

Supreme Court of Florida

IN RE: FLORIDA RULES OF CIVIL PROCEDURE CASE NO. SC08-____
FOR THE MANAGEMENT OF LITIGATION
INVOLVING COMPLEX CASES

PETITION OF THE TASK FORCE ON THE MANAGEMENT OF CASES INVOLVING COMPLEX LITIGATION

The Task Force on the Management of Cases Involving Complex Litigation, by and through the Chairman of the Task Force, the Honorable Thomas H. Bateman III, Circuit Judge, Second Judicial Circuit, files this petition pursuant to Florida Supreme Court Administrative Order AOSC06-53, In Re: Task Force on Management of Cases Involving Complex Litigation, dated September 19, 2006, directing the Task Force to “[r]eview the existing Florida Rules of Court Procedure to determine whether rules, systems, or processes should be created or amended to enhance the effective case management of complex litigation... .” This rule petition is directly related to, but is submitted separately from, the report of the Task Force: “Supreme Court of Florida’s Task Force on the Management of Cases Involving Complex Litigation, Report and Recommendations,” filed with the Florida Supreme Court on April 30, 2008. The proposed rule is new and if promulgated would be included in the Florida Rules of Civil Procedure. The proposed rule is underlined to reflect it is new and is attached to this petition at Appendix A.

I. Historical Background

In creating the Task Force, Chief Justice Lewis, in AOSC06-53, recognized that Florida may lack sufficient rules of procedure to effectively guide the judicial management of complex cases within the State Courts System. The Task Force members were appointed by the chief justice in response to concerns raised by attorneys around the state who were having significant trouble accessing judicial calendars or receiving firm trial dates. In addition, it has become common knowledge that the entire discovery process is burdensome and unwieldy. As a result, frequently, complex cases have taken years to get to a final disposition or to trial. In the opinions of many, such long delays have become intolerable, sow disrespect for the judiciary and significantly impact the cost of complex civil litigation.

The Task Force was appointed to study the problem and make recommendations to improve the administration, management, and disposition of complex cases in Florida's trial courts. A super majority of the membership found that a need exists in Florida's trial courts for a rule of civil procedure that will lend itself to the swifter disposition of complex cases. They believe that the prudent way to address these deficiencies is through adoption of a new rule of civil procedure designed to apply exclusively to complex cases. Experience has shown that judicial attention to complex cases has been insufficient in the past and that it is apparent that there is a concomitant need for additional case management conferences and pretrial hearings to move complex cases through to disposition in a more timely fashion.

Over the course of eighteen (18) months the Task Force studied and researched the way courts across the nation addressed the management of complex

cases. It accomplished its work through three (3) subcommittees created by the chair: a Definition Subcommittee; a Rules Subcommittee; and, a Technology Subcommittee. The Definition Subcommittee was chaired by 18th Circuit Judge James Perry. The Rules Subcommittee was chaired by 9th Circuit Judge Renee Roche. The Technology Subcommittee was chaired by 2nd DCA Judge Edward LaRose.

In addition to study and research, the Task Force conducted a public hearing and held a panel discussion at The Florida Bar's Annual Meeting in Orlando in June 2007. The panel members included 9th Circuit Judge Frederick Lauten, 13th Circuit Judge Richard Nielson, Arizona Superior Court Judge Kenneth L. Fields, California Superior Court Judge David C. Velasquez and New York City attorney Robert L. Haig. All are either presiding over a court that covers complex civil or complex business cases or were instrumental in their state with the creation and implementation of complex court divisions. Their insight and recommendations for improvement to the way Florida's courts address cases considered to be complex were invaluable.

After the Task Force reached a consensus as how best to define a complex case based on the work of the Definition Subcommittee, the Rules Subcommittee worked diligently to craft a rule of civil procedure that would address exclusively those cases a judge designates as being complex. The rule would not apply only to cases one would consider complex in the traditional sense. Rather, the rule would apply to any type of case if a judge, after considering certain factors, designates it as being a complex case. The final draft of the proposed rule being recommended was more than a year in the making and encompassed twenty (20) drafts. Along the way, it became apparent that to accomplish the goal of the rule and to track for

judicial workload purposes, the Civil Cover Sheet, form 1.997, Florida Rules of Civil Procedure, would have to be amended to capture more types of cases and a form order designating a case as being complex would have to be created. It also became apparent that Florida Rule of Civil Procedure form 1.998, Final Disposition Form, was not being used to the fullest extent thereby skewing the reporting of dispositions to the Florida Supreme Court as the circuit clerks of court are required to report pursuant to section 27.075, Florida Statutes.

