

Supreme Court of Florida's Task Force on the Management of Cases Involving Complex Litigation

Report and Recommendations

April 30, 2008

**The Supreme Court of Florida
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Tallahassee, Florida**

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Executive Summary

Florida Supreme Court Chief Justice, R. Fred Lewis, created the Task Force on the Management of Cases Involving Complex Litigation by administrative order in September 2006. He charged the Task Force, in part, to “study and examine the efficient and effective management of complex litigation and the resolution of discovery and other pre-trial matters in litigation.” The Task Force members include judges and lawyers from throughout Florida with experience in handling and managing cases involving complex litigation.

Task Force members met frequently over an eighteen month period and conducted a public hearing and panel discussion in Orlando in June 2007. Simultaneous with the appointment of the Task Force, within three Florida urban jurisdictions business courts began to emerge; in a fourth, a hybrid model comprising both a complex case and a business court division was created. The Task Force spent a considerable amount of time discussing the pros and cons of complex court divisions and business courts. A number of administrative issues relating to time standards for civil cases and pending caseloads also were identified and discussed at length.

Several factors impacted the discussion of the administration and management of complex civil litigation including: the definition of a complex case; the number of complex cases in Florida; the identification and reporting of complex cases; relevant rules of court; current case management practices; accurate and reliable filing information, case management and pending caseload data; the use of electronic filing (e-filing) and electronic discovery (e-discovery); the use of special masters, magistrates, and other alternative dispute resolution neutrals during the discovery process; quasi-judicial staffing complements; judicial education; and best practices.

The chairman formed three primary subcommittees to meet the Task Force’s charge: definition, rules, and technology. The Definition Subcommittee reviewed previous Florida efforts including legislation and a senior judge report defining complex cases. The subcommittee also spent a considerable amount of time reviewing the definition of complex cases from other states. After careful consideration and deliberation, the subcommittee recommended that Florida should consider emulating the California definition of complex cases.

The members of the Rules Subcommittee met extensively during the Task Force's tenure. The ultimate goal of the subcommittee was to advance a rule of civil procedure specifically addressing discovery timeliness, establishing firm trial dates, case management, and other procedural issues that can contribute to case processing delay. Three related issues were also addressed by the subcommittee: (1) amending the civil cover sheet, Form 1.997, Florida Rules of Civil Procedure; (2) creating an order designating a case complex; and (3) requiring enforcement of the final disposition form, Form 1.998, Florida Rules of Civil Procedure.

The members of the Technology Subcommittee met several times by teleconference. The subcommittee reviewed materials related to governance, e-discovery, e-filing, case management, video conferencing, single portal access, content management, electronic signatures, and security. Because many Task Force members practice in federal court, the subcommittee also discussed the federal Public Access to Court Electronic Records (PACER) system which is an electronic document management system designed to facilitate both e-filing and e-discovery. The subcommittee identified several technology recommendations for supreme court consideration.

In sum, the Task Force is advancing a series of recommendations related to the rule process, technology, and administrative matters. If implemented, a majority of the Task Force members believe that these recommendations will advance the disposition of complex civil cases and improve the administration of justice. A few members feel that the Task Force is advancing a "solution that is merely chasing a problem." Indeed, in their judgment and in the final analysis, the issue is a local problem and one that does not need a new statewide procedural rule to address it. Rather, their position is that the judicious enforcement of existing rules of court is a better solution.

The Task Force also is advancing a number of recommendations to the supreme court to improve the management, administration, and disposition of complex cases in Florida's trial courts. These recommendations fall into three broad categories: rule processes and related functions, technology, and administrative issues. The majority of the Task Force members believe that if fully implemented, the recommendations will improve reporting accuracy, make trial courts more efficient, and improve the administration of justice.

Summary of Recommendations

Rule Processes, Civil Cover Sheet, and Order Designating Case Complex

1. **New Rule of Civil Procedure for Complex Cases.** The Task Force recommends that the supreme court adopt a new rule of civil procedure specifically for complex cases (Appendix A). The rule defines what constitutes a complex case and provides for procedural steps that must be followed once the case is filed. The Task Force also further recommends that the supreme court adopt the rule *sua sponte*, then publish for comment rather than refer the proposed rule to The Florida Bar due to the inordinate length of time the normal rules process takes.
2. **Civil Cover Sheet, Form 1.997, Rules of Civil Procedure.** The Task Force recommends that the supreme court amend the Civil Cover Sheet, Form 1.997, Rule of Civil Procedure (Appendix B). The proposed civil cover sheet eliminates all references to family law cases and greatly expands the number of civil case categories. The form also provides for a certification by the petitioning party or attorney.
3. **Order Designating A Case Complex.** The Task Force recommends that the supreme court adopt an order for designating a case complex (Appendix C). Members concluded that only a judge, after reviewing a petition, complaint, or initial pleading, and upon proper motion should determine whether a case is complex. Therefore, the Task Force does not recommend a provisional designation by the filing party, attorney or the clerk of court.
4. **Final Disposition Form, Form 1.998, Rules of Civil Procedure.** The Task Force recommends that the supreme court require and enforce the use of the Final Disposition Form, Form 1.998, found in the rules of civil procedure (Appendix D) as a procedural requirement to formally close a case. While the form currently is in the rules of civil procedure it rarely is filed. The final disposition form, recorded with the clerk of court, is integral to

defined and enforced time standards and the accurate reporting of pending caseload reports.

Technology Issues

5. **Electronic Discovery.** The Task Force makes no specific recommendation concerning e-discovery. However, the Task Force strongly encourages the supreme court and the appropriate Florida Bar rules committees to develop sound principles for e-discovery practices as statewide court technology systems become upgraded to accommodate electronic filing, indexing, retrieval, storage, etc. Guidance may be obtained from the recently amended Federal Rules of Civil Procedure, Rule 26, and the many reports analyzing its implementation and use.
6. **Electronic Access to Data and Information.** The supreme court should strongly encourage and support pursuit of an electronic data system that empowers the courts and their users to access electronic data. Internal security measures are *critical* to ensure that access is limited to authorized users, information cannot be altered, confidentiality is assured where applicable and warranted, and long term storage and audit capability are not compromised. Consideration should be given to re-examining the underlying premise for limiting the duration of retention of documents filed electronically. The resulting efficiencies and the reduction in storage costs, coupled with potential benefits that could be derived from archival of electronically filed documents may better accommodate the public right of access to court records, as well as provide an additional revenue source for Florida courts.
7. **Electronic Filing.** The Florida Courts Technology Commission (FCTC) should create an implementation plan to address e-filing, which should include components and safeguards that need to be in place to insure a successful outcome for all stakeholders. The FCTC should require that a single portal for the submission of electronic court records be developed and implemented once the supreme court has identified the necessary components, such as data elements, reporting needs, standards, governance, security, confidentiality, audit controls, etc., are in place or that will be in place before the portal is

activated. The FCTC should identify clearly who will be responsible for development and maintenance of the portal. Certainly, partnerships with the clerks of the circuit court and The Florida Bar are prerequisites to success. Moreover, developing funding sources, perhaps in partnership with the Florida Legislature or the private sector, or both, may be necessary to implement any e-filing portal.

8. **Content Management.** The supreme court should pursue implementation of a content management system for the entire court system. The system could be integrated into a larger system that permits e-filing, case management, and meets other requirements such as security, confidentiality, and audit capability.
9. **Case Management.** The supreme court should continue to pursue a unified statewide case management system for the trial courts. In the event that the cost of such a system is prohibitive, the court should explore other options such as the case information overlay known as the Comprehensive Case Information System (CCIS) that is being developed by the Florida Association of Court Clerks, or the development of a potential private sector funding initiative. Additionally, the supreme court is strongly encouraged to recommend to the legislature that pooling of resources should be permitted in multi-county judicial circuits in order to implement the integration of their several separately funded and maintained computer systems.
10. **Information Tracking.** The supreme court, through the FCTC, should establish mandatory standards for document tracking, security, and performance auditing. Long-term storage, archival, and retrieval requirements, along with a protocol for meeting the minimum requirements for same, also needs to be addressed.
11. **Document Formats.** The supreme court should formally adopt standards-based document formats and templates such as Adobe[®] portable document format (.pdf), Microsoft Word[®], or WordPerfect[®], or equivalent word-processing programs with specified versions of each that will ensure compatibility for certain categories of documents that may be requested by a court. The categories could include proposed findings of fact, draft orders, and other content intended to enable a court to assemble a final judgment or order based on submissions from the parties.

12. **Security Policies.** The supreme court should establish security policies to insure that the confidentiality, possession or control, integrity, authenticity, availability, and utility of all electronic documents are maintained and enforced. The Task Force did not specifically address the issue of metadata, which is “hidden” information in the electronic version of the document and can include changes and comments made by reviewers of the document, as well as sensitive, confidential, or client privileged information. The Task Force is aware that The Florida Bar has been studying the issue of metadata. The supreme court should ensure coordination between The Florida Bar and the FCTC.
13. **Communications and Videoconferencing.** The supreme court should continue to encourage the state courts to maximize the use of video-conferencing where practicable. Also, attorneys and judges should be strongly encouraged to conduct video conferences for depositions and hearings to facilitate a quicker resolution of cases and to save time and money for themselves, their clients and the courts. Attorneys located outside judicial circuits where venue lies should be encouraged to participate in hearings via video-conference, either from their own workplaces or from the circuit court nearest their offices. Use of a circuit court’s video conferencing capabilities should be permitted when an attorney’s equipment lacks bandwidth or is incompatible.
14. **Archiving Electronic Documents.** The supreme court should adopt standards for the long-term archiving of electronic documents. The Task Force is aware that the supreme court has established the Judicial Branch Records Management Committee to recommend standards for an electronic record keeping system for permanently recording court records. It knows that the FCTC also is looking into issues related to the maintenance and retention of electronic court records. The Task Force recognizes that changes in electronic archiving standards will entail significant revisions to the Florida Rules of Judicial Administration as well as potential amendments to the Florida Rules of Civil Procedure if the court ultimately requires e-filing of a larger category of documents.

Administrative Issues, Data Collection, Judicial Education, Benchguides, and Best Practices

15. **Time Standards.** The supreme court should: (a) adopt new time standard for complex cases; (b) affirm the current time standards for the remaining civil cases which include business cases; or (c) refer the review of all time standards in civil cases to the Trial Court Performance and Accountability Commission (TCP&AC) for further study.
16. **Capture Complex Cases.** The supreme court is strongly encouraged to direct the TCP&AC, in conjunction with the Office of the State Courts Administrator (OSCA), to make changes to the filing and disposition data reported in the Summary Reporting System (SRS) to assure that complex cases, as they have been defined in the proposed rule of civil procedure, are captured. The changes should comport with the proposed changes to the civil cover sheet, Form 1.997, Florida Rules of Civil Procedure.
17. **Capture Business Court Cases.** The supreme court should direct the TCP&AC, in conjunction with the OSCA, to amend the Summary Reporting System (SRS), to capture business court cases. It is recommended that the TCP&AC and OSCA consult with the Ninth, Eleventh, Thirteenth, and Seventeenth Circuits to reach consensus on the types of cases that generally fall within the jurisdiction of business courts.
18. **“Other Civil” Summary Reporting System (SRS) Category.** The supreme court should direct the TCP&AC, in conjunction with the OSCA, to review and amend the “other civil” SRS category, making it more discrete. The Task Force recommends that particular attention be given to those types of cases that take considerable judicial time to dispose.
19. **Technical Assistance to the Clerks of Court.** The SRS has become institutionalized within Florida’s court system. Any reporting changes will have major operational impact on the clerks of court who are required by law to submit all filing and disposition data to the OSCA. Therefore, the Task Force recommends that the supreme

court direct the OSCA to develop an SRS implementation and technical assistance plan for the clerks of court which addresses changes to the civil cover sheet and SRS categories.

20. **Length of Trial Data.** The supreme court should direct the TCP&AC, in conjunction with the OSCA, to amend the monthly Jury Management Report to include comprehensive data on the length of trials. Presently, this data field is omitted from the form. The data is necessary to better evaluate jury trial activity throughout the state.
21. **Judicial Education.** The Task Force recommends that the Florida Court Education Council (FCEC), in consultation with the Dean of the College of Advanced Judicial Studies, develop a comprehensive course on the management of complex civil litigation. The course participants should be limited to judges who currently are presiding over complex civil cases or who will be rotating into a division handling such cases. The course should be offered every two years.
22. **Manuals and Benchguides for Complex Cases and Business Courts.** The Task Force recommends that the supreme court direct the Florida Court Education Council (FCEC) to develop manuals or benchguides for complex civil cases and business courts. The Task Force strongly encourages the FCEC to review the California Manual on Complex Civil Litigation,¹ as well as the Manual for Complex Litigation,² and other relevant materials developed by the American College of Business Court Judges and other states or jurisdictions that have business courts, and to create and implement a Florida manual or benchguide within two years of the referral from the supreme court.
23. **Best Practices.** The Task Force recommends that the supreme court direct the TCP&AC to develop “best practices” for complex civil litigation divisions and business courts. The Task Force further

¹ Deskbook on The Management of Complex Civil Litigation, Judicial Council of California, California Administrative Office of the Courts 2006, Release No.7, October 2006, in conjunction with LexisNexis 800.424.0651 (ext.3268).

