IN THE SUPREME COURT OF FLORIDA

CASE NO. SC22-122

IN RE: REPORT AND RECOMMENDATIONS OF THE WORKGROUP ON IMPROVED RESOLUTION OF CIVIL CASES
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TRIAL LAWYERS SECTION'S COMMENTS ON THE JUDICIAL MANAGEMENT COUNCIL WORKGROUP ON IMPROVED RESOLUTION OF CIVIL CASES- FINAL REPORT

I. INTRODUCTION

A. BACKGROUND AND HISTORY OF TRIAL LAWYERS SECTION

The Trial Lawyers Section of The Florida Bar ("TLS") provides a forum for discussion and exchange of ideas leading to the improvement of individual trial ability. The essential purposes of TLS are threefold: to assist the courts in improving the administration of justice and insure access to courts; to promote the art of trial advocacy; and to preserve and protect the independence of the judiciary. TLS Members represent litigants in civil, non-domestic cases. Additionally, TLS membership has a diversity of practices ranging from solo practitioners, and in-house counsel, to large firms with international offices. TLS was established in 1967 and has over 5,500 members. Membership in TLS is open to Florida Bar members and any student enrolled in any law school who is interested in the purposes of TLS.

B. FLORIDA SUPREME COURT'S INVITATION FOR COMMENT

On October 31, 2019, the Florida Supreme Court established the Workgroup on Improved Resolution of Civil Cases ("Workgroup") and the Workgroup issued its Final Report on November 15, 2021 (" Report"). *See AOSC 19-73.* The Executive Council of TLS studied the Report, the references contained in the Report, the comments from the Chief Judges of the Circuit and Civil Courts of Florida filed April 26, 2022, comments from the Circuit Civil Judges dated September 14, 2021, comments of the 4th Judicial Circuit ("4th Report") filed May 17, 2022, the Eighth Judicial Circuit comments filed April 28, 2022 ("8th Report") and The Florida Bar Civil Procedure Rules Committee filed on October 1, 2021. TLS also solicited comments from the members of The Florida Bar who are also members of TLS. As a result of this research, TLS has gained a thorough knowledge of many of the sectors that will be affected by the Workgroup's proposed changes, affording an opportunity to reflect and comment on the impact on the parties to Florida litigation, especially their access to courts and receiving justice in the resolution of their claims.

II. EXECUTIVE SUMMARY OF TLS RESPONSE

The trial judges and the members of the trial bar who have provided comment have come to similar conclusions on the fundamental problems

created by the changes contained in the Report. There are two basic problems with the proposals of the Workgroup, each of which can be remedied: a) preserving trial court discretion, and; b) making case management rule changes optional.

A. PRESERVING TRIAL COURT DISCRETION

Removing discretion from the trial judges in the proposed Rule changes does not solve the problems identified by the Workgroup, creates unintended consequences, denigrates public confidence in the court system, adds to judicial labor, reduces access to the courts, and is disrespectful to the courts and to the public who voted in many of the members of the court system. Requiring the imposition of sanctions given only empirical criteria, without the application of the trial court's discretion, transfers the system to an artificial intelligence approach to the law, which has not been implemented in any other jurisdiction.

B. MAKING CASE MANAGEMENT RULE CHANGES OPTIONAL WILL BETTER FIT THE CASE MODEL AND NEEDS OF PARTIES

Requiring extensive case management for every case, without the trial court's discretion to select cases for which this is appropriate, over-taxes the existing court system which does not have the capital or resources to provide time-consuming case management, and for many simple cases is a waste of judicial labor and ultimately a denial of access to the courts.

C. COMPROMISE: RULE CHANGES PROVIDE BETTER TOOLS AVAILABLE FOR COURTS AND LITIGATION PARTIES

The Workgroup Report and the recommended Rule changes in many instances can be useful as a toolbox for trial judges to use for better case management in more complex cases, and to create alternative disciplinary measures when appropriate for parties found to be volitionally impeding the process, to prevent the misuse of judicial labor or the limitations to other parties' access to the courts. Therefore, TLS, in conjunction with its membership and judiciary who have separately commented, strongly believe the Florida public and court system are better served by reinserting discretion for the trial courts to implement the Workgroup case management and sanctions toolboxes. Additionally, TLS recommends certain edits to the Rule Amendments to address anecdotal issues with certain of the recommended changes.

D. UNINTENDED CONSEQUENCES PREDICTABLY WILL RESULT IN MORE COMPRESSION IN CASE MANAGEMENT, REDUCTION OF ACCESS TO THE COURTS, AND LESS PUBLIC CONFIDENCE IN THE JUDICIAL SYSTEM

Implementation of the Workgroup Rule amendments without the changes recommended by TLS is likely to lead to expensive and disruptive unintended consequences. This includes the trial courts' inability to have available hearing time needed by the parties prior to trial. As a result, cases

may proceed to trial without the possibility of the parties' need to have heard dispositive motions and adequate discovery oversight.

Also, if the Workgroup Report Rule changes are adopted as is, the result will likely be to shift the caseload from the trial courts to the appellate courts for the following reasons: a) the removal of the standard of review for "abuse of discretion" will mean that more appeals will be decided on a "*de novo"* basis; the amended Rules in many instances do not use previously defined terms of art and use of each new term could likely spark additional review by the five District Courts of Appeal opining on the new definitions, and; b) because the Rule amendments are not modeled after the Federal Rules of Civil Procedure, the parties will not be able to simplify the use of the new Rules by reliance on federal jurisdiction precedent. In addition, recent expansion of Rule 9.130, Florida Rules of Appellate Procedure, will presumably soon result in an increase of appeals of non-final orders as of right. For example, Rule 9.130(g) now allows for the immediate appeal of an order permitting a claim for punitive damages.

Though the Workgroup Report requires trial courts to expeditiously manage their cases to conclusion, if more interlocutory appeals as of right are undertaken, the trial court will face a Hobson's choice, without the discretion to stay, or partially stay a case pending a non-final appeal. This

will necessarily result in forcing the trial courts to order a case to conclusion even though the trial court will not have jurisdiction to enter a final order. *See Fla. R. App. P. 9.130(f).* In the event of a reversal by the appellate court of a non-final order, the trial court may be faced with having to undertake twice the judicial labor, depending on the ruling from the DCA. These are just some of the unintended consequences that may occur as a result of the Rule changes, none of which advance the goals of the Workgroup of better case management and optimum use of available judicial labor, while "encouraging flexibility at the local level to address the pandemic-generated workload". *See Report at p. 6.*

E. OPTIMUM CASE RESOLUTION GOALS ARE NOT EXPRESSED IN THE REPORT AND SOLUTIONS ARE NOT BEST FORMED WITHOUT IDENTIFIED GOALS

TLS carefully reviewed the "legal literature," and "available research and practice in the state and federal jurisdictions," relied upon and recited to in the Report. *See Report, pp. 8, 10, 15, 22-23;* NCSC, *Call to Action: Achieving Civil Justice for All* (NCSC 2016) ("Call to Action")*;* IAALS, *Civil*

