The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Yarborough, Chair
Senator Burton, Vice Chair

MEETING DATE: Tuesday, January 14, 2025
TIME: 4:00—6:00 p.m.
PLACE: *Toni Jennings Committee Room,* 110 Senate Building

MEMBERS: Senator Yarborough, Chair; Senator Burton, Vice Chair; Senators DiCeglie, Gaetz, Hooper, Leek, Osgood, Passidomo, Polsky, Thompson, and Trumbull

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1		Presentation by the Office of the State Courts Administrator describing the court system's administrative and operational responses to the increased judicial workload and case filings resulting from HB 837 (2023), relating to litigation reforms	Presented
2		Presentation by the Office of the State Courts Administrator providing an overview of problem-solving courts, standards for problem-solving courts, and examples of some of the innovative programs and success stories	Presented
3		Presentation by the Office of State Courts Administrator highlighting the major issues comprising the judicial branch's legislative agenda and providing the recommendations of the Workgroup on Vexatious Litigants	Presented
		Other Related Meeting Documents	

Litigation Reform
HB 837 (2023)

The Honorable Mark H. Mahon

Circuit Court Judge, 4th Judicial Circuit

(Chief Judge, 2015-2023)

HB 837 (2023) – Civil Remedies

- **Took immediate effect when signed by the Governor on March 24, 2023 (Chapter No. 2023-15, Laws of Florida).**

- **Major Provisions:**
  - Changed Florida's comparative negligence system from a "pure" comparative negligence system to a "modified" comparative negligence system (except for medical negligence actions) under which a plaintiff who is more than 50 percent at fault for his or her own injuries generally may not recover any damages.
  - Reduced the statute of limitations for negligence actions from 4 years to 2 years.
  - Revised evidence admissible to prove medical damages in personal injury or wrongful death actions (modified the collateral source evidence rule) and capped the amount of recoverable medical damages.
  - Required the trier of fact in certain negligent security actions to consider the fault of all persons who contributed to the injury (including the perpetrator of a criminal offense) and established a presumption against liability for owners of multi-family properties if the owner has taken certain preventative security measures.

HB 837 (2023) – Civil Remedies

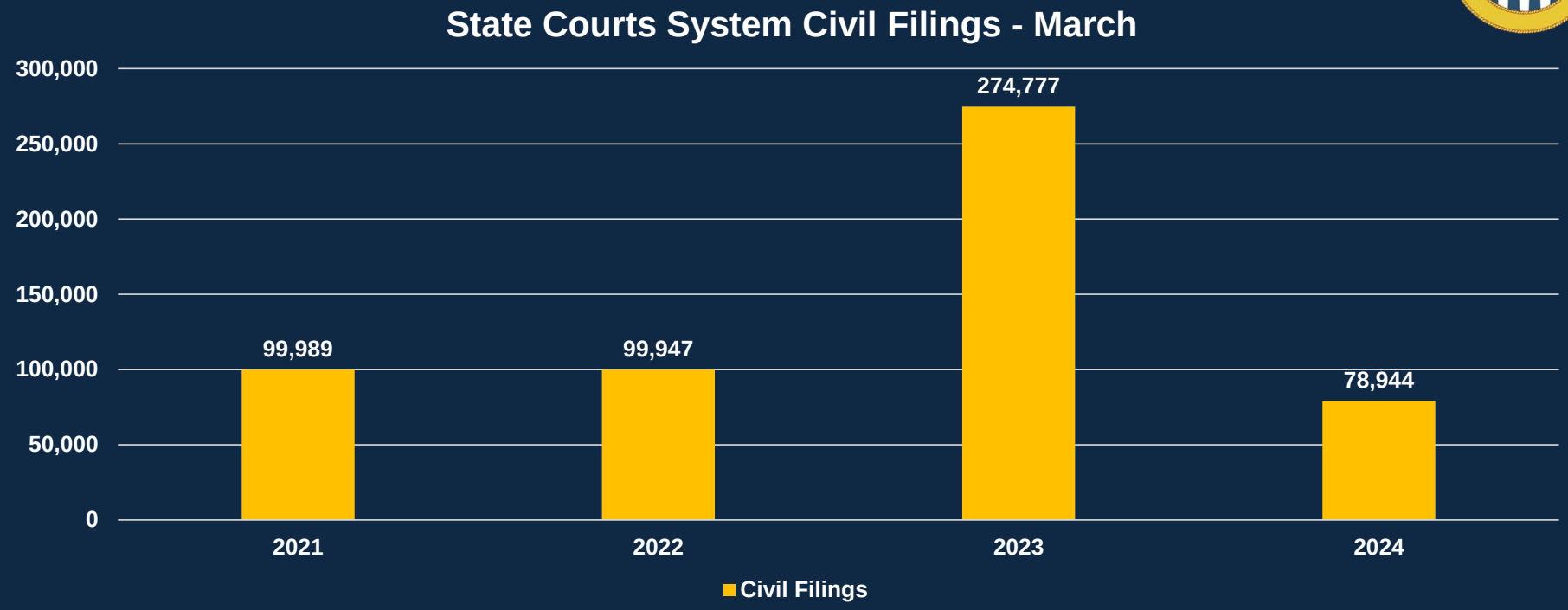
- **Major Provisions (Cont'd):**
  - Revised insurer "bad faith" laws.
    - Provides immunity to insurers for third-party bad faith liability if the insurer tenders the lesser of the policy limits or the amount of a claim within 90 days of receiving notice of a claim.
    - Provides that negligence alone is insufficient to constitute bad faith.
    - Allows insurers, when there are multiple claimants in a single action, to limit the insurer's bad faith liability to the available policy limits under certain circumstances.
    - Requires the insured and a claimant to act in good faith with respect to a claim.
  - Repealed one-way attorney fees in most insurance actions.
  - Provided that the offer of judgment statute applies in any civil action involving an insurance contract.
  - Limited the application of attorney fee multipliers to rare and exceptional circumstances (adopting the federal standard).