² Manual for Complex Litigation, Fourth Edition (2004), Federal Judicial Center, <http://www.fjc.gov/public/home.nsf>

recommends that the commission consult those circuits and jurisdictions that have implemented divisions to handle complex civil or business case litigation to determine which practices are beneficial and which are not. The Task Force also recommends that the commission review best practices from other states such as Arizona, California, New York, and North Carolina.

Following are the findings and recommendations of the Florida Supreme Court's Task Force on the Management of Cases Involving Complex Litigation to the Florida Supreme Court.

Background

Complex litigation places special demands on any court system; Florida is no different. By their very nature, complex cases require more judicial attention and coordination among parties and counsel than other cases. Because of the number of parties and witnesses, and often the number and novelty of legal issues, discovery can easily become protracted and cause delay. To overcome these factors, the Task Force was charged in part to “study and examine the efficient and effective management of complex litigation and the resolution of discovery and other pre-trial matters in litigation.”³

Certainly, demographics and geography contribute to the complex civil litigation challenges Florida's courts face. Because of its proximity to, and interaction with, the Caribbean and Latin America, Florida's economy is characterized by the presence of many domestic, multi-national, and international businesses. Florida also has a large population base,⁴ rich agricultural sector, and vibrant tourism industry. These factors and others lend themselves to the probability of complex civil cases being filed in Florida's civil courts of general jurisdiction.

³ The supreme court's original and amended administrative orders (AOSC06-53 and AOSC07-2) appointing the Task Force are attached.

⁴ Approximately 18.2 million as of January 2006 as reported by the Office of Economic and Demographic Research of the Florida Legislature in July 2006.

As the nation's fourth largest state, Florida receives its share of complex civil filings. The Florida Office of the State Courts Administrator (OSCA) estimates that approximately 2,000 – 3,000 complex cases may be filed each year.⁵ Many of these cases involve mass torts, class actions, product liability, intellectual property, trade secrets, and multiple parties. To be disposed timely, these cases require significant judicial attention including the need for regular and sustained case management as well as an orderly discovery process.

Members of the Task Force are concerned that many complex cases do not receive the judicial attention they deserve. In some jurisdictions, it is difficult to get discovery completed without court intervention, receive hearing times, or obtain a trial date within a reasonable time-frame in accordance with time standards and court rules. Some Task Force members report having cases pending and languishing for several years. For their clients justice is delayed in this type of environment. While there may be many reasons why a case is pending, the Task Force believes two factors will greatly improve case processing times for complex cases, namely, establishing a trial date early in the proceedings and adhering to the trial date firmly. The national literature on case management generally and complex civil litigation in particular strongly suggests that implementation of these two steps is vital to expediting these cases.⁶

Presently, Florida processes complex cases through its circuit court civil divisions. Concurrent with the issue of complex civil litigation, Florida also has witnessed the emergence of business courts in several judicial circuits.⁷ The concepts of business courts and complex civil divisions are not necessarily the same, nor are they mutually exclusive. As such, a discussion of each is included within this report.

⁵ At present, Florida's workload data system does not explicitly capture data on complex cases. Rather, data on these types of cases currently is captured in categories such as contract and indebtedness, products liability, and professional malpractice, etc., as part of the OSCA's Summary Reporting System.

⁶ See Caseflow Management in the Trial Court, Now and For the Future, Maureen Solomon and Douglas K. Somerlot, American Bar Association, 2000 and Manual for Complex Litigation, Federal Judicial Center, Washington D.C. 2004.

⁷ Current business court locations include Orlando, Tampa, Ft. Lauderdale (hybrid model with a complex litigation unit consisting of business tort subdivisions), and Miami.

Several factors impact the discussion about administration of complex civil litigation including: the definition of a complex case; the number of complex cases in Florida; the identification and reporting of complex cases; relevant rules of court; prevalent case management practices; accurate and reliable filing information, case management and pending caseload data; the use of electronic filing (e-filing) and electronic discovery (e-discovery); the use of magistrates, special masters, mediators, arbitrators and other neutrals during the discovery process; quasi-judicial staffing complements; judicial education; and, best practices, among others.

To address these multiple factors, the Task Force and its subcommittees met numerous times in person, by video-conference, and by teleconference over an eighteen month period. The Task Force also hosted a panel discussion at its June 27, 2007 meeting during which panelists included judges from Florida's business courts, judges from Arizona and California who preside over complex civil divisions, and a member of the New York Bar who was a leader in implementing New York's business courts. The Task Force also received a presentation from a member of the Civil Procedures Rules Committee who is also the chair of that committee's Electronic Discovery subcommittee. To meet the Chief Justice's charge, the Task Force formed three subcommittees: (1) definition; (2) rules; and (3) technology. The subcommittees met regularly during the course of the Task Force's term with each giving special attention to its focus area.

1. Complex Civil Litigation Divisions v. Business Courts

A. Different Models: Complex Litigation Courts & Business Courts

When states determine a specialized solution is necessary for complicated civil matters, a decision must be made whether to have a court or division based on one of two models: complex litigation courts or business courts. Typically these models are seen as competing, rather than complementary. While both seek the same goal of improved case management, each takes a different philosophical and managerial approach to the same end. Generally, business courts have businesses as litigants, while complex litigation courts may have both businesses and individuals as litigants.

Typically, a jurisdiction that adopts one of these two models relies upon the seminal approaches of either California for forming complex litigation courts or North Carolina for creating business courts. The California and North Carolina models inspire and guide other jurisdictions as they work to establish their own guidelines and case management techniques. Thirteen states have business courts: Colorado, Delaware, Florida, Illinois, Maryland, Massachusetts, Michigan, Nevada, New York, North Carolina, Oklahoma, Pennsylvania, and Rhode Island. Only four states have complex litigation courts: Arizona, California, Connecticut, and Florida. Additionally, four cities have complex litigation courts within their civil court structure: Philadelphia, Pittsburgh, Chicago, and Las Vegas.⁸

B. California's Complex Civil Litigation Courts

California, with the recommendation of several task forces and committees, began considering complex litigation issues in 1990. In 2000, the state instituted a Complex Civil Litigation Pilot Program in six California Superior Courts. The program was “designed to improve judicial management of complex cases and to expedite case resolution, keep costs reasonable, and promote effective decision making by the courts, parties, and counsel.” Typically, the cases found in the Complex Litigation Courts present issue-related, evidentiary, or logistical complexities.⁹ California Court Rule 3.400 provides a definition and factors to consider in determining whether a case is complex.

C. North Carolina's Business Court

The North Carolina Business Court, established in 1995, was intended to generate a body of case law on corporate governance issues. The goal of such a court was to “...assure that North Carolina offers a legal environment which provides the flexibility and support to allow business to operate successfully...”¹⁰ Cases are designated to the special court by order of the state Chief Justice; however, there is

⁸ Source: Mitchell L. Bach and Lee Applebaum, “A History of the Creation and Jurisdiction of Business Courts in the Last Decade,” *The Business Lawyer*, Vol. 60, November 2004.

⁹ Ibid.

¹⁰ Ibid.

extreme flexibility in that decision; there neither is a fixed definition nor a set dollar threshold that conclusively determines a case suitable for the court. Typically, cases assigned to the Business Court are “corporate domestic disputes,” class actions, and paper or motion intensive cases.¹¹

D. Choosing a Model: California and New York

“The drive to establish specialized business and complex litigation courts stems in part from external complaints of litigants and in part from policy and operational concerns of court managers.”¹² Florida is no different. Seeking to defray costs and expedite litigation, the business community has been and continues to be one of the primary impetuses of court specialization. In all jurisdictions, court managers want to be responsive to litigants within the business community, yet they recognize that specialization must not lead to delay of other types of cases within the court system.

While business courts and complex litigation courts employ similar case management approaches, decisions about which model to institute are conditioned on the historical, political, and legal environment of each state. Two states in particular, California and New York, have been recognized as models for complex civil litigation and business courts. Each state undertook an exhaustive review of policies and procedures to decide which approach would best fit its needs.

In 1990, the California State Bar began to study the issues. In 1993, the State Bar Board of Governors passed a resolution forbidding the creation of a specialized business court.¹³ In 1997, a Business Court Study Task Force determined that California should adopt a system that would encompass a wide variety of cases and that would not be limited to business and commercial disputes.¹⁴ The task force

¹¹ Ibid.

¹² Source: National Center for State Courts, “Focus on Business and Complex Litigation Courts,” Civil Action, August 2000.

¹³ Source: Mitchell L. Bach and Lee Applebaum, “A History of the Creation and Jurisdiction of Business Courts in the Last Decade,” *The Business Lawyer*, Vol. 60, November 2004.

¹⁴ Ibid.

identified several reasons why complex litigation divisions would be preferable to business courts:¹⁵

- Responsiveness to the public. The courts would handle business matters plus disputes in the public sphere.
- Public perception. The courts would handle cases affecting the broader society, not just the business community.
- Service to the public. The courts would be flexible enough to respond to fluctuations in caseloads.
- Equal expertise and resources. The courts would also benefit from streamlined procedures and resources.

The California task force determined that a court dedicated solely to business and commercial litigation would be perceived as elitist and might reflect a pro-business bias. Instead, the task force viewed the more salient issue as the need to develop specialized expertise among judges of the superior courts to manage complex litigation of all types – business and commercial, tort, and real property – and to equip those judges with the support staff, technology, specialized case management procedures, and training necessary to improve the quality of decision making in complex cases.¹⁶

By contrast, in 1993, New York established a pilot commercial court program at a time of waning confidence in the ability of the courts to address the concerns of the business community.¹⁷ The pilot program assigned business and commercial cases to a single judge for the duration of the case.¹⁸ The primary goal of the pilot

¹⁵ Source: California Administrative Office of the Courts, *Fact Sheet: Complex Civil Litigation Program*, January 2007.

¹⁶ Source: Paula L. Hannaford-Agor, Nicole L. Mott, Timothy F. Fautsko, *Evaluation of the Centers for Complex Civil Litigation Pilot Program*, June 30, 2003, National Center for State Courts.

¹⁷ Source: Mitchell L. Bach and Lee Applebaum, “A History of the Creation and Jurisdiction of Business Courts in the Last Decade,” *The Business Lawyer*, Vol. 60, November 2004.

¹⁸ Ibid.

program was to establish consistency in case management, create judicial expertise in business matters, and invoke early judicial involvement in a case.¹⁹ In 1995, the pilot program led to the creation of the Commercial Division of the Supreme Court of New York, and eventually, by virtue of its success, similar divisions throughout the state.²⁰ Ultimately, New York concluded that:

Absent vigorous case management, these cases tend to become protracted and expensive, and, indeed, to become a drag upon the court's inventory of non-commercial matters. By concentrating most of the commercial cases filed in New York County in the [Commercial] Division, before justices familiar with commercial jurisprudence and litigation and who are charged with the task of active case management, court administrators hope that delay and expense can be reduced for all parties in commercial cases, and derivatively for litigants in non-commercial cases as well.²¹

New York's decision to establish business courts was contingent upon a number of considerations:²²

- Knowledge and experience. Business courts allow for increased substantive legal knowledge and experience amongst the judiciary.
- Motion-Practice. Business court judges are more experienced in motion practice, as many cases are resolved via motion, rather than trial.
- Favoritism. Favoritism or pro-business concerns are not an issue as the litigants in these courts are businesses, not individuals, and the assignment of cases to a business court judge is simply a management issue and does not require additional expenditures.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Source: Source: Mitchell L. Bach and Lee Applebaum, "A History of the Creation and Jurisdiction of Business Courts in the Last Decade," *The Business Lawyer*, Vol. 60, November 2004.

²² Source: Robert Haig, Panel Discussion of the Task Force on Complex Civil Litigation, June 27, 2007.

2. Task Force Subcommittees

A. Definition Subcommittee

1. Process and Materials Reviewed

The Definition Subcommittee began its work by reviewing the Florida Supreme Court’s Senior Judge Committee Report of 2002.²³ The Senior Judge Committee noted that the Florida rules of court do not provide a definition of a complex case. To overcome this hurdle, the Senior Judge Committee relied on Senate Bill 934, drafted during the 2000 Legislative Session, which provided some guidance. The bill defined the following filings as complex:

- antitrust claims
- construction defect claims involving multiple parties;
- shareholder derivative claims;
- environmental or toxic claims involving multiple parties;
- mass tort claims;
- claims involving mass class actions; and
- insurance coverage claims arising out of any claims listed above.

The Senior Judge Committee, noting that the list in the bill was not exhaustive, added several other case types that may be complex, including:

- medical malpractice claims;
- product liability claims;
- environmental torts without multiple parties; and
- aviation actions.

The Definition Subcommittee also reviewed California Court Rule 1800 (now rule 3.400), which defined “complex litigation,” as well as the California *Deskbook on the Management of Complex Civil Litigation*. The California rule defines a complex case as “an action that requires exceptional judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs reasonable, and promote effective decision making by the court, the parties, and counsel.”