Case Processing in the Federal District Courts: 1/21 Century Analysis(2009); NCSC, *The Landscape of Civil Litigation in State Courts* (2013).[1]

In addition to the legal resources cited in the Report, TLS researched available Florida data regarding filed civil cases published by the Florida Office of the State Courts Administrator for fiscal years 2018 through 2021. *See* www.flcourts.org/Publications-Statistics/Statistics/Clearance-Rate-Dashboard*.; c.f. fn2 infra.*

The dataset used in the analysis found in *Call to Action* was compiled between 2008 and 2014 in response to the "foreclosure crisis" identified as impacting trial courts nationwide at the time. In *Call to Action*, the author relied on a "multijurisdictional study" of civil caseloads in state courts from 2012 to 2013. Though not identifying the venues, the author characterized the dataset as 5% of civil cases pending nationally. *"Call to Action"* relied heavily on the article NCSC, "*The Landscape of Civil Litigation in State Courts*" (2013) ("*Landscape*"). In *Landscape,* the article examined the

[1] IAALS is the Institute for Advancement of American Legal System based in Denver Colorado. IAALS was the same research source used by the Special Committee to Improve the Delivery of Legal Services that recommended amendment to Rule f4– 5.4 and advocated for non-lawyer ownership of law firms and fee sharing between lawyers and non-lawyers. The Florida Bar Board of Governors unanimously opposed the proposed amendments Rule 4-5.4. *See* G. Blankenship, *Board of Governors Unanimously Opposes Non-Lawyer Firm Ownership, Fee Splitting Ideas,* Fla. B. Journal (Nov. 10, 2021).

dataset of nondomestic civil cases disposed of between July, 2012 and June, 2013 in 152 courts and 10 urban counties. The only Florida cases included were limited to those filed in Miami-Dade County. None of these resources point to an industry-standard for case resolution, nor does the Report otherwise contain a reference to one. Therefore, it does not appear the most accurate data was used or available to the Workgroup when the Report was issued.

Rule 2.250(a)(1)(b), Florida Rules of General Practice & Judicial Administrative Procedure, already provides guidelines for trial court time standards in civil matters, from filing to final disposition: jury cases-18 months; nonjury cases-12 months; small claims-95 days. This Rule provides that these time standards are presumptively reasonable recognizing that ”there are cases that, because of their complexity, present problems that cause reasonable delays.” *Id.* Because the Report does not recommend an amendment to Rule 2.250, TLS assumes that this is still the goal of the Court for final resolution of civil cases.

The available research used in the Report that actually refers to Florida courts comes from *The Long Range Strategic Plan for the Florida Judicial Branch 2016-2021* and Docket Results Case by Year, published by the Florida State Court Administrator. *See Report, p. 5, n. 2; 8-9, n. 12.*

Importantly, the Report opines that the primary measure for progress in case management is "clearance rates." *Report, p. 19. "*Clearance rate" is defined as the number of disposed cases divided by the number of filed cases during a given time, expressed as a percent. *Report, p. 20* (citing Fla. Office of State Court Admr, Florida's Trial Court's Statistical Reference Guide FY 2019-20: Glossary 3 (2021)). The Report acknowledges that "there is no way to determine the age of cases from clearance rates." *Report, p. 20, n. 27.* This is because the clearance rate measures only the number of cases disposed of divided by raw number of cases filed within a given time period, without reference to which cases are which. *Id.*

Those that have spent the most time evaluating judicial case management have observed, "there remains a dearth of data on case management's effectiveness." J. Bailey *Why Don't Judges Case Manage?* 73 U. Miami L. Rev. 1071,1087 (2019) ("Manage"). Also, the Report relies on legal literature" that recognizes "the breadth of the state court docket poses management challenges" as compared to federal district courts with much more limited jurisdiction. *Id. at 1099*.

Though the Report seems to conclude that "clearance rates" are not the proper dataset to evaluate whether cases are being timely resolved, the Report contains no other reference or source identifying the age of pending

cases. *See Report, p. 19, n. 25.* The data apparently available to the Workgroup was seemingly out-dated and therefore "confounded" by the inclusion of mortgage foreclosure crisis figures. *Id. at 21.* Therefore, it is not clear what the Workgroup's recommended goal is regarding timeframe for disposition of other than time frames already included in Rule 2.250(a). The Report does not elucidate to what extent there may be a temporal problem of clearing cases from dockets that have unacceptably aged due to the shutdowns that followed the outbreak of Covid.[2]

Importantly, the empirical data that has been shared by those commenting have shown that the perception of more cases pending due to deficient case management, is just that, perception. *See 4th Report, p. 5.*

[2] TLS reviewed the "clearance rates" for FY 20-21 (attached as Composite Ex A) Recognizing that the Workgroup warns that clearance rates are not the proper dataset, given that there are no other datasets offered for review in the Report, TLS undertook to see whether more cases were being filed than disposed of in a given time period. With few exceptions, the circuits are disposing of cases at 90+% clearance rates, with 4 circuits exceeding 100%. Data for 2021 is only available through June 2021; the State FY runs from July 1 through July 30 of the following year. Only the First Circuit had a significantly low clearance rate. Review of the filings in the First Circuit for January through June 2021 *reflect a significant uptick in contract and indebtedness cases filed*, for the first six months of 2021. It is no surprise that the clearance rate is so low in light of the fact that nearly double the cases in those categories had been filed in those six months, giving the court system insufficient time to dispose of them. This demonstrates why clearance rates are not the proper measure for delays in administration of justice.

("[4th Circuit has] fewer civil cases pending now than [it] did before the Covid pandemic began.") TLS recommends that data be assembled and examined to better identify the scale of civil cases that are not concluding within the timeframes contained in Rule 2.250(a), and from that dataset determine if there are trends in the cases identified and tailor case management remedies as appropriate.

III. TLS COMMENTS ON PROPOSED RULE CHANGES

A. GENERAL OVERVIEW

Based on surveys of its membership and of the responses from the Chief Judges of Florida Circuits, the 4th and 8th Judicial Circuits, and the Florida Civil Rules Committee, TLS comments on the proposed Rules amendments in the Report, as more completely outlined below.

To the extent the proposed Rule amendments are necessarily tied to the "differential case management" designation of a case as "Streamlined", "General" or "Complex", TLS supports certain of the Rule amendments for the General or Complex cases only. For cases such as residential evictions and other similar cases that should be characterized as Streamlined, requiring additional case management that adds unnecessary costs to the litigants and is not supportive of the stated goals of the Workgroup. *See Chief*

Judges Report, p. 4 ("…county courts should be excluded from most of the case management requirements proposed.").

B. RULE 1.280(a) Initial Discovery Disclosure

The new Rule 1.280(a), initial discovery disclosure will start the discovery process sooner. The Report recognizes the need for discretion of the trial court to have the authority to separately order that Initialed Discovery Disclosures should be handled in a different manner, as appropriate. *See Report, p. 152.* Therefore, this proposed Rule amendment could benefit case management for General or Complex cases.

