

IN THE SUPREME COURT OF THE STATE OF FLORIDA

**IN RE AMENDMENTS TO UNIFORM)
GUIDELINES FOR TAXATION)
OF COSTS)**

CASE NO.: SC96726

**RESPONSE OF CIVIL PROCEDURE RULES COMMITTEE
TO COMMENTS OF STEVEN SELLERS TO THE
AMENDED REPORT OF THE CIVIL PROCEDURE RULES COMMITTEE
ON REVISED UNIFORM GUIDELINES FOR TAXATION OF COSTS
IN CIVIL ACTIONS**

The Civil Procedure Rules Committee (“Committee”) appreciates Mr. Sellers’ taking the time to review and provide his view on the proposed Revisions of the Uniform Guidelines for the Taxation of Costs in Civil Actions. As noted previously, the Committee encountered multiple conflicting objectives, and the proposed revisions, taken in the aggregate, attempt to strike a balance between them. One of the most important objectives was to simplify the application of the guidelines so that litigants may predict with greater accuracy the likely total costs. Mr. Sellers’ proposals tend to make the application more complex and therefore more difficult to accurately predict.

Mr. Sellers’ proposals regarding depositions, found at paragraphs two through four of his document, are more complex than the Committee’s simple standard that a deposition be taxable unless the objecting party shows it was not reasonably necessary *when taken*. The Committee’s standard accounts for situations in which the necessity of a deposition is debatable when considered after trial. Such a deposition is nonetheless taxable so long as it was reasonably necessary when taken. The reasonably necessary standard should not be applied at the time of trial because the pleadings may have subsequently changed to such an extent during the course of discovery that the deposition, taken well before the trial, has become irrelevant.

With respect to Mr. Sellers’ proposal regarding the taxation of costs for reproduction of documents, the Committee believes I.B.1–I.B.2 adequately address Mr. Sellers’ concerns. As currently proposed, the objecting party may successfully defend the taxation of reproduction costs by showing that the documents neither assisted the court in reaching a conclusion nor were reasonably necessary. Moreover, the Committee disagrees that a party will not be encouraged to scan documents. A party may find it more or less efficient to scan the documents. In either case, the cost can be taxed if the requirements of the guidelines are satisfied.

Mr. Sellers' proposal with respect to expert witnesses is significantly more complex and expensive than the Committee's proposal. The Committee's proposal, taken as a whole, attempts to strike a balance between making the prevailing party whole, while also reducing the cost of litigation. Tinkering with the expert witness issues will require an adjustment in another area to maintain the overall balance. Furthermore, the Committee's proposal provides the non-prevailing party with an easier calculation (*i.e.*, the deposition time plus the trial time). Mr. Sellers' proposal includes examination, inspection, and/or research time required to formulate an opinion. That time will significantly increase the overall cost of litigation and will be more difficult for the non-prevailing party to accurately predict.

Mr. Sellers' proposal with respect to the service of subpoenas and witness fees adds a level of complexity and ignores the inherent vacillating nature of trials. At trial, a party may decide not to call some previously served witnesses based upon how the evidence unfolds. Thus, the Committee believed that the standard should not require that a witness actually testify at trial in order to be taxed.

Lastly, with respect to mediation fees and costs, the Committee did not attempt to distinguish between court-ordered and consensual mediation. The Committee determined that a substantial majority of civil cases are mediated as a matter of course and a party should not be handicapped because it consented from the outset to do what should be done in the normal course of a civil case. While it is anticipated that a trial court will award mediation fees and costs to the prevailing party, the Committee, with the competing objectives in mind, determined that mediation fees and costs were best left in the discretionary category instead of the mandatory category.

Respectfully submitted _____, 2005.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by United States mail to: Phillip J. Jones, Wilkins, Frohlich et al., 18501 Murdock Circle, 6th Floor, Port Charlotte, FL 33948-1039, Hon. J. Kevin Carey, 801 E. Twiggs St., Ste. 344, Tampa, FL 33602-3515, Madelon Horwich, The Florida Bar, 651 E. Jefferson St., Tallahassee, FL 32399-2300, James W. Middleton, Rogers Towers, et al., 1301 Riverplace Blvd., Ste. 1500, Jacksonville, FL 32207-1811, Walter G. Latimer, Marlow Connell et al., 2950 Southwest 27th Ave, Ste. 200, Miami, FL 33133-3776, Gail Leverett Parenti, Parenti, Falk, et al., 113 Almeria Ave, Coral Gables, FL 33134, Keith H. Park, Law Offices of Keith Park, Ste 200, 2240 Palm Beach Lakes Blvd, West Palm Beach, FL 33409, Daniel K. Bean, Holland & Knight, LLP, P.O. Box 52687, Jacksonville, FL 32201-2687, Bill Wagner, 601 Bayshore Blvd, Ste 910, Tampa, FL 33606, William E. Hahn, Hahn, Morgan & Lamb, 2701 North Rocky Point Dr., Ste. 410, Tampa, FL 33607, Henry Trawick, P.O. Box 4009, Sarasota, FL 34230-4009, T. Rankin Terry, 2121 McGregor Blvd., Ft. Myers, FL 33901-3494, Kelly Hamer, 307 NW 3d St., Ocala, FL 34475-6638, and Steven Sellers, 537 E. Park Ave., Tallahassee FL 32301, on _____, 2005.

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