²³ Senior Judge Report, 847 So.2d 415, n5 (2003).

The rule provides both a set of “factors” that must be considered in determining whether a case is complex and a short list of actions considered to be “provisionally” complex unless later determined otherwise by a judge.²⁴

²⁴ **2008 California Rules of Court**

Rule 3.400. Definition

(a) Definition

A "complex case" is an action that requires exceptional judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs reasonable, and promote effective decision making by the court, the parties, and counsel.

(b) Factors

In deciding whether an action is a complex case under (a), the court must consider, among other things, whether the action is likely to involve:

- (1) Numerous pretrial motions raising difficult or novel legal issues that will be time-consuming to resolve;
- (2) Management of a large number of witnesses or a substantial amount of documentary evidence;
- (3) Management of a large number of separately represented parties;
- (4) Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court; or
- (5) Substantial postjudgment judicial supervision.

(Subd (b) amended effective January 1, 2007.)

(c) Provisional designation

Except as provided in (d), an action is provisionally a complex case if it involves one or more of the following types of claims:

- (1) Antitrust or trade regulation claims;
- (2) Construction defect claims involving many parties or structures;
- (3) Securities claims or investment losses involving many parties;
- (4) Environmental or toxic tort claims involving many parties;
- (5) Claims involving mass torts;
- (6) Claims involving class actions; or

2. Definition of a Complex Case

Issue: **Defining Complex Cases**

Discussion: In order to accurately identify and track the number of complex cases filed in Florida each year, it is necessary to define what constitutes a complex case. The Task Force vigorously debated the merits of “provisionally” designating cases as complex as opposed to waiting for a judge to consider “other factors” associated with the case and then designating the case complex.

The Definition Subcommittee discussions focused on how to properly identify complex cases. A chief concern about the notion of a provisional designation is the probability of a party incorrectly designating the case as complex when the case is filed with the clerk’s office. When accepted and recorded by the clerk, the designation could lead to an inflation of the actual number of complex cases reported. Several subcommittee members voiced concern that one motivation for parties and

(7) Insurance coverage claims arising out of any of the claims listed in (c)(1) through (c)(6).

(Subd (c) amended effective January 1, 2007.)

(d) Court's discretion

Notwithstanding (c), an action is not provisionally complex if the court has significant experience in resolving like claims involving similar facts and the management of those claims has become routine. A court may declare by local rule that certain types of cases are or are not provisionally complex under this subdivision.

(Subd (d) amended effective January 1, 2007.)

Rule 3.400 amended and renumbered effective January 1, 2007; adopted as rule 1800 effective January 1, 2000.

attorneys to provisionally designate their case as being complex is their expectation that their case will be channeled into the complex civil litigation division. Once filed, the case would receive the closer judicial scrutiny, review, and management that is characteristic of those divisions.

The post-filing discussion focused on judicial review of the original complaint or petition after filing. Subcommittee members believed that judges with extensive experience in civil matters are in the best position to determine whether or not a case is complex. They can only do so after reading the petition. Under this scenario a case would be filed as a civil cause of action, reviewed by a judge, and then designated as either complex or not based upon the factors identified in the complaint or petition.

The post-filing designation approach ultimately prevailed as the most appropriate way to designate complex cases in Florida.

Recommendation: The Definition Subcommittee recommended and the Task Force decided to emulate the definition found in the California rule. Incorporated into the recommendation are “other factors” a judge may consider when deciding to invoke complex case procedures to facilitate case management and expedite ultimate disposition. After the Task Force adopted the definition and approach, the information was referred to the Rules Subcommittee for incorporation into a proposed rule of civil procedure.

B. Rules Subcommittee

1. Overview

The Rules Subcommittee met several times during the course of the Task Force’s tenure. The rule development process was very deliberate and expanded upon the

work of the Definition Subcommittee. Based upon their collective experience, the Rules Subcommittee members perceived that the current rules of civil procedure insufficiently address complex cases and that a new rule of civil procedure is needed. Many of the members believe that complex cases warrant a level of structure and judicial management not provided for in the current rules of civil procedure. Moreover, the discovery process has become protracted, misused and abused. Often the abuse or manipulation is a tactic used to delay the proceedings, which can result in considerable cost for the parties. Further, in some local jurisdictions, it is difficult to receive time for hearings and motions. In others, judges are stingy in giving litigants case management conferences or firm trial dates.

Consequently, the goal of the Rules Subcommittee was to create a proposed new rule of civil procedure that specifically addresses discovery, firm trial dates, proactive judicial case management, and other procedural issues that can contribute to delays in case disposition. The proposed rule of civil procedure is designed to streamline the discovery process, provide direction and structure for judges and attorneys to manage complex cases, and to dispose of cases more quickly. The Subcommittee and a majority of the Task Force membership is convinced beyond doubt that the proposed rule will provide the structure necessary for the swifter disposition of complex cases.

A few members of the Task Force have very serious reservations and question the need for advancing a new rule of civil procedure to deal exclusively with complex cases. They believe that the current rules of civil procedure are sufficient to manage and advance complex cases through the court system. Those members contend the central problem lies with judges not actively managing their caseloads effectively.²⁵ And, some members believe that chief judges and administrative

²⁵ That is, where there is a “problem.” Because “complex” cases currently are not captured by any reporting requirements, the actual evidence of a problem is anecdotal; the Task Force found it to be geographically isolated and judge specific as opposed to being systemic. At least one Task Force member opposes specialized trial courts on philosophical grounds and he and a few other members oppose adding a new rule of civil procedure for complex cases fearing it will impact negatively on the judiciary. The majority, on the other hand, believe that the proposed rule will impact positively on the judiciary and give all judges the ability to better manage any case designated as “complex” and will facilitate a more expeditious disposition of such cases.

division judges can and should do more to hold civil division judges accountable for their caseloads. Moreover, some members feel the supreme court should do more to hold chief judges accountable for the overall management and timely disposition of all cases within their circuits. These members believe that management oversight of the trial courts is well within the supreme court's authority under the current Florida Rules of Judicial Administration and as such should be vigorously monitored and regularly enforced.

The Rules Subcommittee also addressed three related issues: (1) amending the Civil Cover Sheet, Form 1.997, Florida Rules of Civil Procedure; (2) creating an order designating a case complex; and (3) requiring use of the Final Disposition Form, Form 1.998, Rules of Civil Procedure. Each issue is discussed below. The Rules Subcommittee and a majority of the Task Force membership recommends in the strongest terms that in addition to adopting the proposed rule of procedure, the

The lack of reliable data statewide to support the recommendation for a complex litigation rule of civil procedure troubled all of the Task Force members. The majority who support the proposed rule argue that the lack of reliable data underscores the exigent need for the proposed rule, a more comprehensive civil cover sheet, the proposed uniform "order designating a case complex" and the mandatory filing of the "final disposition form" in every civil action. The comprehensive recommendations the Task Force is making for numerous upgrades in information technology, which are not opposed by the member filing the minority view, would greatly facilitate collection of non-anecdotal data and provide quantitative analysis of disposition rates for "complex" litigation.

Indeed, the exigent circumstances caused by the current economic downturn that exacerbates insufficient funding for Florida's court system is justification in and of itself for the supreme court to promulgate administratively the proposed rule of civil procedure as soon as possible. The members of the Task Force are aware the supreme court is considering revising the way the court promulgates court rules. The chair believes that if the court is considering moving to the promulgation of court rules administratively rather than through the adversarial process this is the perfect time and proposed rule to use as a test or to make the transition. A majority of the Task Force membership strongly encourages the supreme court to promulgate the proposed rule administratively and then ask for comments rather than forcing the proposals through the current rule-making process which could lead to a delay of many years.

supreme court should approve and implement simultaneously the amended civil cover sheet and the proposed order designating a case complex. The Task Force also recommends that the supreme court mandate the proper use of the final disposition form.

2. Proposed Rule of Civil Procedure – Complex Cases

Issue 1: Proposed Rule of Civil Procedure – Complex Cases

Discussion: 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. The Task Force was 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. Moreover, it has become common knowledge that the entire discovery process is burdensome and unwieldy. In the view of many Task Force members, insufficient judicial attention is being given to complex cases and the concomitant need for additional case management conferences and pretrial hearings. Frequently, complex cases take years to get 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 majority of Task Force members 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.

Description of Rule: The proposed rule of civil procedure (Appendix A) is in response to the direction provided in AOSC06-53 “to determine whether rules, systems or processes should be created or amended to enhance the effective case

management of complex litigation within the court system, including the resolution of discovery and other pre-trial matters.” The rule being recommended includes a definition of a “complex case,” and provides for a method by which such a case can be designated by the court for differentiated case management, an initial case management conference and report, the setting of trial dates on an expedited basis, a case management order and a final case management conference.

After designation as 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 at the initial case management stage.

At any time after service of process, a party or the court can move to declare 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 will enter an order within 10 days. If the case is designated as complex, the order additionally should instruct 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 submit a joint statement framing the issues involved; the theory of damages sought; anticipated discovery issues; suggestions for referral of issues to mediation; partial or complete arbitration; or other neutral processes, including, but not limited to agreement to refer to a general master all discovery matters and non-dispositive motions, with rulings and recommendations appealable to the court; other dispute resolution approaches such as a summary jury trial on the

issues of liability, damages or both; and 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 shall be present at the initial case management conference. At the initial conference the judge will set the trial date to 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 to state dates by which the parties must identify expert witnesses, after which dates, the parties would be precluded from naming additional witnesses. After the dates set for naming experts passes the parties are required to meet and schedule dates for taking the experts' depositions. 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. 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.

Recommendation: The Rules Subcommittee and a majority of the Task Force membership urge the supreme court to adopt administratively the proposed rule for complex cases. The supreme court is strongly encouraged to adopt the rule *sua sponte* and not, as an initial matter, refer the rule to The Florida Bar rules committees. It is the collective opinion of the Task Force members that they have devoted intense and considerable time over the last 18 months developing the proposed rule, and a referral to The Florida Bar rules committees would take several more years. In the view of the Task Force membership, such a review would be untenable and not in the best interests of promoting the administration of justice in Florida as it relates to complex litigation, given the critical need to proactively manage such cases.

3. Rules of Civil Procedure, Form 1.997 – Civil Cover Sheet

In light of the Task Force’s definition of what constitutes a complex case, recommended changes to the rules of civil procedure, the emergence of business courts, and the clearly defined nature of family cases, the Task Force believes that changes to Form 1.997 Civil Cover Sheet are necessary.

The current civil cover sheet was promulgated effective July 1, 1986, and rule 1.100 was amended to add subsection (2) as follows:

(2) A civil cover sheet (Form 1.997) shall be completed and filed with the clerk at the time an initial complaint or petition is filed by the party initiating the action. If the cover sheet is not filed, the clerk shall accept the complaint or petition for filing; but all proceedings in the action shall be abated until a properly executed cover sheet is completed and filed. The clerk shall complete the civil cover sheet for a party appearing *pro se*.

Concomitantly, subsection (2) was added to rule 1.100, the court created form 1.997, the civil cover sheet. The Florida Bar Re: Amendment to Rules of Civil Procedure Rule 1.100(c), 488 So.2d 57 (Fla. 1986). The supreme court was acting on the recommendations of the Court Statistics and Workload Committee chaired by Justice Alderman.

The civil cover sheet later was amended effective January 1, 1997 to account for adoption of the Florida Family law Rules of Procedure. In re Amendments to Florida Rules of Civil Procedure, 682 So.2d 105 (Fla. 1996).

The civil cover sheet was last amended effective January 1, 2006. In re Amendments to the Florida Rules of Civil Procedure (Two Year Cycle), 917 So.2d 176 (Fla. 2005).

Issue 2: Outdated Civil Cover Sheet

Discussion: Form 1.997 is outdated. It needs to be revised to reflect the varied types of cases being filed in Florida's trial courts. The Rules Subcommittee proposes a significant revision to the Civil Cover Sheet, Form 1.997. It is important that any changes to the civil cover sheet conform to the proposed rule being recommended. During the course of the subcommittee's work, it became clear that the current civil cover sheet is inexact and obsolete. Specifically, members noted that many complex cases currently fall into the "other" category on the cover sheet. Consequently, the subcommittee took the initiative to significantly revise the civil cover sheet to make it more meaningful (Appendix B). Both the cover sheet and order designating the case complex play an important administrative role in categorizing complex cases. Since by law all filings in Florida must be reported to the supreme court by each clerk of court, the civil cover sheet helps counsel, parties, and clerks appropriately identify the type of case being filed. Proper and accurate reporting also will assist the supreme court when certifying the need for additional judges.

Recommendations: The Task Force recommends that the supreme court:

- (a) adopt the amended Civil Cover Sheet, Form 1.997;
- (b) remove family law cases from the civil cover sheet;

- (c) require an attorney or *pro se* litigant filing a civil action to certify that the designation of the appropriate category of the case is being made in good faith. Attorneys also should be required to provide their Florida Bar Number and signature on the cover sheet; and
- (d) require similar changes to the Summary Reporting System (SRS) administered by the Office of the State Courts Administrator.

