

Supreme Court of Florida

IN RE: AMENDMENTS TO THE FLORIDA

RULES OF CIVIL PROCEDURE:

CASE NO. SC08-1141

MANAGEMENT OF CASES INVOLVING

COMPLEX LITIGATION

**RESPONSE OF THE TASK FORCE ON THE MANAGEMENT OF CASES
INVOLVING COMPLEX LITIGATION**

TO

**COMMENTS FILED IN RESPONSE TO THE SUPREME COURT'S
REQUEST FOR COMMENTS**

The Task Force on the Management of Cases Involving Complex Litigation (Task Force), by and through its Chairman, the Honorable Thomas H. Bateman III, Circuit Judge, Second Judicial Circuit, files this response to the comments filed in response to the Supreme Court's request for comments regarding the rule of civil procedure relating to the management of complex litigation being proposed by the Task Force.

The Task Force appreciates the efforts of the individuals and organizations that filed comments. Many offer helpful and useful suggestions which will undoubtedly assist the Court in the consideration of the proposed rule. Several of the comments involve technical linguistic suggestions the commenter believes will improve the Task Force's work product and proposed rule. This response will not

address those suggestions inasmuch as the Task Force is confident the Court will give them due consideration and incorporate them, if it is deemed appropriate to do so. However, this response does address the two substantive areas raised in the comments filed by the Family Law Rules Committee of the Florida Bar, the Family Law Section of the Florida Bar, magistrate Diane M. Kirigin and The Florida Bar's Civil Procedures Committee. This response will first address the comments filed by the Family Law Rules Committee of the Florida Bar, the Family Law Section of the Florida Bar and magistrate Kirigin and then will address the comments filed by the Rules of Civil Procedure Committee.

Civil Cover Sheet and Domestic Relations Cases

With respect to the comments filed by Family Law Rules Committee of the Florida Bar, the Family Law Section of the Florida Bar and magistrate Kirigin regarding the Task Force's proposed amendment to the Civil Cover Sheet, Form 1.997, to remove domestic relations cases from the cover sheet, the Task Force agrees that tracking family law (domestic relations) cases serves a useful purpose. The Task Force believes, however, that including domestic relations cases on the Civil Cover Sheet is confusing, fails to capture case information and data that is separate and discreet from civil cases, and results in inaccurate reporting of judicial

caseloads both in civil cases and in domestic relations case. The commenters recommend that the Civil Cover Sheet not be amended. The Task Force disagrees.

The Task Force submits, and in this context agrees with the commenters, that data gathering and tracking in domestic relations cases is every bit as important as is data gathering and tracking in civil cases. Therefore, in addition to recommending that the Supreme Court amend the Civil Cover Sheet, Form 1.997, the Task Force, in response to the comments filed with the Court, proposes that a separate domestic relations case filing cover sheet be implemented for use exclusively for family law (domestic relations) cases. A proposed new domestic relations filing cover sheet form, including only the category of cases listed in the current civil cover sheet, is attached for the Court's consideration. The Task Force recommends the proposed new domestic relations cover sheet be referenced in rule 12.105 of the Family Law Rules of Procedures and included in the Family Law Procedure Forms. As an alternative, the Task Force suggests the new form could be given form number 1.9775 ("Form 1.9775") and be included in the Rules of Civil Procedure inasmuch, as the commenters noted, the civil rules of procedure apply when the family law rules otherwise do not. The Task Force points out, however, that its members do not have the experience or expertise to know whether the categories of cases listed sufficiently encompass the types of domestic

relation proceedings from which data should be collected, and offers no opinion on whether the proposed new domestic relations filing cover sheet fills the needs of Florida's family law and domestic relations courts.