- **Applied to causes of action filed after the bill's effective date (unless otherwise provided).**

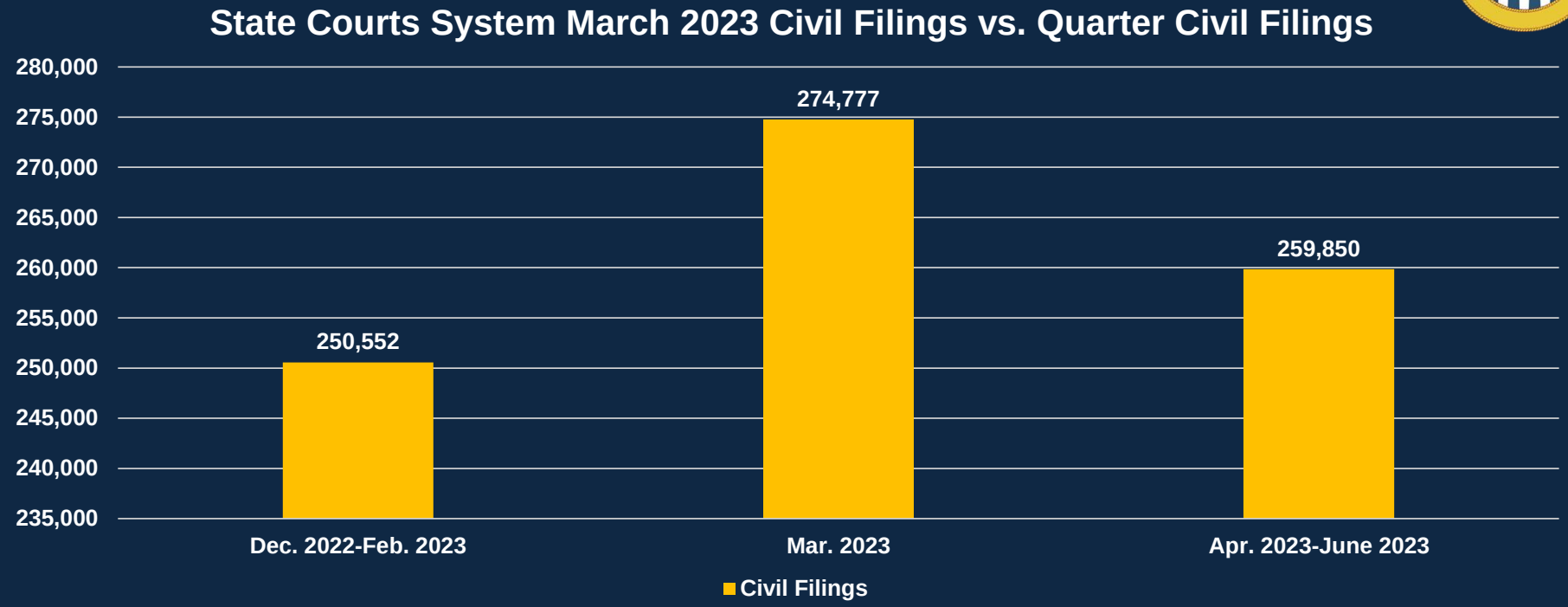
HB 837 (2023) – Civil Remedies

- March 2023 - Signs of an impending surge of civil actions related to the anticipated enactment of HB 837.
  - Discussion in Legal Community
  - News Articles
  - Letter to the Chief Justice

