Workgroup on Sanctions for Vexatious and Sham Litigation

Final Report and Recommendations

June 15, 2022

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Clerk Jerald D. Bryant
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Judge Janeice T. Martin
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Judge Anne-Leigh Gaylord Moe
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Judge Monique Richardson
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Judge Andrea Teves Smith
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Judge A. S. Tanenbaum
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Staff support was provided by the Office of the State Courts Administrator.

EXECUTIVE SUMMARY

The Workgroup on Sanctions for Vexatious and Sham Litigation was established in Fla. Admin. Order No. AOSC21-62 to review rule and statutory provisions relating to vexatious and sham litigation in noncriminal cases; survey judges, court staff, and clerks on the utilization of the provisions; and recommend rule or statutory amendments that may be warranted to address such improper litigation more effectively.

The workgroup met five times during its approximately six-month term. At these meetings, the members reviewed rules of court procedure and laws addressing frivolous, sham, harassing, malicious, vexatious, or similarly improper litigation, and developed surveys for district court of appeal and trial court judges, trial court administrators, district court of appeal clerks, and trial court clerks of court. Workgroup members reviewed the survey results along with other information provided by members of the public. The findings and recommendations by the workgroup, as set forth in this report, are based on the input received and the members' collective experience.

The workgroup's findings and recommendations address four categories and are briefly summarized below:

- *Education:* A review of the rules of court procedure and laws identified a multitude of tools that may be used by judges, litigants, and attorneys to address improper litigation. These tools, however, are scattered throughout the rules and law, use varying terminology and provide different procedures for similar types of improper litigation, and, due to the potential to infringe on the constitutional right to access courts, are subject to appellate case law restricting their use. The survey results indicated that education in this complex area could be of benefit. Accordingly, the workgroup recommends the development of education programs on specified topics for trial court judges, court staff, clerk staff, and attorneys.

- *Operational Changes:* The survey results and information provided by members of the public indicated, among other things discussed more fully later in the report, that improvements could be made to the Florida Courts E-Filing Portal to stop litigants from improperly designating filings as emergencies and to the processes for addressing the filings of pro se litigants who are subject to court orders prohibiting further pro se filings. As such, the workgroup

recommends that the Florida Courts E-Filing Authority develop modifications to the portal that will facilitate the declaration of a filing as an emergency in appropriate circumstances only, that clerks of court develop certain processes to ensure that prohibited pro se filings are rejected, and that the Florida Courts Technology Commission determine how to automate clerk case management systems and Court Application Processing Systems so that the filings by such pro se litigants are rejected and the identities of these litigants are readily available statewide to judges, clerks, litigants, and attorneys.

- *Potential Rule Amendments:* The rules of court procedure authorize motions to strike redundant, immaterial, impertinent, scandalous, and sham matter in pleadings. These rules do not provide sanctions, however, for litigants and attorneys who file such matter, and do not specify parameters for using the motions. These issues were noted by some survey respondents who suggested amending the rules. Based on this input, the workgroup recommends review of the issues by the relevant bar rules committees and, if determined warranted, the proposal of rule amendments.

- *Potential Statutory Amendments:* Several issues were identified in the survey results and by the workgroup as potential areas in which the Florida Legislature may wish to consider statutory amendments. These are:
  - The creation of a public records exemption for scandalous, sham, and other improper matter stricken from a filing under the rules of court procedure, if such matter would defame and harm a litigant or third party.
  - Improvements to the Vexatious Litigant Law that would expand the provisions to address a wider population of vexatious litigants.
  - Consolidation of the many statutes that address improper litigation in order to improve user awareness and ease of use and ensure more consistency.

The workgroup expresses its sincere appreciation to each appellate and trial court judge, appellate and trial court clerk, and trial court administrator who completed the surveys developed by the workgroup and to each member of the public who voluntarily submitted information for the workgroup's consideration.

BACKGROUND

ADMINISTRATIVE ORDER/WORKGROUP MEETINGS

Chief Justice Charles T. Canady established the Workgroup on Sanctions for Vexatious and Sham Litigation ("workgroup") in Fla. Admin. Order No. AOSC21-62, issued on December 9, 2021.[1] The order described vexatious and sham litigation as "legal proceedings that are unwarranted, frivolous, inherently false, without good cause, or filed solely to harass the opposing party; are burdensome and costly for the defendant; and abuse the judicial process and waste limited court resources ...."[2] The workgroup was charged with:

- Reviewing existing rule and statutory provisions relating to vexatious and sham litigation in noncriminal cases;

- Surveying judges, court staff, and clerks on the utilization of these provisions and on the identification of challenges they encounter in the use of the provisions; and

- Recommending any rule or statutory amendments that may be warranted to more effectively address vexatious or sham litigation in noncriminal cases.[3]

The membership of the workgroup consisted of two appellate court judges, three circuit court judges, two county court judges, and one clerk of court. The workgroup had approximately six months to complete its charges, with its final findings and recommendations due to the Chief Justice by June 15, 2022.[4]

The workgroup met five times. At its initial meeting, the workgroup members discussed challenges they had encountered with frivolous, sham, harassing, malicious, vexatious, or similarly improper litigation (hereinafter referred to as "improper litigation"); developed a work plan for its charges; and

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[1] Appendix A.

[2] *Id.* at 1.

[3] *Id.* at 2.

[4] An extension of the June 1, 2022, deadline specified in the administrative order in Appendix A at 2, was granted by Chief Justice Canady on May 20, 2022, per a request made by staff to the workgroup.

reviewed laws and rules of court that address improper litigation. At its second meeting, the workgroup developed surveys, as directed by its charges, for district court of appeal ("DCA") and trial court judges, trial court administrators ("TCAs"), DCA clerks, and trial court clerks of court ("trial court clerks"). Thereafter, at its next two meetings, the workgroup reviewed the survey results and developed recommendations for its final report. At its last meeting, the workgroup considered and finalized this report.

OUTREACH

Pursuant to its charges, the workgroup surveyed DCA and trial court judges, TCAs, DCA clerks, and trial court clerks regarding their use of existing rule and statutory provisions relating to improper litigation in noncriminal cases and on the identification of challenges they encounter in the use of the provisions. The results of the surveys have been summarized in Appendix B and Appendix C. This section provides background on the response rates and division assignments of the trial judge respondents and discusses the percentages of workload estimated to be attributable to improper litigation and the case types in which improper litigation most frequently occurs. Other survey results are discussed in the findings and recommendations section of this report where relevant.

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The following chart depicts the response rates for the surveys:[5]

Respondent	Number Who Responded	Number of Potential Respondents Statewide	Statewide Response Rate
DCA Judges (all five DCAs represented)	32	64	50%
Circuit Judges	77	606	12.7%
County Judges[6]	43	334	12.9%
DCA Clerks	5	5	100%
Trial Court Clerks	24	67	35.8%
Trial Court Administrators	14	20	70%

Trial court judges were asked to identify the divisions to which the greatest percentage of their cases are assigned.

- 36.3% of circuit judges indicated that the circuit civil division is where the greatest percentage of their cases are assigned, while 32.5% selected domestic relations/family, 24.7% selected circuit criminal, and 6.5% selected probate/guardianship.

- 65% of county judges indicated that the county civil division is where the greatest percentage of their cases are assigned, while 25.6% selected county criminal, 4.7% selected circuit criminal, 2.3% selected circuit civil, and 2.3% selected probate/guardianship.[7]

[5] Appendix B at 1 and 10 and Appendix C at 1.

[6] Responses were received from circuit and county judges in 18 of the 20 judicial circuits. County judges were not asked to identify the county in which they preside so that responses from judges in small counties could be anonymous.

[7] Appendix B at 10.

Survey participants were asked to estimate the percentage of workload attributable to improper litigation in noncriminal cases. Described below are the percentages of respondents indicating that improper litigation comprises more than 10% of workload:

- 3.1% of DCA judges provided the response for their workloads, and 0% of DCA judges provided the response for their judicial assistants' ("JAs'") workloads.
- 18.2% of circuit judges provided the response for their workloads and 24.7% of circuit judges provided the response for their JAs' workloads.
- 14% of county judges provided the response for their workloads and 23.3% of county judges provided the response for their JAs' workloads.
- 14.2% of TCAs provided the response for court administration (non-judicial) workload.
- 8.4% of trial court clerks provided the response for clerk staff workload.

For DCA clerk staff workload, 80% of the DCA clerks responded "unknown" to this question, and 20% responded "up to five percent."[8]

Survey respondents, other than TCAs, were also asked to identify the top three noncriminal case types in which improper litigation occurs. The top three case types identified by respondents are:

- Appellate Courts:
  - Appellate judges identified foreclosure and habeas cases, with 3.800, 3.850, pro se family, and dissolution cases tied for third.
  - DCA clerks identified foreclosure, family, and eviction cases.[9]

- Trial Courts:
  - Circuit judges identified domestic relations/family cases generally (with multiple judges noting that pro se litigants are more problematic in these cases), foreclosures, and civil cases generally.
  - County judges identified landlord/tenant, small claims, and personal injury protection ("PIP") cases.
  - Trial court clerks identified circuit civil and county civil cases with foreclosure cases and petitions for mandamus tied for third.[10]

[8] Greater detail for the estimates provided in response to this question may be found in Appendix B at 1 and 11 and Appendix C at 2.
[9] Appendix B at 6-7 and Appendix C at 5.
[10] Appendix B at 25 and Appendix C at 10.

Based on the responses to the various questions discussed above, the greatest amount of improper litigation is estimated to be occurring in the circuit courts in foreclosure and pro se family law cases, with county courts not far behind with improper litigation in landlord/tenant, small claims, and PIP cases.

LEGAL LANDSCAPE

Various tools are available for DCA and trial court judges who preside over noncriminal court proceedings to address improper litigation. Remedies for these issues have been discussed in case law construing the court's inherent authority, and numerous rules of court procedure and statutes also govern this area. The discussion below provides an overview.[11]

INHERENT AUTHORITY OF THE COURT

Bad Faith Conduct by Attorneys

A trial court has "the inherent authority to impose attorneys' fees against an attorney for bad faith conduct."[12] The trial court's exercise of this authority must strike an appropriate balance between condemning as unprofessional or unethical litigation tactics undertaken solely for bad faith purposes, while ensuring that attorneys will not be deterred from pursuing lawful claims, issues, or defenses or from their obligation as an advocate to zealously assert the clients' interests.[13] As such, the Supreme Court has ruled that:

> [T]he trial court's exercise of the inherent authority to assess attorneys' fees against an attorney must be based upon an express finding of bad faith conduct and must be supported by detailed factual findings describing the specific acts of bad faith conduct that resulted in the unnecessary incurrence of attorneys' fees. Thus, a finding of bad faith conduct must be predicated on a high degree of specificity in the factual findings. In addition, the amount

[11] A myriad of legal authority addresses improper litigation. This discussion addresses the inherent authority of the court, rules of court procedure, and statutes identified by staff to the workgroup as being most relevant to the workgroup's charges. Other laws and rules exist.

[12] *Moakley v. Smallwood*, 826 So. 2d 221 (Fla. 2002). *See also Diaz v. Diaz*, 826 So. 2d 229, 232 n.2 (Fla. 2002) (declining to determine whether the courts possess the inherent authority to impose attorneys' fees against *a party* for bad faith litigation).

[13] *Moakley*, 826 So. 2d at 226.

> of the award of attorneys' fees must be directly related to the attorneys' fees and costs that the opposing party has incurred as a result of the specific bad faith conduct of the attorney. Moreover, such a sanction is appropriate only after notice and an opportunity to be heard—including the opportunity to present witnesses and other evidence. Finally, if a specific statute or rule applies, the trial court should rely on the applicable rule or statute rather than on inherent authority.[14]

Frivolous or Excessive Pro Se Filings that Interfere with the Timely Administration of Justice

Appellate and trial courts may rely on their "inherent authority to prohibit further pro se filings from a litigant whose frivolous or excessive filings interfere with the timely administration of justice."[15] Appellate opinions addressing such cases rely on *Spencer v. State*, 751 So. 2d 47 (Fla. 1999), a criminal postconviction case. The typical sanction is that the pro se litigant may file no further cases, or papers in an existing case, unless represented by counsel.[16] A court may also direct that a pro se litigant who has qualified for indigency status no longer be able to file cases without paying the filing fee.[17]

In general, "[w]hile it is clear that a litigant's right to access the courts may be restricted upon a showing of egregious abuse of the judicial process, due process requires that courts first provide notice and an opportunity to

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[14] *Id.* at 227.

[15] *Ardis v. Pensacola State Coll.*, 128 So. 3d 260, 264 (Fla. 1st DCA 2013) (cutting the pro se appellant off from further pro se filings related to the underlying civil case following "repeated violation of this court's prior warnings against additional post-opinion filings in this case"); *Ardis v. Ardis*, 130 So. 3d 791 (Fla. 1st DCA 2014) (cutting the same pro se appellant off from *any* further pro se appellate filings due to his "incessant meritless filings in this court"); *Graham v. Graham*, 898 So. 2d 210 (Fla. 2d DCA 2005) (affirming the trial court's order prohibiting the appellant from further pro se pleadings in his post-dissolution case).

[16] *See, e.g.*, *Werdell v. State*, 16 So. 3d 875, 877 (Fla. 2d DCA 2009); and *Bolton v. SE Prop. Holdings, LLC*, 127 So. 3d 746, 747-748 (Fla. 1st DCA 2013).

[17] *See, e.g.*, *Martin v. State*, 747 So. 2d 386 (Fla. 2000) (imposing this sanction, noting that the sanction had been imposed against the appellant at the DCA and trial court levels).

respond before imposing this extreme sanction."[18] The notice is ordinarily in the form of an order to show cause directed to the litigant, and the order must specify the potential sanctions.[19] Although one law review article asserts that the litigant must be afforded an actual hearing,[20] the case cited[21] is not clear on that point. Other cases use such phrasing as "opportunity to respond,"[22] implying that a written response would be sufficient. The appellate courts do not hold hearings on their orders to show cause, and it appears unlikely that trial courts would be required to have prisoners transported for hearings in all such cases.

RULES OF COURT PROCEDURE

As discussed below, rules of court procedure enable judges to address certain improper litigation.

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[18] *Delgado v. Hearn*, 805 So. 2d 1017, 1018 (Fla. 2d DCA 2002) (citing *Spencer*). The Supreme Court's Internal Operating Procedures, § II.M., reflect these principles:

> Sanctioning Abusive Litigants. When the Court determines that a litigant has repeatedly filed pleadings that are meritless, frivolous, abusive, or inappropriate for review by the Supreme Court or has otherwise abused the process of the Court, the Court disposes of the pleadings before it, retains jurisdiction, and orders the litigant to show cause why the Court should not sanction the litigant for the abusive filings. If the litigant fails to show cause, the Court issues an opinion sanctioning the litigant. When the litigant being sanctioned is a prisoner as defined under section 944.279, Florida Statutes, and the Court finds that the proceedings are frivolous or malicious or otherwise meet the requirements of the statute, the Court directs the Clerk of Court to forward a certified copy of the opinion making the required findings to the appropriate institution or facility to consider initiating disciplinary proceedings against the prisoner pursuant to the rules of the Department of Corrections.

[19] *Brinson v. State*, 215 So.3d 1260, 1261 (Fla. 5th DCA 2017) (reversing because the trial court's order to show cause specified the potential sanction as a bar against making further filings in the instant case where court ultimately barred all future filings in all cases).

[20] Lyndsey E. Siara & Andrea K. Holder, *The Pitfalls and Prospects of Managing the Vexing Litigant*, 39 Trial Advoc. (FDLA) 27, 30 n.44 (Oct. 2020).

[21] *Harris v. Gattie*, 263 So. 3d 829 (Fla. 2d DCA 2019).

[22] *See, e.g., Bolton*, 263 So. 3d at 748.

Motion to Strike Redundant, Immaterial, Impertinent, or Scandalous Matter

Florida Rule of Civil Procedure 1.140(f), Florida Probate Rule 5.025(d)(2), and Family Law Rule of Procedure 12.140(f) authorize a party to move to strike or the court to sua sponte strike redundant, immaterial, impertinent, or scandalous matter from any pleading at any time. According to a treatise:

> The striking of even parts of a pleading is generally considered drastic relief to be applied sparingly, with any doubts resolved in favor of the pleading, and subdivision (f) [of rule 1.140] undoubtedly receives relatively little use because of the difficulty in editing pleadings for relevance, particularly at relatively early stages of proceedings. The cases have described that which may appropriately be stricken for lack of relevance as allegations: (a) that are 'wholly irrelevant'; or (b) that have neither any bearing on the equities nor any influence whatsoever on the ultimate determination of the action.[23]

Further, notwithstanding the ability of a court to strike "scandalous" material from a pleading, even libelous statements made in court filings are "absolutely exempted from liability to an action for defamatory words, regardless of how false or malicious the statements may be, as long as the statements bear some relation to or connection with the subject of inquiry."[24] A "broad standard" is applied in determining whether the statement has "some relation or connection" with the subject matter of the lawsuit.[25, 26]

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[23] Bruce J. Berman & Peter D. Webster, *Berman's Florida Civil Procedure* § 1.140:45. (footnotes omitted).

[24] *Gursky Ragan, P.A. v. Ass'n of Poinciana Vills., Inc.*, 314 So. 3d 594, 595 (Fla. 3d DCA 2020)(referring to this concept as the "absolute litigation privilege"); *see also Wright v. Yurko,* 446 So. 2d 1162, 1164 (Fla. 5th DCA 1984) (stating that, "Parties, witnesses and counsel are accorded absolute immunity as to civil liability with regard to what is said or written in the course of a lawsuit, providing the statements are relevant to the litigation. The reason for the rule is that although it may bar recovery for bona fide injuries, the chilling effect on free testimony and access to the courts if such suits were allowed would severely hamper our adversary system.").

[25] *Gursky Ragan, P.A.,* 314 So. 3d at 595.

[26] The absolute litigation privilege does not protect the person who made the statement from an action for the separate tort of malicious prosecution if that tort would

Motion to Strike Sham Material

Florida Rule of Civil Procedure 1.150(a), Florida Probate Rule 5.025(d)(2), and Family Law Rule of Procedure 12.150(a) authorize a party to move to strike a pleading or part thereof that constitutes a sham. "A pleading is considered a sham only 'when it is palpably or inherently false, and from the plain or conceded facts in the case, must have been known to the party interposing it to be untrue.'"[27] A hearing must be held on the motion to strike to determine whether there are any genuine issues to be tried.[28]

Appellate Sanctions

Florida Rule of Appellate Procedure 9.410(a) authorizes an appellate court, with 10 days' notice, to impose sanctions, on its own motion, for any violation of the appellate rules or for the filing of any proceeding, motion, brief, or other document that is frivolous or in bad faith. The sanctions may include reprimand, contempt, striking of briefs or pleadings, dismissal of proceedings, costs, attorneys' fees, or other sanctions.

FLORIDA STATUTES

The Florida Statutes authorize a variety of sanctions to address improper litigation by all or some types of litigants in various types of noncriminal cases. Most address one-time conduct, while one statute addresses repeated conduct. An overview of these statutes is presented below.

otherwise apply. *Wright*, 446 So. 2d at 1164-65 (Fla. 5th DCA 1984) (so holding and listing the elements of the tort).

[27] *Preudhomme v. Bailey*, 211 So. 3d 127, 131 (Fla. 4th DCA 2017) (citation and internal quotation marks omitted). One case distinguishes "sham" and "frivolous" as follows: "A 'sham' plea is one good on its face but absolutely false in fact. A 'frivolous' plea is one which on its face plainly sets up no defense, although it may be true in fact. One is as objectionable as the other in frustrating the orderly administration of justice." *Rhea v. Hackney*, 157 So. 190, 194 (Fla. 1934).

[28] *Herranz v. Siam*, 2 So. 3d 1105, 1106 (Fla. 3d DCA 2009).