With regard to the Family Law Rules Committee's proposal that rule 12.100 be amended to clarify that civil procedure rule 1.100(c)(3) and Form 1.998 (Final Disposition Form) does not apply in family law cases, if the Court adopts the Task Force's proposed new domestic relations filing cover sheet, it would have no objection to the proposal to amend rule 12.100 to exclude family law cases from the 1.100 requirement to file a final disposition form in family law cases. However, if the Court does not adopt the proposed new domestic relations filing cover sheet, the Task Force submits that it would not be appropriate to amend rule 12.100 in this case that is now before the Court.

Finally, in response to the comments filed by Karen E. Rushing, Clerk of the Court for the 12th Circuit in Sarasota County, the Task Force understands and discussed at length with the staff of the Office of the State Court Administrator the potential impact any change to the Civil Cover Sheet could have on the Supreme Court's Summary Reporting System (SRS) and the concomitant reporting requirements of the state's court clerks. The Task Force learned that data, including the types of cases being filed that are currently reported through the SRS

reporting system, has not been updated in many, many years. Indeed, one SRS category listed on the Civil Cover Sheet, Form 1.997, the “other” category, encompasses nearly as many types of cases as all of the other listed categories combined. It is useless as a judicial caseload data and case management tool without actually going to the 67 clerks offices and reviewing by hand the pleadings in each court file. Thus, the Task Force is proposing that the Civil Cover Sheet be appropriately amended to include as many different types of cases that may exist and that may be identified by not resorting to categorizing them in the SRS as “other.” Because there will be an impact on the state’s court clerks SRS reporting requirements, as Ms. Rushing states, it will require “internal set up” and “programming changes,” implementation should be coordinated statewide under the direction of the Florida Supreme Court and the Office of the State Court Administrator. However, the Task Force highly recommends that the Court put a limit on the amount of time the clerks are given to implement the necessary changes should the Court promulgate the changes to the Civil Cover Sheet, Form 1.997.

In addition, Ms. Rushing raises the specter of the need for additional clerk staff time to review pleadings to determine if they are civil or domestic relations cases. However, it is respectfully submitted that based on the proposal being

advanced by the Task Force, to create a new domestic relations filing cover sheet, Ms. Rushing's concerns about the need for "direction as to how to report mismatched categories," will not come to fruition.

Proposed Complex Litigation Rule

The Florida Civil Procedure Rules Committee (Committee) raised several matters in the comments filed with this Court of which two merit a detailed Task Force response. The Task Force will provide a limited response as to the others, if at all.

First, the Committee questions whether a complex litigation rule of procedure is needed at all.

Interestingly, the Committee agrees with the Task Force's findings which, after more than 18 months of review and research, determined that there is no empirical data demonstrating how many "complex litigation" cases have been filed and are pending in Florida's trial courts. Yet, the Committee takes a position and approach to addressing the lack of data that is polar opposite, 180 degrees, from the approach the Supreme Court's own Task Force is recommending. As was pointed out in their comments to the proposed complex litigation rule filed by the active and retired circuit judges who have served in the family divisions of their

courts, the notion that that there is a need for a rule of procedure addressing complex litigation is not a new concept. Indeed, the Committee admits that there currently is no accurate method to identify and track complex civil cases as a category of case separate from other civil cases. While the committee does attempt to learn from one court clerk, albeit in the Fourth Judicial Circuit, a circuit that does not have either a complex or business court division, the methodology that was utilized surely resulted in a false result because no clerk in the State of Florida, including the clerk in the 4th circuit, knows what factors are to be considered to make a case a “complex case.” The data that office compiled for the Committee must be considered untrustworthy because, in order for a case to be counted as “complex,” the case must fit all the characteristics of a case that someone with authority defines as complex and the clerk has to know what those factors are or they must be identified for the clerk before it can be counted as a “complex” case. Moreover, the Task Force, through the Office of the State Court Administrator, surveyed every circuit to determine how many cases there are in the state court system that should be considered “complex” for the purpose of rule 1.200(a)(3). The consistent answer was that it was impossible to determine if a case was complex unless: either the local court already had set up a complex case or business division and those cases could be counted; or, each and every court file

was hand-audited – a daunting, labor-intensive proposition when there is no criteria or definition of what “complex litigation factors” are.