2023 Civil Filing Surge



2023 Civil Filing Surge



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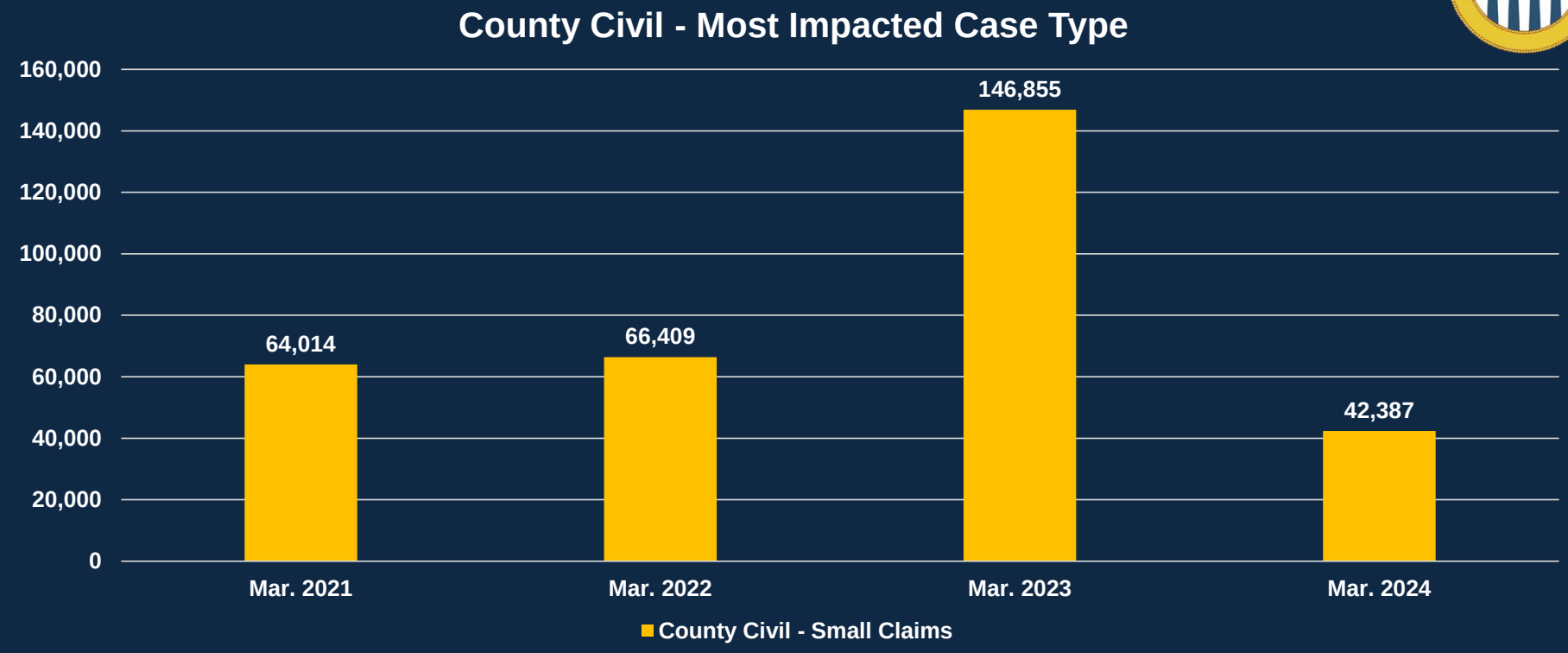
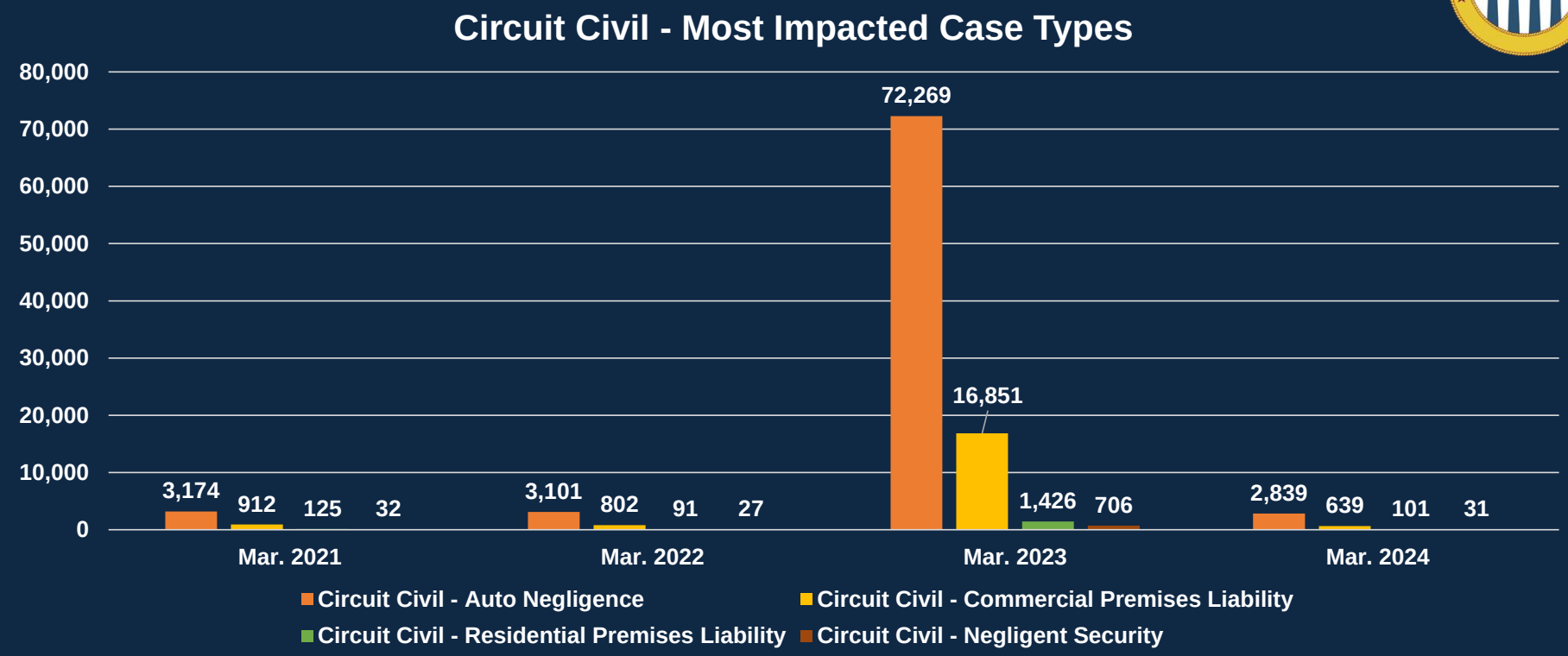
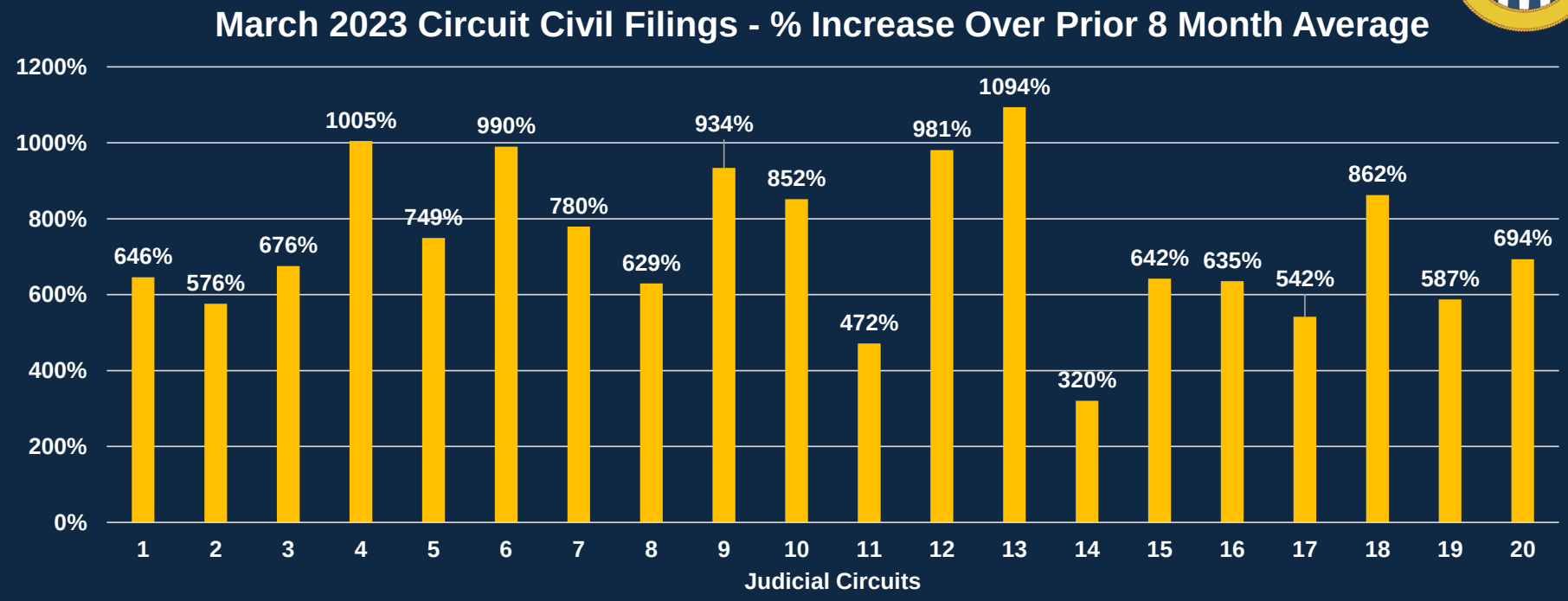