One-Time Conduct

Prevailing Party Attorney's Fees and Damages for Delay – Civil Proceedings

Subject to specified exceptions,[29] section 57.105, Florida Statutes (2021), requires the court in a "civil proceeding or action,"[30] to award:

- prevailing party attorney's fees, including prejudgment interest, on any claim or defense at any time in which the court, on its own or a party's motion, finds that the losing party or attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial: (a) was not supported by the material facts necessary to establish the claim or defense; or (b) would not be supported by the application of then-existing law to those material facts.[31, 32]
- damages to a moving party who proves by a preponderance of the evidence that any action taken by the opposing party was taken primarily for the purpose of unreasonable delay.[33, 34]

The statute includes a safe-harbor provision applicable to the types of improper conduct above: the movant must serve a motion on the opposite party

[29] § 57.105(3) and (8), Fla. Stat. (2021).

[30] Noncriminal categories other than "general civil" (i.e., other than categories governed by the rules of civil procedure) are subject to the statute, e.g., probate and family. *See Casey v. Jensen*, 189 So. 3d 924, 926 (Fla. 2d DCA 2016) (will contest); and *Williams v. Daniel*, 777 So. 2d 1179, 1181 (Fla. 5th DCA 2001) (dissolution of marriage).

[31] § 57.105(1).

[32] Section 57.105(1) also applies at the appellate level, by virtue of section 59.46, Florida Statutes (2021), which provides that "[i]n the absence of an expressed contrary intent, any provision of a statute or of a contract entered into after October 1, 1977, providing for the payment of attorney's fees to the prevailing party shall be construed to include the payment of attorney's fees to the prevailing party on appeal." *See also Waddington v. Baptist Med. Ctr. of Beaches, Inc.,* 78 So. 3d 114, 117 (Fla. 1st DCA 2012) (stating "By now, it is well settled that appellate courts can award appellate attorney's fees under [section 57.105(1)].").

[33] § 57.105(2).

[34] Although an award under section 57.105(2), for "unreasonab[ly] delay[ing]" an appellate proceeding appears theoretically possible, staff could not locate a case in which an award was granted on that basis.

without filing it and allow 21 days for the matter to be corrected; only if the matter is uncorrected may the movant file the motion with the court.[35]

To impose sanctions under this statute, the court must make specific findings of bad faith and recite the facts on which it bases its conclusions in the order awarding such fees.[36] The court's findings "must be based upon substantial competent evidence presented to the court at the hearing on attorney's fees or otherwise before the court and in the trial court record."[37]

The sanctions under section 57.105 are "supplemental to other sanctions or remedies available under law or under court rules."[38]

Indigent Prisoners – Noncriminal Claims

Prisoners are subject to a separate restriction-on-filing statute. Under section 57.085(6), Florida Statutes (2021), an appellate or trial court must review an indigent prisoner's[39] noncriminal claim[40] to determine its legal sufficiency. The court must dismiss all or part of a claim that fails to state a claim for which relief may be granted, seeks monetary relief from a defendant who is immune from such relief, seeks relief for mental or emotional injury when there is no related allegation of physical injury, is frivolous or malicious,[41] or reasonably appears to be intended to harass the defendant(s).[42] Further, at any time in the proceeding, the court may dismiss an indigent prisoner's action in whole or in part if the court finds that the claim of indigence was false or misleading, the prisoner provided false or misleading information regarding another proceeding in which the prisoner was a party,

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[35] § 57.105(4).

[36] *Lanson v. Reid*, 314 So. 3d 385, 387 (Fla.3d DCA. 2020), *reh'g denied* (Dec. 17, 2020).

[37] *Weatherby Assocs., Inc. v. Ballack*, 783 So. 2d 1138, 1141 (Fla. 4th DCA 2001).

[38] § 57.105(6).

[39] That is, a prisoner determined to be indigent after following the procedures in subdivisions (2) through (5) of the statute.

[40] Section 57.085 does not apply to criminal or collateral criminal proceedings. § 57.085(10).

[41] Section 57.085(9) lists factors that the court may consider when determining that an action is frivolous or malicious.

[42] § 57.085(6).

the prisoner failed to pay costs and fees despite having the ability to pay, or the action or portion thereof is frivolous or malicious.[43]

Review of Noncriminal Prisoner Actions

Section 944.279(1), Florida Statutes (2021), provides that the court on its own motion or that of a party may "conduct an inquiry into whether any [noncriminal] action or appeal brought by a prisoner was brought in good faith."[44] Specifically:

> A prisoner who is found by a court to have brought a frivolous or malicious suit, action, claim, proceeding, or appeal in any court of this state or in any federal court, . . . or to have brought a frivolous or malicious collateral criminal proceeding, . . . or who knowingly or with reckless disregard for the truth brought false information or evidence before the court, is subject to disciplinary procedures pursuant to the rules of the Department of Corrections.[45]

If the court makes such finding, it must forward its order to the appropriate facility for disciplinary proceedings pursuant to Department of Corrections rules.[46]

Forfeiture of Gain Time

Section 944.28, Florida Statute (2021), provides that if a prisoner is "found by a court to have brought a frivolous suit, action, claim, proceeding, or appeal in any court," all or any of his or her gain time is subject to forfeiture.[47] This statute applies prospectively as well: "A prisoner's right to earn gain-time during all or any part of the remainder of the sentence or sentences under

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[43] § 57.085(8).

[44] Section 944.279(2) specifies that the section does not apply to criminal proceedings.

[45] § 944.279(1).

[46] *Id.* This statute references section 944.09, Florida Statutes (2021). That statute provides that the Department of Corrections has the authority to adopt rules on various subjects, including "[d]isciplinary procedures and punishment." § 944.09(1)(c). The rule-based punishment for a court's determination under 944.279(1) is up to 15 days of disciplinary confinement and the loss of up to 30 days of gain time. Fla. Admin. Code R. 33-601.314, § 9-32 (referencing section 944.79(1), Fla. Stat. (2021)).

[47] § 944.28(2)(a).

which he or she is imprisoned may be declared forfeited because of the seriousness of a single instance of misconduct or because of the seriousness of an accumulation of instances of misconduct."[48]

Sanctions in Specific Case Types

The statutes discussed above apply to broad categories of noncriminal cases. Numerous other statutes address mandatory or permissive sanctions for certain types of improper litigation in specific case types. For example, a court:

- may award a defendant in a False Claims Act case reasonable attorney fees and expenses if the defendant prevails and "the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment."[49]
- must impose costs, including attorney's fees, in favor of the prevailing employer against an employee whistle-blower who files a "frivolous action in bad faith."[50]
- may require a party instituting an action under the Florida Deceptive and Unfair Trade Practices Act to post a bond to indemnify the defendant for "any damages [that may be] incurred, including reasonable attorney's fees" if the court finds such bond necessary, based on a motion by the defendant alleging the action "is frivolous, without legal or factual merit, or brought for the purpose of harassment."[51]

An overview of the statutes discussed above and nine similar statutes is set forth in Appendix D. Other statutes on this topic exist.

<u>Repeated Conduct</u>

Section 68.093, Florida Statutes (2021), known as the "Florida Vexatious Litigant Law,"[52] was adopted by the Florida Legislature in 2000.[53] The law was

[48] § 944.28(2)(b).

[49] § 68.086(2). Fla. Stat. (2021).

[50] § 112.3187(9), Fla. Stat. (2021).

[51] § 501.211(3), Fla. Stat. (2021).

[52] § 68.093(1).

[53] Ch. 2000-314, § 1, Laws of Fla. The law has not been amended since its enactment.

based on California's vexatious litigation law,[54] originally enacted in 1963.[55] The Florida Senate staff analysis indicated that pro se litigants are often judgment proof; thus, section 57.105, providing for the recovery of attorney's fees and costs, does not serve to deter such pro se litigants.[56]

The law defines a "vexatious litigant" as a pro se litigant who in the immediately preceding five-year period has "commenced, prosecuted, or maintained" five or more civil actions in Florida state court,[57] all of which have been finally and adversely determined[58] against the litigant.[59] "Action" means any civil action governed by the Rules of Civil Procedure and the Probate Rules but excludes actions governed by the Family Law Rules and Small Claims Rules.[60] An action commenced by counsel who then withdraws is not counted as a pro se action for purposes of the statute.[61] A "vexatious litigant" is also defined as "[a]ny person or entity previously found to be a vexatious litigant pursuant to this section."[62]

The statute is not self-executing; someone must take action against a "vexatious litigant" on or before his/her sixth or subsequent lawsuit. The statute delineates two remedies.

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[54] Cal. Civ. Proc. Code §§ 391 *et seq.* (2021).

[55] Deborah L. Neveils, *Florida's Vexatious Litigant Law: An End to the Pro Se Litigant's Courtroom Capers?*, 25 Nova L. Rev. 343, 359, n.103 (2000) (citing audio tape of legislative hearing).

[56] Fla. S. Comm. on Judiciary, CS for SB 154 (1999) Staff Analysis and Economic Impact Statement at 1 (Nov. 3, 1999), *available at* https://flsenate.gov/Session/Bill/2000/154/Analyses/20000154SJU_SB0154.ju.pdf (last visited May 29, 2022).

[57] The statute applies to the trial courts only, not the appellate courts. *Pflaum v. Pflaum*, 974 So. 2d 579, 581 (Fla. 1st DCA 2008).

[58] An action is not finally and adversely determined if an appeal is pending. § 68.093(2)(d)1. (flush left language).

[59] § 68.093(2)(d)1.

[60] § 68.093(2)(a) and (d)1.

[61] § 68.093(2)(d)1. (flush left language).

[62] § 68.093(2)(d)2.

First, "in any action pending in any court of this state, including actions governed by the Florida Small Claims Rules,"[63] a defendant may move the court to order the plaintiff to furnish "security,"[64] defined as "an undertaking by a vexatious litigant to ensure payment to a defendant in an amount reasonably sufficient to cover the defendant's anticipated, reasonable expenses of litigation, including attorney's fees and taxable costs."[65] Such a motion must demonstrate that the plaintiff: (1) is a vexatious litigant; and (2) is not likely to prevail on the merits.[66] If, on hearing, the court "determines" the two elements in favor of the defendant, the court must order the plaintiff to furnish appropriate security at a time designated by the court.[67] If the plaintiff fails to timely provide security, the court must immediately dismiss the action with prejudice as to the moving defendant.[68]

Second, the court, in addition to any other relief under the section, "may, on its own motion or on the motion of any party, enter a prefiling order prohibiting a vexatious litigant from commencing, pro se, any new action in the courts of that circuit without first obtaining leave of the administrative judge of that circuit."[69]

Disobedience of a prefiling order is punishable by contempt.[70] The proposed plaintiff may file an action only upon a showing that the proposed action "is meritorious and is not being filed for the purpose of delay or harassment."[71] The administrative judge of the circuit may condition the filing

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[63] This wording ("any action in any court . . .") appears to refer to actions governed by the civil and probate rules, per section 68.093(2)(a), and, exceptionally, actions governed by the small claims rules. In other words, failed small claims actions cannot be counted toward the five actions that would define a person as a vexatious litigant, but a defendant in small claims court may use the statute in a small claims action against a plaintiff who otherwise meets the definition of a "vexatious litigant."

[64] § 68.093(3)(a).

[65] § 68.093(2)(d).

[66] § 68.093(3)(a).

[67] § 68.093(3)(b).

[68] § 68.093(3)(c).

[69] § 68.093(4).

[70] *Id.*

[71] *Id.*

of the proposed action upon the furnishing of security.[72] If the clerk "mistakenly permits a vexatious litigant to file an action pro se in contravention of a prefiling order," any party may file and serve a notice stating that the plaintiff is a pro se vexatious litigant subject to a prefiling order.[73] The notice stays the proceeding.[74] If the plaintiff fails to file a motion for leave within 10 days after the filing of the notice, the court must dismiss the action with prejudice.[75]

Trial court clerks must provide copies of prefiling orders to the clerk of the Supreme Court, who must maintain a registry of "all vexatious litigants."[76] As of May 29, 2022, the registry had 92 total entries since 2003 for 78 individuals (some names appear multiple times). All 20 circuits are represented, and 36 of Florida's 67 counties (53.7%) are represented. Although these figures give the impression that the Vexatious Litigant Law is not being used to great effect, it may be the case that the circuits are not forwarding their prefiling orders to the clerk of the Supreme Court for entry into the registry. For example, a search of the Fourth Judicial Circuit's online administrative orders[77] discloses numerous orders against vexatious litigants whose names do not appear in the registry.

The relief defined in section 68.093 is cumulative to any relief available "under the laws of this state and the Florida Rules of Civil Procedure."[78]

Because section 68.093 infringes on a person's right of access to the courts, as otherwise guaranteed by article 1, section 21 of the Florida Constitution — a "fundamental right" — "courts will review the law under a strict scrutiny test and uphold it only when it is narrowly tailored to serve a

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[72] *Id.*

[73] § 68.093(5).

[74] *Id.*

[75] *Id.*

[76] § 68.093(6). The registry is posted by the clerk at this link: https://www.floridasupremecourt.org/content/download/823325/file/Vexatious%20Litigant%20List_Updated%2005-04-2022.xlsx (last visited May 29, 2022).

[77] The Fourth Judicial Circuit's administrative orders are available at this link: https://www.duvalclerk.com/adminOrders/#/search/10/1/-2208970800000/1641396137908/frivolous/ (last visited May 29, 2022).

[78] § 68.093(7).

compelling state interest."[79] "The compelling state interest behind section 68.093 is to prevent vexatious litigation from interfering with the business of the court system."[80] "Narrowly tailored" means that the method for remedying the asserted malady must be strictly tailored to remedy the problem in the most effective way and must not restrict a person's rights more than absolutely necessary."[81] Florida courts have concluded that section 68.093 passes constitutional muster.[82]

FINDINGS AND RECOMMENDATIONS

The workgroup's findings and recommendations address four categories: 1) judicial, court staff, clerk, and attorney education, including best practices and, for trial court judges, the development of bench cards and template orders; 2) operational changes; 3) potential rule amendments; and 4) potential statutory amendments. These recommendations primarily focus on the trial courts given that the survey results from DCA judges and clerks did not reflect significant workload attributable to improper litigation or notable problems in addressing improper litigation in the appellate courts.

The workgroup notes that its foremost recommendation is education. Although the survey respondents and members of the public provided many suggestions for proposed amendments to rules of court procedure and statutes and other changes, the workgroup believes that some of the suggestions would be subject to a more informed review by the court system and its partners after implementation of the educational programming, best practices, and tools. Suggestions that the workgroup believe are ripe for consideration now are discussed below.

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[79] *Smith v. Fisher*, 965 So. 2d 205, 208 (Fla. 4th DCA 2007) (citation and internal quotation marks omitted).

[80] *Id.* at 209.

[81] *Id.* at 208–09 (citation and internal quotation marks omitted).

[82] *See e.g.*, *Id.* at 209–11 ("Significantly, the determination that a plaintiff is a vexatious litigant does not shut the courthouse door."); *Brown v. Miami-Dade County*, 319 So. 3d 81 (Fla. 3d DCA 2021).

EDUCATION

FINDINGS

As discussed above,[83] a multitude of tools that may be used by judges, litigants, and attorneys to address improper litigation are provided pursuant to the inherent authority of the court, statutes, and rules. These tools, however, use different terminology, and they provide different sanctions or other remedies and different procedures to address the same or similar types of improper litigation. These differences result in a complex and frequently overlapping system for enforcement that varies greatly based on the litigant's status as pro se or represented, a prisoner, an indigent prisoner, an attorney, or other status; the case type; whether a statute exists to address the case type and circumstance or whether the court's inherent authority may be used; whether only a litigant may raise the issue or whether the court may sua sponte do so; the case law that has an interpreted the statute or the court's inherent authority in the context at hand; and other matters.

For some of the more prominent tools (e.g., motions to strike, sanctions pursuant to five sections of the statutes, and the court's inherent authority under case law), trial court judges were asked in the survey[84] to evaluate the sufficiency of these tools to effectively address specified types of improper litigation. Their responses are summarized in a chart on page 12 of Appendix B. In multiple instances, 49.2% to 75% of the judges indicated having no opinion or having not used the tool (i.e., sections 57.085(6), 68.093, and 944.279, and inherent authority). Such results could indicate that the tools are not frequently used and that judicial education on these tools may be beneficial.

When responding to the survey questions, trial court judges indicated that:

- they are reluctant to grant motions to strike, impose attorney's fees and costs or damages under section 57.105, and use their inherent authority because their rulings will not be sustained on appeal.[85] As noted

[83] Section titled "Legal Landscape" at 10-22.

[84] Appendix B at 11-24.

[85] Appendix B at 13, 15, 16, 18-20, 22, and 24.

above,[86] with respect to motions to strike, appellate courts regard such relief as drastic and subject to use in limited situations only. Similarly, as noted above, [87] the appellate courts generally regard the referenced sanctions under section 57.105 and the use of inherent authority as extreme, thus requiring a high degree of specificity in the court's factual findings, notice, and an opportunity to be heard. Many judges noted that it takes an exceptional amount of judicial labor to conduct the hearings and draft the orders required to impose sanctions for improper litigation. Some judges suggested that the development of template orders to impose such sanctions could expedite the process and lower the potential for reversal.[88]

- some trial court clerks continue to accept pro se filings from litigants who are subject to a court order prohibiting further pro se filings.[89] One member of the workgroup stated that her trial court clerk has indicated that filings made through the Florida Courts E-Filing Portal are automatically added to the court file and that a system needs to be developed to prevent this from happening when a court order prohibiting further pro se filings has been entered. This clerk also indicated that such court orders must expressly indicate that the pro se litigant is prohibited from filing pro se in the future because clerks are very mindful of their statutory duty[90] to store all papers and electronic filings with the related case file.

- self-represented litigants are not aware of the rules and statutes addressing improper litigation and attorneys do not understand how to use these rules and statutes and do not use them when they should.[91]

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[86] Section titled "Rules of Court Procedure" at 12-14.

[87] Sections titled "Inherent Authority of the Court" at 10-12 and "Florida Statutes" at 14-22.

[88] Appendix B at 13 to 15, 17, 19, and 30.

[89] Appendix B at 22 and 24.

[90] *See* § 28.13, Fla. Stat. (2021) (providing that, "The clerk of the circuit court must maintain all papers and electronic filings in the clerk's office with the utmost care and security, storing them with related case files and affixing a stamp, which may be electronic, to each submission indicating the date and time that the submission was filed.").

[91] Appendix B at 13-15, 17, 18, and 29.

Further, survey responses from the trial court clerks indicated that 4.2% of clerks do not have a formal process to ensure the court is made aware of a clerk's determination that a prisoner is indigent for the purpose of deferring court costs and fees under section 57.085, and that 16.7% may not have such process.[92] These survey responses also indicated that 25% do not have a process in place to receive prefiling orders from the court and to submit those orders to the clerk of the Supreme Court as required under section 68.093, and that 29.2% may not have a process to ensure submission to the clerk (discussed more fully below).[93]

Finally, survey responses from trial court clerks and TCAs indicated that clerk and court staff are impacted by improper litigation as follows: 1) clerk staff must spend time reviewing, scanning, docketing, and redacting often lengthy improper filings and must assist such litigants, who are often argumentative, when they call, email, or visit the clerk's office; 2) court counsel and staff attorneys must sometimes review improper filings and provide advice on how to address them; 3) court administration staff must sometimes review such filings and respond; and 4) JAs must sometimes assist these litigants when they call, email, or visit the judge's office.[94]

RECOMMENDATIONS

Taking the complex legal landscape and survey results together, the workgroup's primary recommendation in this report is to develop education and other training tools as described below.

- Educational programs for trial court judges should be developed to instruct on the multitude of tools in the laws and rules and provide best practices for use. Additionally, bench cards with checklists for the requirements and template orders to impose sanctions, under the statutory sections and the court's inherent authority discussed in this report, should be developed where appropriate. For sanctions that prohibit future pro se filing, the template orders should specify language expressly stating that the litigant may not file documents in the future unless signed by an attorney and that the clerk must reject any pro se documents in violation of the order and must remove from a court file any pro se documents that have been filed in violation of the order.

[92] Appendix C at 11-12.

[93] Appendix C at 12-13.

[94] Appendix C at 9-10 and 16-17.

- Educational programs for court staff should be developed on best practices for addressing filings that constitute improper litigation and, where appropriate, interacting with individuals who file improper litigation.

- Educational programs for clerk staff should be developed to instruct on their statutory duties under sections 57.085 and 68.093 and on the necessity to reject filings from pro se litigants when court orders prohibiting such filings exist. Additionally, best practices for addressing filings that constitute improper litigation and for interacting with individuals who file improper litigation should be included in the programs.