C. RULE 1.280(g) SUPPLEMENTING OF DISCOVERY RESPONSES

TLS supports this proposed change that requires a party who has made initial discovery disclosure, or who is ordered to disclose specified information, responded to interrogatories, request for production or request for admission to supplement promptly after some material respect of the disclosure is incomplete or incorrect. *See Report, p. 156.* This change will curtail the need for multiple rounds of discovery requests and responses and should generally expedite the discovery process. The Chief Judges also support this Rule change. *See Chief Judges Report, p. 2.* Also, TLS supports imposition of sanctions for failure to comply *as being an option* but not mandatory. *Id.* TLS does not support re-lettering this rule from 1.280(f) to

1.280(g). This will lead to unnecessary confusion in researching the precedent on this Rule. The proposed Rule amendment should remain as Rule 1.280(f).

D. Rule 1.440- "At Issue" Rule

TLS supports the Rule change that eliminates the "at issue" prerequisite requirement in order to set trial. The Chief Judges also support this change. *See Chief Judges Report, p. 2.*

E. Rule 1.200 Case Management

The Report states that "encouraging active case management… should translate into enhanced access to the courts." *Report at p. 28; see id. at 129-140.* The Report concludes that more active management reduces costs because there is an efficiency towards resolution*. Id. at 28*. In support of this conclusion, the Report cites C. Gerety, *Excess & Access: Consensus on the American Civil Justice Landscape 2, 9, 17* (IAALS 2011)(reporting survey results from ACTL Fellows, ABA Section of litigation members, NELA members and trial judges) ("*Excess")*. According to this IAALS article, discovery is the single greatest cause of unnecessary cost and delay in litigation. This article did not express a connection between early or more active judicial involvement and the reduction of discovery costs. *Id.* In

Excess, the article makes reference to data and experience other state courts that is limited to the following jurisdictions:

1) Wayne County, Michigan 1929;
2) two California small claims courts in the 1980s;
3) a two-judge trial court in Campbell County, Kentucky, and ;
4) Colorado Civil Access Pilot Project 2012 sunsetted in 2015.

In addition to the fact that these instances were very limited in their application and timeframe, the experiences in these jurisdictions reported mixed results on case management as a result of these pilot programs. *Report, pp. 44-49.* Because of the early timeframes of these studies, the results studied could not evaluate electronic discovery, which did not exist for the most part during the period studied. Thus, even though the *Excess* article was published in 2011, eleven years ago, the database was much older than 11 years, making it difficult to draw logical parallels with case management issues facing Florida courts today.

Rule 1.280(d), Florida Rules of Civil Procedure already addresses limitations on discovery of electronically stored information. The Report does not recommend modification or amendment of this Rule nor explain why the current Rule does not address and curtail excesses in costs due to electronic information discovery.

TLS adopts and accepts the comments filed by the 4th and 8th Judicial Circuits, and the Chief Judges, all of which conclude that changes to Rule

1.200 are unnecessarily complex and unduly burdensome on the trial courts. If the trial court's time and energy is directed to micromanagement tasks, the result will necessarily be a reduction of the amount of court time available to address substantive issues and to effectively bring a case to final resolution. *See 4th Report, p. 19-20.*

If implemented, the changes proposed to Rule 1.200 will require the trial court to assign each case to a case management track (Streamlined, General, or Complex) while leaving the parties with a right to request a change from the original track assignment. The time, responsibility, and management required for each case is dictated by the Rules relative to the particular track. For example, Rule 1.200(e)(3) will increase the responsibility of parties in "General" track cases to discuss legal issues, evidence, anticipated additional pleadings, confidentiality issues, depositions, inspections, examinations, electronic discovery issues, alternative dispute resolution, and more. The changes also require the parties in "General" track cases to identify deadlines for fact witness disclosure, expert witness disclosure, discovery, motions, amendments to pleadings, *Daubert* motions, alternative dispute resolution, and trial. The identification of issues and deadlines are required to be set forth in a joint case management report and a proposed case management order prepared by the parties. In addition, the

parties will have a continuing obligation to file updated joint case management reports or statements identifying outstanding motions and issues prior to each case management conference.

If adopted, the trial court is only permitted to extend deadlines for good cause. If an extension of a deadline will affect another deadline, the parties may not extend the deadlines by agreement. Instead, the parties must seek an amendment to the case management order and show "extraordinary unforeseen circumstances." And, if a party is unable to comply with one or more provisions of the case management order, that party is required to immediately file a motion for a case management conference laying out the issue and proposed remedy. Substantially more hearing time will be required to deal with these new requirements; this is predicted by those in the judiciary offering comment, all of which result in far greater expenses for litigants. *Id. at 19.*

Finally, the new Rule 1.200 prohibits parties from re-opening discovery if a trial is postponed from the period it was originally scheduled by the case management order. If a trial must be continued, it will be reset to the next available trial period with no further activity, absent leave of court.

For these reasons, TLS opposes these changes.

F. Rule 1.420(e)(3) Failure to Prosecute

TLS neither supports nor opposes this proposed Rule change, reducing the amount of time after which a case is subject to dismissal for failure to prosecute. Because this Rule change affects TLS membership disparately, TLS cannot comment.

G. Rule 1.460- Continuances

TLS opposes these Rule amendments because the significantly modified proposed continuance Rule puts additional time burdens on trial courts (requiring more detailed orders, more conferral with the parties and other judges, etc.) without providing additional resources and manpower (or any flexibility) to accomplish the additional work. The proposed modification changes the Rule from one in which there is a presumption in favor of a continuance to a presumption against a continuance and removing most discretion and flexibility from the judges. Every case is different and a more flexible system is needed.

Additionally, the Rule will increase motion practice by not allowing the parties to reach agreements between themselves. If both sides agree to a continuance, that should be afforded due weight. In contrast, the existing Rule became too lenient in practice, resulting in the granting of continuances

in instances when they were unopposed. Yet, the proposed new Rule militates too heavily in the opposite direction.

Rule 1.460(b)(5)(F) precludes parties from using trial conflicts (e.g., another trial in which counsel is involved scheduled for the same day) as the basis for a continuance and requires the two presiding judges to resolve the conflict – this will also result in more judicial labor and will likely result in trials being stacked back to back, which is not good for attorney well-being and work/life balance. If no resolution is reached between the two "presiding judges", the trial lawyer is left with the ultimate ethical dilemma, having to prefer one client over another.

The Chief Judges agree. *See Chief Judges Report, pp. 5-7.* As the judges report, many more civil cases will be ready to go to trial without the judges, senior judges or courtrooms to try them. *Id. at 5.* Because the new Rule does not allow for a continuance due to lack of court resources, the end result will be continuances denied even when there is no reasonable likelihood of being tried on the date set. This will add to the parties' expenses by the scheduling and re-scheduling, preparing for trial repeatedly, lining up witnesses and experts, only to have the case roll to another docket. *See id. at 5.*

Additionally, there is no discretion for the trial court to grant a continuance if there is an emergency issue with a witness upon which a party relies. *See 4th Report, p. 23.* Also, the Report does not cite to any empirical data showing that the current Rule 1.460 is broken, ill-used or ineffective.