This petition addresses only the new proposed rule of procedure, the amended civil cover sheet, the new proposed order designating a case as complex and the required use of the Final Disposition Form, form 1.998, Florida Rules of Civil Procedure, the Task Force is advancing. It does not address the technology and administrative issues nor the data collection, judicial education, bench guides or best practices referred to in the Task Force's Final Report.

II. The Proposed Rule of Civil Procedure

The rule being proposed and recommended for implementation, rule 1.201, includes a definition of a "complex case" and provides a method for differentiated case management and a concomitant procedure for designating a case complex. The proposed rule also addresses expediting the setting of the trial date, an initial case management conference and report, a case management order and a final case management conference, all of which have been identified as needed for the expeditious disposition of complex civil cases.

The proposed rule provides for the designation of a case as complex upon motion of a party and requires the presiding trial judge to enter an order designating the case a "complex case." The rule provides for expedited case

management procedures designed to require the parties to frame the issues and evidence. It is further designed to compel the parties to design a discovery plan and to identify contentious issues early in the case and to discuss them at the initial case management stage.

At any time after service of process, a party or the court can move to declare and designate a case complex. The proposed rule specifies factors to consider when deciding whether the case meets the definition in the proposed rule. Once the motion has been heard, the judge must enter an order within 10 days. If the case is designated as complex, the order directs the clerk to properly code the case to allow separate tracking and management.

The proposed rule provides that within 60 days of designation, the court shall hold an initial case management conference. Before that initial conference is held, the parties must prepare and submit to the court a joint statement which does the following:

- 1) frames the issues involved;
- 2) discusses the theory of damages sought;
- 3) discusses anticipated discovery issues;
- 4) makes suggestions for referral of issues to mediation, partial or complete arbitration, or other neutral processes, including, but not limited to:
 - a) agreement to refer to a mediator all discovery matters and non-dispositive motions; or, agreement for referral to a master, with rulings and recommendations appealable to the court;

b) other dispute resolution approaches such as a mini-trials or summary jury trial on the issues of liability, damages or both;

5) any other matters that may be helpful to the court in setting further conferences and the trial date.

Lead counsel and a representative of the client must be present at the initial case management conference. At the initial conference the judge will set the trial date. The date will be no sooner than 6 months nor more than 24 months from the date of the conference. The rule provides that a continuance of a trial rarely should be granted and even then only after a showing of good cause.

The rule would require the court's case management order include dates by which the parties must identify expert witnesses. After those dates, the parties would be precluded from naming additional experts. After the dates set for naming experts pass, the parties are required to meet and schedule the expert witnesses for deposition. Those dates cannot thereafter be changed without the consent of all parties or order of the court. The case management order may include necessary briefing schedules and must include a deadline for conducting alternative dispute resolution.

Additional case management conferences may be scheduled at the court's discretion. Before each of those conferences, self-represented parties or the attorneys for the parties must meet to frame the issues, consider whether such additional conference is unnecessary and be prepared to advise the court accordingly.

Not less than 90 days before trial, a final case management conference must be held. As with previous case management conferences, the parties must meet 10

days before the conference to frame a case status report for presentation to the presiding judge. That report must identify the attorneys who actually will try the case, the witnesses who will testify, and any other issues that could impact the timely trial of the case.

If the supreme court promulgates proposed civil procedure rule 1.201, rule 1.200(a)(3) also must be amended inasmuch as the “complex litigation factors” referred to in that rule, which have never been delineated, are contained in the new rule 1.201 being proposed. Accordingly, rule 1.200(a)(3) should be amended to read: “(3) coordinate the progress of the action if the complex litigation factors contained in rule 1.201(a)(2)(A-H) are present.”

III. Proposed Amended Civil Cover Sheet, Form 1.997

The Rules Subcommittee proposed to the Task Force members a significant revision of the Civil Cover Sheet, Form 1.997. During the course of the subcommittee’s work, it became clear that the civil cover sheet currently in the rules of civil procedure is inexact, obsolete and fails to capture information crucial to the needs of the courts. Specifically, many cases that are considered to have significant impact on a judge’s time and workload, or cases that are complex, currently fall into the “other” category on the cover sheet. As a result, the general “other” category effectively hides from detection and accurate accounting what some consider to be the most time consuming and complex of cases. Accordingly, the subcommittee took the initiative to recommend to the Task Force members that it is in the State Court System’s best interest to significantly revise the civil cover sheet to make it more meaningful and accurate. The Subcommittee recommended and the Task Force agreed that added specificity to the types of cases previously described as “other” allows greater definition of those types of cases broadly

included in the current Civil Cover Sheet, Form 1.997. Amending the civil cover sheet will allow the clerks to more accurately report the types of civil cases that are filed. In addition, the Task Force recommends that family law cases be removed from the civil cover sheet because they are not “civil” cases. Family law cases will still be reported by the clerk because they are required by law to do so.