4. Order Designating A Case Complex

One step the civil cover sheet does not take is to automatically designate a case as being complex. That designation only can be made by the presiding judge after reviewing the complaint or petition. The order designating the case complex is a tool developed by the Task Force's Rules Subcommittee that enables presiding judges to direct the clerk to report the case as complex.

Issue 3: Need for an Order Designating a Case Complex

Discussion: In order to accurately track complex cases in the Summary Reporting System, trial judges need a mechanism to communicate to their respective clerk's offices that a case is designated as complex. The civil cover sheet, while helpful to filing parties and clerk's staff, does not accomplish that goal. The petitioning party may believe a case is complex, but the clerk's office cannot and should not 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 report. Accordingly, the Rules Subcommittee believes it imperative to provide a formal mechanism in the way of a form order for the presiding judge to designate a case as complex.

Recommendation: The Rules Subcommittee and the Task Force recommend that the supreme court adopt the proposed Order Designating a Case Complex (Appendix C).

5. Rules of Civil Procedure, Form 1.998 – Enforced Use of Final Disposition Form

Issue 4: Submission of Final Disposition Form

Discussion: The courts have a formal means for documenting final case disposition. However, it appears attorneys have not been submitting a final disposition form at the close of the case. The Rules Subcommittee and Task Force members believe that many cases that might appear on a judge's pending caseload report have been disposed but a final disposition form has not been filed. The Task Force asserts that the form is woefully under-used even though it is mandated by the rules of civil procedure that it be filed at the close of the case.

Indeed, most clerks of court close or dispose of a case upon the filing of an order of dismissal or a final judgment rather than on the filing of a Final Disposition Form. Enforcing the requirement that attorneys file the form with the clerk of court will assist in the requirement that the clerk comply with the reporting requirements in §25.075, Florida Statutes.

Recommendation: The Rules Subcommittee and Task Force recommend that the supreme court mandate and enforce the use of the Final Disposition Form (Appendix D) as a means of formally disposing of a case and to make a reporting record for the clerk of court. The Final Disposition Form is integral to an accurate and well-defined reporting system, to enable the clerks of court to meet their statutory obligations to the supreme court, to enforce the

time standards required by the rules of court, and to the accuracy of a trial court's pending caseload report.

6. Conclusion

The Rules Subcommittee and Task Force identified a number of steps that the supreme court should adopt to improve the management, processing, and administration of complex cases in Florida's trial courts. First and foremost, the supreme court is urged to adopt the proposed rule of civil procedure that will enable judges and parties to move their case more expeditiously from filing to disposition. The Task Force strongly encourages the supreme court to adopt the proposed rule administratively and *sua sponte* and not refer this matter to The Florida Bar rules committees which historically has led to a protracted delay in implementation of needed rules of procedure. The members of the Rules Subcommittee and Task Force also recommend that the supreme court become more proactive in its oversight of the trial courts and clerks of court specifically with respect to monitoring judicial caseloads, enforcing time standards, ensuring accurate reporting, and assuring greater accuracy in pending caseload reports. To assist in that effort, the Rules Subcommittee and Task Force encourages the supreme court to adopt, mandate and enforce the use of the proposed revised civil cover sheet, the proposed order designating a case complex, and final disposition form.

C. Technology Subcommittee

1. Overview

The Technology Subcommittee of the Task Force on Management of Cases Involving Complex Litigation was formed in response to: (1) the charge contained in the supreme court administrative order appointing the Task Force and (2) experiences of Task Force members concerning the appropriate role of technology in complex litigation.

The Task Force is aware that a technology governance structure exists for Florida's court system under the leadership of the Florida Court Technology Commission (FCTC), and suggests to the supreme court and FCTC that the use of technology

should be more robust. The subcommittee strived to advance recommendations that are supportive of ongoing efforts, while sufficiently visionary to provide constructive recommendations and comments to enhance and reinforce the goals of the existing governance body.

The recommendations in this report apply to the emergence of business divisions in several large circuits in central and south Florida including the Ninth (Orlando), Eleventh (Miami-Dade), Thirteenth (Tampa), a Complex Litigation Division in the Seventeenth (Ft. Lauderdale), and to the court system as a whole. It is anticipated that the stakeholders involved with those court divisions will become prolific users of the technology recommendations and implementations discussed in this report. From a technology perspective, however, how the divisions receive and process electronic information is indistinguishable.

2. Governance Structure

Florida develops policies and oversight related to technology under the auspices of the Florida Courts Technology Commission (FCTC), which is appointed by and reports to the supreme court. The commission consists mainly of two committees - an appellate court technology committee and an electronic filing committee. Together, the commission and its constituent committees provide statewide policy recommendations for all court technology issues.

Over the last several years, the FCTC has provided and continues to provide oversight on a number of initiatives including: (1) promoting electronic filing; (2) promoting access to court records; (3) promoting data exchanges among justice community partners; (4) establishing a state judicial information strategic plan; and (5) recommending procedures to handle privacy issues related to court records.

Supreme Court Administrative Order AOSC07-59 charges the FCTC with performing eight specific tasks over the next two years, including the following:

- Developing a comprehensive framework for the implementation of technology within the court system that addresses the needs of judicial officers, court managers and staff, and court users;
- In cooperation with the clerks of court, proposing uniform technical and substantive standards that would allow consideration of remote access to

court records in electronic form, conditioned on the effective identification and protection of confidential and exempt information;

- Continuing to oversee, monitor, and evaluate the pilot project implemented by the Clerk of Court of Manatee County for electronic release of court records;
- Evaluating appropriate security precautions that are necessary with regard to any automated search technologies that may extract information from court records, considering methods or regulations that require commercial users of electronic court records to regularly update their databases with records that have been corrected or purged of erroneous, expunged, and sealed records; and advising the Chief Justice on the implications and advisability of available policy options;
- Reviewing and evaluating matters relating to user access fees identified by the Committee on Privacy and Court Records and advising the Chief Justice on the implications and advisability of system funding models that are uniform statewide and do not impose costs beyond those necessary to support the system;
- Continuing to provide guidance and oversight on the development of an electronic filing portal that establishes a common entry point for all electronically filed court submissions in all jurisdictions; and formulating proposed policies to ensure uniformity and standards to secure a comprehensive electronic record;
- Ensuring that the technology utilized at all levels of the State Courts System is capable of full integration; and
- Integrating appropriate security policies into all projects to ensure the integrity and efficiency of court technology systems.

The recommendations in this report are intended to be harmonious with those eight tasks.

3. Process and Materials Reviewed

The Task Force Technology Subcommittee (“Subcommittee”) met numerous times by teleconference during 2006, 2007, and 2008. The Subcommittee reviewed

voluminous materials related to governance, electronic discovery (e-discovery), electronic filing (e-filing), case management, video conferencing, single portal access, content management, electronic signatures, confidentiality, audit trails, metadata, and security.

Because many Task Force members practice in federal court they have familiarity with the electronic management system in use, which is the Public Access to Court Electronic Records (PACER) system. PACER is an electronic document management system designed to facilitate both e-filing and e-discovery. The members brought the benefit of their experience with PACER to the deliberations of the Subcommittee. Many of the concepts discussed in this report already are embodied in the PACER system and have been addressed by the federal courts. With the PACER model as an example, the Task Force suggests that a number of initiatives implemented and proven in the federal court system could be adapted to Florida's court system.²⁶

4. Issues and Recommendations

The Subcommittee and Task Force have identified a number of technology issues that affect court users throughout the state. Although particular emphasis on complex civil litigation was the initial focus, these recommendations also support the efforts of the supreme court and the FCTC to advance the use of technology in Florida's court system. Generally, the Subcommittee firmly believes these recommendations are in the best interest of the court system. The Subcommittee recognizes that Florida courts currently use over 400 operating systems; this poses compatibility and interface difficulties for everyone using the court system.

The Task Force members recognize that the principles of accessibility must be incorporated into all court technology projects. The requirements of the Americans with Disabilities Act of 1990, sections 262.601 through 262.606, Florida Statutes, and any other applicable state or federal disability laws must be considered and applied. Additionally, it is acknowledged that these issues and recommendations are applicable to and should be made available to *pro se* litigants. The coordination and implementation of the recommendations that follow present a significant challenge for the court system.

²⁶ For a detailed description of the PACER system please see: <http://pacer.psc.uscourts.gov/pacerdesc.html>.

Issue 1: Electronic Discovery (E-Discovery)

Discovery has been described as “the disclosure...of facts, deeds, documents, or other things which are in his exclusive knowledge or possession, and which are necessary to the party seeking the discovery as a part of a cause of action pending, or to be brought in another court, or as evidence of his rights or title in such proceeding.” *Hardenbergh v. Both*, 247 Iowa 153, 73 N.W.2d 103 (1955).²⁷

Discussion: Discovery essentially is a procedural process governed by rules of court. Discovery often significantly contributes to cost and delay in civil litigation and it tends to be a factor in necessitating judicial intervention.²⁸ This especially is true where there are multiple parties, competing experts, voluminous documents, lengthy interrogatories, a large number of depositions, and many exhibits. With advances in technology, some or all of the discovery process can and should be handled electronically. From a technical perspective, this issue is procedural in nature even when executed electronically. Electronic discovery can aid in the disposition of a case at a lower cost to the parties than through traditional production of documents, and with potentially less judicial intervention, if properly deployed and diligently pursued.

Recommendation: The Task Force makes no specific recommendation concerning the process of e-discovery, other than: (1) to encourage re-examining the underlying premise for limiting the duration of retention of documents filed electronically; and (2) to consider whether more categories of discovery

²⁷ See Black’s Law Dictionary, 6th Ed., St. Paul, Minn., West Publishing Company, 1990, at p.466.

²⁸ Deskbook on Management of Complex Civil Litigation, Judicial Council of California, copyright 2006, Administrative Office of the Courts, Release No. 7 October 2006, LexisNexis.

documents should be e-filed to better facilitate judicial case management functions. The Task Force through the Subcommittee encourages the supreme court and the appropriate Florida Bar rules committees to develop sound principles for e-discovery practices as statewide systems become upgraded to accommodate electronic filing, indexing, retrieval, storage, etc. Guidance, in this regard, may be obtained from the recently amended Federal Rules of Civil Procedure, Rule 26.

Issue 2: Electronic Access to Information

Discussion: The ability to view and share information should be facilitated for all stakeholders: parties, their counsel, courts, and statutorily or constitutionally permitted observers. Electronic access to documents is important in that it reduces or eliminates the need for traveling to the courthouse and reduces associated costs. Electronic access allows litigants to monitor case progress, especially in complex litigation and in other cases that involve complex legal actions, multiple parties, voluminous exhibits, many deposition transcripts, challenges to interrogatories and answers, evidentiary filings and rulings; and numerous interim orders. However, the confidentiality, control, integrity, authenticity, availability, and utility of any electronic system the supreme court approves, must be established before access is permitted.

Recommendation: The supreme court should strongly encourage and support pursuit of an electronic data system that empowers court users to access electronic data. Several internal security measures are *critical*: ensuring access is limited to authorized users and that the information cannot be altered; assuring confidentiality where applicable and when warranted; and providing for long term storage with audit capability. The Task Force members believe that consideration should be given to re-examining the underlying premise for limiting the duration of retention of documents filed electronically. The resulting efficiencies and the reduction in storage costs, coupled with potential benefits

that could be derived from archiving of electronically filed documents, may better accommodate the public right of access to court records as well as provide an additional revenue source for Florida courts.

Issue 3: Electronic Filing (E-Filing)

Discussion: E-filing is defined as the process of transmitting documents and other information to a court through electronic means rather than on paper. E-filing enables more work to be performed via computers. There would be no need to file papers or to physically send and receive pleadings and other filings, view documents, pay filing fees, notify other parties, receive court notices, and retrieve court information.²⁹ Given the typical volume of documents filed with the court in complex cases, e-filing is essential to achieve greater judicial and clerical efficiency for those engaged in such litigation.

Since 2000, the supreme court has approved twenty requests in support of electronic filing or electronic signature technology applications. Of the twenty requests, several were for Internet-based electronic filing systems that are designed to accept secure transmission of electronic court documents.³⁰ These sites include:

- Hillsborough County (Complex Business Litigation) ordered 04/21/2008
- Orange County (Complex Business Litigation) ordered 04/21/2008
- Leon County (Traffic) ordered 03/19/2008

²⁹ Source: *A Guidebook for Electronic Court Filing*, copyright 1998, 1999, West Group Inc. and the National Center for State Courts ISBN 0-314-23340-7.

³⁰ Supreme Court of Florida Administrative Orders:
<http://www.floridasupremecourt.org/clerk/adminorders/index.shtml>

- Miami-Dade County (Criminal) ordered 02/12/2008
- Broward County (Probate and Guardianship) ordered 04/23/2007
- Clay County (General Civil) ordered 04/23/2007
- Pasco County (Probate and Guardianship) ordered 12/28/2005
- Orange County (Complex Civil) ordered 12/28/2005
- Leon County (Misdemeanor) ordered 04/27/2005
- Duval County (Small Claims) ordered 07/21/2004
- Miami-Dade County (Traffic) ordered 11/12/2003
- Manatee County (General Civil) ordered 01/26/2001

In January 2008, the FCTC approved the concept of establishing a state-wide e-filing portal. State-approved standards applied to construction, maintenance, use, and integrity of the e-filing portal should provide for secure filing of electronic document submissions to all areas of state jurisdiction through a single Internet-based computer interface.

