

IN THE SUPREME COURT OF FLORIDA

IN RE:

AMENDMENTS TO THE RULES  
OF CIVIL PROCEDURE

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CASE NO. SC10-148

COMMENT ON PROPOSED AMENDMENT  
TO RULE 1.420(a)(1)

Presently, Florida Rule of Civil Procedure 1.420(a)(1) permits voluntary dismissal only of an entire “action.” This is consistent with Federal Rule of Civil Procedure 41(a)(1), on which rule 1.420(a)(1) is modeled. In its Regular-Cycle Report to the Court, the Florida Civil Procedure Rules Committee has proposed amending this portion of subdivision (a)(1) to permit voluntary dismissal of “a claim, or any part of an action or claim,” as well as an entire action. Regular-Cycle Report of the Florida Civil Procedure Rules Committee (hereafter “Report”) at 5, and Appendix B at 31. No justification for such a major change is offered in the Report. It recites merely that the “change . . . was suggested by Committee member John Scarola, to allow voluntary dismissal of part, not just all, of a suit.” Id. at 5. The undersigned is of the opinion that this proposed amendment is both unnecessary and ill-advised.

The proposed amendment is unnecessary because a mechanism already exists in the Rules of Civil Procedure to achieve the result that the proposed amendment is supposedly designed to permit. Pursuant to the Rules as they currently exist, if one who has filed a pleading seeking affirmative relief wishes to delete “a claim or part of an action or claim,” all the pleader need do is file (or seek leave to file, depending on the stage of the litigation) an amended pleading (usually a complaint or counterclaim) that deletes the desired portions of the previous pleading. *See* BRUCE J. BERMAN, FLORIDA CIVIL PROCEDURE ¶ 420.3[1], at 631 (2009-2010 ed.). Rule 1.420(a)(1) was never intended to be a means for amendment of pleadings. Those provisions are set out in other rules. It was, as its title clearly states, intended to be a means by which to dismiss “actions.”

In addition to being unnecessary, the proposed amendment is also ill-advised. Currently, if a party seeking affirmative relief wishes to amend the claims made in its pleading, it must file (or seek leave to file) an amended pleading that is complete in itself. *See* Fla. R. Civ. P. 1.190(a). The salutary purpose of this requirement is to permit recourse to one document, rather than several, to determine the claims being asserted. If the proposed amendment is adopted, a party will be able to delete “a claim or any part of an action or claim” by simply serving (or stating on the record during trial) a notice of dismissal. This would require one to search the entire court file to determine the claims being asserted.

The result would be confusion and the expenditure of additional time by litigants and the trial court.

For the foregoing reasons, the undersigned requests that the Court reject the proposed amendment to rule 1.420(a)(1) that would permit voluntary dismissal of “a claim, or any part of an action or claim,” as well as an entire action. Should the Court reject the proposed amendment to rule 1.420(a)(1), it should also reject the proposed amendment to rule 1.420(d) which, as the Committee’s Report states, is suggested only to bring the latter subdivision into accord with the former. Report at 6.

Respectfully submitted,

*Peter D. Webster*

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CERTIFICATE OF SERVICE

I certify that a copy of this Comment on Proposed Amendment to Rule 1.420(a)(1) has been furnished to Mark A. Romance, Chair, Civil Procedure Rules Committee, Richman Greer, P.A., Miami Center, Suite 1000, 201 S. Biscayne

Blvd., Miami, FL 33131, and to Steven G. Schwartz and David J. Pascuzzi, Schwartz & Horwitz, PLC, Suite 400, 6751 North Federal Highway, Boca Raton, FL 33487, by United States Mail, this 27th day of May, 2010.

*Peter D. Webster*

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Peter D. Webster

CERTIFICATE OF COMPLIANCE

I certify that this Comment on Proposed Amendment to Rule 1.420(a)(1) was prepared in compliance with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

*Peter D. Webster*

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Peter D. Webster