One favorable change is that the proposed rule requires that trial dates be set in collaboration with the parties, rather than being unilaterally set by the judge. TLS membership also believes the parties, and their counsel would be more favorably served if the trial court routinely set trials for more specific dates rather than multi-week dockets.

H. Rules 1.160, 1.161 and 2.215-Motion Practice

TLS supports the *intent* of the proposed amendments to Rules 1.160, 1.161 and 2.215, but not the amendments as drafted. The Workgroup has proposed a Motion practice that is more sophisticated and follows the federal system in large part. However, without the funding needed to provide trial judges with access to law clerks, the application of the Rule changes will not only fall flat, but instead create a system that curtails oral argument for motions in favor of courts ruling based on the written submissions will actually *increase* the judicial labor because trial judges will not have the benefit of oral advocacy to synthesize the issues that are important to making a ruling. TLS agrees with the conclusions reached by the Chief Judges and

4th Judicial Circuit on this point. *See CJ Report, pp.3-4; 4th Report, p. 14 ("These rule changes micromanage the bench and the Bar and will result in much more delay in dispute, not less.).* Unlike the federal judiciary, circuit and county judges have limited full-time law clerks or other legal support staff, which is essential to support the burden shift created by requiring trial judges to rely only on written filings without oral advocacy, without advocates' identification of critical issues.

Imposition of rigid deadlines for parties' responses to motions, and for court resolution of motions, will result in an overwhelming burden on the court system, adding to, and not alleviating, the caseloads. As expressed by the judiciary, trial judges will have difficulty using current resources and staffing in meeting the deadlines for resolution of motions. The Report recommends the creation of more, and not less, administrative work if motion resolution is not timely, i.e. trial judge self-reporting to the respective chief judges, and then additional reporting from each circuit to the Florida Supreme Court for review. As the 4th Circuit observed, "much of Rules 1.160 and 1.161 either stripped the trial court of discretion or unnecessarily codify discretion", and adds to the court's work requiring the tracking of timelines. *4th Report at pp. 16-17.* The rigid limitation requiring trial court to rule on a motion in 10 days fails to consider routine trial dockets that can take up the full complement of

10 days for the trial judge. As a result, for the judiciary, this is not a close call. These changes have been labeled by Florida judges as “staggering and counterproductive”, and that would ”dramatically increase workloads for trial courts.” *Id. at 17.* Further, the Report points to no research or empirical data to support that motion practice is causing delays in the system.

Because these proposed Rule Amendments are more predictably going to add to case resolution and case management problems, TLS opposes these proposed Rule changes.

I. RULE 1.190(B)- FABRE PLEADING

TLS agrees with the judiciary that this proposed Rule amendment is unnecessary. *See 4th Report, p. 18.* The proposed amendment addresses specificity in pleading *Fabre* parties. *Report, p. 128.* The outcome predicted is that litigants will feel the need to over-identify potential *Fabre* parties because dropping them later is allowed yet adding them later is much more limited.

J. RULE 1.260; 1.380 SANCTIONS

TLS believes these Rule Amendments do not favor one sector of our membership over another, but rather have the potential of being equally harsh to all practicing attorneys. These new Rules are much more penal than it is procedural, and do not appear to address the ultimate goal of more

expeditious case resolution. A few of the most severe and expansive proposed sanctions include: (1) requiring one or more clients or representatives to attend all future hearings; (2) refusing to allow a party to support or oppose a designated claim or defense; (3) staying further proceedings, in whole or in part, until the party obeys a rule of previous order; (4) reducing the number of preemptory challenges available to a party; and (5) finding the party or attorney in contempt of court. It also imposes a list of six separate factors a court must consider before entering an order of dismissal with prejudice or default as a sanction, one of which is finding that the behavior has been "contumacious." TLS recommends that a much higher standard be imposed before implementing some of the harshest sanctions.

Additionally, this is a stand-alone "Sanctions" section, and thus would be applicable in each and every situation, rather than the previous Rules which contain their own specific sanctions language. Also, it would appear that the primary objective of this new section would be to address attorney misconduct and lack of professionalism, rather than facilitating more expeditious litigation. In light of the Workgroup's description of this new Rule "as a reminder", it remains arguable whether or not this new section even

belongs in these revisions. It may be that a renewed emphasis on professionalism training and requirements is more appropriate.

The Rule amendment will still require findings by the trial court in compliance with *Kozel v. Ostendorf,* 629 So. 2d 817 (Fla. 1993). *Kozel* requires the trial court make findings of fact to support the sanctions order, which necessarily means an opportunity given for an evidentiary hearing, failure of which constitutes reversible error on appeal. *See Shelswell v. Bourdeau, 239 So. 3d 707, 708-9* (Fla. 4th DCA 2018); *Bank of Am., N.A. v. Ribaudo,* 199 So. 3d 407, 408-9 (Fla. 4th DCA 2016). Therefore, in addition to the additional time constraints placed on the trial court from the other Rule amendments, evidentiary hearing time is also to be made available each time a motion for sanctions is filed. *See Report, p. 165-170. See also, 4th Report, p. 21.*

Because these amendments do not favor better case management or resolution, TLS opposes these changes.

VI. CONCLUSION AND RECOMMENDATION OF A NEW APPROACH

TLS greatly appreciates the opportunity to present comment on these very important issues that will profoundly affect all non-domestic civil cases in Florida. At stake are the interests of not only Section members and the

Florida trial bar at large, but essentially the interests of all of the consumers of civil legal services in Florida.

One of the most significant takeaways from the publication of the Report is that numerous parties in interest have weighed in on these very essential questions and issues. Clearly, everyone who has expressed an opinion to the Court has done so earnestly and with the intent of being helpful to address the pursuit of optimum access to the courts in Florida. From this process has evolved what is perhaps a better solution.

Certainly, the circuit judges are well represented in those expressing opinions in response to the Report; and these judges have the most experience from the bench to give fair warning about the negative impact many of the proposed Rule changes will have on civil cases going forward. Amongst the comments in the report of the 4th Judicial Circuit, explained in detail how case management works for that circuit, including how the circuit addresses problem-solving along the way when there are needs for operating procedure amendments. The 4th Circuit comments are extremely valuable to show what works, and what does not, in a circuit of its size. These comments also note what would likely not work for smaller circuits, or circuits located in other parts of the state that have historically different demographic filings of civil cases. As stated in the 4th Report, “the proposed rule changes

will impose an unworkable ‘one-size fits all’ approach to case management throughout the state,” and that this approach will result in less efficiency in case management and resolution of civil cases. *4th Report at p. 6.*

Florida has been a leader in developing judicial resources and creating case management vehicles as useful tools for the varied circuits throughout the state. The Florida Conference of Circuit Judges hosts and sponsors the Florida College of Advanced Judicial Studies (“Judicial College”), which is a comprehensive continuing judicial education program attended by Florida’s appellate and trial judges, as well as its general magistrates and civil hearing officers. This forum, together with the Florida Judicial College, could serve as a research and development solution to the implementation of the proposed Rule amendments wholesale.