The Judicial Inquiry System (JIS) is a similar type Internet-based interface. “The JIS is a web-based system that enables judges, judicial staff, and other governmental entities to access multiple data sources through one point of entry. The system is a secure, anywhere access system where a single query can gather information from many different data sources and display the information in a user friendly format.”³¹

Adoption of a single e-filing portal is expected to be recommended to the supreme court by the FCTC in the near future to help facilitate further efforts by the FCTC and court stakeholders. Indeed, in the latest administrative order issued by the chief justice, he said:

The Supreme Court anticipates the approval of a statewide e-filing “portal” to ensure equal access

³¹ Source: Judicial Inquiry System Whitepaper, Office of the State Courts Administrator, last revised October 15, 2007.

to electronic filing across the state and has directed that the Florida Courts Technology Commission make implementation of such a system a priority of the judicial branch. All local electronic filing systems must be compatible with the statewide electronic filing portal and approval of Orange County's request is contingent on the system's compatibility with the statewide portal when it is approved.

At the present time, the Court is considering enhancements to current electronic filing practices throughout the state. There is a possibility that these enhancements may include the development and application of new business practices and technology standardization. Because these enhancements may occur in the near future, it will be the responsibility of the Orange County Clerk of Court to ensure that functionality of the proposed system related to electronic court records will also be made compliant with these new technological enhancements.

AOSC-08-13 (Orange County)

The next step, if the Task Force recommendations contained in this report are adopted by the supreme court, would be to conduct a state-wide outreach to help design an implementation plan.

Recommendation: The FCTC should create an implementation plan to address e-filing, including components and safeguards that need to be in place to insure a successful outcome for all stakeholders. The FCTC should identify clearly who will be responsible for development and maintenance of the portal. The FCTC should require that a single portal for the submission of electronic court records be developed and implemented once the supreme court has identified the necessary data elements,

reporting needs, standards, governance, security, confidentiality, audit controls, and other components. Some of these factors are in place; others will need to be implemented before the portal is activated. Partnerships with the Florida Legislature, clerks of court and The Florida Bar are prerequisites to success. Developing funding sources, from or in conjunction with the private sector, may be necessary to implement any e-filing portal.

Issue 4: Content Management

Discussion: Attorneys should be given the capability to easily organize, search, and retrieve all relevant information pertaining to their client's litigation. They also should be able to conduct shared reviews of all electronically submitted content to allow parties to see non-confidential or non-privileged information on court events and case proceedings. Content management builds upon the concept of e-filing; documents electronically submitted then can be stored, indexed, searched, and easily retrieved. Content management is a feature that is *essential* for those engaged in complex civil litigation. It enables attorneys and judges to keep abreast of filed documents and to identify outstanding filings and deadlines. This, in turn, enables parties, their attorneys, and judges to better manage such cases.

Recommendation: The supreme court should pursue implementation of a content management system for the entire court system. Such a system may be integrated into a larger system that permits single portal e-filing, case management, and other necessary requirements such as security, confidentiality, and audit capability.

Issue 5: Case Management

Discussion: Florida's court system currently lacks uniform case management among all legacy systems. Typically, most court

automation is funded at the county level. Each county or clerk's office has implemented one or more of its own case maintenance systems without regard to statewide compatibility. Systems used to track and manage cases for judges and other court stakeholders have been separated into two distinct categories of functionality – case maintenance and case management. This distinction is consistent with the implementing language of Revision 7 to Article V of the Florida Constitution and in F.S. § 29.004 (10).

Notable Challenges:

Paper as the Official Record. For most Florida jurisdictions, paper still serves as the “official” record. Current trial court automation systems only permit court clerks to collect information necessary to maintain and track paper-based court records. While clerks are working to install appropriate technology to capture, store, and process court records in an electronic format, the current paradigm summarily precludes statewide statistical analysis, impedes supreme court oversight, and contributes to judicial inefficiency.

Funding. Funding is an on-going challenge for each judicial circuit. As directed by Article V implementing legislation, trial court technology is funded through fees associated with document filings, administered by each county. For multi-county circuits, this presents challenges in coordination of local or regional resources. Modern technology advancements leverage network resources; therefore, judges require that case information transcend county lines and be associated with all parties and court divisions. However, counties are not required to use software that is compatible and consistent across judicial circuits. Due to fragmentation of resources, the concepts of access, oversight, system integrity, and the ability to audit performance statewide are significantly diminished.

Multi-County Circuits. Adequate funding is a consideration. Charges collected by the clerks for recording, indexing and filing any instrument provide the funding stream for court-related technology. Several multi-county judicial circuits are located in rural areas. Because rural areas typically experience lower filings, technology funding levels are inadequate to implement and to sustain an appropriate level of integrated technology. This is further compounded by lack of coordination of funding between counties within a judicial circuit. By law, judicial circuits currently do not have authority to pool county resources for procurement of integrated systems to serve an entire judicial circuit.

Integrated Computer Systems. No judicial circuit has fully installed an integrated computer system capable of providing information to all court stakeholders. To provide some relief, the Florida Association of Court Clerks created a data warehouse called the Comprehensive Case Information System (CCIS), which is used to help consolidate case and party information. Additionally, the supreme court has created the Judicial Inquiry System (JIS), which aggregates disparate information between state and local systems using the Internet. One of the systems connected to JIS is the CCIS. All judicial staff, including judges, judicial assistants and case managers, are given access to JIS if requested and properly trained.

Volume of Operating Systems. In 1998, Florida voters passed Revision 7 to Article V of the Florida Constitution. This amendment redefined funding models used to support court automation efforts. To help facilitate this transition, the courts performed a survey that included an inventory of all automation systems used to manage court records. The survey revealed approximately 800 stand-alone database applications throughout the state used in support of case maintenance responsibilities. These legacy systems are an impediment to achieving efficiency for all stakeholders.

Uniform Standards. As directed through supreme court administrative order, the FCTC continues to establish uniform case management standards to assist judges and attorneys with access to court information from a single electronic interface.

Recommendation: The supreme court should continue to pursue and proactively recommend a unified statewide case management system for the trial courts. If the cost of such a system is prohibitive, the court should explore other options such as a case information overlay, like the CCIS that is being developed by the FACC, or the potential for legislative or private sector funding initiatives. Additionally, the supreme court should recommend to the Florida Legislature that pooling of resources should be permitted in multi-county judicial circuits in order to implement integrated computer systems.

Issue 6: Information Tracking

Discussion: To ensure integrity of any content management system, court record keeping systems should maintain all original content. This will enable tracking access to documents, and allow for review of all changes of any form to electronic content. Such functionality is important to those engaged in complex civil litigation and is applicable to all other litigation. Parties, their legal counsel, and judges must be confident that all original and supplemented document content has not been improperly manipulated by anyone. Tracking standards, processes, and protocols must be implemented so that court users are reassured that all original content is maintained, and that confidentiality, where it is authorized and when warranted, is absolutely assured.

Recommendation: The supreme court, through the FCTC, should establish mandatory standards to enable documents to be tracked, to assure security, and to perform auditing. Additionally, the protocol for long-term storage, archival, and retrieval specifications and standards must be developed.

Issue 7: Document Formats

Discussion: To facilitate uniformity of case processing, content and document management, and to maintain the electronic integrity of documents submitted to the court, reasonable and well defined standards are *essential*.

Recommendation: The supreme court formally should adopt standards-based document formats and templates, such as Adobe[®] portable document format (.pdf), Microsoft Word[®], or WordPerfect[®], or equivalent word-processing programs with specified versions of each that will ensure compatibility for all categories of documents requested by a court. Such documents include, but are not limited to, proposed findings of fact, draft orders, and other content intended to enable a court to assemble a final judgment or order from the submissions of the parties. Any document or template should retain the integrity of the original content and retention of layout, fonts, formatting, and tables to facilitate reuse of the content.

Issue 8: Security Policies

Discussion: Any discussion concerning the use of electronic documents in a legal setting first must address security for documents submitted to a court. This is especially important in some complex case types. Frequently in such litigation, there may be trade secrets, such as customer lists, formulas, and proprietary know-how, patent applications, and other proprietary or competitively sensitive documents covered by protective orders, submitted under seal, or subject to confidentiality assured by federal or state law that cannot, and should not, be made accessible to anyone other than the presiding judge, or possibly a very limited number of other persons specifically designated by an order issued by the presiding judge. “Thefts of proprietary information are

increasing, which can jeopardize revenue, competitive advantage, and customer relationships; generate negative publicity; and result in significant penalties and fines for failure to comply with privacy laws.”³² If the court system is unable to *absolutely* assure stakeholders that confidential information will remain inviolate, parties and their attorneys will be reluctant to electronically file such information. This would defeat the efficiency and cost savings likely to be achieved by e-filing. There are six security attributes specific to e-filing: confidentiality, possession or control, integrity, authenticity, availability, and utility.³³ A brief description of each follows.

Confidentiality. Confidentiality generally is defined as limitations concerning who can or may gain access to different types of information.³⁴ Electronically, this typically is handled in three ways: (1) “encryption, is the process of transforming information (*plaintext*) into an incomprehensible form (*ciphertext*). Encryption is an effective technique for managing document access; (2) decryption is the reverse process that transforms ciphertext back to the original plaintext; and (3) cryptography refers to the two processes of encryption and decryption and its implementation is referred to as a *cryptosystem*.”³⁵ A court could order that truly confidential information, such as trade secrets, only be

³² See *A Primer on Electronic Document Security, How Document Control and Digital Signatures Protect Electronic Documents*, an Adobe Technical Whitepaper.

³³ See Donn B. Parker "Toward a New Framework for Information Security", in *The Computer Security Handbook*, 4th ed., edited by Seymour Bosworth and M. E. Kabay • New York, NY: John Wiley & Sons, 2002.

³⁴ Ibid.

³⁵ See *A Primer on Electronic Document Security, How Document Control and Digital Signatures Protect Electronic Documents*, an Adobe Technical Whitepaper. [Emphasis added by underlining, above.]

submitted in encrypted form, and that all such documents are to be segregated electronically in a manner that precludes access for the duration of the case and any final appeal except to the presiding judge. Thereafter, the e-filings that pertain to the trade secret could, on motion of the submitting party, be electronically scrubbed from the court computer system leaving no traces that could be accessed by anyone. Additionally, the supreme court should recommend to the legislature the creation of sanctions, possibly including criminal penalties, for those who gain improper access to trade secrets submitted in the litigation process. These types of measures will enhance significantly the integrity of the statewide computer system, as well as assure stakeholders that their trade secrets will be protected by the court system during litigation.

Possession or Control. In simplest terms, possession or control refers to the electronic chain of custody of a document. All document managers and electronic systems must be able to fully and permanently document the history of access to all legal documents submitted to a court.³⁶ Such audit capability is *essential* to the adoption of e-filing by stakeholders whose confidential information may be entrusted to a court.

Integrity. “Integrity means to be correct or consistent with the intended state of information. Any unauthorized modification of data, whether deliberate or accidental, is a breach of data integrity.”³⁷ The supreme court should recommend to the legislature creation of statutory sanctions, possibly including criminal penalties, to deter and punish unauthorized modification of data submitted in the litigation process.

³⁶ See Donn B. Parker "Toward a New Framework for Information Security", in *The Computer Security Handbook*, 4th ed., edited by Seymour Bosworth and M. E. Kabay • New York, NY: John Wiley & Sons, 2002.

³⁷ Ibid.

One effective way of ensuring integrity is through the use of digital signatures, a protocol that uses cryptography to produce authenticated information. Cryptography also may be useful to guarantee authenticity.

Authenticity. “Authenticity refers to the correct labeling or attribution of information.”³⁸ Digital signatures provide document authenticity by electronically verifying a signer’s digital identity through the use of cryptography and the use of public and private electronic keys. A requirement to use digital signatures would necessitate amendments to the rules of civil procedure, rules of criminal procedure, and rules of appellate procedure. Further, the Florida Board of Bar Examiners should test knowledge about such matters. In addition, to assure compliance, continuing legal education programs should be developed and presented by The Florida Bar and judicial education programs mandated by the Florida Court Education Council (FCEC).

Availability. “Availability means having timely access to information. For example, a disk crash or denial-of-service attack both cause a breach of availability. Any delay that exceeds the expected service levels for a system can be described as a breach of availability.”³⁹ Consequently, a protocol for what constitutes “timely access” needs to be addressed, to assure that uniform standards are implemented statewide. Additionally, because of the danger posed by periodic calamities, such as hurricanes and other *force majeure*, plans for secured off-site back-up of data needs to be implemented. Finally, because the court system databases will contain billions of pages of dockets and records, they would be too large to fit into any one computer. The databases would need to be spread over a number of computers, with each computer handling, for example, one

³⁸ Ibid.

