

IN THE SUPREME COURT OF FLORIDA

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

CASE NO. SC08-1141

COMMENTS OF BILL WAGNER

BILL WAGNER, a member in good standing of the Florida Bar, respectfully submits these comments regarding the captioned proposed amendments as follows:

1. Proposed Rule 1.201(a) raises three potential problems in the view of the undersigned:

a. In truly complex litigation, it is possible that a single named party may not be served, or may voluntarily choose not to appear. In such event, the first sentence of the Rule could be construed as preventing the Court, or any party, from seeking any relief under the Rule. That result should not occur.

b. There should be a point beyond which a party (as distinguished from the Court) should be prohibited from filing a motion to declare a long pending case as being a case that should at a late date come under the Rule, or at least a point beyond which the Court is not required to conduct a hearing on any such motion filed.

c. The second sentence of the sub-paragraph is potentially confusing in that it does not describe clearly the specific event which triggers the 10 day mandatory time for entering an order.

2. Proposed Rule 1.201(b)(1)(D) should be clarified in its requirement that the parties disclose the “likelihood of appearance in the action” of “non-parties to whom allocation of fault will be sought”. If the party referred to is a true “non-party”, then they are not likely to file an “appearance in the action”.

3. With regard to Proposed Rule 1.201(d)(4):

a. The Court should either eliminate the requirement for listing “impeachment” witnesses or additional safeguards should be provided in situations in which the need for “impeachment” is unknown and could not reasonably have been anticipated before trial. Lawyers frequently plan and anticipate that witnesses, both expert and non-expert, will essentially tell as true the same facts and opinions at trial that they have previously expressed either during discovery or other materials. Should they, for whatever reason, dramatically change their description of facts or their opinion during the actual trial, they should not be able to escape “impeachment” by claiming that the witness presented to impeach had not been “listed” 100 days before the trial commenced. If the listing of “impeachment” witnesses is truly deemed necessary, a party faced with surprise

testimony should be able to show good cause why an impeachment witness was not anticipated as being needed and therefore was not listed.

b. Due to the potential technical interpretation of the words “impeachment” and “rebuttal”, it seems that inclusion of the words “or otherwise” likely is to create a potential area for abuse and dispute that the Rule is attempting to avoid.

Respectfully Submitted:

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CERTIFICATE OF SERVICE

I certify that a copy of the above was served by mail on _____, upon the following.:

The Honorable Thomas H. Bateman, III
Leon County Courthouse
Room 365C
301 South Monroe Street
Tallahassee, FL 32301-1861

Bill Wagner

CERTIFICATE OF TYPE SIZE AND STYLE

Bill Wagner HEREBY CERTIFIES that this petition is typed in 14 point Times New Roman Regular type.

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