Mark Romance, Chair, Civil Procedure Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, file this Response to Comments submitted by Mr. Henry Trawick. This Response was approved by the Committee by a vote of 35-1.

The Committee appreciates Mr. Trawick’s desire for a more concise form. Nevertheless, it believes that the form adopted by the Supreme Court should remain unchanged. The Committee believes that separating the elements required by §48.23, Fla. Stat. into separate subparagraphs will make it easier for practitioners to ensure that they have included each of the required elements. The use of separate subparagraphs also makes it easier for unsophisticated recipients to read and understand the form in situations in which there are multiple plaintiffs or in which the legal description of the property is lengthy.

Additionally, the Committee notes the following concerns with Mr. Trawick’s proposed form:

- The revised Note attempts to place responsibility on the Clerk for adding a case number to the form. The Committee assumes that Mr. Trawick was concerned that the practitioner might not have a case number yet if the lis pendens form is filed at the same time as the complaint in the
underlying action. Nevertheless, rather than attempting to assign responsibility to the Clerk, the Committee believes that the better practice is for the practitioner to be responsible for ensuring that the case number is added to the form. If the form is to be filed at the same time the action is instituted, and the case number is unknown at the time of filing the form, then the practitioner can either use the date of institution of the action to satisfy the requirements of §48.23 or can file the Complaint first and then write the case number assigned by the Clerk into the appropriate blank on the lis pendens notice before filing the notice.

- The second line of the suggested form opens with “The date of institution of this action is” and then follows with a parenthetical that suggests to the practitioner three possible types of dates. But neither the second or third options suggested by the parenthetical are guaranteed to fit with the opening language of the second sentence. The second suggestion is “the date on the clerk’s electronic receipt for filing the action.” Although this should normally coincide with the date the action is filed, there may be exceptional circumstances where the date the action is instituted would be different than the date on the clerk’s electronic receipt. The third suggestion is more likely to cause problems, as it does not actually correspond to a date – it is instead the case number of the action, which would not match at all with the opening language. This phrasing is unnecessarily confusing.

- The form improperly substitutes “foreclosure” for “foreclose” and “petition” for “partition” in the parenthetical in the first line.

- The form restores several prepositions that were deleted by the Supreme Court from the Committee’s original draft, in (a) of the form. (That is, the Supreme Court on its own made a few style changes to (a), which, in the suggested form, have been changed back to the former language.)
Respectfully submitted, ________________________________.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was furnished by United States mail to
Henry Trawick, P.O. Box 4009, Sarasota, FL 34230, this ____ day of __________,
2009.

CERTIFICATE OF COMPLIANCE

I certify that this response was prepared in accordance with the font

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