- Educational programs for attorneys should be developed to instruct on the multitude of tools in the laws and rules and provide best practices for use.

The workgroup recommends that the Supreme Court refer the recommendations relating to the development of educational programs for: 1) judges and court staff to the Florida Courts Education Council; 2) trial court clerks to the Florida Court Clerks & Comptrollers ("FCCC"); and 3) attorneys to The Florida Bar.

OPERATIONAL CHANGES

FINDINGS

Florida Courts E-Filing Portal

DCA clerks indicated that filers of improper litigation in noncriminal cases frequently mark non-emergency filings as emergencies in an attempt to prioritize their filings ahead of others.[95] They also personally serve judges and court staff with their filings. These practices waste judicial, clerk, and JA time. The clerks suggested that: 1) information be added in the Florida Courts E-

[95] As of May 31, 2022, when filing in the Florida Courts E-Filing Portal, the portal asks the filer, "Do you wish to declare this filing an 'Emergency Filing'?" A filer can then check a box indicating they wish to make such declaration. The portal may be accessed at this link: https://www.myflcourtaccess.com/authority/ (last visited May 31, 2022).

Filing Portal to explain to filers why filings should not be marked as emergencies except when appropriate; 2) the portal should be modified to require filers to provide a specific reason indicating why the filing is an emergency or to select from a pre-defined list of cases or reasons constituting an emergency; and 3) features be added to the portal to discourage personal service on judges and court staff.[96]

Vexatious Litigant Law/Orders Prohibiting Future Pro Se Filings

Section 68.093, the Vexatious Litigant Law, requires trial court clerks to provide prefiling orders to the clerk of the Florida Supreme Court, who must maintain a registry of all vexatious litigants. As discussed above,[97] not all individuals, who have been declared a vexatious litigant by a court, are listed in the registry. Further, the responses to the trial court clerk surveys indicated that only 33.3% of the responding clerks had a process in place to receive prefiling orders from the court and to submit those orders to the clerk of the Supreme Court, whereas 29.2% of the respondents appeared to be aware of statutory requirement but did not specify whether the orders are sent to the clerk of the Supreme Court, and 25% indicated not having a process or did not appear to be aware of the requirement. Of the remaining clerks who responded, 4.2% said no such orders had been issued in the county, and 8.3% indicated that they would be creating a process for this issue.[98]

Additionally, multiple judges indicated that some trial court clerks continue to accept pro se filings from litigants who are subject to a prefiling order under the Vexatious Litigant Law or to an order prohibiting further pro se filings under the court's inherent authority.[99]

RECOMMENDATIONS

Florida Courts E-Filing Portal

The workgroup recommends that the Supreme Court make a referral to the Florida Courts E-Filing Authority to review the suggestions by the DCA clerks, as noted in the findings above, and to develop modifications for the portal that will facilitate the declaration of a filing as an emergency in

[96] Appendix C at 4 and 6-7.

[97] Section titled "Repeated Conduct" at 18-22.

[98] Appendix C at 8 and 12-13.

[99] Appendix B at 22 and 24.

appropriate circumstances only and discourage inappropriate personal service on judges and court staff.

Vexatious Litigant Law/Orders Prohibiting Future Pro Se Filings

The workgroup recommends that the Supreme Court make a referral to:

- the FCCC for the development of processes for all trial court clerks to ensure that prefiling orders entered pursuant to section 68.093 and other orders issued by the courts to prohibit future pro se filings are acted upon by the clerk and that filings by litigants subject to the orders are rejected or removed from the court file when improperly filed. Additionally, these processes should ensure that all prefiling orders received are submitted to the clerk of the Supreme Court.

- the Florida Courts Technology Commission ("FCTC") for it to determine how clerk case maintenance systems and Court Application Processing Systems can be modified so that filings from pro se litigants who are prohibited by court order from further pro se filings are automatically flagged and rejected. Further, the FCTC should determine how to establish a statewide database searchable by judges, clerks, attorneys, and litigants that lists all pro se litigants subject to such court orders and, if feasible, that alerts courts and clerks in other jurisdictions when such litigant files in their jurisdiction. The database will assist in identifying pro se litigants in particular cases who may be subject to section 68.093. The database should be made accessible in the Florida Courts E-Filing Portal as well as on court and trial court clerk websites.

The FCCC and FCTC should work collaboratively with respect to these referrals.

POTENTIAL RULE AMENDMENTS

FINDINGS

In the survey responses, numerous trial court judges indicated that rules 1.140(f) and 1.150(a), rule 5.025(d)(2), and rules 12.140(f) and 12.150(a), addressing motions to strike redundant, immaterial, impertinent, scandalous, or sham matter from a pleading, do not provide consequences other than the removal of the matter from the pleading for purposes of the case. Moreover, the burden is on the aggrieved party to file a motion, schedule a hearing, and draft an order. These two issues incentivize bad behavior. Thus, amending the

rules to provide judges with the discretion to impose sanctions or other remedies when the court strikes such matter may be advisable.[100, 101]

Some judges also noted that the terminology used in these rules is ambiguous and not understood by attorneys or self-represented litigants, and that parties sometimes improperly use these motions when what they are in fact filing is a response that disagrees with a pleading. Accordingly, suggestions were made to amend the rules to clarify the terminology and to specify parameters for use of the motions. Suggestions were also made to amend: 1) all the motion to strike rules to specify that the filing of such motion does not constitute the filing of a response to the pleading otherwise required by the rules, unless the party is in good faith filing a motion to strike the entire pleading; and 2) the rules addressing motions to strike redundant, immaterial, impertinent, or scandalous matter to also reference "harassing" matter.[102]

RECOMMENDATIONS

The workgroup recommends that the Supreme Court refer the suggestions provided by the trial court judges, as outlined in the findings above, to the relevant bar rules committees for review and, if determined warranted, for the proposal of rule amendments to implement the suggestions.

[100] Appendix B at 13 and 15.

[101] Note, however, that one judge stated in the survey response that, "[I]t is those litigants that might themselves be described as 'vexatious' that would be more inclined to use [rule] 1.150 motions to attack their opponent's pleadings. Consequently, a rule change that incorporated a more severe remedy could invite additional vexatious litigation. Perhaps a shift away from technical rules of pleading and toward the goal of more rapidly identifying facts and evidence in all cases would be useful. A rule change requiring automatic initial discovery disclosures upon filing a claim, together with firm deadlines and severe consequences for failure to make discovery may be more useful." *Id.* at 16. In pending Supreme Court Case No. SC22-122 at pages 94, 95, and 99-102 of the rules petition, the Workgroup on Improved Resolution of Civil Cases discusses its proposed rule amendments that establish initial disclosure requirements with deadlines and sanctions for failing to meet the deadlines.

[102] *Id.* at 13-15.

POTENTIAL STATUTORY AMENDMENTS

FINDINGS

Stricken Matter – Public Records

Some trial court judges noted the fact that motions to strike do not remove sham (i.e., palpably or inherently false), scandalous, or other improper matter from the public record.[103] When such matter is stricken from the court record under rules 1.140(f), 1.150(a), 5.025(d)(2), 12.140(f), and 12.150(a), the improper matter can still be obtained through a public records request or through documents posted in online court dockets. As discussed above,[104] libelous statements, regardless of how false or malicious, that are made in court filings are absolutely exempted from liability for an action for defamation if the statements bear some relation to or connection with the subject of inquiry. Moreover, there are no sanctions for the litigant responsible for the stricken matter. Collectively, these factors fail to deter individuals from alleging improper matter that may result in defaming and harming a party or third party when the matter is obtained through a public records request.

Sealing a court record is not always a solution for such improper matter. Court records may be sealed for compelling reasons only.[105] These reasons are recognized in Florida Rule of General Practice and Judicial Administration 2.420(c)(9)(A), which exempts matter in a court record from the right of public access under article I, section 24(a) of the Florida Constitution if confidentiality is required for reasons that include, in relevant part, the avoidance of substantial injury to: 1) a party by disclosure of matters protected by a common-law or privacy right not generally inherent in the specific type of proceedings to be closed; or 2) innocent third parties. Regarding injury to a party, only those matters that are peripheral to the litigation may be subject to the exemption; thus, it does not appear that sham, scandalous, or other improper matter that is generally inherent in the litigation can be exempted.[106]

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[103] Appendix B at 14-15.

[104] Section titled "Rules of Court Procedure" at 12-14.

[105] *News–Press Publ'g Co. v. State*, 345 So.2d 865, 867 (Fla. 2d DCA 1977).

[106] *Gombert v. Gombert*, 727 So. 2d 355, 358 (Fla. 1st DCA 1999) (holding that matters relating to a child custody determination are "generally inherent" in a dissolution of marriage proceeding and, as such are not subject to the exemption relating to substantial injury to a party).

Regarding the sealing of matter that would avoid substantial injury to third parties, case law appears to provide only two examples of circumstances that would justify the exemption; i.e., the protection of young witnesses from offensive testimony and the protection of children in a divorce.[107] It is unknown whether this exemption would serve as a basis to exempt stricken matter relating to a third party in all instances where the public disclosure of the stricken matter is likely to defame and harm the third party.

To exempt stricken matter in a court record from public disclosure in all instances where public disclosure would defame and harm a party or a third party, it appears that a public records exemption adopted by the Florida Legislature would be necessary. Since July 1, 1993, only the Legislature has the authority to create a new public records exemption.[108] Such exemption would require a two-thirds vote of each house of the Legislature.[109] If such new exemption were adopted, it would apply to court records pursuant to Rule of General Practice and Judicial Administration 2.420(c)(7) and (d)(1)(B) so long as subdivision (d)(1)(B) is amended by the Florida Supreme Court to cross-reference the statutory exemption.

Vexatious Litigant Law

Multiple judges and a trial court clerk indicated that the statute is too limited. Suggestions for amendments are discussed below.

- In the definition of "action" set forth in section 68.093(2)(a), include, rather than exclude, actions governed by the Florida Family Law Rules of Procedure and the Florida Small Claims Rules, and include adversely determined "actions" in other states and in the federal courts for purposes of the five or more finally and adversely determined actions required under paragraph (2)(d) of the statute. Some state statutes addressing vexatious litigants apply broadly to civil actions commenced, maintained, or pending in any state or federal court.[110]

[107] *Barron v. Florida Freedom Newspapers, Inc.,* 531 So.2d 113, 118 (Fla.1988).

[108] Art. I, § 24(d), Fla. Const.

[109] Art. I, § 24(c), Fla. Const.

[110] *See, e.g.,* Cal. Civ. Proc. Code § 391(a); Haw. Rev. Stat. § 634J-1; and Tex. Civ. Prac. & Remedies Code § 11.001(2) (2021).

- Lower the requirement in section 68.093(2)(d) for five or more finally and adversely determined actions. Idaho requires three "litigations"[111] that have been "finally determined adversely" in the preceding seven-year period for its vexatious litigant rule.[112] Iowa requires three or more unsuccessfully prosecuted actions[113] in the preceding five-year period that have been deemed frivolous by a judge for the imposition of a security requirement that will pay all costs, including attorney's fees, of the opposing party.[114]

- Expand the look-back period in section 68.093(2)(d) from five years to a lengthier period. In some states, the look-back period is seven years.[115, 116]

RECOMMENDATIONS

The workgroup recommends that the Supreme Court provide the following potential statutory amendments, along with the workgroup's findings above, to the presiding officers of the Florida Legislature for their review and consideration:

- Adoption by the Legislature of a public records exemption to exempt stricken matter from public disclosure that would defame and harm a party or third party.

- Expansion by the Legislature of the Vexatious Litigant Law to include actions governed by the Florida Family Law Rules of Procedure and the Florida Small Claims Rules; lower the requirement for five or more finally

[111] "Litigation" is defined to mean any civil action or proceeding, including appeals. Idaho Ct. Admin. R. 59(b). For purposes of declaring an individual a vexatious litigant, the rule excludes small claims cases from inclusion in the three litigations. Idaho Ct. Admin. R. 59(d).

[112] *Id.*

[113] This term is not defined in the law or the rule. Iowa Code § 617.16 (2021); Iowa R. Civ. P. 1.413(2).

[114] *Id.*

[115] *See, e.g.,* Cal. Civ. Proc. Code § 391(b)(1); Haw. Rev. Stat. § 634J-1; Idaho Ct. Admin. R. 59(d)(1); Tex. Civ. Prac. & Remedies Code § 11.054(1); and Utah R. Civ. P. 83(a)(1)(A) (2021).

[116] Appendix B at 21-22 and 24 and Appendix C at 14.

and adversely determined actions; and expand the law's look-back period.

Additionally, the workgroup recommends that the Supreme Court suggest to the presiding officers that the Legislature may wish to consider consolidation of the many statutes set forth in numerous chapters of law into a single chapter of law that addresses sanctions for improper litigation. Such consolidation would improve user awareness and ease of use and could ensure more consistent use of the terminology describing improper litigation as well as more consistent procedures and sanctions or other remedies.

Supreme Court of Florida

No. AOSC21-62

IN RE: WORKGROUP ON SANCTIONS FOR VEXATIOUS AND SHAM LITIGATION

ADMINISTRATIVE ORDER

WHEREAS, vexatious and sham litigation in noncriminal trial court cases may be described as legal proceedings that are unwarranted, frivolous, inherently false, without good cause, or filed solely to harass the opposing party; are burdensome and costly for the defendant; and abuse the judicial process and waste limited court resources; and

WHEREAS, Florida has established rule and statutory provisions that address sanctions or other remedial actions that a trial court may take in response to vexatious and sham litigation in noncriminal cases; and

WHEREAS, some of these rule and statutory provisions have been in place for many years; and

WHEREAS, a review of these provisions is necessary to ensure the ongoing effective and efficient administration of justice;

NOW THEREFORE, the Workgroup on Sanctions for Vexatious and Sham Litigation is hereby established for the purpose of recommending whether any enhancements to these sanctions or other remedial actions are warranted based on experience, changes in litigation practice, technology, or other factors that have occurred since enactment of those provisions. Specifically, the Workgroup shall perform the following tasks:

1. Review existing rule and statutory provisions relating to vexatious and sham litigation in noncriminal cases;
2. Survey judges, court staff, and clerks on the utilization of these provisions and on the identification of challenges they encounter in the use of the provisions; and
3. Recommend any rule or statutory amendments that may be warranted to more effectively address vexatious or sham litigation in noncriminal cases.

The Workgroup shall, by June 1, 2022, submit its findings and recommendations to the Chief Justice through the State Courts Administrator.

The following persons are appointed to serve on the Workgroup for a term that expires on June 30, 2022:

The Honorable Alice L. Blackwell
Circuit Court Judge, Ninth Judicial Circuit

The Honorable Jerald D. Bryant
Clerk of the Circuit Court, Okeechobee County

The Honorable Janeice T. Martin
County Court Judge, Collier County

The Honorable Anne-Leigh Gaylord Moe
Circuit Court Judge, Thirteenth Judicial Circuit

The Honorable Carol-Lisa Phillips
Circuit Court Judge, Seventeenth Judicial Circuit

The Honorable Monique Richardson
County Court Judge, Leon County

The Honorable Andrea Teves Smith
Appellate Court Judge, Second District Court of Appeal

The Honorable Adam S. Tanenbaum
Appellate Court Judge, First District Court of Appeal

The Honorable Carol-Lisa Phillips shall serve as Chair to the Workgroup. Staff support shall be provided by the Office of the State Courts Administrator.

The Workgroup must be cognizant of the limitations on the resources available to support its efforts as it develops a work plan

that will accomplish the important tasks assigned in this administrative order. With regard to meetings, the Workgroup should strive to utilize the most economical means appropriate to the type of work being accomplished.

DONE AND ORDERED at Tallahassee, Florida, on December 9, 2021.

AOSC21-62 12/09/2021

Chief Justice Charles T. Canady

AOSC21-62 12/09/2021

ATTEST:

AOSC21-62 12/09/2021

John A. Tomasino, Clerk of Court

AOSC21-62 12/09/2021

APPENDIX B

OVERVIEW OF THE APPELLATE AND TRIAL JUDGE SURVEY RESULTS

INTRODUCTION

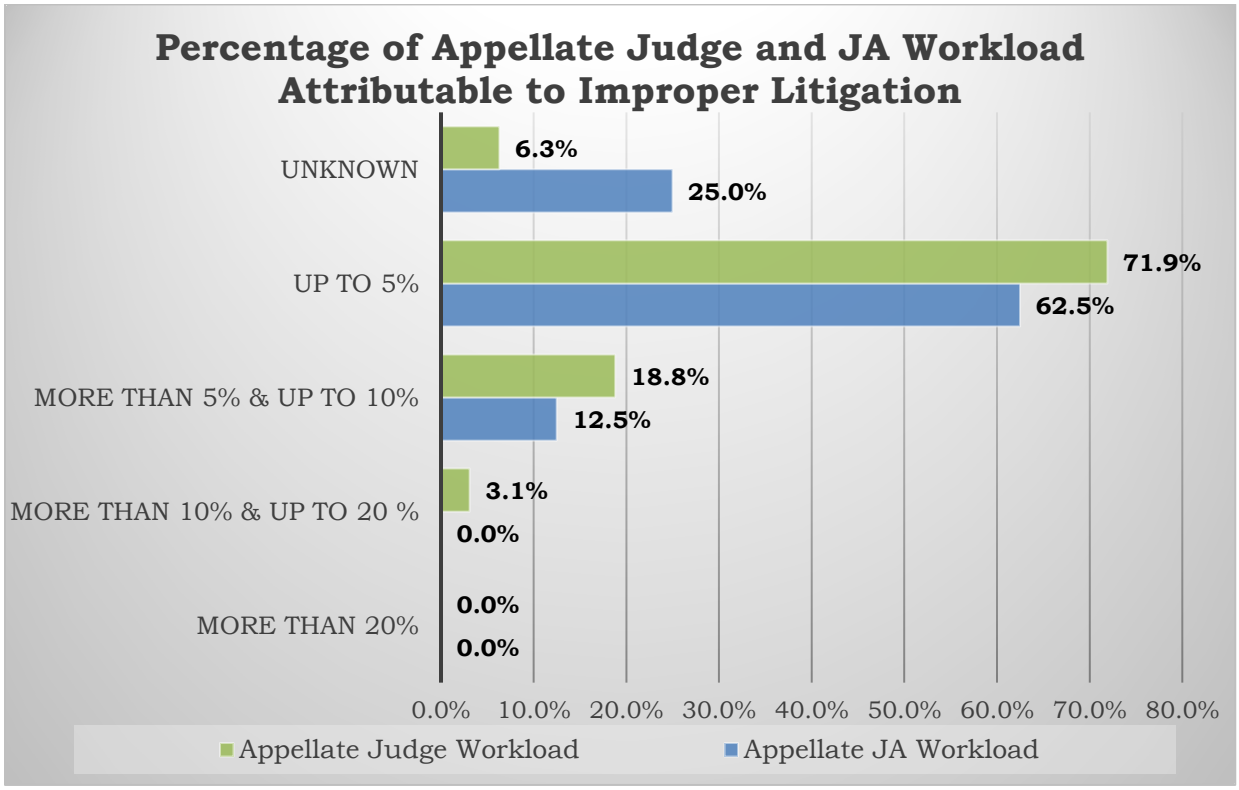
As used in this overview, the term "improper litigation" generally refers to frivolous, sham, harassing, malicious, vexatious, or similarly improper litigation. An overview of the survey responses from appellate judges is presented at pages 1 to 9 and from trial judges is presented at pages 10 to 32.

APPELLATE JUDGE SURVEYS

Background

Responses were received from 32 appellate judges (50% of the 64 appellate judges statewide). All five of the district courts of appeal responded. Almost 35% of the respondents had served as an appellate judge for more than 10 years, while 40.6% had served as an appellate judge for more than three years and up to 10 years.