³⁹ Ibid.

search request. This will require that the databases be scalable and capable of running while dispersed among a number of computers, which creates challenges for “single copy consistency.” Different computers might get updated at different times, and some may be slightly out of sync at precisely the same time, yielding slightly different search results. Finally, the overall “availability” challenge will be to take a collection of legacy software running on generic hardware of uncertain reliability and to forge it into a statewide, cohesive computing network with known “availability,” to assure “uptime” with a low probability of being “out of service.”

Utility. Utility means that the efficacy and value of the data are a priority. Uniformity in data submissions greatly increases utility. Any conversion of the data that makes it more confusing or difficult to use reduces its utility. Thus, it is important that security measures maintain the integrity of the data filed electronically, without compromising its utility. Given the existence of legacy software in each county, the linkage between submission and maintenance of the data contained in e-filings will be critical to stakeholders.

Recommendation: The supreme court should establish security policies to insure that the confidentiality, possession or control, integrity, authenticity, availability, and utility of all electronic documents are maintained and enforced. Because it is likely to take time to train personnel employed by the courts and their clerks, funding for training and periodic re-training with regard to statewide security policies would be imperative.

The Subcommittee and Task Force membership did not specifically address the issue of metadata. Metadata is “hidden” information within and about an electronic document, including changes and comments made by reviewers of the document, which may contain sensitive or client-privileged information. The Florida Bar has issued an

ethics opinion on the issues involved in examining metadata,⁴⁰ and other state bar associations are examining the impact of metadata.⁴¹

Issue 9: Communications and Video Conferencing

Discussion: Under the direction of the FCTC, the Office of the State Courts Administrator has created an extensive multimedia communications network to provide access to legal research information, electronic mail, and state data resources through the network. OSCA has also made efforts to enable conferences and collaboration through video communications. The network provides communications between circuit courts and county courthouses. Each appellate and nearly all trial court locations have a standards-based video conferencing system that is capable of supporting video conferences between each courthouse location and externally across the Internet or through dedicated circuits.

A 2004 survey⁴² indicated that many trial courts support attorneys using court equipment for court-ordered depositions, expert witness testimony, and court interpreting. Generally, use of the equipment is handled locally on a per case basis as determined by the chief judge and court administrator. Most circuits have standard policies and procedures governing use of the technology. Unless waived by the court, requesting parties must pay all additional costs including fees for using equipment and communications charges.

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<http://www.floridabar.org/tfb/tfbetopin.nsf/SearchView/ETHICS,+OPINION+06-2?opendocument>

⁴¹ See Marcia Coyle, “Where Do the Footprints of Metadata Lead?” *The National Law Journal*, February 20, 2008.

⁴² Conducted by the Office of the State Courts Administrator, Information Systems Services unit.

Recommendation: The supreme court should continue to encourage all courts to maximize the use of video-conferencing where practicable. Attorneys and judges should also be encouraged to conduct video conferences for depositions and hearings in order to facilitate a quicker resolution to their cases. Attorneys located in judicial circuits other than where a case is venued should be encouraged to participate in hearings via video-conference from the circuit court nearest to their office. This is especially important if the attorney lacks sufficient bandwidth or has an incompatible video-conferencing system.

Issue 10: Archiving Electronic Documents

Discussion: Digital records are fragile. CD-Rom and tape formats become unreadable over time. Servers are subject to periodic purging. Backups can be misplaced or erased. Backwards compatibility fades through successive upgrades of operating systems, applications, and data formats over time. The Subcommittee and Task Force members encourage the development of fundamental and sound operating principles in support of long-term preservation of digital information maintained in court records. The National Archives currently is addressing this issue.⁴³ The supreme court should review standards that are adopted by the National Archives and consider their applicability to the Florida courts.

Recommendation: The supreme court should adopt standards for the long-term archiving of electronic documents. The supreme court has established the Judicial Branch Records Management Committee to recommend standards for an electronic record keeping system for permanently recording court records. The FCTC also is looking into issues related to the maintenance and retention of electronic court records. This would entail significant changes to Rule 2.430 of the Florida Rules of Judicial Administration as well as potential changes to the

⁴³ <http://www.archives.gov/era/index.html>

Florida Rules of Civil Procedure to require e-filing of a greater category of documents.

5. Conclusion

Implementation of a considerable amount of technology must occur for Florida's court system to become more efficient; to handle an increasing workload required to service court users; to mirror significant changes in the way that information increasingly is processed in the public sector; to assure better access by all court users; and to attract and retain the best personnel. Twenty-first century challenges abound. Willingness to address the recommendations made in this report now will be less costly and more productive for all concerned rather than studying them further or deferring them.

The Subcommittee and Task Force members encourage the supreme court to collaborate with the Florida Legislature and stakeholders in the public and private sectors to ensure sufficient technology funding for the court system. It is imperative that court users be able to file and manage their documents electronically. It is equally important for presiding judges, court administrators, chief judges, and the supreme court to improve the ability to monitor judicial caseloads. One way to accomplish this goal is to ensure that all courts have sufficient funding and flexibility to effectively and more efficiently manage their cases.

Many of the issues discussed in this report will have an impact on the work of other supreme court entities and on the initiatives of other stakeholders. The supreme court is encouraged to promote intra-branch collaboration between other stakeholders, commissions and committees, and to place a special focus on branch goals, planning, and funding.

Most importantly, it is clear that Florida's trial courts would benefit from greater use of technology. Many state trial courts around the nation⁴⁴ and the entire federal court system⁴⁵ make better use of technology. The Task Force strongly

⁴⁴ http://www.ncsconline.org/D_Tech/

⁴⁵ <http://pacer.psc.uscourts.gov/pacerdesc.html>

encourages the supreme court and the FCTC to expeditiously consider and adopt the recommendations contained in this report as these recommendations are essential to advancing the efficient use of technology so as to better manage civil litigation cases in Florida as well as to serve all court users.

3. Administrative Issues

A. Overview

A number of administrative issues needing attention were identified by the Task Force during the course of its work. Chief among them are current civil time standards, pending caseload reports, proper counting of complex and business court cases, ancillary data like length of trial, judicial education and training on case management, and the need for best practices. Each of these areas is discussed below.

B. Issues and Recommendations

Issue 1: Time Standards

Discussion: The Task Force reviewed the current time standards and quarterly pending case load reports submitted to the Office of the State Courts Administrator (OSCA). Rule 2.250 (a) (1) (B) Time Standards for Trial and Appellate Courts and Reporting Requirements provides time standards for civil cases. The rule provides that civil jury cases should be disposed within 18 months of filing, and civil non-jury cases should be disposed within 12 months of filing. These time standards for civil cases were passed in 1986 and never have been amended. Moreover, there is no time standard specific to complex or business court cases.

Recommendations: The Task Force recommends that the supreme court: (a) adopt new time standards for complex and business court cases; (b) review the current time standards for the remaining civil cases; or (c) implement a time standard for complex and business court cases and then refer the review of the all time standards to the Trial Court

Performance and Accountability Commission (TCP&AC) for further study to determine if the more than 20-year old current standards should be updated.

Issue 2: Quarterly Pending Caseload Report

Discussion: The Task Force also identified several problems associated with the current quarterly pending caseload report. Rule 2.250 (b), Florida Rules of Judicial Administration provides for the reporting and monitoring of pending caseloads. The rule provides in part that “all pending cases in circuit and district courts of appeal exceeding the time standards shall be listed separately on a report submitted quarterly to the chief justice. The report shall include for each case listed the case number, type of case, case status (active or inactive for civil cases and contested or uncontested for domestic relations and probate cases), the date of arrest in criminal cases, and the original filing date in civil cases.”

The Task Force concludes that there are a number of deficiencies with the current reporting format including: (1) the need for a more discrete designation for the type of pending civil case; (2) the need for clear delineation as to the reasons why a case might be pending; (3) the need for a listing of any case management activity occurring within the quarter; (4) the need for a listing of pending cases by case type grouped in one year increments; and (5) the need to clearly communicate these changes to the clerks of court and provide them with any necessary training.

Recommendations: The Task Force recommends that the supreme court direct the Trial Court Performance and Accountability Commission to study the deficiencies noted above and make necessary improvements to the reporting of quarterly pending caseload data. The supreme court should also take the necessary steps to ensure the

enforcement of an acceptable pending caseload level for the trial courts, including amending the Florida Rules of Judicial Administration, if necessary.

Issue 3:

Revise Summary Reporting System Categories

Discussion:

The work of the Task Force revealed that the Summary Reporting System (SRS) used by the supreme court and the OSCA to track filing, disposition, and special proceedings data does not explicitly capture complex or business cases. Currently, complex cases are captured in SRS categories such as professional malpractice, products liability, contract and indebtedness, and “other civil.” The absence of discrete SRS categories for complex cases has impeded the Task Force’s ability to truly measure how many such cases exist in Florida at any given time. In order to overcome this deficiency, the Task Force relied on statistical estimates provided by the OSCA. However, it is clear that more precise data on complex cases is necessary.

The SRS also does not explicitly capture “business court” cases. Since three circuits, the ninth, eleventh, and thirteenth, currently have business courts that hear such cases exclusively and one circuit, the seventeenth, uses a hybrid model of complex divisions and a business court, the need for accurate and reliable data about their operations is critical to understanding their impact on the court system. It is also apparent that accurate data on business courts is necessary as Florida’s court system progresses further into the 21st Century.

The Task Force also notes that the general SRS category of “other civil” is far too broad. It should be revised to make it more discrete. Presently, the category includes cases like declaratory judgments, injunctions, administrative agency appeals, bond estreatures, replevins, habeas corpus proceedings, forfeitures, and

interpleaders. The Task Force is particularly concerned that some of these cases take far longer than others to dispose; condemnation, insurance company receiverships and administrative agency appeals are examples. The supreme court should consider capturing and weighting these types of cases separately. This change will assist the court in better assessing judicial workload, especially when the court is required to certify the need for additional judges.

Recommendations:

Complex Cases. The Task Force recommends that the supreme court require that the Trial Court Performance and Accountability Commission, in conjunction with the OSCA, amend the SRS to capture complex cases as defined in the proposed rule of civil procedure. These changes should comport with proposed changes made to the civil cover sheet.

Business Court Cases. The Task Force recommends that the supreme court require that the Trial Court Performance and Accountability Commission, in conjunction with the OSCA, amend the SRS to capture business court cases. It is recommended that the two entities consult with the Ninth, Eleventh, Thirteenth, and Seventeenth Circuits to reach consensus on the types of cases that generally fall under the jurisdiction of business courts.

Other Civil Cases. The Task Force recommends that the supreme court require that the Trial Court Performance and Accountability Commission, in conjunction with the OSCA, review and consider amending the “other civil” category. The Task Force recommends that particular attention be given to those types of cases that may take considerable judicial time to dispose.

Technical Assistance to the Clerks of Court. Because SRS has become institutionalized within the court

system, any changes will have major operational impact on the clerks of court. Therefore, the Task Force recommends that the supreme court direct the OSCA to develop a sound implementation and technical assistance plan for the clerks of court.

Issue 4: Judicial Education – Case Management for Complex Cases

Discussion: Florida’s judicial education is governed by the Florida Court Education Council (FCEC). The Council was created by an administrative order of the Chief Justice in 1978. In that order, Chief Justice Ben F. Overton charged the Council with providing oversight of the development and maintenance of a comprehensive educational program for Florida judiciary professionals. The council’s responsibilities include making budgetary, program, and policy recommendations regarding continuing education for Florida judges and certain court professionals.⁴⁶

The present membership consists of one Supreme Court Justice, the chair of the Circuit and County Judges’ Conferences, the education committee chairs of both the Circuit and County Judges’ Conferences, the Dean and Associate Dean of the Florida Judicial College, the Dean and Appellate Dean of the Florida College of Advanced Judicial Studies, a trial court administrator, a chief judge representing the interests of other, non-judicial, court personnel as well as certain at-large members. The work of the council is financed via a trust fund. The council is staffed by the OSCA.

⁴⁶ Source: Office of the State Courts Administrator’s article entitled *Management Structure and Policy Requirements Governing the Administration of the Court Education Trust Fund*.

Program planners and faculty endeavor to provide balanced discussion and treatment of program issues and subject matter. However, program design is determined by goals and learning objectives for each instructional session and affected by time constraints, the newness of a topic, the needs of the learners as determined by the learners, and availability of appropriate faculty, among other factors.⁴⁷ Over the years, a number of courses have been developed to address case or trial management and complex civil litigation, including:

- 1998 Education Program of the Florida Conference of Circuit Judges – *Managing Trials Effectively*;
- 2002 Florida College of Advanced Judicial Studies – *General Trial Management: Managing Trials Effectively*;
- 2002 Florida College of Advanced Judicial Studies – *Managing Complex Litigation*;
- 2004 Education Program of the Florida Conference of Circuit Judges – *Managing the Unmanageable – Multi-Party, Multi-Claim, Multi Experts*;
- 2007 Business Program of the Florida Conference of Circuit Judges – *Developing a Civil Jury Trial Bench Book*;
- Case management for both circuit and county judges has historically been taught at the Florida Judicial College;

Note bene: The 2008 Florida College of Advanced Judicial Studies planned to present a program titled, *Managing Complex Cases*. However, the college was canceled due to budget constraints.