2023 Civil Filing Surge



2023 Civil Filing Surge



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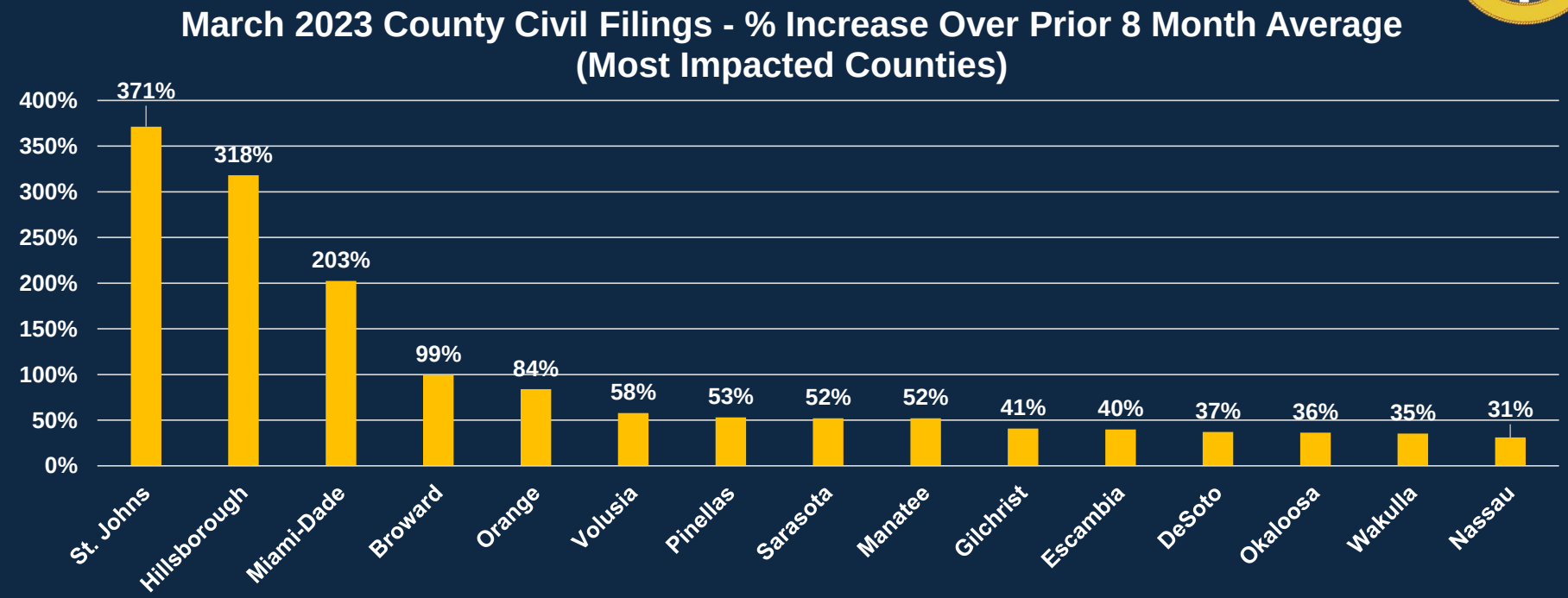


2023 Civil Filing Surge

- In the Fourth Circuit, circuit civil filings increased by 1,005% during the March 2023 civil filing surge.
  - The second most impacted circuit for circuit civil, only slightly behind the Thirteenth Circuit, where circuit civil filings increased 1,094%.
- Most impacted case types in the Fourth Circuit:
  - **Auto Negligence**
    - March 2022 – 237 Cases Filed
    - March 2023 – 6,081 Cases Filed
  - **Commercial Premises Liability**
    - March 2022 – 74 Cases Filed
    - March 2023 – 1,258 Cases Filed

Court System Response

“The opinion that I and many of my colleagues on the bench have is ‘keep calm and carry on.’”

The Honorable Jennifer Bailey
Circuit Administrative Judge, 11th Judicial Circuit

Comprehensive Tort Reform Spurs Record Filings, Florida Bar News, April 6, 2023.

Court System Response

Clerks of Court

- Clerks of court, the first point of contact in the court system for these cases, were valued and indispensable partners in responding to the civil filing surge.

- Many clerks of court were required to take extraordinary measures to process and docket the 232% increase in civil cases while continuing day-to-day operations and avoiding disruption to other essential services.
  - Requesting additional FTEs to handle the caseload.
  - Reassigning resources, where possible, to process the cases and authorizing staff overtime for several weeks following the surge to manage the case load and other statutorily required functions.
  - Utilizing the Florida Courts E-Filing Portal's auto docketing function to assist in handling the surge in filings.

Court System Response

2023 Civil Case Management Framework

- **Florida Rules of General Practice and Judicial Administration**
  - 2.250 – Time Standards for Trial and Appellate Courts and Reporting Requirements
  - 2.545 – Case Management
- **Local Administrative Orders**
- **Judicial Management Council Workgroup on Improved Resolution of Civil Cases (AOSC19-73)**
  - Established October 31, 2019, to make recommendations, if warranted, to improve the resolution of civil cases and propose any revisions in the state's laws, rules of court, or practices necessary to implement the workgroup's recommendations.
  - In 2021, based on the workgroup's recommendations, the Supreme Court established active case management protocols for managing judicial caseloads. The protocols required that all chief judges enter local administrative orders on differentiated civil case management and specify civil cases be governed by a case management order that includes enforceable deadlines and a projected trial date (**AOSC20-23 Amendment 10 and AOSC21-17**).