TLS well-recognizes there are a number of esteemed and seasoned jurists that constitute the members of the Workgroup, and the individual experiences of their trial experience have been, no doubt, essential to the development of the Report. However, the overwhelming expressed concern reflected in the filed comments of the Chief Judges of the Circuits, as well as the 4th and 8th Judicial Circuits demonstrate that the aspirations contained in the Report of moving Florida civil trial practice toward a more strictly

regulated federal-type practice is largely un-workable in light of the disparate resources available to state court trial courts versus federal district courts.

Protecting the rights of parties who are expecting, and deserve, a well-run court system is paramount. As an untested lab experiment to be implemented across the board, the recommendations of the Report could, and likely will, result in moving away from the overall goal of effective case management and timely case resolution. TLS requests this study and Report be remanded to the Judicial College for thorough review and revised report.

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was furnished via the Florida Courts E-Filing Portal on this 31st day of May, 2022 to:

Hon. Robert Morris, Chair
2nd District Court of Appeal
P.O. Box 327
Lakeland, FL 33802-0327
Florida Bar No. 308439

Hon. Jennifer D. Bailey
W. Flagler St., Ste. 635
Miami, FL 33130-1709
mprieto@jud11.flcourts.org
Florida Bar No. 386758

Kenneth B. Bell
215 S. Monroe St., Ste. 601
Tallahassee, FL 32301-1804
kbell@gunster.com
Florida Bar No. 347035

Thomas S. Edwards, Jr.
4401 Salisbury Rd., Ste. 200
Jacksonville, FL 32216-8715
tse@edwardsragatz.com
Florida Bar No. 395821

Scott G. Hawkins
505 S. Flagler Dr., Ste. 1100
West Palm Beach, FL 33401-5950
shawkins@jonesfoster.com
Florida Bar No. 460117

Hon. Robert W. Lee
201 SE 6th St., Ste. WW14135
Fort Lauderdale, FL 33301
robertleefl@yahoo.com
Florida Bar No. 500984

Hon. Michael T. McHugh
1700 Monroe St.
Fort Myers, FL 33901-3071
Florida Bar No. 968978

Hon. Donald A. Myers, Jr.
P.O. Box 947861
Maitland, FL 32794-7861
don@mymediationgroup.com
Florida Bar No. 818290

Hon. Christopher C. Nash
800 E. Twiggs St.
Tampa, FL 33602-3500
nashcc@fljud13.org
Florida Bar No. 135046

Eugene K. Pettis
1 Financial Plz., Fl. 7
Fort Lauderdale, FL 33394
epettis@hpslegal.com
Florida Bar No. 508454

Tina White
500 S. Duval St.
Tallahassee, FL 32399-6556
whitet@flcourts.org
Florida Bar No. 108642

Jay W. Thomas
4720 Joyce Dr.
Lakeland, FL 33805-8524
jaythomasesquire@gmail.com
Florida Bar No. 11455

Ali Sackett
500 S. Duval St.
Tallahassee, FL 32399-6556
sacketta@flcourts.org
Florida Bar No. 582700

Mikalla A. Davis
651 E. Jefferson St.
Tallahassee, FL 32399-6584
mdavis@floridabar.org
Florida Bar No. 100529

Jason P. Stearns
201 N. Franklin St., Ste. 3550
Tampa, FL 33602-5821
jstearns@freeborn.com
Florida Bar No. 59550

Kevin Stone
4850 N. Highway 19A
Mount Dora, FL 32757-2008
kevin@stoneandgerken.com
Florida Bar No. 28516

Laura A. Roe
1301 1st Ave. N.
St. Petersburg, FL 33705-1531
laura.roe@stpete.org
Florida Bar No. 92110

Fred W. Baggett
101 E. College Ave.
Tallahassee, FL 32301-7742
baggettf@gtlaw.com
Florida Bar No. 125961

J.B. Grossman
2120 SW 92nd Terr., Apt. 2904
Davie, FL 33324-6837
jbg@jbgpa.com
Florida Bar No. 147036

Benjamin Raslavich
2110 W. Platt St.
Tampa, FL 33606-1759
ben@thekrfirm.com
Florida Bar No. 102808

Hon. Thomas P. Barber
801 N. Florida Ave.
Tampa, FL 33602-3849
chambers_flmd_barber@
flmd.uscourts.gov
Florida Bar No. 963070

Philip B. Wiseberg
11300 US Highway 1, Ste. 300
North Palm Beach, FL 33408
pwiseberg@wlclaw.com
Florida Bar No. 27233

James L. S. Bowdish
759 SW Federal Hwy., Ste. 106
Stuart, FL 34994-2972
jlsb@crarybuchanan.com
Florida Bar No. 114308

Janine Q. Menendez-Aponte
150 W. Flagler St., Ste. 2600
Miami, FL 33130-1560
jmenendezaponte@
insurancedefense.net
Florida Bar No. 84589

Richard H. Ford
390 N. Orange Ave., Ste. 1000
Orlando, FL 32801-1646
rford@wickersmith.com
Florida Bar No. 288391

Michael S. Vitale
P.O. Box 112
Orlando, FL 32802-0112
mvitale@bakerlaw.com
Florida Bar No. 17136

Victoria Katz
200 Corporate Pointe, Ste. 400
Culver City, CA 90230
Victoria.katz@aderant.com

Philip Bartlett
201 S. Biscayne Blvd., 28th Flr.
Miami, FL 33131
phil@bartlegal.com
Florida Bar No. 45318

Jason Gonzalez
Shutts & Bowen
215 S. Monroe St., Ste. 804
Tallahassee, FL 32301
jasongonzalez@shutts.com
Florida Bar No. 146854

George N. Meros
Shutts & Bowen
215 S. Monroe St., Ste. 804
Tallahassee, FL 32301
gmeros@shutts.com
Florida Bar No. 263321

Tara R. Price
Shutts & Bowen
215 S. Monroe St., Ste. 804
Tallahassee, FL 32301
tprice@shutts.com
Florida Bar No. 98073

Spencer H. Silverglate
Clarke Silverglate, P.A.
799 Brickell Plaza, Ste. 900
Miami, FL 33131
ssilverglate@cspalaw.com
Florida Bar No. 769223

Russell Landy
Damian & Valori, LLP
1000 Brickell Ave., Ste. 1020
Miami, FL 33131
rlandy@dvllp.com
Florida Bar No. 44417

Hon. Christopher Patterson
Fourteen Judicial Circuit
P.O. Box 1089
Panama City, FL 32401
pattersonc@jud14.flcourts.org
Florida Bar No. 508365

