order.
Rule 1.201(a)	The rule does not accommodate a defaulting party. In two places the word “case” is used when “action” would be the appropriate term in accordance with rules style.
Rule 1.201(a)(1)	It would be better to use “action” instead of “case” each time “case” appears in this subdivision of the rule. The term “complex action” is in accordance with the style initially adopted for the rules. I will not refer to that term again although it occurs several additional

	times in the rule proposal. The term case management conference is entirely different. Using “action management conference” gives an entirely different context to the term. The current terminology should continue.
Rule 1.201(a)(2)	Items (D) and (E) do not have any benefit in the definition. The mere fact that a large number of witnesses or of documents must be submitted does not make a case complex. It may make it lengthy. It may require the court to rule on more testimony, but neither is a reason for declaring an action complex unless combined with one of the other items. Item (E) is completely irrelevant. The time it takes to try the case does not make it complex.
Rule 1.201(b)(1)	This does not provide for the inability of counsel to agree on the various matters and direct the court to rule on the disagreements, particularly in connection with the discovery plan.
Rule 1.201(b)(1)	Items (M) and (N) are premature unless some provision is made for allowing amendment to these lists.
Rule 1.201(b)(2)	There is no reason for a client representative to attend what is essentially a conference on purely legal matters.

Rule 1.201(b)(3)	The term “attorney” is the one used throughout the rules. The use of “counsel” should be changed accordingly.
Rule 1.201(b)(3)	The rule should not require the “assurances” that the trial date has been discussed with clients. It should require the attorneys to discuss the trial dates and tell the court that those dates are satisfactory or not.
Rule 1.201(c)(1)	Presumably this is already covered in subsection (b)(1). The discovery plan should include these items if it is going to be useful.
Rule 1.201(c)(2)	Some of this is accommodated in subsection (b) on the discovery plan. It is more appropriate to include all of the discovery requirements in one place. The rule should provide that if the parties cannot agree, the court shall set the schedule. For example, the deposition schedule is not the only one. There should be a schedule for production of documents and for the examination of property and things.
Rule 1.201(c)(4)	What briefs are required? The rules do not provide for briefs. If this subdivision remains in the rule, it should specify that the court will determine what questions of law it wants briefed and

	then require a briefing schedule.
Rule 1.201(d)(6)	This is unnecessary. These items should be filed with the court before the case management order provided for in subsection (c).
Rule 1.201(d)(7)	Why is this different from (4) and (5)?
Rule 1.201(c)	In the preliminary paragraph and in subdivision (1) Florida rules are referred to as “subdivision.” In both cases this should be changed to “rule.”
Court Commentary	The court may make whatever comments it wants in connection with the adoption of rules. However, this court commentary is obviously prepared by the taskforce. It should be properly and accurately designated. I suggest that nothing in it is either necessary or desirable.

The undersigned certifies that a copy of the foregoing has been furnished to The Honorable Thomas H. Bateman, III, Taskforce Chairman and John F. Harness, Jr., as Executive Director of The Florida Bar by mail on July 28, 2008.

By_____

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