Court System Response

June 2023 - Civil Case Management (AOSC23-29)

- "Recently we experienced a temporary but significant increase in case filings in certain categories of civil cases. These filings have posed short-term case processing challenges, both to litigants and to the court system. In response, judicial circuits have taken varied approaches to processing these cases, reflecting the conditions and resources unique to each circuit."

- "***It is in the public's best interest both to allow the circuits this flexibility and to maintain our overall commitment to active case management.*** To that end, this order gives circuits the discretion, as to the cases involved in the recent filings increase, to use the date of service or the date that an initial stay is ended—rather than the date of filing—as the starting point for calculating the allowable time for case completion. ***In all other respects, the case management requirements of AOSC21-17 remain unchanged and in effect.***"

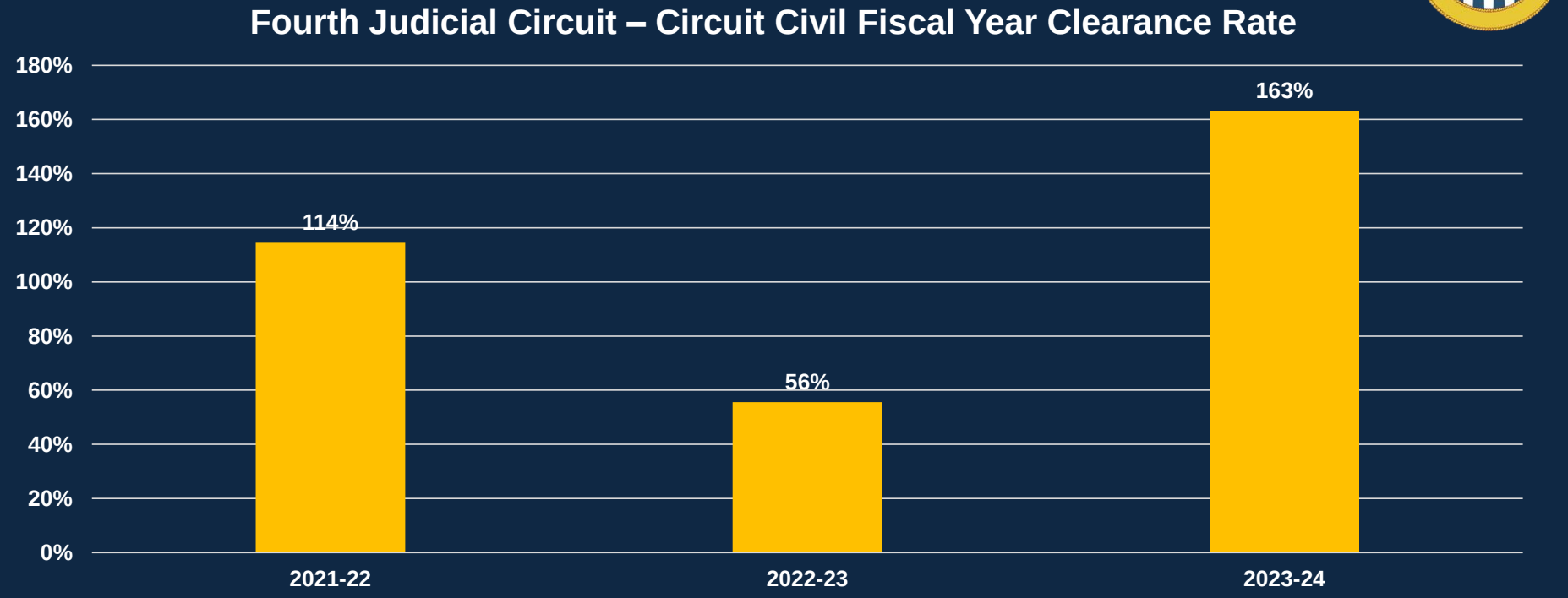
- "Chief judges who avail themselves of the flexibility granted by this administrative order must do so only to the extent reasonably necessary."

Court System Response

Fourth Judicial Circuit – “All hands on deck”

- **Clerk’s Office**
  - Cases were processed as normal filings and given no special designation.
  - Cases with no action are reported to court administration for review and to close by court order or by requesting voluntary dismissal by the attorneys of record.
- **Civil Case Management Unit**
  - Case managers, critical to helping manage differentiated case management requirements for the surge cases.
  - Additional significant judicial workload impact to assist case managers due to case manager staffing limitations.
- **Court Administration**
  - Cases were taken up in the order filed, and to date all cases have been called up for a hearing (case management conference or a notice of proposed dismissal for lack of prosecution).
  - Cases without activity have been dismissed by counsel, consolidated if they were duplicate filings, or dismissed by the court after the hearing.