Hon. Monica Brasington
Eighth Judicial Circuit
201 E. University Ave.
Gainesville, FL 32601
brasingtonm@circuit8.org
Florida Bar No. 167721

Cory L. Andrews
Washington Legal Foundation
2009 Massachusetts Ave. NW
Washington, D.C. 22036
candrews@wlf.org
Florida Bar No. 25677

Hon. Jonathan E. Sjostrom
Second Judicial Circuit
301 S. Monroe St., #301D
Tallahassee, FL 32301
sjostromj@leoncountyfl.gov
Florida Bar No. 816108

Hon. Michael S. Orfinger
Seventh Judicial Circuit
125 E. Orange Ave.
Daytona Beach, FL 32114
mmacdonald@circuit7.org
Florida Bar No. 814830

Francisco Ramos, Jr.
Clarke Silverglate, P.A.
799 Brickell Plaze, Ste. 900
Miami, FL 33131
framos@cspalaw.com
Florida Bar No. 114766

Robert L. Christie
Christie Law Group, PLLC
2100 Westlake Ave. N., #206
Seattle, WA 98109
bob@christielawgroup.com

David B. Alexander
Bradford Cederberg, P.A.
2900 E. Robinson St.
Orlando, FL 32803
david@bradfordlaw.com
Florida Bar No. 40557

Dan Cytryn
Cytryn & Velazquez, P.A.
10100 W. Sample Rd., Ste. 404
Coral Springs, FL 33065
dan.cytryn@
personalinjuryfirm.com
Florida Bar No. 318558

Kansas R. Gooden
Boyd & Jenerette
11767 S. Dixie Hwy., #274
Miami, FL 33156
kgooden@boydjen.com
Florida Bar No. 58707

Hon. Katie L. Dearing
Fourth Judicial Circuit
501 W. Adams St.
Jacksonville, FL 32202
kdearing@coj.net
Florida Bar No. 184632

Hon. Waddell Wallace
Fourth Judicial Circuit
501 W. Adams St.
Jacksonville, FL 32202
wwallace@coj.net
Florida Bar No. 263427

Hon. Don H. Lester
Fourth Judicial Circuit
501 W. Adams St.
Jacksonville, FL 32203
lesterd@coj.net
Florida Bar No. 370134

Hon. James Daniel
Nassau County Courthouse
76347 Veterans Way
Yulee, FL 32097
jprather@nassauclerk.com
Florida Bar No. 959715

Hon. Roberto Arias
Fourth Judicial Circuit
501 W. Adams St.
Jacksonville, FL 32203
rarias@coj.net
Florida Bar No. 313335

Hon. Virginia B. Norton
Fourth Judicial Circuit
501 W. Adams St.
Jacksonville, FL 32202
nortonvb@coj.net
Florida Bar No. 124397

Hon. Marianne Aho
Fourth Judicial Circuit
501 W. Adams St.
Jacksonville, FL 32203
maho@coj.net
Florida Bar No. 856746

Hon. Michael Sharrit
Clay County Courthouse
P.O. Box 1866
Green Cove Springs, FL 32043
sharritm@clayclerk.com
Florida Bar No. 936073

Hon. Steven Whittington
Clay County Courthouse
P. O. Drawer 1018
Green Cove Springs, FL 32043
whittingtons@clayclerk.com
Florida Bar No. 55972

Hon. Robert M. Dees
Fourth Judicial Circuit
501 W. Adams St.
Jacksonville, FL 32202
rdees@coj.net
Florida Bar No. 714399

Hon. Bruce R. Anderson, Jr.
Fourth Judicial Circuit
501 W. Adams St.
Jacksonville, FL 32203
branderson@coj.net
Florida Bar No. 802654

Hon. G.L. Feltel, Jr.
Fourth Judicial Circuit
501 W. Adams St.
Jacksonville, FL 32202
glfeltel@coj.net
Florida Bar No. 993603

Ashely P. Withers
Wicker, Smith, O'Hara, et al
9132 Strada Pl., Ste. 400
Naples, FL 34108
awithers@wickersmith.com
Florida Bar No. 15868

Jason L. Unger
Gray Robinson, P.A.
301 S. Bronough St., Ste. 600
Tallahassee, FL 32301
Jason.unger@gray-robinson.com
Florida Bar No. 991562

Craig M. Greene
Kramer Green, et al
4000 Hollywood Blvd., Ste. 485
Hollywood, FL 33021
cgreene@kramergreen.com
Florida Bar No. 618421

Scott A. Cole
Cole, Scott & Kissane, P.A.
9150 S. Dadeland Blvd., Ste. 1400
Miami, FL 33156
scott.cole@csklegal.com
Florida Bar No. 885630

Hon. Diana Lee Moreland
Twelfth Judicial Circuit
P.O. Box 3000
Bradenton, FL 34206
dmoreland@jud12.flcourts.org
Florida Bar No. 709867

Stanford R. Solomon, Chair
The Solomon Law Group, P.A.
1881 W. Kennedy Blvd.
Tampa, FL 33606-1611
ssolomon@solomonlaw.com
Florida Bar No. 302147

Hon. Gina Beovides
Eleventh Judicial Circuit
73 W. Flagler St., Ste. 418
Miami, FL 33130
gbeovides@jud11.flcourts.org
Florida Bar No. 14973

William Wells Large
FL Justice Reform Inst.
210. S. Monroe St.
Tallahassee, FL 32301
william@fljustice.org
Florida Bar No. 981273

William Thomas Cotterall
FL Justice Association
218 S. Monroe St.
Tallahassee, FL 32301
wcotterall@myfja.org
Florida Bar No. 574651

Kenneth Brian Schurr
Law Offices
of Kenneth B. Schurr, P.A.
2030 S. Douglas Rd., Ste. 105
Coral Gables, FL 33134
counselken@schurrlaw.com
Florida Bar No. 876100

Edgar Noel Velazquez
Cytryn & Velazquez, P.A.
2825 N. University Dr., Ste. 350
Coral Springs, FL 33165
edgar.velazquez@
personalinjuryfirm.com
Florida Bar No. 692409

Patrick Russell
Salmon & Dulberg
1395 Brickell Ave., Ste. 800
Miami, FL 33131
pr@meaningful-mediation.com
Florida Bar No. 995568

Bruce J. Berman
2 Miami Central
700 Northwest First Ave.
Miami, FL 33136
bberman@carltonfields.com
Florida Bar No. 159280

Peter D. Webster
215 S. Monroe St., Ste. 500
Tallahassee, FL 32301
pwebster@carltonfields.com
Florida Bar No. 185180

Kimberly M. Jones
1501 S. Church Ave.
Tampa, FL 33629
kjones@wshblaw.com
Florida Bar No. 29069

Thomasina Moore
301 S. Bronough St., Ste. 600
Tallahassee, FL 32301
Thomasina.moore@
gray-robinson.com
Florida Bar No. 57990