The simple truth is that the Civil Procedures Rules Committee has never defined “complex litigation factors” in the Rules of Civil Procedure. And, for some strange reason, the Committee at its meeting in September voted to not only to oppose the proposed new rule of procedure for complex cases, but also voted down an attempt by a couple of the more prescient members to at least adopt the factors and criteria the Task Force has recommended for inclusion in the rules for the presiding judge to consider in her determination if the case needs more differentiated case management. The Task Force submits to this Court that at least the courts in the 11th Circuit, the 17th Circuit, the 9th Circuit and the 13th Circuit have attempted to identify cases in which more judicial involvement in the management of the cases during litigation is necessary by describing in an administrative order the criteria the circuit uses to assign the case to the appropriate complex case or business division of the court. The Committee’s silence in this regard is deafening.

The Committee describes the Task Force’s proposed rule as micro-management and restrictive of the discretion of the court (presiding judge). The Committee and the Task Force have legitimate and very different philosophical

perspectives on the role of the judge in managing the control of the progress of a complex litigation case. The debate between those who think it is the judge's role to manage the pacing of litigation, and those who believe the party's attorneys should control the proceedings, continues unabated. It is one that this Court will have to reconcile as a policy matter. Moreover, there are those that believe the current rules of civil procedure are adequate and the problem of cases pending too long are geographical and even judge specific. See Judge Peter Webster's minority comments in the Task Force's Report and Recommendations filed with the Court on April 30, 2008. However, a close reading of rule 1.200 and the court commentary to the 1984 amendment demonstrates that at that time, if not earlier, this Court indicated that it intended for presiding judges in civil cases to apply differentiated management techniques when it amended the rule "to authorize case management conferences in an effort to give the court more control over the progress of the action." (Emphasis supplied).

In the absence of a wholesale adoption of the direction the Court gave to the trial courts nearly 25 years ago, and in the absence of the rules of civil procedures committee adopting criteria to describe what it means by the term "complex litigation factors" in rule 1.200, it appears that the time has come, notwithstanding the protestations of some, for this Court to take the next step and to adopt a case

management rule specific to complex litigation and, to include in the rule, the “factors” and “criteria” the Task Force recommends. Indeed, after considerable debate and deliberation, the majority of the Task Force concluded that the best alternative to attempting to get individual judges to utilize differentiated case management procedures was to propose a rule of procedure that can be applied to any type of case, whether the case is in Miami (Miami-Dade County) or in Bristol (Liberty County). Included in the proposed rule are the “complex litigation factors” the judge must consider before declaring the case complex. It must be remembered that the recommendation was not made in a vacuum. The Task Force surveyed the other states and the federal courts, heard from judges and lawyers who chaired state creation and implementation of complex case management efforts, considered national and international legal treatises, conducted independent research for guidance and conducted public hearings before making the recommendation it did to this Court. Indeed, according to a 2006 survey of judges from across the country who handle complex litigation by the National Judicial College, the National Center for State Courts and the National Association of State Judicial Educators, through a grant from the Civil Justice Reform Group, 98% of the respondents said that “identification of complex cases” was “essential” (68%) or “important” (30%). The remaining 3% of the responders said that it was “useful.” None – not one – said that it was “marginal” or “unnecessary.” From the

survey, the National Judicial College has now created a judicial education curriculum called “Managing Complexities in Civil Cases.”

If this Court determines that a specific rule to manage declared complex litigation is not necessary or desirable, the Task Force implores this Court to adopt the complex factors and criteria it has recommended and to incorporate them into the rules of civil procedure inasmuch as the Civil Procedures Rules Committee has already voted not to do so.

Finally, due to the current economic downturn and the huge influx of mortgage foreclosure court filings throughout the state, the Task Force agrees with the Committee that the Civil Cover Sheet, Form 1.997, should delineate “residential mortgage foreclosure” as a distinct category so that data can be collected and reported through the SRS by the clerks of court. In addition, the Task Force has no objection to the Committee’s suggestion of adding “Dismissed pursuant to settlement” and “Dismissed pursuant to mediated settlement” to Form 1.998, Final Disposition Form.