Clearance Rate



The Fourth Circuit's FY 2023-24 circuit civil clearance rate was the highest in the state.

Court System Response

Eleventh Judicial Circuit (Miami-Dade)

- **Circuit Civil**
  - Declined to implement an across-the-board stay and instead employed differential case management to identify and group cases using various characteristics. This case management technique allowed judges to more efficiently move cases to resolution based on a case's particular needs.
  - Implemented selective hearing intervention to address hearing time challenges. Judges exercised additional prudence in determining which motions or matters required hearings and those that could be decided after reviewing the filings.
  - Liberally used the backup trial division to create supplemental trial and summary judgment calendars.
  - Revised division reports to optimize case tracking and to monitor compliance with case management deadlines.
  - Fast-tracked to completion a pilot project automating issuance of case management orders which allowed court staff to perform other more complex tasks to mange the case surge.
  - Approximately 80% of surge cases have been resolved.

Court System Response

Eleventh Judicial Circuit (Miami-Dade)

County Civil

- Redistributed cases from the Coral Cables branch, which was heavily affected, to five judicial sections in the Central Courthouse to achieve caseload equity. Additional steps were taken to revise the county civil blind filing system to avoid workload imbalances.
- Fast-tracked to completion an increase of civil judicial sections from 20 to 23.
- Revised and refined the deployment of case managers to triage cases based on events such as the failure to prosecute, lack of service, settlement, voluntary dismissal, stipulations, etc.
- Revised division reports to optimize case tracking.
- Worked collaboratively with the clerk of court to track closing queues at each courthouse location.
- Implemented a jury trial blitz designed to close over 2,500 pre-surge cases to avoid developing a backlog related to the civil filing surge.
- Only 1,415 cases remain open from the original 60,000 cases filed in March 2023.

Court System Response

Seventeenth Judicial Circuit (Broward)

- Meeting of judges and private bar to establish that all cases would be resolved in accordance with exiting case management requirements.
- Cases were immediately set for case management conference and uniform trial orders were issued as soon as the cases were at issue.
- Additional case managers for civil greatly assisted in responding to the surge. Case managers proactively assisted in the management of dockets and set case management hearings.
- The Circuit Civil Administrative Judge and the case managers also manage a jury trial pool to ensure that cases that are ready for trial are assigned to judges who may have had their trial calendar “wash” due to settlements.
- The Seventeenth Circuit currently has one of the lowest pending case counts in the circuit’s history.

Court System Response

Thirteenth Judicial Circuit (Hillsborough)

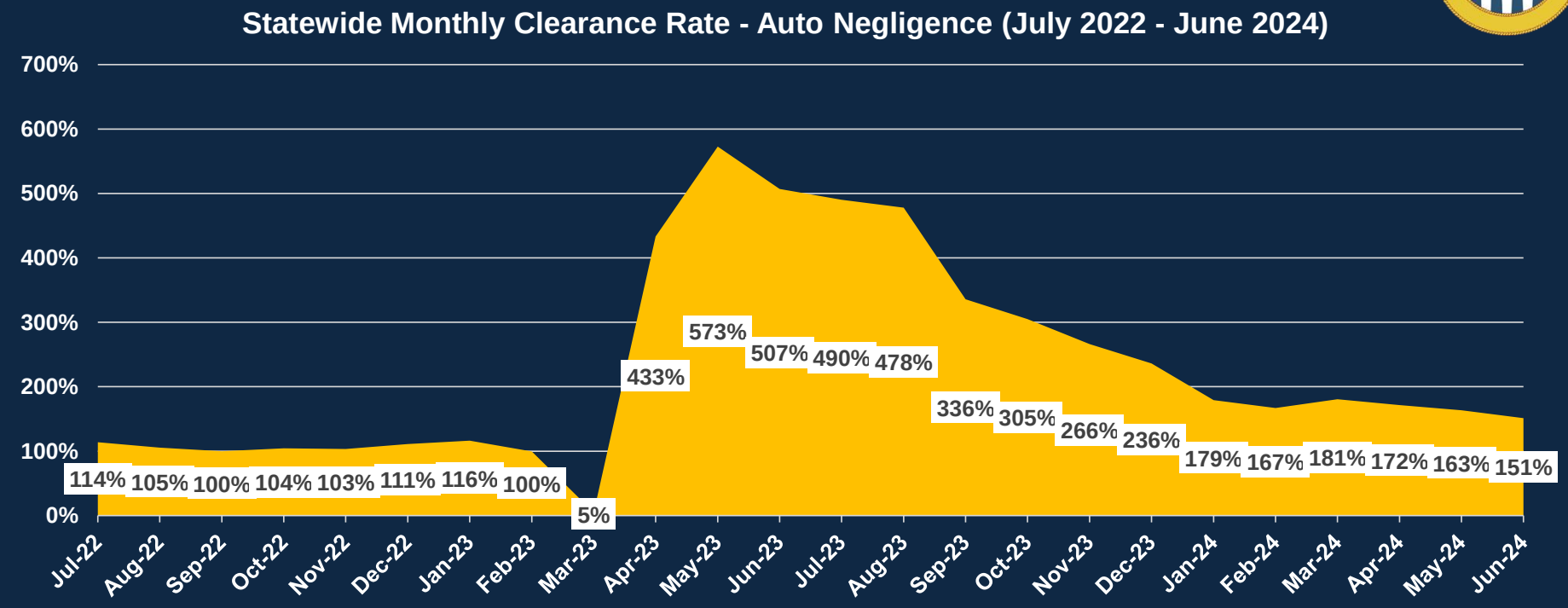
- **Circuit Civil**
  - Issued an administrative order to establish an additional circuit civil division to temporarily manage the case surge. The division handled all circuit civil cases filed as a result of the surge. The new division conducted monthly case management dockets prior to docket hearings. If service was effectuated or a notice of appearance was filed, the case was transferred from the new division back to an original “home division.” If service was not effectuated in accordance with the rules of procedure, the case was dismissed prior to the case management docket and transferred back to the “home division” as a closed case. Process resulted in a disposal of 46% of the circuit civil surge filings.
  - Workflow process was successful due to case manager assistance and a judge with an existing circuit civil assignment who volunteered to take on the additional temporary circuit civil division.