Karla D. Ellis
P.O. Box 771450
Miami, FL 33177
karlaellislaw@gmail.com
Florida Bar No. 122017

Ariadne FitzGerald
13th Judicial Circuit
800 E. Twiggs St., Ste. 603
Tampa, FL 33602
fitzgeam@fljud13.org
Florida Bar No. 586463

Robert S. Swaine
Swaine, Harris & Wohl, P.A.
425 S. Commerce Ave.
Sebring, FL 33870
bob@heartlandlaw.com
Florida Bar No. 514837

Lyndsey E. Siara
13th Judicial Circuit
800 E. Twiggs St., Ste. 603
Tampa, FL 33602
siaralk@fljud13.org
Florida Bar No. 91032

Melissa A. Foss
13th Judicial Circuit
800 E. Twiggs St., Ste. 603
Tampa, FL 33602
fossma@fljud13.org
Florida Bar No. 105906

Jennifer Larra
13th Judicial Circuit
800 E. Twiggs St., Ste. 603
Tampa, FL 33602
jennifer.latta@fljud13.org
Florida Bar No. 1010980

Respectfully submitted,

/s/ Lewis W. Murphy, Jr.
Lewis W. Murphy, Jr.
Florida Bar No. 0909467
Murphy & Walker, P.L.
2001 U.S. Highway 1
Vero Beach, FL 32960
wmurphy@murphywalker.com
pleadings-murphy@murphywalker.com
Chair, Trial Lawyers Section of The Florida Bar

/s/ Weston F. Smith
Weston F. Smith
Florida Bar No. 964522
Weston Smith Law, PLLC
100 2nd Avenue North, Suite 300
St. Petersburg, FL 33701-3338
wes@westonsmithlaw.com
Chair-Elect, Trial Lawyers Section of The Florida Bar

CERTIFICATE OF COMPLIANCE

In accordance with Florida Rules of Appellate Procedure 9.045 and 9.210(a)(2), the undersigned counsel hereby certifies that this comment complies with the font and word count requirements of the Rules: Arial 14-point font and under 13,000 words.

/s/ Lewis W. Murphy, Jr.
Lewis W. Murphy, Jr.

CIRCUIT CIVIL CLEARANCE RATES
by Circuit
FY 2020-21

Circuit	Filings	Dispositions	Clearance Rates
1	5,079	3,004	59.1%
2	2,901	3,156	108.8%
3	756	955	126.3%
4	8,064	7,659	95.0%
5	6,677	5,767	86.4%
6	8,778	9,458	107.7%
7	5,812	5,801	99.8%
8	1,786	1,526	85.4%
9	15,994	13,322	83.3%
10	4,198	4,113	98.0%
11	30,383	27,634	91.0%
12	4,625	3,759	81.3%
13	9,586	9,116	95.1%
14	2,311	3,259	141.0%
15	15,757	13,169	83.6%
16	692	602	87.0%
17	24,340	22,117	90.9%
18	7,372	7,080	96.0%
19	4,482	4,018	89.6%
20	14,037	12,711	90.6%
Total	**173,630**	**158,226**	**91.1%**

TrialCourtStatsView

Summary Reporting System (SRS)

Summary for the month of January 2020 through December 2020

Circuit: 1

Circuit Civil

	Prof Malp	Prof Liab	Auto Negl	Other Negl	Condo	Contract & Indebt	Real Prop	Eminent Domain	Other	Total
A. Cases Filed	44	29	882	342	26	668	678	64	697	3,430
B. Cases Disposed										
1. Dismissed Before Hearing	15	9	497	95	6	290	391	6	213	1,522
2. Dismissed After Hearing	11	9	115	52	1	89	56	1	74	408
3. Disposed By Default	0	0	6	0	0	61	51	0	20	138
4. Disposed By Judge	6	2	43	19	2	170	455	27	169	893
5. Disposed By Non-Jury Trial	0	0	0	0	0	2	52	0	7	61
6. Disposed By Jury Trial	0	0	0	0	0	0	2	0	0	2
7. Other	0	1	16	12	1	37	10	0	70	147
Total	**32**	**21**	**677**	**178**	**10**	**649**	**1,017**	**34**	**553**	**3,171**
C. Cases Reopened	2	6	23	32	5	221	1,068	2	129	1,488
D. Appeals Filed from County Court		15								

Note: There was a data entry error for non-jury trials in August 2002 for the Thirteenth Judicial Circuit. A total of 481 non-jury trials are inaccurately reported for the circuit. The actual total number of non-jury trials for August 2002 is 2 (one under auto negligence and contract indebtedness.)

SRS data are used to measure trial court activity in Florida. These data are not intended as a measure of efficiency of the judiciary.

These data are based on information received from the Clerks of Court and are extracted from a static data base containing the official trial court statistics.

Pursuant to ch. 2020-61, Laws of Fla., effective January 1, 2021, the circuit court's general statutory authority in § 26.012, Fla. Stat., to hear appeals from county court final orders and judgments was repealed as was its specific authority in § 924.08, Fla. Stat., to hear appeals from county court final judgments in misdemeanor cases. Due to this legislation, the district courts of appeal will have jurisdiction. Circuit courts will continue, however, to have appellate jurisdiction for certain types of cases under statutes that were not amended.

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TrialCourtStatsView

Summary Reporting System (SRS)

Summary for the month of January 2021 through June 2021

Circuit: 1

Circuit Civil

	Prof Malp	Prof Liab	Auto Negl	Other Negl	Condo	Contract & Indebt	Real Prop	Eminent Domain	Other	Total
A. Cases Filed	33	17	405	150	7	1,556	233	0	933	3,334
B. Cases Disposed										
1. Dismissed Before Hearing	4	10	250	51	7	210	115	8	137	792
2. Dismissed After Hearing	3	3	81	28	2	51	33	0	52	253
3. Disposed By Default	1	0	7	0	0	27	15	0	14	64
4. Disposed By Judge	6	1	19	10	6	61	181	2	61	347
5. Disposed By Non-Jury Trial	0	0	0	0	0	2	17	0	2	21
6. Disposed By Jury Trial	0	0	1	0	0	1	0	0	1	3
7. Other	0	2	6	4	0	30	3	0	42	87
Total	**14**	**16**	**364**	**93**	**15**	**382**	**364**	**10**	**309**	**1,567**
C. Cases Reopened	0	9	18	15	7	130	335	0	65	579
D. Appeals Filed from County Court		0								

Note: There was a data entry error for non-jury trials in August 2002 for the Thirteenth Judicial Circuit. A total of 481 non-jury trials are inaccurately reported for the circuit. The actual total number of non-jury trials for August 2002 is 2 (one under auto negligence and contract indebtedness.)