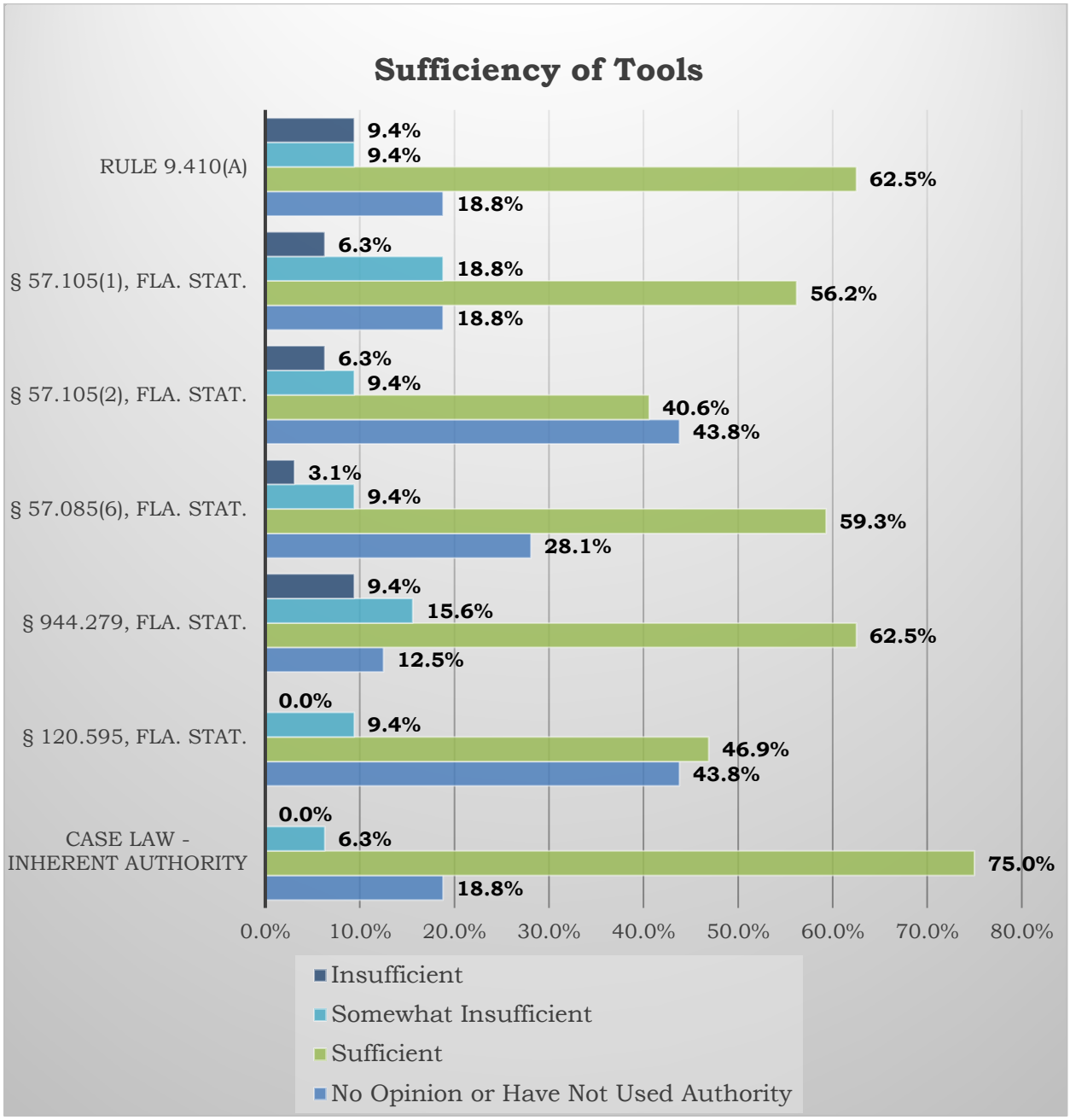
Appellate judges were asked to estimate the percentage of workload attributable to improper litigation in noncriminal cases. The chart below illustrates the percentages estimated by appellate judges for themselves and their judicial assistants ("JAs").



APPENDIX B

Appellate judges were also asked to evaluate the sufficiency of certain tools in the rules of court, the statutes, and case law to effectively address specified types of improper litigation. Judges who indicated that a tool is "somewhat insufficient" or "insufficient" were then requested to explain their answer and to describe any changes recommended for the rules, statutes, or case law. The responses for each of these questions are presented at pages 3 through 6.

To provide an overall sense of the responses provided for the questions regarding the sufficiency of the tools, the following chart specifies the percentages of the 32 appellate judge respondents who selected a particular answer indicated in the legend at the bottom of the chart.



APPENDIX B

Florida Rules of Court

The survey asked appellate judges to evaluate the sufficiency of attorney's fee awards and other sanctions pursuant to Fla. R. App P. 9.410(a) to effectively address the filing of any proceeding, motion, brief, or other document that is frivolous or in bad faith. Overall, 18.8% indicated "no opinion" or "I have not ruled upon such motion"; 62.5% indicated "sufficient"; 9.4% indicated "somewhat sufficient"; and 9.4% indicated "insufficient."

The six appellate judges who indicated "somewhat sufficient" or "insufficient" provided the following comments when asked to explain why they selected the answer and to describe any changes recommended to improve the rule:

- "Standard should be meritless, not 'frivolous' or in 'bad faith.'"
- "I would remove the phrase 'in bad faith' from Rule 9.410(a). The term elevates the standard for sanctions by suggesting that the appellate court has to make a finding as to the abusive filer's state of mind. Whether or not a filing is 'frivolous' under the rule should be based on the filing itself without consideration of the filer's state of mind."
- "Give courts express permission."
- "I would suggest studying and seeking input on a new, more forceful rule to address vexatious litigants."
- "Striking frivolous briefs and motions tends to facilitate and expedite the resolution of the appeal."
- "Indigent pro se litigants file [the] majority of frivolous pleadings and cannot pay sanctions."

Florida Statutes

Section 57.105(1), Fla. Stat.

The survey asked appellate judges to evaluate the sufficiency of prevailing party attorney's fee awards to effectively address an unsupported noncriminal claim or defense. Overall, 18.8% indicated "no opinion" or "I have not used this statute"; 56.2% indicated "sufficient"; 18.8% indicated "somewhat sufficient"; and 6.3% indicated "insufficient."

Six of the eight appellate judges who indicated "somewhat sufficient" or "insufficient" provided the following comments when asked to explain why they selected the answer and to describe any changes recommended to improve the statute:

- "I would change statute to impose fees for 'meritless' claims."
- "Give courts express permission."

- "The rule would seem to require a fact hearing which the trial courts are better equipped to handle. I believe that the power to award appellate sanctions should be by Rule, as suggested in my earlier answer."

- "I have not studied the issue sufficiently to give further comment."

- "It is occasionally sufficient. What changes may be made to 'improve the statute' depend on the case. I do not believe the problem is the statute."

- "Yes it is." [This judge selected "somewhat sufficient."]

Section 57.105(2), Fla. Stat.

The survey asked appellate judges to evaluate the sufficiency of damage awards to effectively address actions taken primarily for the purpose of unreasonable delay. Overall, 43.8% indicated "no opinion" or "I have not used this statute"; 40.6% indicated "sufficient"; 9.4% indicated "somewhat sufficient"; and 6.3% indicated "insufficient."

The five appellate judges who indicated "somewhat sufficient" or "insufficient" provided the following comments when asked to explain why they selected the answer and to describe any changes recommended to improve the statute:

- Two judges indicated same as above.

- "Other sanctions may have merit depending on the facts."

- "Give courts express permission."

- "I have not studied the issue sufficiently to give further comment."

Section 57.085(6), Fla. Stat.

The survey asked appellate judges to evaluate the sufficiency of dismissal to effectively address indigent prisoner noncriminal claims that are legally insufficient, frivolous, harassing, or similarly improper. Overall, 28.1% indicated "no opinion" or "I have not used this statute"; 59.3% indicated "sufficient"; 9.4% indicated "somewhat sufficient"; and 3.1% indicated "insufficient."

Three of the four appellate judges who indicated "somewhat sufficient" or "insufficient" provided the following comments when asked to explain why they selected the answer and to describe any changes recommended to improve the statute:

- "I have not studied the issue sufficient to give further comment."

- "Review of claims and dismissal still takes too much time. Unless DOC enforces recommended sanctions, statutory remedy has no effect."

- "Sometimes, there is no perfect rule that can balance a right to access to court with protecting the court and its resources from frivolous, harassing, repetitive complaints. But we should holistically seek to review and reform our rules, and,

where necessary, seek statutory changes that balance the right of access to court, with stronger sanctions and bars on filing where such claims become repetitive and harassing. The relevant bar committees should study these issues, seek public comment, and propose rules that will also be subject to comment and refinement. To the extent statutory changes are needed, the relevant committees of the bar, or an ad hoc committee for this purpose, should study the issue. I do not feel comfortable proposing substantive changes to rules or statutes without a larger sample size than myself, and without the input of all stakeholders."

Section 944.279, Fla. Stat.

The survey asked appellate judges to evaluate the sufficiency of referring prisoners to the Department of Corrections for disciplinary procedures as a means to effectively address prisoner noncriminal actions or appeals that are frivolous, malicious, or false. Overall, 12.5% indicated "no opinion" or "I have not used this statute"; 62.5% indicated "sufficient"; 15.6% indicated "somewhat sufficient"; and 9.4% indicated "insufficient."

Seven of the eight appellate judges who indicated "somewhat sufficient" or "insufficient" provided the following comments when asked to explain why they selected the answer and to describe any changes recommended to improve the statute:

- "[S]ee above."
- "I have not studied the issue sufficient to give further comment."
- "DOC does not appear to enforce any recommendations for discipline due to budgetary or other agency constraints."
- "I assume the Department enforces the statute. My court issues many Spencer orders and bars many abusive prisoner litigants. We also frequently use this statute in addition to or instead of barring such litigants."
- "It is simply one tool. Other tools need to be available, like prohibiting future filings unless signed by an attorney."
- "Other tools can also be valuable."
- "I've cited the statute but am not sure how much of a deterrent it is."

Section 120.595, Fla. Stat.

The survey asked appellate judges to evaluate the sufficiency of awarding attorney's fees and costs to the prevailing party in appeals of certain decisions under the Administrative Procedure Act as a means to address appeals that were frivolous, meritless, an abuse of the appellate process, or filed for other specified improper purposes. Overall, 43.8% indicated "no opinion" or "I have not used this statute"; 46.9% indicated "sufficient"; 9.4% indicated "somewhat sufficient"; and 0% indicated "insufficient."

The three appellate judges who indicated "somewhat sufficient" provided the following comments when asked to explain why they selected the answer and to describe any changes recommended to improve the statute:

- "One judge said see above."
- "I have not studied the issue sufficient to give further comment."
- "Other tools may also be valuable."

Case Law

The survey asked appellate judges to evaluate the sufficiency of the court's inherent authority under case law (*see, e.g.*, *Ardis v. Pensacola State Coll.*, 128 So. 3d 260, 264 (Fla. 1st DCA 2013)) to prohibit self-represented litigants (SRLs) from future pro se filings as a means to effectively address a SRL's frivolous or excessive noncriminal filings that have interfered with the timely administration of justice. Overall, 18.8% indicated "no opinion" or "I have not used this authority"; 75% indicated "sufficient"; 6.3% indicated "somewhat sufficient"; and 0% indicated "insufficient."

The two appellate judges who indicated "somewhat sufficient" provided the following comments when asked to explain why they selected the answer and to describe any changes recommended for holdings in specifically cited cases:

- "I am not suggesting the caselaw needs amending. I simply point out other tools need to be used as well, such as referrals to DOC for sanctions."
- "It is sometimes difficult for the court to keep track of litigants who have been barred from pro se filings. I don't know how to improve it, but this is a common issue with these orders."

Miscellaneous

Top Three Noncriminal Case Types

The survey asked appellate judges to identify up to three noncriminal case types in which improper litigation consumes a significant amount of judicial workload. The numbers in parentheticals indicate the number of appellate judges who provided the answer. Case category descriptions indicated without a number were provided by staff.

- Civil cases
  - Foreclosures (5)
  - Direct civil appeals (1)
  - Employment discrimination (1)
  - Business litigation (1)
  - Landlord/tenant disputes (1)
  - "PIP Cases--its nonsensical that parties are engaged in jury trials, with expert witnesses, over disputes of several hundred dollars." (1)

  - Pro se county court actions (1)

- Prisoner-related cases
  - Habeas (3)
  - 3.850 and 3.800 (2)
  - Criminal (1)
  - Prisoner Civil cases and writs like mandamus (1)
  - Petitions for writs of certiorari by prisoners (1)

- Domestic relations/family law cases
  - Pro se family law cases (2)
  - Dissolution (2)
  - Family law appeals (1)
  - Pro se domestic violence injunctions (1)
  - Pro se homeowners/condo association disputes (1)

- Writs generally
  - Extraordinary petitions (typically mandamus and prohibition) (1)
  - Prohibition (1)
  - Discovery petitions for certiorari (1)
  - "Pro se (and sometimes represented parties) cert petitions for prohibition" (1)

- Miscellaneous
  - Motions to review denials of stays (1)
  - Guardianship (1)

A judge who cited "foreclosures" stated, "I suspect some appeals are being filed because the lawyer is being paid a monthly fee as long as the debtor can remain in the house. I wonder if there is a way to access the attorney fees contracts in some of these cases." This same judge after citing "criminal" stated, "Some incarcerated people file motions and appeals biannually for decades. I can certainly understand why in terms of the persons emotional needs. But most of these appeals beyond the first three are truly legally frivolous, although I treat them with respect."

One judge stated, "None consumes a 'significant' amount of appellate judicial workload."

One judge stated, "This is such a small percentage of our workload (Spencer Orders for criminal filings vastly outnumbering all other categories put together) that a listing of categories is not appropriate."

Use of Other Tools

The survey asked appellate judges whether they use tools other than those discussed in the survey to address improper litigation in noncriminal cases. Thirty appellate judges indicated "no." Two appellate judges indicated "yes" and provided the following comments:

- "Orders to Show Cause and sanctions hearings for failure to comply with court orders. Admittedly, this process is used more for noncompliance than for frivolity."

- "Requiring counsel to appear before the court for an in-person 'visit.'"

Other Challenges

The survey asked appellate judges to describe challenges that they had not previously identified in the survey. Comments by the appellate judges who responded follow:

- Three judges indicated not applicable.

- Seven judges indicated none.

- "During times of normal caseload, the waste of judicial resources on frivolous matters."

- "Mentioned above (failure to identify past barred litigants)."

- "Unprofessional and improper conduct by counsel in OA and motions for rehearing."

- "Honestly, this issue does not consume too much bandwidth for me. Sure, it arises on occasion, but we deal with it, and then move on to the next case."

- "I don't see a problem, in terms of volume of these cases, that creates a real problem."

- "I have not experienced any challenges yet."

The survey also asked appellate judges to identify solutions for the challenges they identified in the survey. The following comments were provided:

- Five judges indicated none.

- Three judges indicated not applicable.

- "I believe the framework we currently have is workable. This may be different on the trial level."

- "I wish I knew."

- "Legislation capping attorney's fees in PIP cases similar to Worker's Comp cases."

- "Our court began using Spencer orders for frequent post-conviction filers, which has reduced repetitious appeals."

- "Perhaps Bar complaints that could allow confidential investigations into the attorney's fees provisions of foreclosure cases to determine if a lawyer is being paid to delay the foreclosure. Perhaps a Bar opinion stating that being paid for litigating for the sole purpose of delay is not proper. This is just a general suggestion."

APPENDIX B

TRIAL JUDGE SURVEYS

Background

Responses were received from 120 of the 940 trial judges statewide (12.8% statewide response rate). Seventy-seven responses were from circuit judges (12.7% of the 606 circuit judges), and 43 were from county judges (12.9% of the 334 county judges). The responses came from 18 of the 20 judicial circuits.[1] Almost 40% of the respondents had served as a judge for more than 10 years, while 43% had served as a judge for more than three years and up to 10 years. With respect to division assignments:

- 36.3% of circuit judges indicated that the circuit civil division is where the greatest percentage of their cases are assigned, while 32.5% selected domestic relations/family, 24.7% selected circuit criminal, and 6.5% selected probate/guardianship.

- 65% of county judges indicated that the county civil division is where the greatest percentage of their cases are assigned, while 25.6% selected county criminal, 4.7% selected circuit criminal, 2.3% selected circuit civil, and 2.3% selected probate/guardianship.

Trial judges were asked to estimate the percentage of workload attributable to improper litigation in noncriminal cases. The chart below illustrates the percentages estimated by circuit and county judges for themselves and their JAs.

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[1] The 2nd and 16th Judicial Circuits did not respond.