⁴⁷ Ibid.

Recommendation: The Task Force recommends that the Florida Court Education Council consider recommending to the Dean of the College of Advanced Judicial Studies that a course on complex civil litigation be offered for those judges who may be presiding over such matters. The course should be comprehensive, considered a “core course” and offered every two years at a minimum.

Issue 5: Jury Management Report – Length of Trial Data

Discussion: Currently, the OSCA does not capture length of trial data in its jury management report. However, this data is important in assessing jury trial activity especially as it relates to complex cases. Although the OSCA collects jury trial data via both the monthly Jury Management Report (JMR) and the SRS, neither database explicitly captures length of trial data. Because many complex or business court cases settle before trial, anecdotal evidence suggests that complex cases that do go to trial are generally quite lengthy. Accordingly, the Task Force believes that length of trial data would be beneficial to the court system generally and to the supreme court specifically when evaluating complex or lengthy trials.

Recommendation: The Task Force recommends that the supreme court direct the TCP&AC, in conjunction with the OSCA, to amend the monthly Jury Management Report to include length of trial data. At present, this data field is omitted from the form and is necessary to better evaluate jury trial activity throughout the state.

Issue 6: Operational Policies and Best Practices

Discussion: Since business courts and complex civil divisions are relatively new to Florida’s court system, now is the opportune time to identify and distribute sound

operational policies and practices. The development of best practices should also include a review of which type of model is most appropriate. For example, consideration should be given to whether circuits should adopt a strict business court model or use a hybrid approach like the Seventeenth Circuit where the courts address both complex and business cases are addressed in a holistic manner. Whichever court division is used, it behooves circuits to deploy and use best practices. Fortunately, a considerable amount of foundational work has been done regarding the implementation of business courts nationally. In addition, an emerging body of work is being developed by states like Arizona and California which use complex divisions.

Recommendations:

Best Practices. The Task Force recommends that the supreme court direct the TCP&AC to develop “best practices” for complex civil litigation divisions and business courts. The Task Force further recommends that the commission consult those circuits and jurisdictions that are currently deploying complex civil divisions and business courts to determine which practices are beneficial and which are not. The Task Force also recommends that the commission review best practices from other states such as Arizona and California.

Develop Manuals or Benchguides for Complex Cases and Business Courts. The Task Force recommends that the supreme court direct the Florida Court Education Council (FCEC) to develop manuals or benchguides for complex civil cases and business courts. The Task Force encourages the FCEC to review the California Manual on Complex Civil Litigation,⁴⁸ the Manual for Complex

⁴⁸ Deskbook on The Management of Complex Civil Litigation, Judicial Council of California, California Administrative Office of the Courts 2006, Release No.7, October 2006, in conjunction with LexisNexis 800.424.0651 (ext.3268).

Litigation, Fourth Edition (2004),⁴⁹ relevant materials developed by the American College of Business Court Judges, and other states and jurisdictions with complex court divisions or business courts.

4. Conclusion

With the assistance of Justice Pariente, supreme court liaison and chair of the Florida Court Education Council, the Task Force was able to identify a variety of administrative issues that merit the supreme court's attention. There is no question that the reporting of complex and business court cases via the Summary Reporting System needs improvement. Concomitantly, the current time standards and attendant pending caseload reports have not been updated for over 20 years. Moreover, the quarterly pending caseload report as currently constituted is of limited value and needs to be updated to make it more meaningful for chief judges, the Office of the State Courts Administrator, and the supreme court. The emergence of business courts and complex civil divisions necessitate that specific judicial education curriculum and courses be developed and taught at the Advanced College of Judicial Studies. Best practices for implementing business and complex civil divisions is warranted as are the development of manuals and benchguides for trial judges as they struggle to meet the ever increasing complexity of litigation being filed in Florida's courts.

⁴⁹ See footnote 2, *supra*.

5. Minority View of Judge Peter D. Webster

The Task Force has accomplished a great deal in a relatively limited amount of time. For that, I commend my fellow members. I am, however, unable to agree with the majority on what I consider to be issues of critical importance because of their potential impact on the state's judiciary. Accordingly, I write so that the court might have the benefit of my thoughts when it considers the recommendations made by the majority.

First, at a basic philosophical level, I disagree with the premise upon which many of the Task Force's recommendations are based--that greater specialization in the form of courts or divisions devoted to complex litigation would represent a step forward for Florida's judiciary. Having been a judge for nearly 23 years, at both the trial and appellate levels, I am firmly of the belief that our judicial system functions better staffed with generalists than with specialists. I think that we are already too specialized at the trial level, and that such specialization deprives our trial courts of that desirable flexibility which, in the past, permitted them to deal with unexpected emergencies in an expeditious manner.

I am also concerned that, by creating (or encouraging circuits to create) specialized complex litigation divisions, we will be skimming the cream from the top of our available judicial labor pool. Those most qualified for assignment to such divisions would obviously be individuals who, before becoming judges, had had considerable experience trying complex cases. Those individuals tend (whether by coincidence or otherwise) to be among the best and the brightest of our judges. I do not understand why it is either necessary or appropriate that we funnel such people away from equally (if not more) important areas such as criminal, family and juvenile, and into complex litigation.

It seems to me that complex litigation divisions are also a bad idea because they cannot help but create the impression that some litigants are getting more justice from the system than are others. Of course, the fact that the perceived winners in this competition will be made up predominantly of large, financially well-heeled, corporations cannot possibly improve the judiciary's image among the public at large, most of whom are far more concerned about attention to, and timely resolution of, dissolution of marriage, adoption, criminal and probate cases than about disputes between or among corporate "fat cats."

My second major concern is with the proposed new rule of civil procedure. In the first place, it strikes me that such a rule is utterly unnecessary because virtually everything it is designed to accomplish may currently be achieved through the use of Florida Rule of Civil Procedure 1.200 (“Pretrial Procedure”). That litigants and trial judges are not currently making full use of the tools they have does not seem to me a very good reason for adding yet more rules to a procedural system that has already become Byzantine in its complexity.

Moreover, creating a rule such as that proposed by the majority would, I suggest result in a “tail-wagging-the-dog” effect. We have no reliable data to support the need for such a rule. Virtually all of the information upon which the majority relies as a foundation for its recommendations is anecdotal. In such circumstances, it seems to me a major mistake to foist upon all of our circuit judges a set of procedural requirements which is, at best, necessary in only four or five circuits. It strikes me that this should carry particular weight given the fact that the proposed rule will require trial judges even in small circuits to focus on a complex case rather than other equally (if not more) pressing litigation whenever a complex case presents itself.

As an appellate judge, I am also concerned about the law of unintended consequences in the form of the impact that adoption of such a rule would have on our caseloads. My experience tells me that, every time a major new procedural rule is adopted, the district courts of appeal spend years hearing appeals in an attempt to interpret, and give texture to, the new rule. Two such examples are Florida Rules of Civil Procedure 1.442 and 1.525, both of which have engendered significant numbers of appeals.

Finally, I am concerned about the recommendation that the court bypass the normal rulemaking process set out in Florida Rule of Judicial Administration 2.140. There are many good reasons for the existence of that rule, not the least of which is that it ensures consideration of proposals to amend our rules of procedure by the group or groups having the most expertise. I am unable to see any emergency here that would suggest the desirability of ignoring that process.

Again, I commend my fellow Task Force members for their dedication and hard work. However, because I am unable to see any empirically demonstrated need either for specialized complex litigation courts or divisions, or for the proposed new rule of civil procedure, I would not tamper with the present system. Instead, I

would let those few circuits that feel a need to do so adopt whatever policies and procedures they believe to be best suited to their particular situation.

6. Appendices

Appendix A

Proposed Rule of Civil Procedure – Complex Cases

(a) Complex Litigation Defined. At any time after all defendants have been served, and an appearance has been entered in response to the complaint by each party, any party, or the court on its own motion, may move to declare a case complex. The court shall convene a hearing to determine whether the case requires the use of complex litigation procedures and enter an order within 10 days.

(1) A “complex case” is one that is likely to involve complicated legal or case management issues and that may require extensive judicial management to expedite the case, keep costs reasonable, or promote judicial efficiency.

(2) In deciding whether an action is a complex case, the court must consider whether the action is likely to involve:

(A) numerous pre-trial motions raising difficult or novel legal issues or legal issues that are inextricably intertwined that will be time-consuming to resolve;

(B) management of a large number of separately represented parties;

(C) coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court;

(D) pre-trial management of a large number of witnesses or a substantial amount of documentary evidence;

(E) substantial time required to complete the trial;

(F) management at trial of a large number of experts, witnesses, attorneys, or exhibits;

(G) substantial post-judgment judicial supervision; and

(H) any other analytical factors identified by the court or party that tend

to complicate comparable cases and which are likely to arise in the context of the instant case.

(b) Initial Case Management Report and Conference. The court shall hold an initial case management conference within 60 days from the date of the order declaring the case complex.

(1) At least 20 days prior to the date of the initial case management conference, attorneys for the parties shall meet and prepare a joint statement which shall be submitted to the court within 14 days of the conference outlining a discovery plan and stating:

(A) a brief factual statement of the case, which includes the claims and defenses;

(B) a brief statement on the theory of damages by any party seeking affirmative relief;

(C) the likelihood of settlement;

(D) the likelihood of appearance in the action of additional parties or any non-parties to whom allocation of fault will be sought;

(E) the proposed limits on the time: (i) to join other parties and to amend the pleadings, (ii) to file and hear motions, (iii) to identify any non-parties whose identity is known, or otherwise describe as specifically as practicable any non-parties whose identity is not known, (iv) to disclose expert witnesses, and (v) to complete discovery;

(F) the names of the attorneys responsible for handling the case;

(G) the necessity for a protective order to facilitate discovery;

(H) proposals for the formulation and simplification of issues, including the elimination of frivolous claims or defenses, and the number and timing of motions for summary judgment or partial summary judgment;

(I) the possibility of obtaining admissions of fact and voluntary exchange of documents and electronically stored information, stipulations regarding authenticity of documents, electronically stored information, and the need for advance rulings from the court on admissibility of evidence;

(J) suggestions on the advisability and timing of referring matters to a magistrate, master, other neutral, and mediation;¹

(K) a preliminary estimate of the time required for trial;

(L) requested date or dates for conferences before trial, a final pretrial conference, and trial;

(M) a description of pertinent documents and a list of fact witnesses the parties believe to be relevant;

(N) number of experts and fields of expertise; and

(O) any other information that might be helpful to the court in setting further conferences and the trial date.

(3) Lead trial counsel and a client representative shall attend the initial case management conference.

(4) Notwithstanding rule 1.440 Fla.R.Civ.P., at the initial case management conference, the court will set the trial date or dates no sooner than 6 months and no later than 24 months from the date of the conference unless good cause is shown for an earlier or later setting. The trial date or dates shall be on a docket having sufficient time within which to try the case and, when feasible, for a date or dates certain. The trial date shall be set after consultation with counsel. When the case is set to be tried before a jury, counsel shall provide to the court at the case management conference assurances that the trial date has been discussed with their clients. The court shall, no later than 2 months prior to the date scheduled for jury selection, arrange for a sufficient number of available jurors. Continuance of the

¹ The use of general magistrates, special masters, mediators or arbitrators for discovery disputes or coordination, alternative dispute resolution of issues or the case, or for any other matters in dispute, should be utilized to ensure the case progresses without unnecessary delay.

trial of a complex case should rarely be granted and then only upon good cause shown.

(c) The Case Management Order. The case management order shall address each matter set forth under subdivision 1.200(a) Fla.R.Civ.P. and set the case for a pre-trial conference and trial. The case management order also shall specify the following:

(1) Dates by which all parties shall name their expert witnesses and provide the expert information required by subdivision 1.280(4) Fla.R.Civ.P. If a party has named an expert witness in a field in which any other parties have not identified experts, the other parties may name experts in that field within 30 days thereafter. No additional experts may be named unless good cause is shown.

(2) Not more than 10 days after the date set for naming experts, the parties shall meet and schedule dates for deposition of experts and all other witnesses not yet deposed. At the time of the meeting each party is responsible for having secured three confirmed dates for its expert witnesses. In the event the parties cannot agree on a discovery deposition schedule, the court, upon motion, shall set the schedule. Any party may file the completed discovery deposition schedule agreed upon or entered by the court. Once filed, the deposition dates in the schedule shall not be altered without consent of all parties or upon order of the court. Failure to comply with the discovery schedule may result in sanctions.

(3) The court shall schedule periodic case management conferences and hearings on lengthy motions at reasonable intervals based on the particular needs of the case. The attorneys for the parties shall meet and confer no later than 15 days prior to each case management conference or hearing. They shall notify the court at least 10 days prior to any case management conference or hearing if the parties stipulate that a case management conference or hearing time is unnecessary. Failure to timely notify the court that a case management conference or hearing time is unnecessary may result in sanctions.

(4) The case management order may include a briefing schedule setting forth a time period within which to file briefs or memoranda, responses and reply briefs or memoranda, prior to the court considering such matters.

(5) A deadline for conducting alternative dispute resolution.