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TrialCourtStatsView

Summary Reporting System (SRS)

Summary for the month of January 2018 through December 2018

State Total

Circuit Civil

	Prof Malp	Prod Liab	Auto Negl	Other Negl	Condo	Contract & Indebt	Real Prop	Eminent Domain	Other	Total
A. Cases Filed	1,534	835	32,424	14,886	1,327	62,852	49,653	495	40,071	204,077
B. Cases Disposed										
1. Dismissed Before Hearing	513	543	17,383	5,514	592	22,784	14,251	42	13,818	75,440
2. Dismissed After Hearing	724	433	8,675	5,865	383	12,585	6,041	35	7,314	42,055
3. Disposed By Default	3	2	646	178	155	5,055	5,462	0	1,133	12,634
4. Disposed By Judge	209	407	1,533	1,123	255	6,440	17,575	389	6,072	34,003
5. Disposed By Non-Jury Trial	2	0	29	39	12	278	7,156	1	141	7,658
6. Disposed By Jury Trial	44	24	271	170	0	64	32	18	72	695
7. Other	79	56	463	484	17	1,675	462	3	1,645	4,884
Total	**1,574**	**1,465**	**29,000**	**13,373**	**1,414**	**48,881**	**50,979**	**488**	**30,195**	**177,369**
C. Cases Reopened	824	460	3,445	3,643	1,028	23,430	56,546	101	8,416	97,893
D. Appeals Filed from County Court		1,683								

Note: There was a data entry error for non-jury trials in August 2002 for the Thirteenth Judicial Circuit. A total of 481 non-jury trials are inaccurately reported for the circuit. The actual total number of non-jury trials for August 2002 is 2 (one under auto negligence and contract indebtedness.)

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Summary Reporting System (SRS)

Summary for the month of January 2019 through December 2019

State Total

Circuit Civil

	Prof Malp	Prod Liab	Auto Negl	Other Negl	Condo	Contract & Indebt	Real Prop	Eminent Domain	Other	Total
A. Cases Filed	1,523	884	36,324	16,098	1,237	64,326	46,400	381	42,699	209,872
B. Cases Disposed										
1. Dismissed Before Hearing	465	483	19,545	6,270	651	28,840	16,694	38	18,452	91,438
2. Dismissed After Hearing	716	535	9,104	5,786	291	13,198	5,754	19	8,641	44,044
3. Disposed By Default	4	0	832	192	142	5,706	5,659	11	1,186	13,732
4. Disposed By Judge	186	184	1,822	1,199	255	6,931	18,144	321	6,204	35,246
5. Disposed By Non-Jury Trial	1	0	19	17	10	169	5,866	0	118	6,200
6. Disposed By Jury Trial	41	18	259	155	1	91	23	2	69	659
7. Other	46	80	553	501	17	1,873	500	0	1,790	5,360
Total	**1,459**	**1,300**	32,134	**14,120**	**1,367**	**56,808**	**52,640**	**391**	**36,460**	**196,679**
C. Cases Reopened	784	453	3,638	3,702	838	24,407	46,984	89	9,427	90,322
D. Appeals Filed from County Court		1,416								

Note: There was a data entry error for non-jury trials in August 2002 for the Thirteenth Judicial Circuit. A total of 481 non-jury trials are inaccurately reported for the circuit. The actual total number of non-jury trials for August 2002 is 2 (one under auto negligence and contract indebtedness.)

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Summary Reporting System (SRS)

Summary for the month of January 2020 through December 2020

State Total

Circuit Civil

	Prof Malp	Prod Liab	Auto Negl	Other Negl	Condo	Contract & Indebt	Real Prop	Eminent Domain	Other	Total
A. Cases Filed	1,581	690	37,022	16,698	1,172	47,545	20,796	635	37,195	163,334
B. Cases Disposed										
1. Dismissed Before Hearing	431	391	21,647	6,751	604	27,698	10,493	106	18,947	87,068
2. Dismissed After Hearing	603	345	7,192	4,653	233	10,642	3,224	57	7,245	34,194
3. Disposed By Default	10	3	739	146	234	4,242	2,710	11	1,025	9,120
4. Disposed By Judge	152	60	1,597	1,006	168	5,428	7,139	315	5,436	21,301
5. Disposed By Non-Jury Trial	2	0	10	10	7	162	1,487	6	154	1,838
6. Disposed By Jury Trial	11	1	103	59	0	48	8	0	43	273
7. Other	36	66	524	565	28	1,653	292	3	1,755	4,922
Total	1,245	866	31,812	13,190	1,274	49,873	25,353	498	34,605	158,716
C. Cases Reopened	831	417	3,078	3,323	759	19,375	26,627	65	8,928	63,403
D. Appeals Filed from County Court		567								

Note: There was a data entry error for non-jury trials in August 2002 for the Thirteenth Judicial Circuit. A total of 481 non-jury trials are inaccurately reported for the circuit. The actual total number of non-jury trials for August 2002 is 2 (one under auto negligence and contract indebtedness.)

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TrialCourtStatsView

Summary Reporting System (SRS)

Summary for the month of January 2021 through June 2021

State Total

Circuit Civil

	Prof Malp	Prod Liab	Auto Negl	Other Negl	Condo	Contract & Indebt	Real Prop	Eminent Domain	Other	Total
A. Cases Filed	815	382	17,526	8,422	546	31,731	8,934	247	24,016	92,619
B. Cases Disposed										
1. Dismissed Before Hearing	251	202	11,692	3,930	314	13,914	4,382	41	9,562	44,288
2. Dismissed After Hearing	284	152	3,578	2,487	160	6,129	1,557	795	3,993	19,135
3. Disposed By Default	2	3	345	78	75	1,770	1,060	3	607	3,943
4. Disposed By Judge	101	37	991	755	109	3,037	3,604	194	3,020	11,848
5. Disposed By Non-Jury Trial	2	0	16	8	7	69	612	0	58	772
6. Disposed By Jury Trial	6	4	47	24	0	22	4	0	24	131
7. Other	240	25	314	310	8	902	178	6	1,019	3,002
Total	**886**	**423**	**16,983**	**7,592**	**673**	**25,843**	11,397	**1,039**	**18,283**	**83,119**
C. Cases Reopened	397	223	1,730	1,659	465	9,373	11,345	61	4,697	29,950
D. Appeals Filed from County Court		0								

Note: There was a data entry error for non-jury trials in August 2002 for the Thirteenth Judicial Circuit. A total of 481 non-jury trials are inaccurately reported for the circuit. The actual total number of non-jury trials for August 2002 is 2 (one under auto negligence and contract indebtedness.)

SRS data are used to measure trial court activity in Florida. These data are not intended as a measure of efficiency of the judiciary.

These data are based on information received from the Clerks of Court and are extracted from a static data base containing the official trial court statistics.

Pursuant to ch. 2020-61, Laws of Fla., effective January 1, 2021, the circuit court's general statutory authority in § 26.012, Fla. Stat., to hear appeals from county court final orders and judgments was repealed as was its specific authority in § 924.08, Fla. Stat., to hear appeals from county court final judgments in misdemeanor cases. Due to this legislation, the district courts of appeal will have jurisdiction. Circuit courts will continue, however, to have appellate jurisdiction for certain types of cases under statutes that were not amended.

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