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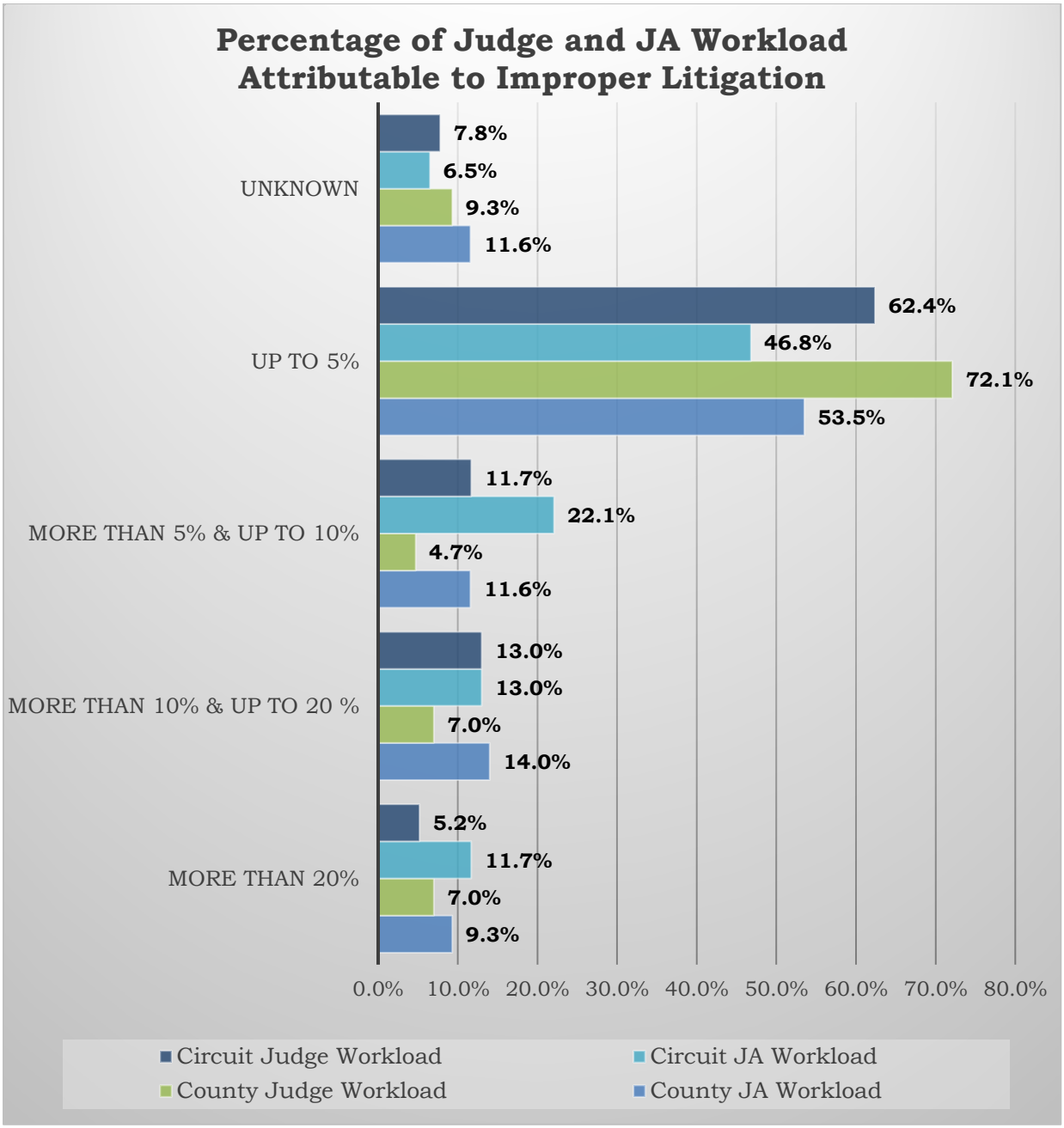
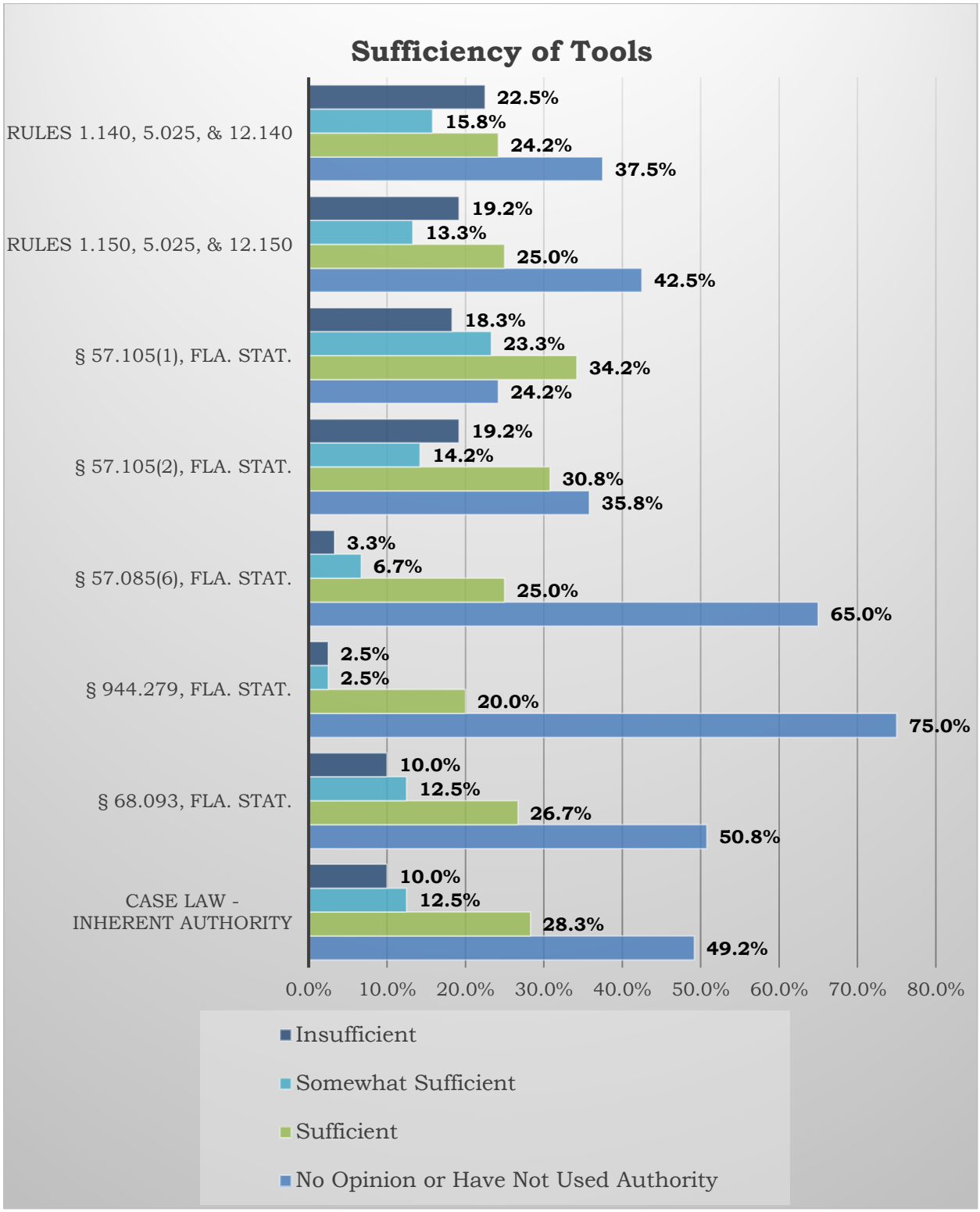


Trial judges were also asked to evaluate the sufficiency of certain tools in the rules of court, the statutes, and case law to effectively address specified types of improper litigation. Judges who indicated that a tool is "somewhat insufficient" or "insufficient" were then requested to explain their answer and to describe any changes recommended for the rules, statutes, or case law. The responses for each of these questions are presented at pages 12 through 23.

To provide an overall sense of the responses provided for the questions regarding the sufficiency of the tools, the following chart specifies the percentages of the 120 trial judges who selected a particular answer indicated in the legend at the bottom of the chart. As illustrated, in some cases, a low percentage of judges selected

"somewhat insufficient" or "insufficient" as their response, while a large percentage selected "no opinion" or that they have not used the authority (e.g., §§ 57.085(6) and 944.279, Fla. Stat.). Such results may indicate that judicial education may be needed for that particular tool, rather than indicating the tool is in fact sufficient.



APPENDIX B

Florida Rules of Court

Motions to Strike Redundant, Immaterial, Impertinent, or Scandalous (RIIS) Matter

The survey asked trial judges to evaluate the sufficiency of motions to strike pursuant to Fla. R. Civ. P. 1.140(f), Fla. Prob. R. 5.025(d)(2), and Fla. Fam. L.R.P. 12.140(f), to effectively address RIIS matter in a pleading.

- Of circuit judges, 33.8% indicated "no opinion" or "I have not ruled upon such motion"; 26% indicated "sufficient"; 15.6% indicated "somewhat sufficient"; and 24.7% indicated "insufficient."

- Of county judges, 44.2% indicated "no opinion" or "I have not ruled upon such motion"; 20.9% indicated "sufficient"; 16.3% indicated "somewhat sufficient"; and 18.6% indicated "insufficient."

Overall, 46 of the 120 responding judges (38.3%) selected "insufficient" or "somewhat sufficient." These judges were asked to explain why they selected the answer and to describe any changes recommended for the rules. Forty-four commented as summarized or quoted below.

- The rules do not provide consequences. Only sanctions get attention. Requiring attorney's fees or other sanctions may be helpful. The burden to file a motion, schedule a hearing, and draft an order is on the aggrieved party. This and a lack of consequences incentivizes bad behavior. (18)
    - "Perhaps it should be easier to utilize 57.105 in these instances. With possible sanctions against both the attorney and the client, it may act as a deterrent to the filings." (1)

- RIIS matter often appears in domestic violence and family cases and in pleadings filed by self-represented litigants (SRLs). While SRLs are often the sources of such matter, aggrieved SRLs do not know to use these motions. (11)
    - "Too often in family law, we have pro se parties that don't know about this rule. I have spent hours dealing with pleadings that are simply harassing and holding unnecessary hearings on these pleadings." (1)
    - SRLs whose pleadings are struck usually become upset with the court and accuse "the court of being bias and helping the other side. This can make it difficult in moving forward." (1)

- Judges are reluctant to grant these motions due to the potential for reversal on appeal. "[M]any appellate decisions reverse sanctions as being too harsh or inappropriate." "Although the rules allow it, striking pleadings is a last resort according to the case law." (7)
    - Trial judges are reluctant to grant these motions because of election consequences. (1)

- These motions require too much judicial time due to the frequent need for the judge to have to parse out RIIS matter because the allegation in the motion to

strike is bare bones or the pleading is large and primarily legitimate. The judicial labor required outweighs its practical value. (6)
    - Due the generous case law, vexatious litigants get many chances to amend their often lengthy and incoherent pleadings; thus, requiring the court and opposing counsel to expend a great deal of time trying to make "heads or tails" of the pleading. (1)

- The RIIS terminology is ambiguous. (4)
    - Attorneys do not know what "impertinent and scandalous" means. (1)
    - Any attorney unhappy with an allegation can claim it is "immaterial." The rule should clearly specify "that filing a motion to strike … does not constitute the filing of a response to the pleading otherwise required by the rules, unless the party is in good faith filing a motion to strike the entire pleading." (1)
    - "Harassing" should be added to the list. (1)

- Judges should have the ability to sua sponte strike pleadings that violate the RIIS standard. (2) [Note, however, that these rules allow the court to strike RIIS matter on its own.]

- The matter stricken remains in the court file. Clerks will not remove as it is a public record. It should be sealed to "alleviate the damage." (2)

- The cases should be dismissed. (2)
    - But this would not be upheld on appeal. (1)
    - Filers should be reported to the State Attorney's Office. (1)

- These motions should be required to be verified. (1)

- Family law cases should be added to the vexatious litigant statute (1) as well as small claims cases (1).

- Additional judicial training would help. (1)

Motions to Strike Sham (i.e., palpably or inherently false) Matter

The survey asked trial judges to evaluate the sufficiency of motions to strike pursuant to Fla. R. Civ. P. 1.150, Fla. Prob. R. 5.025(d)(2), and Fla. Fam. L.R.P. 12.150, to effectively address sham material in a pleading.

- Of circuit judges, 40.3% indicated "no opinion" or "I have not ruled upon such motion"; 26% indicated "sufficient"; 10.4% indicated "somewhat sufficient"; and 23.4% indicated "insufficient."

- Of county judges, 46.5% indicated "no opinion" or "I have not ruled upon such motion"; 23.2% indicated "sufficient"; 18.6% indicated "somewhat sufficient"; and 11.6% indicated "insufficient."

APPENDIX B

Overall, 39 of the 120 responding judges (32.5%) selected "insufficient" or "somewhat sufficient." These judges were asked to explain why they selected the answer and to describe any changes recommended for the rules. Thirty-seven of the 39 judges provided comments. Of the 37, six indicated that their comments for this question are the same as those they made regarding motions to strike RIIS matter. The following summarizes or quotes comments made by the other 31 judges.

- As with motions to strike RIIS matter, the following issues were cited:
  - A lack of consequences (11)
  - Reversal on appeal (2)
  - The need to remove stricken matter from the public record (2)

- The "sham" terminology needs a clear definition using 21st century language that clarifies the parameters. Parties often use these motions when what they are actually doing is filing a response that disagrees with a motion. (6)
  - The rules should clearly specify "that filing a motion to strike … does not constitute the filing of a response to the pleading otherwise required by the rules, unless the party is in good faith filing a motion to strike the entire pleading." (1)
  - "[I]t is rare for an allegation to be proven to be blatantly false. Usually it's a 'he said/she said' situation and I have to make a credibility determination." (1)

- These motions are rarely used as (5):
  - they require the movant to undertake time and expense to prove the pleading is indisputably false and that the falsity was known to the pleader.; (1)
  - it is more efficient to seek summary judgment in almost all cases; and (2)
  - SRLs do not know about them. (3)

- These motions require significant judicial time and cause delay due to evidentiary hearings and extensive discovery often being required and other reasons listed below. (3)
  - "[H]earing the motion should be optional. Too many parties make these motions under circumstances that double the work when pushing to trial would reveal the same sham nature of the claim and allow for sanctions at that point. Judges need discretion to handle misconduct without required additional hearings that may not benefit and largely duplicate work." (1)
  - "Many of the vexatious litigants just file and file and file cases. They seldom get them served but we still have to case manage them, set them for hearings, etc. If they are served, they often face Motions to Dismiss and Motions to Strike under 1.150. If I grant both motions, they are often allowed to amend, and another complaint is often filed with similar deficiencies as the first complaint and another hearing is needed and another Motion to Dismiss and/or Strike is filed and so it goes. . .." (1)

- "In any response to a motion under 1.150, party who filed the sham must provide record evidence, sworn affidavit, etc. to evidence good faith basis within 5 days. If not filed, all counts based on the allegation are dismissed with prejudice. If … discovery [is needed] to provide evidence, must list specific discovery needed to be taken and take same within 30 days. In the meantime, pleading stricken with reservation on sanctions. They should have info before they plead. Maybe also create a pre-motion safe harbor and allow party to withdraw the assertions within 5 days of notice of falsity--not sure that's a good idea, because once it's out there.... and make clear pro se subject to same sanctions." (1)

- "[I]t is those litigants that might themselves be described as 'vexatious' that would be more inclined to use 1.150 motions to attack their opponent's pleadings. Consequently, a rule change that incorporated a more severe remedy could invite additional vexatious litigation. Perhaps a shift away from technical rules of pleading and toward the goal of more rapidly identifying facts and evidence in all cases would be useful. A rule change requiring automatic initial discovery disclosures upon filing a claim, together with firm deadlines and severe consequences for failure to make discovery may be more useful." (1)

- Additional judicial training would help. (1)

Florida Statutes

Section 57.105(1), Fla. Stat.

The survey asked trial judges to evaluate the sufficiency of prevailing party attorney's fee awards to effectively address an unsupported noncriminal claim or defense.

- Of circuit judges, 22.1% indicated "no opinion" or "I have not used this statute"; 28.6% indicated "sufficient"; 29.9% indicated "somewhat sufficient"; and 19.5% indicated "insufficient."

- Of county judges, 27.9% indicated "no opinion" or "I have not used this statute motion"; 44.2% indicated "sufficient"; 11.6% indicated "somewhat sufficient"; and 16.3% indicated "insufficient.

Overall, 50 of the 120 responding judges (41.7%) selected "insufficient" or "somewhat sufficient." These judges were asked to explain why they selected the answer and to describe any changes recommended to improve the statute. Of the 50 judges, 48 provided comments, which are summarized or quoted below.

- Judges are reluctant to grant these motions due to the:
    - Potential for being reversed on appeal. (13)
        - "The appeals courts have gutted the statute … too hard to use." (1)
        - "Too liberal standards as to what may be 'unsupported.'" (1)
        - "Bad behavior in family cases often does not arise to the level necessary to sanction under 57.105." (1)

        - "A very high burden of proof, as it currently stands. Little discretion for the trial court." (1)
        - "Anyone can claim the filing was made in good faith … to avoid the rule." (1)
        - "Unethical or seasoned attys know how to skirt the rule." (1)
    - "Too cumbersome." The required order takes longer than necessary considering busy court dockets. Delays cases and results in more litigation. Takes time away from resolving cases. (8)

- Litigants, primarily SRLs, are unconcerned about financial penalties. They go unpaid. There's no deterrent effect. (9)
    - "Sanctions should be at the discretion of the court and entitlement to Atty fees should be by statute or the American rule." (1)
    - "In foreclosure cases, a defendant filing frivolous motions does not care about a money judgment against them." (1)

- "The criteria to awarding fees is sometimes difficult to demonstrate clearly." The exceptions make it confusing and can lead to additional litigation. (5)
    - Violations of the statute need to be clearly defined. (1)
    - "Enforcement of attorney's fees should be mandatory." (1)

- Motions are rarely used. (3)
    - SRLs do not know about the statute. (1)
    - Complicated and attorneys do not understand it. (1)
    - "Seldom sought and when it is, it turns into satellite litigation--and cannot be raised during the course of the case for fear of creating a required attorney client privilege waiver or a conflict." (1)

- "[D]ifficult in county civil to use this tool as a judge without the party moving for it and then actually having a hearing for the court to make a ruling without the parties resolving it before hearing." (1)

- Collection of credit card debt is careless. "I have plaintiffs not showing up for court then refiling and still not showing up for court so that the defendants are being required to come to the courthouse multiple times for no reason. The depth of this problem is nothing that I have seen before; plaintiffs are filing defaults on cases that are in trial posture. I am being generous in hoping that it was a well-intended error. The plaintiffs do not follow trial orders by filing paperwork ahead of time so a pro se defendant alleging fraud knows what they will face in trial. I could go on and on." (1)

- "57.105 isn't very helpful for two self-represented individuals - these are the cases where the game-playing and manipulation are the worst. Motions to Strike are effective IF people know to file them. I see many instances where attorneys could, and should, file such motions but they do not." (1)

- Courts should be able to use the rule sua sponte. (1) [Note, however, that subsection (1) of § 57.105, Fla. Stat. can be used on "court's initiative."]

Section 57.105(2), Fla. Stat.

The survey asked trial judges to evaluate the sufficiency of damage awards to effectively address actions taken primarily for the purpose of unreasonable delay.

- Of circuit judges, 33.8% indicated "no opinion" or "I have not used this statute"; 28.6% indicated "sufficient"; 18.2% indicated "somewhat sufficient"; and 19.5% indicated "insufficient."

- Of county judges, 39.6% indicated "no opinion" or "I have not used this statute"; 34.9% indicated "sufficient"; 7% indicated "somewhat sufficient"; and 18.6% indicated "insufficient."

Overall, 40 of the 120 responding judges (33.3%) selected "insufficient" or "somewhat sufficient." These judges were asked to explain why they selected the answer and to describe any changes recommended for the statute. Of the 40 judges, 37 provided comments. Of the 37, nine judges said to see their comments regarding § 57.105(2), Fla. Stat. The following summarizes or quotes comments made by the other 28 judges.

- The subsection is rarely used. (7)
  - "I don't know what kind of evidence a judge would see that would implicate [delay]. It would just turn into a mud fest." (1)
  - "I think the delay gets gray for the use of 57.105. It's not really an issue for family law because of the fees provisions under Fla Stat 61." (1)
  - SRLs do not know about the rule. (1)
  - Burden of proof is on the aggrieved party. (1)

- Appellate courts will not sustain. (5)
  - The statute is fine. The problem is the appellate courts. (2)

- It is an insufficient deterrent overall and is no deterrent to an indigent SRL. (4)
  - Sanctions other than money are needed, e.g., limiting pleadings where after a court warning to the litigant, the court can review and summarily deny future motions that appear to be for purposes of undue delay. (1)

- The subsection is ambiguous. (3)
  - It "should set forth factors the trial court must consider and which provide direction to all to limit these instances but, to also provide guidance to the trial court." (1)
  - "Attorney's fees should be mandatory." (1)

- Requires too much judicial labor. (2)

- Courts need authority to sua sponte use this subsection. (2)

- "Litigants should not be allowed to walk away from improper conduct by dismissing the case." (1)

- "This rule is of little use if there is already prevailing party attorney fee entitlement by contract or statute. Perhaps specifying further what "reasonable expenses" are might help. Is it limited to taxable costs? What about travel costs, a client's lost wages for having to appear at depo, etc.?" (1)

- "[T]hey always come up with excuses for delay and the other side can … blame the delay on the other party. Ethical responsibilities and professionalism would go a long way - it is mostly attys because we control the pro se cases." (1)

Section 57.085(6), Fla. Stat.

The survey asked trial judges to evaluate the sufficiency of dismissal to effectively address indigent prisoner noncriminal claims that are legally insufficient, frivolous, harassing, or similarly improper.

- Of circuit judges, 66.3% indicated "no opinion" or "I have not used this statute"; 22.1% indicated "sufficient"; 7.8% indicated "somewhat sufficient"; and 3.9% indicated "insufficient."

- Of county judges, 62.8% indicated "no opinion" or "I have not used this statute"; 30.2% indicated "sufficient"; 4.7% indicated "somewhat sufficient"; and 2.3% indicated "insufficient."

Overall, 12 of the 120 responding judges (10%) selected "insufficient" or "somewhat sufficient." These judges were asked to explain why they selected the answer and to describe any changes recommended for the statute. Of the 12 judges, 10 provided comments, which are summarized or quoted below.

- Need other penalties (e.g., take away gain time or "[t]hree strikes and you are out"). (5)
  - "It seems as if they continually re-file. It would be nice to have guidelines to be able to dismiss with prejudice easier." (1)
  - "[N]o real civil penalties to someone in prison other than DL revocation, and even that would only work some time." (1)

- "Most vexatious litigants I've encountered are not in prison." "Not applicable to non-prisoners." (2)

- "[A]ppeal court issues." (1)

- "Not sure what additional changes could effectively address such claims." (1)

- "It still takes time to write the orders that dismiss the claim. Template orders can be helpful and allows the judge to write in specific findings of fact. This may expedite matters." (1)

- "Tends to generate additional litigation, cost and expense; born by innocent party." (1)

- "Not really because typically they do not care they simply refile." (1)

Section 944.279, Fla. Stat.

The survey asked trial judges to evaluate the sufficiency of referring prisoners to the Department of Corrections for disciplinary procedures as a means to effectively address prisoner noncriminal actions or appeals that are frivolous, malicious, or false.

- Of circuit judges, 75.4% indicated "no opinion" or "I have not used this statute"; 16.9% indicated "sufficient"; 3.9% indicated "somewhat sufficient"; and 3.9% indicated "insufficient."