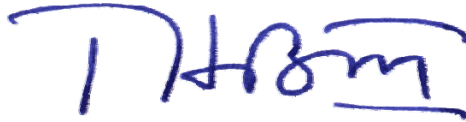
RESPECTFULLY SUBMITTED on November 17, 2008.



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I CERTIFY that a copy of this response to comments was provided to the persons listed below by U. S. Mail on November 17, 2008.



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PROPOSED NEW DOMESTIC RELATIONS COVER SHEET

Form _____ Domestic Relations Cover Sheet

The domestic relations cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form shall be filed by the petitioner 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 the form).

I. Case Style

(Name of Court) _____

Petitioner _____

Case #: _____
Judge: _____

vs.

Respondent _____

II. Type of Case (Place an x in one box only. If the case fits more than one type of case, select the most definitive.)

Domestic Relations

-
- | | | |
|---|---|--|
| <input type="checkbox"/> Simplified dissolution | <input type="checkbox"/> Dissolution | <input type="checkbox"/> Support-IV-D |
| <input type="checkbox"/> Support-Non IV-D | <input type="checkbox"/> UIFSA-IV-D | <input type="checkbox"/> UIFSA-Non IV-D |
| <input type="checkbox"/> Domestic violence | <input type="checkbox"/> Repeat violence | <input type="checkbox"/> Dating violence |
| <input type="checkbox"/> Sexual violence | <input type="checkbox"/> Other domestic relations | <input type="checkbox"/> Paternity |
-

I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief.

Signature _____ Fla. Bar # _____
Attorney or party (Bar # if attorney)

(Type or print name)

Date

FORM 1.9975. INSTRUCTIONS FOR ATTORNEYS COMPLETING DOMESTIC RELATIONS COVER SHEET

I. Case Style. Enter the name of the court, the appropriate case number assigned at the time of filing of the original petition, the name of the judge assigned (if applicable), and the name (last, first, middle initial) of petitioner(s) and respondent(s).

II. Type of Case. Place an "X" in the appropriate box. If the cause fits more than one type of case, select the most definitive. Definitions of the cases are provided below.

(A) Simplified Dissolution of Marriage- petitions for the termination of marriage pursuant to Fla.Fam.L.R.P.12.105.

(B) Dissolution of Marriage - petitions for the termination of marriage other than simplified dissolution.

(C) Support - IV-D - all matters relating to child or spousal support in which an application for assistance has been filed under Title IV-D, Social Security Act, except for such matters relating to dissolution of marriage petitions (sections 409.2564, 409.2571, and 409.2597, Florida Statutes), paternity, or UIFSA.

(D) Support-- Non IV-D - all matters relating to child or spousal support in which an application for assistance has not been filed under Title IV-D, Social Security Act.

(E) UIFSA- IV-D - all matters relating to Chapter 88, Florida Statutes in which an application for assistance has been filed under Title IV-D, Social Security Act.

(F) UIFSA - Non IV-D - all matters relating to Chapter 88, Florida Statutes, in which an application for assistance has not been filed under Title IV-D, Social Security Act.

(G) Domestic Violence - all matters relating to injunctions for protection against domestic violence pursuant to section 741.30, Florida Statutes.

(H) Domestic Relations - all matters involving adoption, change of name, child custody, separate maintenance, annulment, or other matters not included in categories (A) through (G).

(I) Paternity - all matters relating to paternity pursuant to section Chapter 742, Florida Statutes.

ATTORNEY OR PARTY SIGNATURE. Sign the civil cover sheet. Print legibly the name of the person signing the civil cover sheet. Attorneys must include a Florida Bar number. Insert the date the civil cover sheet is signed. Signature is a certification that filer has provided accurate information on the civil cover sheet.