(d) Final Case Management Conference. The court shall schedule a final case management conference not less than 90 days prior to the date the case is set for trial. At least 10 days prior to the final case management conference the parties shall meet to prepare a case status report. The status report shall contain in separately numbered paragraphs:

(1) A list of all pending motions requiring action by the court and the date those motions are set for hearing.

(2) Any change regarding the estimated trial time.

(3) The names of the attorneys who will try the case.

(4) A list of the names and addresses of all non-expert witnesses (impeachment, rebuttal or otherwise) intended to be called at trial.

(5) A list of all exhibits intended to be offered at trial.

(6) Certification that copies of witness and exhibit lists will be filed with the Clerk of the Court at least 48 hours prior to the date and time of the pretrial conference.

(7) A deadline for the filing of a final list of witnesses and exhibits that will be used in the trial.

(8) Any other matters which could impact the timely and effective trial of the case.

Appendix B

Form 1.997 Civil Cover Sheet (Revised) – Expanded Categories

The civil 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 is required 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) _____

Plaintiff _____

Case #: _____

Judge: _____

vs.

Defendant _____

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.)

- | | | | |
|--|--|---|---|
| <input type="checkbox"/> Antitrust/Trade regulation | <input type="checkbox"/> Constitution – statute or ordinance challenge | <input type="checkbox"/> Insurance claims | <input type="checkbox"/> Residential real property/Mortgage foreclosure |
| <input type="checkbox"/> Business governance | <input type="checkbox"/> Condominium | <input type="checkbox"/> Intellectual property | <input type="checkbox"/> Securities litigation |
| <input type="checkbox"/> Business torts | <input type="checkbox"/> Construction defect | <input type="checkbox"/> Libel/Slander | <input type="checkbox"/> Shareholder derivative actions |
| <input type="checkbox"/> Business transactions | <input type="checkbox"/> Contracts | <input type="checkbox"/> Malpractice – business | <input type="checkbox"/> Third party indemnification |
| <input type="checkbox"/> Commercial real property/Mortgage foreclosure | <input type="checkbox"/> Contract product liability | <input type="checkbox"/> Malpractice – medical | <input type="checkbox"/> Trade secrets |
| <input type="checkbox"/> Constitution – proposed amendment challenge | <input type="checkbox"/> Corporate trusts | <input type="checkbox"/> Malpractice – professional | |
| | <input type="checkbox"/> Eminent domain | <input type="checkbox"/> Mass tort | |
| | <input type="checkbox"/> Environmental/Toxic tort | <input type="checkbox"/> Negligence – auto | |
| | <input type="checkbox"/> Forfeiture | <input type="checkbox"/> Negligence – other | |
| | | <input type="checkbox"/> Personal injury | |
| | | <input type="checkbox"/> Products liability | |

III. Remedies sought (check all that apply): ☐ monetary; ☐ non-monetary
declaratory or injunctive relief; ☐ punitive

IV. Number of causes of action
(specify): _____

V. This case ☐ is ☐ is not a class action lawsuit.

VI. If there are any known related cases, file and serve a notice of related
case.

VII. Is a jury trial demanded in the complaint? ☐ yes ☐ no

Date: _____

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 (type or print name) (Bar # if attorney)

NOTICE

- Plaintiff must file this cover sheet with first paperwork filed in the action or proceeding (except small claims cases or other county court cases, probate, or family cases). Failure to file may result in sanctions.
- This cover sheet will be used for statistical purposes only.

Appendix C

Form 1.____. Order Designating A Case Complex.

This form order is for designating a case complex under rule 1.____ and directing the clerk of court to update the court's records and to report the case activity to the supreme court.

IN THE CIRCUIT COURT OF
THE _____ JUDICIAL CIRCUIT,
IN AND FOR _____ COUNTY, FLORIDA

Plaintiff
vs. Case No. _____

Defendant. Division _____

ORDER DESIGNATING CASE A "COMPLEX CASE" **DIRECTIONS TO THE CLERK OF COURT**

THIS CAUSE was considered on [the court's own motion] [the motion of a party] to designate this case a "complex case" as defined in rule 1._____, Fla. R. Civ. P. Being fully advised in the circumstances, the court designates the case as meeting the criteria for proceeding under the rule and designates it as a "complex case."

The clerk of the court shall designate this case a "complex case," update the court's records accordingly, and report such designation and the case activity to the supreme court pursuant to section 25.075 Fla. Stat. and rule 2.245(a), Fla. R. Jud. Admin.

DONE AND ORDERED at _____,
County, Florida, on _____.

Judge

Appendix D

FORM 1.998. FINAL DISPOSITION FORM, RULES OF CIVIL PROCEDURE

This form is required 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)

Plaintiff Case #:

Judge:

vs

Defendant

II. MEANS OF FINAL DISPOSITION (Place an "x" in one box only)

- ☐ Dismissed Before Hearing
- ☐ Dismissed After Hearing
- ☐ Disposed by Default
- ☐ Disposed by Judge
- ☐ Disposed by Non-jury Trial
- ☐ Disposed by Jury Trial
- ☐ Other

DATE AND SIGNATURE ATTORNEY FOR PARTY INITIATING ACTION

FORM 1.998. INSTRUCTIONS FOR ATTORNEYS COMPLETING FINAL DISPOSITION FORM

I. Case Style. Enter the name of the court, the appropriate case number assigned at the time of filing of the original complaint or petition, the name of the judge assigned to the case and the names (last, first, middle initial) of plaintiff(s) and defendant(s).

II. Means of Final Disposition. Place an “x” in the appropriate box. The following are the definitions of the disposition categories.

(A) Dismissed Before Hearing ☐ the case is settled or voluntarily dismissed before a hearing is held;

(B) Dismissed After Hearing ☐ the case is dismissed by a judge, voluntarily dismissed, or settled after a hearing is held;

(C) Disposed by Default ☐ a defendant chooses not to or fails to contest the plaintiff’s allegations and a judgment against the defendant is entered by the court;

(D) Disposed by Judge ☐ a judgment or disposition is reached by the judge in a case.

Supreme Court of Florida

No. AOSC06-53

IN RE: TASK FORCE ON MANAGEMENT OF CASES
INVOLVING COMPLEX LITIGATION

ADMINISTRATIVE ORDER

The increasing complexity of legal disputes and demands placed upon judicial resources have given rise to operational concerns relating to costs and the efficient and effective processing associated with litigating such disputes, as well as the ability of the state courts to manage this type of litigation. Mass torts, class actions, product liability cases, intellectual property disputes, cases involving advanced scientific evidence, and cases involving multiple parties, among others, are managerially and substantively intricate and may require considerably more resources and effective management techniques than other cases.

According to the *Manual for Complex Litigation*,¹ the fair and efficient resolution of complex litigation requires that the court exercise effective supervision and control, and that judge and counsel collaborate to develop and implement a comprehensive plan for the conduct of pre-trial and trial proceedings.

¹ Manual for Complex Litigation, Fourth Edition, The Federal Judicial Center, Washington, D.C., 2004.

Florida may lack sufficient rules of court procedure to effectively guide the judicial management of complex cases within the State Courts System and may unnecessarily expend judicial resources in resolving discovery and other pre-trial matters in all types of cases.

The Task Force on Management of Cases Involving Complex Litigation is hereby established to study and examine the efficient and effective management of complex litigation and the resolution of discovery and other pre-trial matters in litigation. Based on this analysis, the Task Force shall recommend actions needed to effectively and efficiently process complex litigation and preserve judicial resources related to the resolution of discovery and other pre-trial matters in litigation.

The Task Force shall perform the following assignments and submit a final report to the Chief Justice no later than October 31, 2007:

1. Recommend a definition of case types or characteristics that should be considered in determining whether a case is defined for management purposes as “complex litigation.”
2. Review 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 within the State Courts System, including the resolution of discovery and

other pre-trial matters. The review should include consideration of case management elements, procedures, and best practices for complex litigation in other court systems, as well as any existing local procedures in Florida courts. The Task Force is also encouraged to seek advice and information from chief judges and other judicial officers, Bar rules committees, attorneys, and others, as appropriate.

3. If the Task Force determines that amendments to existing rules or the development of new rules of court procedure are necessary, the Task Force is authorized to coordinate with any applicable rules committees. The Task Force is also requested to consult with the Trial Court Budget Commission for coordination on the resource impact any proposal may have and include that information when the Task Force files any specific proposals. The Task Force shall coordinate and liaison with any other Florida groups as may be necessary to effectuate any proposal advanced.

The following individuals are appointed to the Task Force for a term to expire on October 31, 2007:

The Honorable Thomas H. Bateman, III, Chair
Circuit Judge, Second Judicial Circuit
Leon County Courthouse, Room 365-C
301 South Monroe Street
Tallahassee, Florida 32301-1853

The Honorable Thomas M. Lynch, IV, Vice Chair
Circuit Judge, Seventeenth Judicial Circuit
999 Broward County Courthouse
201 S.E. Sixth Street
Ft. Lauderdale, Florida 33301

Mr. Theodore Babbitt
1450 Centrepark Blvd., Suite 100
West Palm Beach, Florida 33401-7404

Mr. Mitchell Berger
Berger Singerman
350 E. Las Olas Boulevard, Suite 1000
Ft. Lauderdale, Florida 33301-4215

Mr. Anthony J. Carriuolo
Berger Singerman
350 E. Las Olas Boulevard, Suite 1000
Ft. Lauderdale, Florida 33301-4211

Mr. Gene Cavallucci
Vice President and General Counsel
Harris Corporation
1025 West NASA Boulevard
Melbourne, Florida 32919

Mr. Philip Freidin
Freidin & Dobrinsky, P.A.
Two S. Biscayne Blvd., Suite 3100
Miami, Florida 33131-1812

Mr. Charles J. Grimsley
General Counsel
United Automobile Insurance Group
2909 N.E. 163rd Street
North Miami Beach, Florida 33160

Mr. Merrick L. Gross
Akerman Senterfitt
1 S.E. 3rd Avenue, 28th Floor
Miami, Florida 33131

Mr. Greg Holland
General Counsel
MPS Group, Inc.
1 Independent Drive, Suite 2500
Jacksonville, Florida 32202

The Honorable Edward C. LaRose
Appellate Judge, Second District Court of Appeal
P. O. Box 327
1005 E. Memorial Blvd.
Lakeland, Florida 33802-0327

Mr. Jason M. Murray
Carlton, Fields P. A.
P.O. Box 019101
Miami, Florida 33101-9101

Mr. Stephen E. Nagin
18001 Old Cutler Road, Suite 556
Miami, Florida 33157-6416

The Honorable James E. C. Perry
Circuit Judge, Eighteenth Judicial Circuit
301 N. Park Avenue
Seminole County Courthouse
Sanford, Florida 32771-1292

The Honorable Renee A. Roche
Circuit Judge, Ninth Judicial Circuit
425 N. Orange Avenue, Room 1725
Orlando, Florida 32801


Mr. Neal Roth
Grossman Roth Olin Meadow
2665 S. Bayshore Drive, Penthouse 1
Miami, Florida 33133-5462

The Honorable Harvey Ruvlin
Clerk of Court, Dade County
73 W. Flagler St., Suite 242
Miami, Florida 33130


The Honorable Peter Webster
Appellate Court Judge, First District Court of Appeal
301 Martin Luther King Jr., Blvd.
Tallahassee, Florida 32399-1850

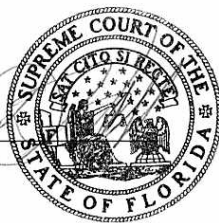
Justice Barbara J. Pariente will serve as the Supreme Court's liaison to the Task Force. Staff support shall be provided by the Office of the State Courts Administrator.

DONE AND ORDERED at Tallahassee, Florida, on September 19, 2006.


Chief Justice R. Fred Lewis

ATTEST:


Thomas D. Hall, Clerk



Supreme Court of Florida

No. AOSC07-2

IN RE: TASK FORCE ON MANAGEMENT OF CASES
INVOLVING COMPLEX LITIGATION

ADMINISTRATIVE ORDER

The increasing complexity of legal disputes and demands placed upon judicial resources have given rise to operational concerns relating to costs and the efficient and effective processing associated with litigating such disputes, as well as the ability of the state courts to manage this type of litigation. Mass torts, class actions, product liability cases, intellectual property disputes, cases involving advanced scientific evidence, and cases involving multiple parties, among others, are managerially and substantively intricate and may require considerably more resources and effective management techniques than other cases.

This Court on September 19, 2006 created the Task Force on Management of Cases Involving Complex Litigation, and it is appropriate to add additional individuals.

The following individuals are appointed to the Task Force for a term to
expire on October 31, 2007:


The Honorable Victoria Platzer
Circuit Judge, Eleventh Judicial Circuit
Dade County Courthouse, Room 416
73 West Flagler Street
Miami, FL 33130-1707

Maria Santoro
George Hartz Lundeen Et Al
863 East Park Avenue
Tallahassee, FL 32301-2620

DONE AND ORDERED at Tallahassee, Florida, on January 5, 2007.


Chief Justice R. Fred Lewis

ATTEST:


Chief Deputy Clerk
Thomas D. Hall, Clerk