- Of county judges, 74.4% indicated "no opinion" or "I have not used this statute"; 25.6% indicated "sufficient"; 0% indicated "somewhat sufficient"; and 0% indicated "insufficient."

Overall, only six circuit judges out of the 120 responding judges (5%) selected "insufficient" or "somewhat sufficient." These judges were asked to explain why they selected the answer and to describe any changes recommended for the statute. Of the six judges, five provided comments, which are quoted below.

- "Very little happens with the referral. If the inmate is serving a lengthy sentence, DOC sanctions are impotent." (1)

- "No confidence in the department taking sufficient action to punish or deter the frivolous and time-wasting actions of the prisoner." (1)

- "[A]ppeal court [will] not sustain." (1)

- "[I] have used this to deter defendants from proceeding with frivolous 3.850 hearings after one has been granted. They sometimes waive a hearing to avoid losing gain time." (1)

- "Never used this but can only imagine that a life prisoner would not care. Not sure how DOC enforces this or what the discipline is. Might want to set parameters to require DOC to enforce with certain minimum disciplinary tools (i.e. 1st offense 30 days hole, 2nd 60 days, etc) or take away phone and other privileges - a chart for offenses so it is consistent and known in advance." (1)

Section 68.093, Fla. Stat.

The survey asked trial judges to evaluate the sufficiency of imposing security requirements and orders prohibiting future pro se filings as a means to effectively address "vexatious litigants" as defined in the statute.

- Of circuit judges, 44.2% indicated "no opinion" or "I have not used this statute"; 24.7% indicated "sufficient"; 19.5% indicated "somewhat sufficient"; and 11.7% indicated "insufficient."

- Of county judges, 62.8% indicated "no opinion" or "I have not used this statute"; 30.2% indicated "sufficient"; 0% indicated "somewhat sufficient"; and 7% indicated "insufficient."

Overall, 27 judges out of the 120 responding judges (22.5%) selected "insufficient" or "somewhat sufficient." These judges were asked to explain why they selected the answer and to describe any changes recommended for the statute. Of the 27 judges, 26 provided comments, which are summarized or quoted below.

- The statute is too limited. (9)
  - The types of cases addressed should be broadened. Small claims (3) and family cases should be included. (3)
  - "Saying '5 or more actions in 5 years' is a meaningless … in family cases. The problem of vexatiousness in family cases arises not by the number of actions, but rather the number of post judgment filings in an action. Each post judgment supplemental petition (or in some cases post-judgment motions) become actions in and of themselves. Vexatious should be a matter of the number of filings, the volume of the filings, and the merit of the filings. A method to define a vexatious family litigant could be, '5 or more filings within a five-year span that have been deemed to be either harassing, redundant, immaterial, or without merit.' There is also a significant problem of vexatious litigation prior to final judgment. We see in family divisions some litigants filing countless motions for contempt, emergency motions, excessive motions for rehearing, and even various "complaints" against the judiciary. There should be a standard to which we as judges can equally hold all litigants in scenarios where the litigation process is abused. Appellate caselaw is not very helpful in giving trial courts bright line standards on when we can 'pull the plug' on a litigant filing these types of motions. Again, it may be helpful to set a standard such as 'When a litigant files or more motions during the course of litigation which are deemed by the court to be either harassing, redundant, immaterial, or without merit…'" (1)
  - The number of cases required should be less than five or should not require a final adverse ruling. A determination that the person was a vexatious litigant in another state should be recognizable in Florida. "When I was in a civil division, there was a [SRL] who filed MANY more civil cases than 5, but he voluntarily dismissed most of them before a final adverse ruling …. He had already been found to be a vexatious litigant … in Ohio. The cases that he filed in my division took time to review, and I had hearings on some of them (and had to draft orders). My JA's time was wasted with numerous phone calls, emails, and filings from this litigant and the people the litigant sued (who were also pro se). This litigant had filed other pro se cases that were pending before at least 3 other judges in my county … so their time was wasted too." (1)
  - "'Finally and adversely determined' … takes a long time to reach and frivolous litigation can go on for a long time (amended complaint after amended complaint until the filer realizes that the next dismissal will be

'with prejudice' and then they will just dismiss it[)]. All the while, the Defendant has spent time and money and endured the stress of being harassed, often without consequence. I realize the importance of providing access to the courts and am mindful that we must not prevent legitimate suits from proceeding; on the other hand, we need to crack down on the increase in harassing/frivolous filings that are being presented which tax both the other parties and our court system." (1)

- "[I] like requiring a member of the Florida bar to sign off as well. However, we have a problem with sovereign citizens and vexatious litigators in civil and family courts more now than anywhere..... so the word defendant needs to be replaced with a party or judge on his/her own motion." (1)
- "As stated above, 3 strikes and you're done." (1)

- Does not prevent refiling. (6)
  - Orders are not "followed by the clerk's office and therefore frivolous motions continue to be received by the court." (1)
  - "My Clerk will accept anything from anybody and file it wherever the case style … says it should be filed." (1)
  - "[I]t is grossly insufficient because the Clerk's office still accepts the filings. So it becomes very burdensome on the judges and their staff to manage or ignore the filings and multiple emails and phone calls from [SRLs] because they believe their filings were appropriately received and are pending. The statute would better serve the Courts if the filings were flagged and rejected by the Clerk's office so there's no misunderstanding on the part of the litigants that their filings will not be accepted (and consequently are not pending) unless they comply with the Court's last order on vexatious litigation/filings." (1)
  - "[T]he better practice would be to have a system where pro se litigants must have their filings reviewed and approved prior to filing to ensure they meet certain basic requirements to help avoid vexatious filings." (1)
  - Clear and meaningful sanctions for continued conduct are needed. (2)
  - However, a judge stated, "If this type of order is issued, and the party violates the order, then the Court will issue an order to show cause as to why the Court should not find the party in contempt; and if a contempt hearing proceeds then the threat of sanctions, including the possibility of incarceration is a fairly strong deterrent to such filings." (1)

- These litigants waste significant amounts of the court's time. (5)

- "[P]ro-se plaintiffs should not be allowed to claim indigent status and be able to file frivolous lawsuits. If they had to pay filing fees and service fees they would not do it." (1)

- "Concerns of reversal by the appellate court 'chill' the use of such actions by the trial court." (1)

- Elements established in case law to use when imposing the statute's sanctions should be included in the statute. (1)

- "This statute could be sufficient if [I could] search, on a statewide basis, other cases that the alleged vexatious litigant has filed in the time frame noted in the statute. Without a way to check that, I'm relying on the other side or the vexatious litigant to discovery and/or offer up that information." (1)

Case Law

The survey asked trial judges to evaluate the sufficiency of the court's inherent authority under case law (*see, e.g.*, *Graham v. Graham*, 898 So. 2d 210, 211 (Fla. 2d DCA 2005)) to prohibit SRLs from future pro se filings as a means to effectively address a SRL's frivolous or excessive noncriminal filings that have interfered with the timely administration of justice.

- Of circuit judges, 44.2% indicated "no opinion" or "I have not used this authority"; 27.3% indicated "sufficient"; 16.9% indicated "somewhat sufficient"; and 11.7% indicated "insufficient."

- Of county judges, 58.2% indicated "no opinion" or "I have not used this authority"; 30.2% indicated "sufficient"; 4.7% indicated "somewhat sufficient"; and 7% indicated "insufficient."

Overall, 27 trial judges out of the 120 responding judges (22.5%) selected "insufficient" or "somewhat sufficient." These judges were asked to explain why they selected the answer and to describe any changes recommended for holdings in specifically cited cases. Of the 27 judges, three said to see their comments above. The following summarizes or quotes comments made by the other 24 judges.

- This authority should be specified in a rule or statute. (5)
  - The case cited in the survey "is devoid of facts and is not very helpful as a bright-line case." (1)
  - "To provide clarity for courts and litigants, it would be helpful if the holdings in cases like *Graham*; *Golden v. Buss*, 60 So. 3d 461 (Fla. 1st DCA 2011), and *Delgado v. Hearn*, 805 So. 2d 1017 (Fla. 2d DCA 2001) were distilled into a rule." (1)
  - "Authority should be either procedural or statutory and should clearly put all parties (and the courts) on notice. Lack of clarity raises due process concerns." (1)

- Consumes extensive judicial time and resources. (2)
  - "Improperly motivated pro se litigants consume a tremendous amount of judicial labor. Given the critical importance of access to the courts, a trial judge must undertake substantial time, effort, patience and concentration to properly implement this sanction without prejudice to the pro se litigant or committing reversible error. This is true even where the pro se filings are obviously insufficient, improperly motivated, or excessive (often incessant). Clearer rules regarding the necessary form,

style and content for motions and pleadings would be useful, especially if the consequence for failure to carefully comply with these requirements was also included in the rule." (1)

- Clerks still accept the filing. (2)
  - "[I]n many instances, the Clerk's office is not aware that these filings are in derogation of *Graham* and they should be rejected…." (1)

- "The holding in this case was made without a record of the hearing and in it the Supreme Court reminded trial courts that requiring parties to have counsel should be used 'sparingly and in extreme circumstances.' If we had more concrete examples of what types of pleadings/number of pleadings etc. would qualify for an 'extreme circumstance,' this case might be used more. But, as it stands, I don't think I've ever used this case." (1)

- "The trial court was upheld in *Graham* because there was court reporter. The case does not set any meaningful standard for stopping vexatious litigation in family cases. Pretty much it invites further appeals as there is no clear standard (except that which is noted below) as to when a litigant crosses the line of abusing the process. I have in my comments before set forth some suggested language on that standard in family law cases. The remedy employed by the trial court in this case should be used sparingly and only in extreme circumstances after the party has been afforded a full measure of due process to explain the questioned conduct and an opportunity to discontinue any misconduct." (1)

- The appellate courts will not sustain these orders on appeal. (3)
  - "Seems like appellate courts give themselves the ability but overrule trial courts who exercise this authority." (1)

- "[T]hey don't care and ignore our orders! Especially the sovereign citizens… vexatious statute should apply too!" (1)

- "[V]exatious litigation should be curtailed to two times not five." (1)

- "Not enough of a deterrent." (1)

- "The threshhold to get here under the case law is too high." (1)

- "Given the harshness of the remedy, it is difficult to impose this sort of restriction." (1)

- "Needs expansion of authority." (1)

- "[U]nder-utilized." (1)

Miscellaneous

Top Three Noncriminal Case Types

The survey asked trial judges to identify up to three noncriminal case types in which improper litigation consumes a significant amount of judicial workload. In some cases, judges referenced the case types very generally and, in other cases, very specifically. Accordingly, the results below show specific case types referenced under the general category.

The following lists the case types cited by at least four circuit judges.

- Domestic Relations/Family generally (16): (multiple judges indicated that pro se litigants are more problematic and one judge mentioned that sovereign citizens and mentally ill patients are especially problematic)
  - Timesharing (4)
  - Dissolution (4)
  - Domestic Violence (9)

- Civil generally (7) (one judge mentioned that sovereign citizens and mentally ill patients are especially problematic)
  - Foreclosure cases (13) (some mentioned that pro se litigants are more problematic)
  - Negligence (5)
  - Insurance cases (4)

The following lists the case types cited by at least two county judges.

- Domestic relations/family generally (2) (one judge noted that pro se litigants are especially problematic)
  - Domestic violence (3) (one judge commented that many are frivolous due to the lack of filing fees)

- Civil generally (2) (one judge noted that complaints are filed despite knowing damages have been resolved or the statute of limitations has run)
  - Landlord/tenant (6)
  - Small claims cases (4)
  - PIP (4) (one judge noted that PIP cases are filed even though the defendants have paid the claims in order to obtain attorney's fees and dismissal is avoided by omitting facts in the complaint)
  - Inmate civil cases (one judge noted that malpractice of prison medical staff cases are problematic) (2)
  - Replevin (2)

Use of Other Tools

The survey asked trial judges whether they use tools other than those discussed in the survey to address improper litigation in noncriminal cases. Sixty circuit judges said "no" (78%), and 17 judges said "yes" (22%). Thirty-six county judges said "no" (83.7%), and 7 judges said "yes" (16.3%).

APPENDIX B

Overall, 24 judges out of the 120 responding judges (20%) indicated "yes." These judges were asked to identify the other tools used. All 24 judges provided comments, which are summarized or quoted below.

- Case management (e.g., setting conferences and deadlines and requirements for pleadings) (12)
  - "Having calendar time available to address small issues before they become large." (1)
  - "After an evidentiary hearing on a matter, I rarely grant any further Court time to the issue. I try to manage cases and be cognizant of motions that get filed (limited based on technology issues) and rule on the 'papers' if it is an issue previously addressed. But, if I don't know of the motion, it usually sits. If I notice several motions that have been filed, I may call a case management conference to discuss whether a hearing should be granted (and generally to try to get the case back on track)." (1)
  - "Setting limitations on how pleadings should be titled (i.e.. limiting motions to a single subject). Restricting litigants from reincorporating of previously filed motions into current motions. Setting limitations on page lengths. Restricting methods of contact with the court. Restricting material inappropriately submitted outside of the court record to the court (i.e., medical records directed to the court's email as opposed to a litigant's attorney)." (1)
  - "Clear judicial requirements, frequent reference to published local rules and standards for professionalism, frequent hearings, formal orders in response to correspondence to the court, multiple warnings if sanctions are being considered." (1)
  - "I set STATUS hearings every Friday at 3pm. until the issues are resolved." (1)
  - "I set them for a hearing and deal with the issues once and for all. It takes less time than devising other remedies or sanctions which the litigants will think the court has overstepped its authority." (1)
  - "Once detected, I set a case management conference and may sua sponte issue an order to show cause why pleadings should not be stricken." (1)
  - "Ruling on procedural motions without a hearing and requiring parties to confer has stemmed the tide a bit." (1)
  - "Upon multiple useless court dates I dismiss with prejudice. I shred bad paperwork and set other matters for hearing." (1)

- "[S]anctions as allowed by the discovery rules." (1)

- "Orders limiting future filings unless signed by an attorney." (1)

- "[D]ismissals for fraud on the court." (1)

- "Letting the litigant vent. Examining things from his/her perspective. Assuring them that I have heard and understood them. Then explain the process and why it is inappropriate for him/her to file what he/she filed." (1)

- "Assessing fees under rules, 61.16, *Rosen v Rosen*." (2)

- "Refer criminal activity to law enforcement and attorney misconduct to the Florida Bar." (1)
  .
- "Striking pleadings" (1)

- "Spencer motion requiring attorney to sign pleadings." (1)

- "Court counsel" (1)

- "Sending Orders prohibiting those litigants from sending e-mails and faxes and ordering them to file any documents with the Clerk." (1)

Other Challenges

The survey asked trial judges to describe challenges that they had not previously identified in the survey. Comments were provided by 29 circuit judges (37.7% of circuit judges) and 10 county judges (23.3% of county judges).

The comments by circuit judges providing information not repeatedly discussed above are summarized or quoted below. Unless otherwise indicated, each comment was provided by one judge.

- "1- Legally insufficient and unfounded motions for disqualification 2- Federal law suits filed against the trial judge and opposing counsel 3-Attempts to avoid discovery by pro se arguing disabilities so cannot comply."

- "Being an elected official"

- "[S]omething more than awarding attorney fees would be helpful even in routine matters. The delay in a denial of response, a filing, setting the hearing, and holding the hearing is perhaps not fully sanctioned with the award of … fees."

- "I had a family case (child custody of one child) which began in 2009. By 2018, the clerk's docket reflected almost 3000 filings, the vast majority of which were submitted by the former husband. His pleadings were often in excess of 100 pages, and would include dozens of citations of legal authority. He would reincorporate numerous previously filed motions. Occasionally, there would be viable claims hidden among the meritless. It would take hours just to review a single pleading. The time expended over the years on this once case was outrageous and significantly impacted the time available for the court's consideration of other cases. All of the above was complicated by the fact that both sides were pro se for the last several years, with the former wife having no idea how to utilize any of the aforementioned rules."

- SRLs. (2)
  - SRLs are "currently the biggest challenge …. There is little incentive for a [SRL] to avoid filing countless pleadings to trigger a response by opposing counsel or the court; in some cases this can be an effective strategy given that the opposing party may be incurring attorneys fees each time a

response is required. There is also little incentive to avoid the practice of declaring many filings as an 'emergency.'"

- Need additional staff attorneys and case managers. (3)
  - "I would need a doubling or tripling of staff attorneys to assist the tsunami of post-conviction motions and motions to correct sentence that prisoners are filing decades after convictions were upheld."
  - "Multiple appeals to district court, supreme court, federal district court, and U.S. Supreme Court. Takes a law clerk … to keep up with just one case …."

- "Invoked the vexatious litigation statute and, after a hearing, … restricted the rogue litigant from filing any further civil cases unless reviewed and signed by a member of the Florida Bar as to the whether there was a meritorious claim. The rain of filings and constant record requests (he once made a public record request to me to provide copies of all resource material including thesaurus's, dictionaries, statutes, etc.) all stopped after my order, which followed dismissal of all of the claims pending at that time as being wholly without merit."

- "Many litigants can't afford to pay fees. A lot of bad behavior arises from understandable emotional issues associated with family cases. Punishment, often, is not the best way to change behavior."

- "Professional rules as to attorneys. I would order a professionalism course."

- "The new Supreme Court rules re referral to the Bar may be helpful...assuming that they have the staff to handle this referral...hopefully better than the condo cases."

- "The tools we presently have available are perfectly fine."

- "They just ignore our orders, overburden us with extra steps and additional work and take time from our daily routines of hearings and preparing orders. Some of their postings and allegations, lawsuits in federal court, liens against our homes and demeanor is at times emotional distressful."

- "To dot the i's and cross the t's as required by existing case law takes a substantial amount of time and dedication to the outcome. Because of the investment of time and, because I dislike being in the position of having to raise issues that I then rule on, I routinely do not pursue vexatious / 57.105 unless I come to the conclusion that that investment is absolutely necessary. To me, the outcome must save me more time than I have to spend addressing the vexatious litigant issue. Otherwise, it is difficult … to justify the investment of time because it really takes time away that I can be addressing other cases."

- "We had a litigant file approximately 90 filings over … several years before we felt we met a high enough threshold to stop future filings. These were harassing to the magistrates, judges, and hearing officers. … We need … a standard that does not require such an extreme drain before action can be taken in a family law case."

- "I have been in Civil for approximately 6 years during two different assignments and have dealt with this only once or twice. So, I don't know where … this is a problem …. [I]t consumes virtually none of my judicial workload. Just rule."

The comments by county judges are summarized or quoted below. Each comment was provided by one judge.

- "Aggressive nonsensical or accusatory arguments in correspondence and in court take up a significant amount of time to review and address."

- "[T]hese pleadings are usually filed by [indigent SRLs]. They do not have to pay the regular clerk fees for filing because they are indigent which feeds into their inability to limit their filings. I believe there is usually some kind of mental health issue that prevents them from understanding what is appropriate. Fines and attorney fees do not serve as a deterrent as they don't have any money …. Unfortunately, in my experience, there doesn't seem to be much we can do."

- "It is not always immediately apparent how frivolous a case is or that an individual has filed a number of unsuccessful claims. Further, pro se litigants do not know about 68.093 or 57.105."

- "Knowing that case will eventually be dismissed but being unable to do anything until discovery is completed. Plaintiff Voluntarily Dismissing Complaint just prior to hearing on Motion for Summary Judgment knowing that they cannot be charged with reciprocal attorney fees."

- "No matter what I order, they re-file."

- "No real way for court to address sua sponte or get facts into evidence to support without attorney starting.

- "Pro se family litigants are the most challenging, especially with zoom hearings."

- "[B]iggest frustration is that we are taught that contempt should only be used as a last resort. If we come down hard on someone for their behavior, then we are accused of not having a good judicial temperament. In today's society, where everyone's feelings get hurt, we have to be particularly aware of how we handle the public, and the lawyers, in every case. The one time, in more than 3 years, when I came down hard on someone for being extremely disruptive to a very full courtroom, I had a senior Judge in my office advising me that I violated at least three judicial canons by taking control of my courtroom and advising the gentleman of his bad behavior. I feel frustrated that I have to just put up with it. At least that's the message that was delivered to me."

- "Sometimes they are coupled with safety concerns. Often, a vexatious litigant may have violent tendencies."