An additional amendment to the cover sheet is proposed to require the filing attorney, or a *pro se* party, to certify that the designation of the case type is being made in good faith. The purpose of the certification is to attempt to ensure that the attorney or *pro se* party has personally considered the nature of the case.

Historically, law firm paralegals, runners and secretaries were the persons filing the cover sheet. The amendment being proposed places the responsibility directly on the filing attorney or *pro se* party. It also is an attempt ward off an initial claim that the case is a complex case which, if permitted, could result in assignment of the case to a specialized division of the trial court without judicial oversight. And, attorneys would be required to provide their Florida Bar number.

The amendment to the categories of cases included in the civil cover sheet are being proposed in an effort to assist counsel, parties, and trial court clerks to appropriately identify the type of case being filed, to enable more accurate reporting and tracking of civil cases, including complex cases, and to assist the supreme court each time it must certify the need for additional judges.

IV. Proposed Form Order Designating a Case Complex

In order to accurately track complex cases in the Summary Reporting System, trial judges need a mechanism to communicate to their respective clerks of court that a case has been designated as complex. The civil cover sheet, while helpful to filing parties and the court clerk’s staff, does not accomplish that goal.

The petitioning party may believe a case is complex, but neither the party nor the clerk of court should make that determination. Only a judge can determine whether a case is likely to be sufficiently complex to warrant invoking the new proposed rule of civil procedure recommended in this petition. Accordingly, the Task Force proposes a form order designating a case complex which the trial judge must enter to meet the requirements that the proposed rule envisions. That is, a case may not be considered complex and the proposed complex litigation rule of procedure cannot be utilized until the trial judge enters the order designating the case as complex and invoking the complex litigation rule. The form order not only provides to the trial judge the formal mechanism to accomplish the goal but also directs the clerk of court to take the action necessary to meet the ministerial reporting requirements of section 25.075, Florida Statutes.

V. Proposal Regarding Final Disposition Form, Form 1.998

The current final disposition form is not routinely being filed by the prevailing party despite the mandatory language contained in Rule 1.100(c)(3), Rules of Civil Procedure. As a result, case disposition data being reported is not accurate. This failure may be because the language prefacing Final Disposition Form 1.998 is worded in a way that implies that the document is to be prepared by the clerk. The Task Force recommends that Form 1.998 be amended to reflect that the form is to be filed by the prevailing party so as to assist the clerk of court in performing the reporting requirements of section 25.075, Florida Statutes. Specifically, the language should be amended to say, “This form shall be filed by the prevailing party for the use of the Clerk of Court for the purpose of reporting judicial workload data pursuant to Florida Statute 25.075. (See instructions on the reverse of this form.)”

In addition, rule 1.100(c)(3) should be amended so as to require the plaintiff or petitioner to file form 1.998 with the clerk of court when a case has settled or dismissed without a court order or judgment. Currently, there is no requirement in the rule that form 1.998 be filed when a case settles out of court or is voluntarily dismissed. Often, neither the trial court nor the clerk of the court is aware the parties have settled or dismissed their case. The result is that the trial court's pending caseload count is skewed and the data the clerk is required to report to the supreme court through the Summary Reporting System is not accurate. Mandating that the plaintiff or petitioner file form 1.998 when the case has been settled or dismissed by the parties will assist the trial courts in managing their cases and the supreme court in meeting its responsibility to certify the need for additional judges.

Accordingly, rule 1.100(c)(3) should be amended to read:

(3) A final disposition form (form 1.998) shall be filed with the clerk by the prevailing party at the time of the filing of the order or judgment which disposes of the action. If the action is settled without a court order or judgment being entered, or dismissed by the parties, the plaintiff or petitioner immediately shall file a final disposition form (form 1.998) with the clerk. The clerk shall complete the final disposition form for a party appearing pro so, or when the action is dismissed by court order for lack of prosecution pursuant to rule 1.420(e).

VI. Conclusion

The Task Force urges this Court to adopt the proposed rule for managing civil litigation in complex cases. The proposed new rule of civil procedure will greatly enhance the management of complex litigation in Florida's courts. The

procedures set forth in the proposed rule will help ensure that complex cases are given the necessary judicial attention needed to move such cases from filing to disposition in time measured in months rather than many years. The proposed amendments to the civil cover sheet and final disposition form, as well as the new proposed order designating a case as complex, will assist trial judges, trial court clerks and the Office of the State Courts Administrator to compile information necessary for the Florida Supreme Court to assess judicial workloads and to meet its duty to determine the need for additional judges.

The undersigned does not request oral argument but will appear as necessary if the Court desires.

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June 16, 2008