- "The plaintiff counsel expect a lot of other people but little of themselves when pursuing litigation. They could also be a little more considerate of others. The

law firms doing mass filings are often impossible to get on the phone, even to a judicial office (everyone should be treated with the same courtesy)."

The survey also asked trial judges to identify solutions for the challenges they identified in the survey. Numerous judges answered this question including ones who had not identified challenges.

The comments by circuit judges providing information not repeatedly discussed above are summarized or quoted below. Unless otherwise indicated, each comment was provided by one judge.

- "Stronger 'encouragement' for members of the Bar to refrain from such activities. More definitive sanctions for [SRLs] who engage in such conduct. Procedural and/or statutory guidelines to put all participants on notice and to include available sanctions courts can employ in cases where a party engages in that type of behavior."

- "A more stringent timeline prohibiting motions and a requirement that the filings not be received … by a clerk's office if … filed past the timeline."

- "All of the tools available (most mentioned herein), criminal enforcement, striking of pleadings, sanctions such as dismissal, fees, grant relief to the other party (esp. when they don't plead b/c they are pro se), a specialist at OSCA to contact, form or sample template/orders for dealing with their motions/ petitions."

- "Amending the sanctions rules of procedure for clarity in the range of possible sanctions and specific criteria required to be considered in imposing sanctions."

- "More robust rules regarding the form, style and content for all filings. An intermediate standard for preventing individual vexatious litigants from inappropriately consuming judicial resources. In many cases a litigant may not be a serial filer, but may instead file excessive pleadings within a single case or two. Clear procedures to identify these litigants on a case-by-case basis and take action to curtail their activities within a particular case would be helpful. Lawyers can be referred for discipline or directed to local professionalism panel. Perhaps some form of oversight for [SRLs] would also be useful."

- "[A]warding fees in domestic restraining orders when the petitioner fails to show for the follow-up hearing thereby resulting in a dismissal of the underlying temporary injunction."

- Effective case management. (2)

- Education for law enforcement, judges, and court staff on options available and how to deal with sovereign citizens and difficult attorneys and litigants. (2)

- Education for attorneys.

- Allow the court "on its own motion, to order sanctions (such as community service, or reimbursement for gas money) to the party who is cooperating."

- "Have Appellate Judges sit as trial judges for a month or two." "Limit appellate review." (2)

- "In dependency cases perhaps when a case is closed … the rules could limit the number of attempts to reopen by the parents to a limited number per year. Continue authorization for the court to allow the respondents or appear virtually and the court having the discretion to require that the petitioners appear in person thus limiting the impact on the non-moving party."

- "Just set in person hearings and strike them when they FTA. Seems to keep everything under control."

- "Sanctions against pro se or attorneys for legally insufficient Motions to Disqualify. When Fed cases are dismissed, underlying state case should be placed on the fast track. Sanctions should be available for improper use of disability arguments."

- "Something like "stand by" counsel for Civil cases - to assist [SRLs] with rules and possible appropriate filings."

- "Staff and speed plus seriousness of resolution."

- "Singing 'I'm so Pretty' to myself when my patience seems to be waning."

The comments by county judges providing information not repeatedly discussed above are summarized or quoted below. Unless otherwise indicated, each comment was provided by one judge.

- "Ability to dismiss cases after the second time the Court either receives correspondence or conducts a hearing that falls within these situations."

- "After many years, I (along with our mediation director) have come to know these individuals. I immediately set the case for hearing … and … hear from the plaintiff about the basis of the claim and then I consider dismissal…."

- "Allow for attorney's fees even if case is voluntarily dismissed after Motion for Summary Judgment is filed."

- "For Small Claims and Landlord/Tenant: Would be great if there was authority for a magistrate to screen for sufficiency, order to mediation if a sufficient, then send to the judge for final resolution if unsuccessful at mediation."

- "[L]egislature needs to change the PIP statute and the DCAs need to rule on the AOB statutes."

- "Often will have extra security in the courtroom when vexatious matters are set for hearing and other appearances."

APPENDIX B

- "The Civil Collections Bar should hold themselves to a higher professional practice."
- "The appellate courts should follow the language and intent of the statutes and rules enacted to prevent and punish frivolous litigation."
- "There really is no solution other than to tolerate intolerable behavior."
- "Five courts more power to initiate."

APPENDIX C

OVERVIEW OF THE APPELLATE AND TRIAL COURT CLERK AND TRIAL COURT ADMINISTRATOR SURVEY RESULTS

INTRODUCTION/BACKGROUND

As used in this overview, the term "improper litigation" generally refers to frivolous, sham, harassing, malicious, vexatious, or similarly improper litigation. An overview of the survey responses from:

- District Court of Appeal ("DCA") clerks is presented at pages 3 to 7;
- Trial court clerks of court ("trial court clerks") is presented at pages 8 to 15; and
- Trial court administrators ("TCAs") is presented at pages 16 to 19.

The response rates for the surveys are depicted in the chart below.

Respondent	Number Who Responded	Number of Potential Respondents Statewide	Response Rate
DCA Clerks	5[1]	5	100%
Trial Court Clerks	24	67	35.8%
Trial Court Administrators	14	20	70%

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[1] Four DCA clerks responded, and one judge responded on behalf of the Third DCA (hereinafter collectively referred to as "DCA clerks").

APPENDIX C

DCA and trial court clerks were asked to estimate the percentage of clerk staff workload that is attributable to filings in cases involving improper litigation in noncriminal cases. TCAs were also asked to make the same estimation with respect to court administration (non-judicial) workload. The chart below illustrates the estimates provided by the respondents.

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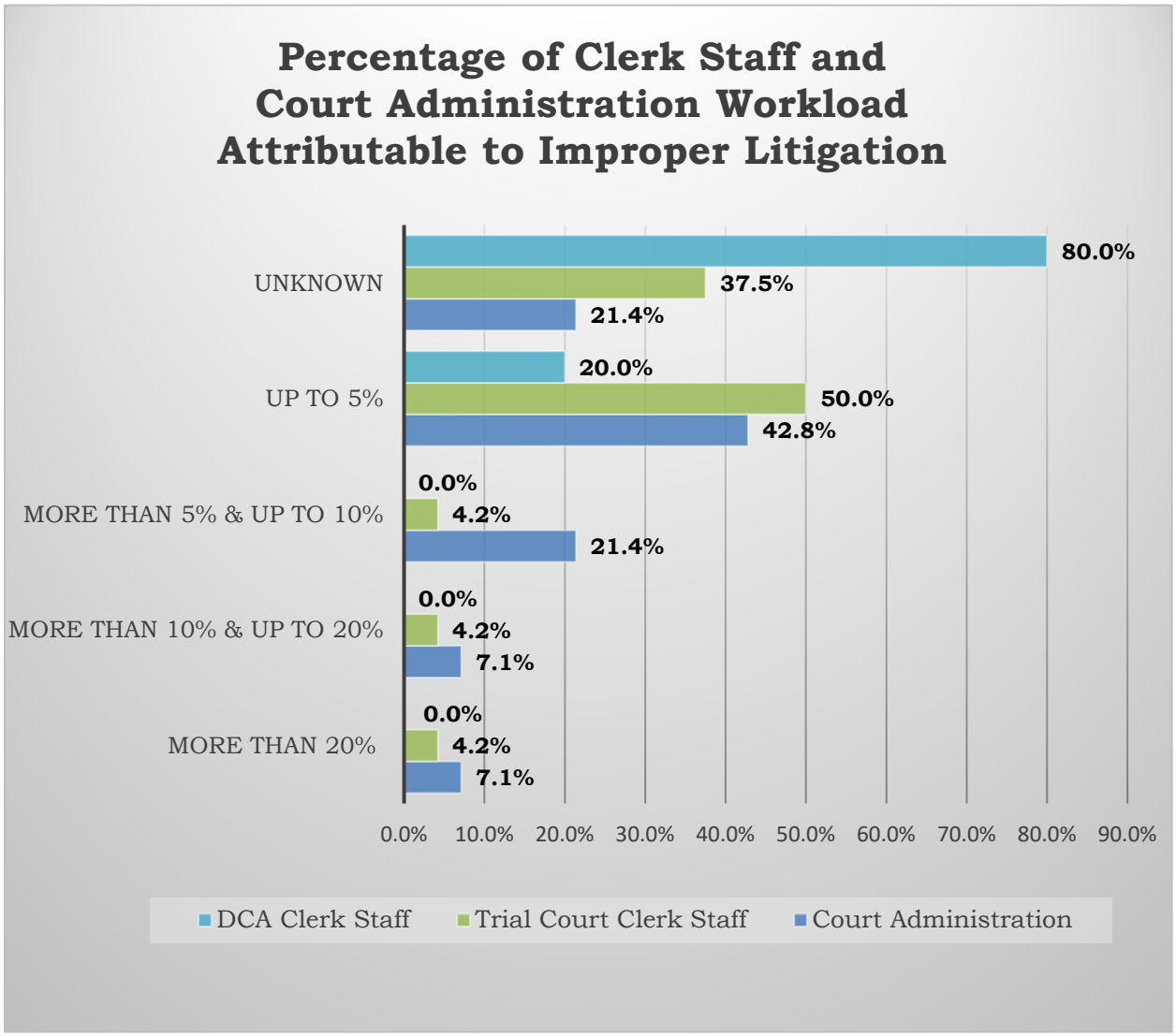

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DISTRICT COURT OF APPEAL CLERKS

Question 1.

DCA clerks were asked whether they have processes in place to identify improper filings at the time of filing by litigants in noncriminal cases. All five responded "yes."

DCA clerks were then asked to describe their processes and whether the information was communicated to the court. Additionally, they were asked the following questions relating to communication with the court:

- If communicated to the court, DCA clerks were asked to identify the title of the person to whom the information is communicated and the purpose of the communication.

- If not communicated to the court, DCA clerks were asked how the information is used.

The summarized or quoted responses of the DCA clerks follow:

- The clerk's office does not review the substance of filings, but maintains a list of litigants who are barred from further pro se filings. If such litigant attempts to file pro se, the clerk "reviews the new filing to see if it falls within the scope of the order or opinion barring the filer. If so, the filing is rejected and returned to the filer with the reason for rejection."
    - Stated that this information is communicated to the court, and provided the following explanation of who receives the information and for what purpose: If, after rejection, the filer files a pleading attempting to challenge the determination that the attempted filing is barred, and the issue is debatable, then that pleading is submitted to the panel of judges who presided over the case in which the filer has attempted to file for a final determination. Or, if the filer had attempted to file a new case, the clerk's office submits the pleading to the panel of judges assigned to decide motions for the week for a final determination.

- Substantively the same as the first bullet above.
    - Stated that this information is <u>not</u> communicated to the court and that, if the case cannot be opened due to the court's order, the clerk writes the filer to explain that no new case will be opened and that the notice or petition will be placed in a correspondence file without further action.

- The judge stated he does not know the details of the process, only that the clerk's office notifies the court – when the case is first tasked to a panel – that the lower court (or this court) has previously deemed one of the parties a vexatious litigant (or was previously barred from proceeding pro se).

  - The judge stated that this information is communicated to the court and that the information is sent to the Clerk of Court or Chief Deputy Clerk.

- Substantively the same as the first bullet above. Added that, "[d]uring the course of an opened case, if a filer is making what appear to be improper filings which are not authorized by the Florida Rules of Appellate Procedure, those filings are brought to the attention of the appropriate merits panel or motions panel. The court will often strike such filings, and if the filings continue, warn the filer or issue an order to show cause as why the filer should not be prohibited from future pro se filings."
  - Stated that this information is communicated to the court, and provided the following explanation of who receives the information and for what purpose: "The Clerk's Office indicates in the case management system that the litigant has been previously warned, which is viewable to the merits panel judges and court staff. Individual filings which may be improper are brought to the attention of the appropriate merits panel or motions panel through the court's electronic workflow system."

- The electronic case management system ("CMS") "alerts us when a pro se filer has been barred. The proposed filing is given to me for review. If the filing is prohibited, it is returned as rejected."
  - Stated that this information is <u>not</u> communicated to the court and that "We use the information to reject the filing. We do not track filings."

Question 2.

DCA clerks were asked to describe the impact that filings constituting improper litigation in noncriminal cases have on clerk workload. Their responses are summarized or quoted below.

- Indicated that is difficult to tell as we do not review the substance of the pleadings. Most staff time is spent on calls and with people at the counter.

- Indicated that the impact on workload is inestimable and further described the impact as follows:
  - The office receives a few notices or petitions annually in noncriminal cases from pro se filers who have been barred from opening new cases. These cases require review by a case opening deputy clerk and the clerk.
  - The office frequently receives calls that are frivolous or harassing. Some weeks, no calls occur. Other weeks, the "office, as a whole, spends several hours with callers who … ask questions that we have repeatedly explained we cannot answer or who 'lecture' us. I use 'lecture' to refer to callers, who are likely ill, who monologue about their cases, their life, or the world in general."

- Judge stated, "I do not know."

- "Although improper filings are less of an issue in noncriminal cases compared to criminal cases, the more vexatious filers in noncriminal cases tend to: file multiple improper documents through the Statewide Portal, mark non-emergency filings filed through the Statewide Portal as emergencies or as time-sensitive in an attempt to 'jump the line' to have their filings processed ahead of those of other filers, personally serve judges and court staff with documents they file through the Statewide Portal, call the Clerk's Office to take issue with the court's rulings, be belligerent with court staff both in person and over the phone, and continue to file improper documents in a case even after it has concluded. All of the above issues require an inordinate amount of staff time, often require the intervention of multiple staff members and levels of supervisors, and take staff away from working on important matters."

- "The greatest impact is the time required to address this issue. Typically[,] vexatious pro se filers will call repeatedly, and keep the deputy clerks on the phone for extended periods of time to no purposeful end."

Question 3.

DCA clerks were asked to identify up to three of the top noncriminal case types in which filings constituting improper litigation in noncriminal cases have on clerk workload improper filings constituting improper litigation in noncriminal cases occur most frequently. The judge indicated "unknown" and one DCA clerk stated that the judges can better answer the question (the clerk also indicated two case types that are noted below). The numbers in parentheticals below indicate the number of DCA clerks who provided the same or similar answer.

- Civil
  - Circuit civil (1)
  - Foreclosures (3)
  - Evictions (2)
  - Denial of Medicaid benefits (1)
- Domestic relations/family law cases
  - Domestic violence injunctions (1)
  - Family (2)
  - Child custody/visitation (1)
  - Domestic Relations (1)

Question 4.

DCA clerks were asked to describe the processes utilized by their offices to ensure the court is made aware of a clerk's determination that a prisoner is indigent for the purpose of deferring court costs and fees under § 57.085, Fla. Stat. Under subsection (6) of the statute, the court must review an indigent prisoner's claim to determine whether it is legally sufficient to state a cause of action for which the court has jurisdiction and may grant relief. The court must dismiss a claim or part thereof that is insufficient, frivolous, malicious, intended to harass, or meets other similar criteria.

The DCA clerks' responses are summarized or quoted below.

- If the lower court determines that a filer is indigent, the lower court's order is sent to the appellate court where it is docketed in the case. (2)
- The judge indicated unknown.
- "The clerk of the lower tribunal files the determination or order with the court through the Statewide Portal."
- "The indigent determination is listed on the case information panel."

DCA clerks were also asked if their offices can search court records to identify cases in which the court dismissed an indigent prisoner's claim under subsection (6). Four clerks (80%) responded "no" and the judge responded "unknown."

Question 5.

DCA clerks were asked to describe any recommendations they may have to more proactively deter or address improper filings in noncriminal cases. Responses received are summarized or quoted below.

Amendments to Rules of Court:

- "Perhaps, after a number of frivolous filings are made in the same case, require some sort of monetary fee."
- "Discourage use of the 'emergency filing' feature in the portal - perhaps require the filer to identify the emergency from a pre-set list of reasonable emergency reasons, which would not include that the filer is desperate or that the filer didn't make the filing on time."

Amendments to Statutes and Changes to Operational Processes:

No responses were provided.

Other:

- "There could be features added to the statewide E-Filing Portal to discourage (1) personal service on judges/clerks and (2) overuse of the 'emergency' button. It may be helpful if the Portal required more information about why a filing is an 'emergency' or include more detailed examples/explanation of what constitutes an emergency. Specifically, a statement that the filing is due that day does not equal an emergency."
- "There should be more information in the Portal which explains to filers that they should not mark filings as emergencies or time-sensitive as a matter of

course. Also, filers should be required to state a detailed reason why a filing is an 'emergency' instead of having a dropdown with only a few options."

TRIAL COURT CLERKS

Question 1.

Trial court clerks were asked whether they have processes in place to identify improper filings at the time of filing by litigants in noncriminal cases:

- Fifteen trial court clerks (62.5% of the respondents) indicated "no"; and
- Nine trial court clerks (37.5% of the respondents) indicated "yes."

Trial court clerks who responded "yes" were asked to describe their processes and whether the information was communicated to the trial court. Additionally, they were asked the following questions relating to communication with the trial court:

- If communicated to the trial court, the trial court clerks were asked to identify the title of the person to whom the information is communicated and the purpose of the communication.
- If not communicated to the trial court, the trial court clerks were asked how the information is used.

Staff Note: In short, based on the responses summarized below for the nine trial court clerks who said "yes" to the initial question:

- *Five have processes in place to identify litigants who have been declared by court order to be a vexatious litigant under the statute.*
- *One tracks filings by sovereign citizens.*
- *One reviews civil cases and notifies the court of potential frivolous or vexatious filings.*
- *One notes frivolous or improper filings in the clerk's note tab in the case management system ("CMS") and notifies the judge's judicial assistant ("JA").*
- *One indicated that frivolous or improper filings by prisoners, as identified by a law clerk, are sent to the judge with an order for his/her signature.*

The nine trial court clerks' summarized responses follow:

- Five responses relate only to processes for litigants declared by court order to be vexatious litigants under § 68.093, Fla. Stat. For such litigants, the five trial court clerks indicated the following, respectively:
  - An alert is placed on the case in Benchmark, which results in notifying the deputy and the Florida Supreme Court ("FSC") Clerk of the case. This information is not communicated to the trial court. Further relevant information was not provided.

  - The court order is entered into the CMS for a pending case and posted in the workspace where new cases are entered into the CMS, so clerks are alerted of the ban on new cases. This information is communicated to the trial court. Further information was not provided.
  - Pro se filings are compared against a list of vexatious litigants. This information is not communicated to the trial court. Electronic and paper filings received from vexatious litigants are rejected by the trial court clerk.
  - The case file is updated to reflect the court order and trial court clerk staff are instructed to watch for further pleadings from the vexatious litigant. The order is sent to the FSC Clerk. The information is provided to the trial court through a docket entry or a case alert.
  - Filings are reviewed by the deputy clerk against a list of vexatious litigants. This information is provided to the judge's JA.

- A trial court clerk indicated that the only filings by sovereign citizens are monitored. These are forwarded to the trial court clerk's legal team. This information is not communicated to the trial court, but is filed in the case.

- A trial court clerk indicated that wills are reviewed to determine that they are original and, if not, the party is asked to submit the original. For civil cases, the trial court is notified of potential frivolous or vexatious filings.

- A trial court clerk indicated that "customers," who are making or who have made improper filings, often require a significant amount of time to help and sometimes must be referred to senior managers or the sheriff's office. The clerk's intake team notes a frivolous or improper filing in the clerk's note tab in the CMS and notifies the presiding judge's JA.

- A trial court clerk indicated that the law clerk reviews prisoner cases to determine if the filing is frivolous or otherwise improper. If it is, the law clerk prepares an order for the judge to sign.

Question 2.

Trial court clerks were asked to describe the impact that filings constituting improper litigation in noncriminal cases have on clerk workload. Their responses are summarized or quoted below. The numbers in parentheticals indicate the number of trial court clerks who provided the answer.

- Unknown (3) and no impact (2)

- Minimal impact as there are few improper filings. (2)

- Staff time, and expenses for equipment, for scanning, docketing, redacting, and processing improper filings. (7)

- Staff time spent comparing pro se and other filings against vexatious and frivolous litigant lists to ensure that the filings are not accepted (4)

- Staff time to review poorly drafted, lengthy documents, which often lack a proper case caption, to determine if they are a filing or a public or court records request. Frequently, these litigants apply for an indigency determination that requires clerk time to review; file injunctions not requiring a filing fee; or refuse to pay a filing fee, which then requires the clerk to invoice the litigant and sometimes have to engage in extensive correspondence with the litigant. (2)

- Many of these litigants email, call, and visit regularly insisting to speak with specific clerks, management, or our attorney. They are usually argumentative as to how their case is being handled by opposing counsel and/or the court. (1)

- These filings are very time-consuming "with numerous entities involved with getting the pleadings through the proper channels." (1)

- Workload is increased because the filer will appeal an order dismissing the case. The clerk must prepare the appeal for the DCA, which typically dismisses the appeal. This results in much wasted time and work by the clerk. (1)

- "Medium to high impact on the workload as it requires many more steps outside of normal operations for accepting a filing." (1)

- "Searching records for improper filings: time spent[.]" (1)

Question 3.

Trial court clerks were asked to identify up to three of the top noncriminal case types in which filings constituting improper litigation in noncriminal cases occur most frequently. The numbers in parentheticals indicate the number of trial court clerks who provided the same or similar answer.

- Civil
  - Circuit civil (13)
  - County civil (8)
  - Foreclosure (4)
  - Other circuit civil (2)
  - Contract/indebtedness (1)
  - Inmate replevins (1)

- Writs generally
  - Mandamus (4)
  - Habeas (3)
  - Certiorari (1)

- Domestic relations/family law cases
  - Domestic violence injunctions (3)

  - Family (2)
  - Domestic Relations (2)

- Probate (1)
- Mental Health (1)
- Other (1)
- Unknown (3)

Question 4.

Trial court clerks were asked to describe the processes utilized by their offices to ensure the court is made aware of a clerk's determination that a prisoner is indigent for the purpose of deferring court costs and fees under § 57.085, Fla. Stat. Under subsection (6) of the statute, the court must review an indigent prisoner's claim to determine whether it is legally sufficient to state a cause of action for which the court has jurisdiction and may grant relief. The court must dismiss a claim or part thereof that is insufficient, frivolous, malicious, or intended to harass, or meets other similar criteria.

Staff Note: In short, based on the responses summarized below for the trial court clerks:

- *Nine place the determination of indigency in the court file where it can be accessed by the court.*
- *Nine have processes where the determination is directly brought to the attention of the court or where the prisoners' affidavits and sometimes proposed orders are sent to the court for a ruling or review.*
- *One sends all pro se filings to the division judge for review.*
- *One has no formal process.*
- *Four provided no indication of whether the information is provided to the court.*

The trial court clerks' responses are summarized below. The numbers in parentheticals indicate the number of trial court clerks who provided the same or similar answer.

- The determination of indigency ("DI") is filed/docketed in the CMS or court file where it may be accessed by the court. (9)
- It is reflected in the docket and the clerk in the courtroom brings it to the judge's attention. (1)
- The prisoner's affidavits and an order are submitted to the court for the court to make a ruling. (4)

- The DI is submitted to the court. (1)
- The DI is made by the clerk in open court; thereby, notifying the judge. (1)
- The DI is submitted to the court with a proposed order. (1)
- The prisoner's filing is sent to the judge's office with a cover sheet. (1)
- All pro se filings, including those of indigent persons, are forwarded to the division judge for review. (1)
- No formal process. (1)
- Explained all or part of the process used by the clerk to determine indigency, but did not indicate whether the court is made aware of the DI. (4)

Trial court clerks were also asked whether their offices can search court records to identify cases in which the court dismissed an indigent prisoner's claim under subsection (6) of § 57.085, Fla. Stat. Fifteen clerks (62.5% of the respondents) responded "no" and nine clerks (37.5% of the respondents) responded "yes."

Question 5.

Trial court clerks were asked if their offices could search records to identify pro se litigants who have been determined by the court to be vexatious litigants pursuant to § 68.093, Fla. Stat., and required to furnish security. Sixteen clerks (67% of the respondents) responded "no" and eight clerks (33.3% of the respondents) responded "yes."

Of the eight clerks who responded "yes":

- Two (8.33% of the respondents) indicated that they cannot determine whether the vexatious litigant furnished the security while six (25% of the respondents) indicated they can.
- One (4.2% of the respondents) indicated that he/she cannot determine whether the case was dismissed for a failure to furnish the security, while seven (29.2% of the respondents) stated they can.

Trial court clerks were also asked to describe the processes used to ensure that their offices receive all prefiling orders entered by a court under § 68.093(4), Fla. Stat., and provide such orders to the FSC Clerk as required by the statute. The trial court clerks' responses are summarized or quoted below. The numbers in parentheticals indicate the number of trial court clerks who provided the same or similar answer.

Staff Note: When conducting preliminary research, staff discovered that some "vexatious litigants" listed in local administrative orders were not included on the FSC Clerk's list of "vexatious litigants." Anecdotal reports from persons who have reached out to the workgroup have also mentioned this issue. Of the 24 responses received: (a) eight

appear to have a process to provide it to the FSC Clerk; (b) seven appear to be aware of the issue but did not specify whether they send it to the FSC Clerk; (c) two are addressing this issue now; (d) one is unaware of any such orders in the county; and (e) six indicate not having a process or appear to not know about this issue.

- The prefiling orders are sent to the FSC Clerk when received by the clerk. (6)
- The clerk prepares an order when the court finds a litigant to be a vexatious litigant. This order is entered into the CMS, notice is provided to all deputy clerks, and the information is provided to the FSC Clerk. (1)
- Prefiling orders are filed by the court through the e-portal. The clerk then enters the order into the CMS and transmits it to the FSC Clerk. (1)
- Indicated placing the order in the CMS or notifying certain staff of the order, but did not specify information as to whether it is sent to the FSC Clerk. (7)
- We are unaware of any prefiling orders in this county. (1)
- Our office has not received any prefiling orders in the county, but we are creating a docket code to track this issue in the future. (1)
- "We receive emails daily in regards to court filings." (1)
- "We have our Judge review filings we are not sure of." (1)
- The process is "being drafted and revised." (1)
- "We currently do not have a process in place for this." (1)
- Unknown (2) or "N/A" (1)

Question 6.

Trial court clerks were asked to describe any recommendations they may have to more proactively deter or address improper filings in noncriminal cases. Responses received are summarized or quoted below.

Amendments to Rules of Court:

- Create a rule that would support the clerks and courts in having a clear and apparent manner to determine and track litigants responsible for improper litigation. The courts should make this determination and the rule should support a motion and an order that can flag these cases for tracking. This rule change should be funded.
- "Make it clear if the vexatious litigant is permitted to file a Notice of Appeal or an Injunction for Protection."

- Amend the rules to "standardize the criteria for determining what constitutes a 'vexatious litigant.'" *Note: The criteria are in statute. It does not appear possible to change/standardize it with a court rule.*

- "Provide Judges and defendants with the latitude and opportunity to commence a hearing to make findings as to the motives of plaintiff earlier in the case, for example during pre[-]trial motions and/or discovery."

Amendments to Statutes:

- Amend the vexatious litigant statute to:
  - Include, rather than except, small claims cases or, if not, create a statute limiting vexatious filings in small claims cases to 10 actions filed within an appropriate period.
  - Extend the lookback period of five years in the statute to seven or eight years.
  - "Include in the definition of 'vexatious litigant' triggering actions that are not only 'finally and adversely determined against such person or entity,' but also those that are 'voluntarily dismissed' by the person. This would prevent individuals from filing frivolous actions, settling with unsophisticated parties, and then dismissing the actions … to remain under the filing cap."
  - "Add a third definition of 'vexatious litigant' (as s. 68.093(2)(d)(3), F.S.) to state 'Any person or entity who has not paid the appropriate filings fees within ___ days (possibly 60) and who has failed to file an application for determination of civil indigent status.[']"
  - "Add a section to s. 68.093 recommending that the clerk of court publish, on its website, a copy of s. 68.093 and a link to the Florida Supreme Court's list of vexatious litigants. This may help defendants in actions brought by vexatious litigants by (a) making them aware of their rights under Florida law and (b) allowing them to determine whether the plaintiff in their action has been deemed a 'vexatious litigant.'"

- "Statutes could be amended to criminalize frivolous, sham, harassing, malicious, vexatious, or similarly improper filings in noncriminal cases."

- "Upon a determination by the Court that plaintiff has commenced a frivolous, harassing, malicious, vexatious, or similarly improper filing, the Court shall have the authority and ability to sanction the plaintiff by imposition of a fine and fees."

Changes to Operational Processes:

- "At the Portal level, there could be one listing for the entire State of Florida of known vexatious litigants with alerts to the individual counties."

Other:

- "Statute awareness."

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- "Some sort of notification to alert the judiciary of a possible vexatious litigant."

APPENDIX C

TRIAL COURT ADMINISTRATORS

Question 1.

TCAs were asked how long they have served as a TCA. The responses indicated that:

- Nine (64.3% of the respondents) have served for more than 10 years.
- Three (21.4% of the respondents) have served for more than five years and up to 10 years.
- One (7.1% of the respondents) has served for more than 3 years and up to 5 years.
- One (7.1% of the respondents) has served for 1 to 3 years.

Question 2.

TCAs were asked to describe the impact that filings constituting improper litigation in noncriminal cases have on court administration (non-judicial) workload. Their responses are summarized or quoted below. The numbers in parentheticals below indicate the number of TCAs who provided the same or similar answer.

- Little Impact
  - No impact. (1)
  - Very little impact as the filings go to the judge. (1)
  - Little to no impact as few cases in the small circuit fall under the category. (1)
  - "Subjectively, small impact." (1)
- Improper filings affect everyone (e.g., administrative staff, JA, staff attorney, case managers, TCA, chief judge, and, if there is a threat against a judge, court security). The recipient must read them, look up the case to find its division, and try to direct it appropriately. Sometimes have to send a response. These litigants also make public records requests, tying up the Public Information Officer's time and sometimes the Court Technology Officer's time. They also call or walk in, which can require a lengthy amount of staff time. Can spend "5 minutes to "hours and hours working on it." (8)
- General/Court Counsel
  - The general counsel is impacted by frivolous cases against judges or cases that otherwise harass a judge. These issues may require research and the development of a strategy to address them on behalf of the judge. (1)

  - "In most instances, these documents are also forwarded to our court counsel's office for review and advice." (1)
  - Sometimes the filings need to be sent to court counsel to determine if there is any merit. (1)
  - Court counsel must review public records requests for redaction. (1)

- Family Cases
  - About 10% of the time in family court case management is spent dealing with these types of pleadings. Staff attorneys spend about 2 to 5% of their time moving through such filings. (1)
  - "We have seen the great impact in Family Law cases in our Pro Se Department." (1)
  - In Unified Family Court, extra case management conferences often need to be set up, which consumes the judge's and case manager's time. (1)

- Sham pleadings must be reviewed by a case manager and judge. "Many times, hearings must be set even though it is known to be a sham." (1)

- "A final impact on our office is our Court Reporting Department. We have one vexatious litigant who makes frequent requests for transcripts and often requests that they be expedited. The transcripts requested are not typically related to an appeal or anything pertinent to a specific issue." (1)

Question 3.

TCAs were asked to describe any recommendations they may have to more proactively deter or address frivolous, sham, harassing, malicious, vexatious, or similarly improper filings in noncriminal cases. Responses received are summarized or quoted below. Each bullet reflects the response of one respondent.

Amendments to Rules of Court:

- Prohibit pro se litigants who have been determined to have brought frivolous or otherwise improper litigation from further pro se filing.

- Need "[r]ules that designate what is frivolous, provide the authority to stop responding, and establish sanctions to violators."

- Need penalties for improper litigation. "While a judge may hold someone in contempt, it is not really a vehicle to address vexatious litigants. Many of these people have mental health issues and … cannot be dealt with the same way as others."

- "Allow us to charge extra for transcript or audio CD requests that are unrelated to an appeal or specific pending motion. Not sure whether this should be a rule or statutory provision."

- "Amend the Florida Rules to more closely mirror the Federal Rules allowing for more judicial discretion for dismissal of actions not based on a motion to dismiss."

- "Unless someone is designated as the gatekeeper for the entry of this litigation entering the court system, I don't see how you can deter citizens/litigants from filing documents; some of these filings may not be readily apparent as frivolous, harassing, malicious, etc."

- Need to amend to require certain elements before you can file a case and to limit improper filings by people who are very litigious.

Amendments to Statutes:

- Statutes should assess fees for improper litigation.

- Need "[s]tatutes that designate what is frivolous, provide the authority to stop responding, and establish sanctions to violators."

- Need to amend to require certain elements before you can file a case and to limit improper filings by people who are very litigious.

Changes to Operational Processes:

- "We have tried many different approaches for dealing with these types of litigants, especially in our Unified Family Court but I don't know that there is a one size fits all solution. We instruct our staff to contact security if they feel threatened and there are panic buttons installed in the offices in case of an emergency. We cannot simply turn people away. Additional staff would definitely help because we might be able to assign 1 or 2 staff to deal with these type of litigants instead of diverting time from another case manager, or supervisor."

- "When we have a litigant who has abused judicial process by filing these types of cases or papers, we include in the initial orders cautionary language about the possible sanctions for abuse of judicial process, which includes being barred from filing pro se pleadings. The next step after repeated abuse-usually after at least three orders with the cautionary language-we issue an order to show cause why a litigant should not be barred from filing further pro se pleadings. We usually set it for hearing, but we can rule on just the papers. We can then issue an order barring an individual from filing further pro se pleadings, and directing the clerk to return papers unfiled with a copy of the order. This is very similar to what we do in post-conviction cases where a defendant keeps raising the same claims that have been denied and unsuccessfully appealed. As you can see, it takes a lot of time to do this."

Other:

- "I do not have any recommendation at this time but welcome any recommendations or suggestions in dealing with this group of litigants."

APPENDIX D

Examples of Statutory Sanctions for Improper Litigation in Specific Noncriminal Case Types

Statute	Brief Summary
Florida False Claims Act – §§ 68.081–68.092. Fla. Stat. (2021)	An individual, the Department of Legal Affairs, or the individual and the department together may bring an action against a person who has, in any of various defined ways, defrauded the state financially.[1] If the individual proceeds alone, "the court may award to the defendant its reasonable attorney fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment."[2]
Whistle-blower's Act – §§ 112.3187–.31895, Fla. Stat. (2021)	An employee whistle-blower who files a "frivolous action in bad faith" is subject to costs, including attorney's fees, in favor of the prevailing employer.[3] This relief is mandatory.[4]
Public Records – Chap. 119, Fla. Stat. (2021)	If the court determines that a complainant "requested to inspect or copy a public record or participated in the civil action for an improper purpose" — i.e., "primarily to cause a violation of [chapter 119] or for a frivolous purpose" — the court "shall assess and award against the complainant and to the agency the reasonable costs, including reasonable attorney fees, incurred by the agency in responding to the civil action."[5]

[1] §§ 68.082(1)(b), 68.083(1) and (2), and 68.084(3), Fla. Stat. (2021).

[2] § 68.086(2).

[3] § 112.3187(9)(d), Fla. Stat. (2021).

[4] § 112.3187(9) (". . . the relief must include the following:").

[5] § 119.12(3), Fla. Stat. (2021).

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Administrative Procedure Act – Chap. 120, Fla. Stat. (2021)	"When there is an appeal [relating to agency action], the court in its discretion may award reasonable attorney's fees and reasonable costs to the prevailing party if the court finds that the appeal was frivolous, meritless, or an abuse of the appellate process, or that the agency action which precipitated the appeal was a gross abuse of the agency's discretion."[6]
"Public meetings; …" – §§ 286.011 and 286.0114, Fla. Stat. (2021)	If the court finds that an action filed by an individual against a state, county, or municipal entity for violation of the statute requiring that meetings of such entities be open to the public[7] was "in bad faith or frivolous," the court "may assess" attorney's fees against the individual.[8] There is a virtually identical provision in the related statute requiring that members of the public be given a reasonable opportunity to be heard at meetings of government entities.[9]
"Loan modification." – § 494.00296, Fla. Stat. (2021)	The defendant in an action brought for loss as a result of an alleged violation of the loan modification statute[10] may move the court to determine that the action is "frivolous, without legal or factual merit, or brought for the purpose of harassment."[11] If the court so finds, it "may" require the plaintiff "to post a bond in the amount that the court finds reasonable to indemnify the defendant for any damages incurred, including reasonable attorney's fees."[12]

[6] § 120.595(5), Fla. Stat. (2021).

[7] § 286.011(1), Fla. Stat. (2021).

[8] § 286.011(4),

[9] § 286.0114(7)(a), Fla. Stat. (2021).

[10] § 494.00296, Fla. Stat. (2021).

[11] § 494.00296(3)(b)1.

[12] *Id.*

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"Consumer report security freeze." – § 501.005, Fla. Stat. (2021)	A person aggrieved by a violation of the statute governing consumer report security freezes[13] may file a civil action for damages.[14] "Upon a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this subsection was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees that are reasonable in relation to the work performed in responding to the pleading, motion, or other paper."[15]
Florida Deceptive and Unfair Trade Practices Act ("FDUTPA") – §§ 501.201–.213, Fla. Stat. (2021)	Section 501.211 of FDUTPA provides for several remedies: a declaration that an act or practice violates FDUTPA,[16] an injunction against the violator,[17] and damages plus attorney's fees and costs for a violation of FDUTPA.[18] In response, the defendant may by motion allege that an action brought under section 501.211 "is frivolous, without legal or factual merit, or brought for the purpose of harassment."[19] The court, "after hearing evidence as to the necessity therefor," "may . . . require the party instituting the action to post a bond in the amount which the court finds reasonable to indemnify the defendant for any damages incurred, including reasonable attorney's fees."[20]

[13] § 501.005, Fla. Stat. (2021).

[14] § 501.005(16)(a)–(d).

[15] § 501.005(16)(e).

[16] § 501.211(1), Fla. Stat. (2021).

[17] *Id.*

[18] § 501.211(2).

[19] § 501.211(3).

[20] *Id.*

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"Payment by direct deposit of funds." – § 532.04, Fla. Stat. (2021)	An employer may pay an employee by direct deposit to the employee's bank account if the employee so authorizes.[21] An employer may not terminate an employee solely for refusing to authorize direct deposit of wages or salary.[22] An employee so terminated may bring a civil action against the employer.[23] However, "[i]f it appears to the court that the suit brought by the plaintiff was ill-founded or brought for purposes of harassment, the plaintiff shall be liable for reasonable attorney's fees incurred by the defendant."[24]
Viatical Settlement Act – §§ 626.991–.99295, Fla. Stat. (2021)	A person damaged by a person who violates this act may bring a civil action.[25] However, "[i]f it appears to the court that the suit brought by the plaintiff is frivolous or brought for purposes of harassment, the plaintiff is liable for court costs and reasonable attorney's fees incurred by the defendant."[26]
"Civil remedy." – § 634.271, Fla. Stat. (2021) (under "Motor Vehicle Service Agreement Companies," Part I of Chap. 634, Fla. Stat. (2021))	"Any person damaged by a violation of the provisions of this part may bring a civil action against a person who violated such provisions . . . ."[27] However, "[i]f it appears to the court that the suit brought by the plaintiff is ill-founded or brought for purposes of harassment, the plaintiff shall be liable for court costs and reasonable attorney's fees incurred by the defendant."[28]

[21] § 532.04(1), Fla. Stat. (2021).

[22] § 532.04(2).

[23] § 532.04(3).

[24] *Id.*

[25] § 626.9927(3), Fla. Stat. (2021).

[26] *Id.*

[27] § 634.271(1), Fla. Stat. (2021).

[28] § 634.271(4).

APPENDIX D

"Charter schools." – § 1002.33(4), Fla. Stat. (2021)	"No district school board, or district school board employee who has control over personnel actions, shall take unlawful reprisal against another district school board employee because that employee is either directly or indirectly involved with an application to establish a charter school."[29] In a lawsuit over alleged reprisal, relief "shall include" "[p]ayment of reasonable costs, including attorney's fees . . . to the prevailing employer if the employee filed a frivolous action in bad faith."[30]

[29] § 1002.33(4)(a), Fla. Stat. (2021).

[30] § 1002.33(4)(b)4.