Court System Response

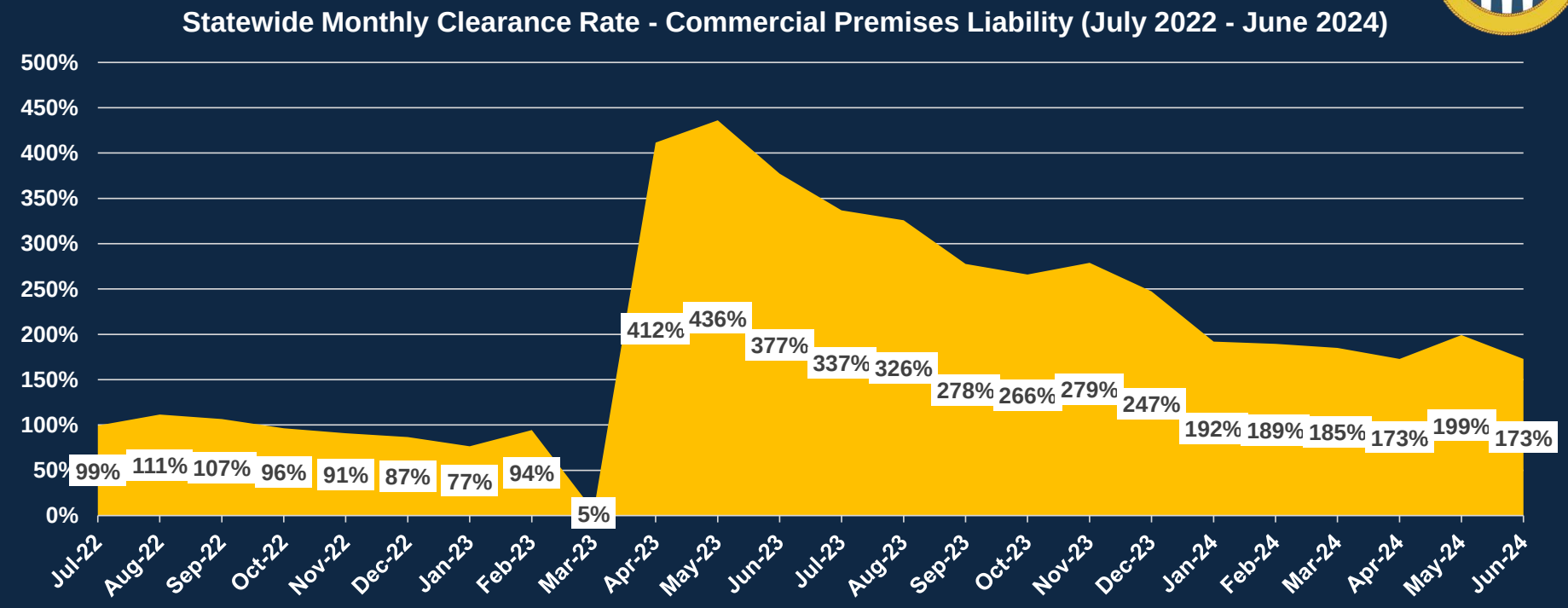
Thirteenth Judicial Circuit (Hillsborough)

- **County Civil**
  - Average county civil case load per division grew from 11,500 cases before the surge in civil filings to 14,000-15,000 cases after the surge.
  - Initially, the county civil divisions did not have the judicial or case management resources of the circuit civil division, but the circuit took proactive measures to assign the judgeships created by the legislature in FY 22-23 and FY 23-24 to county civil. The establishment and assignment of additional county judgeships, coupled with additional OPS case management resources, have reduced the average caseload per division to 6,300-8,300 cases.

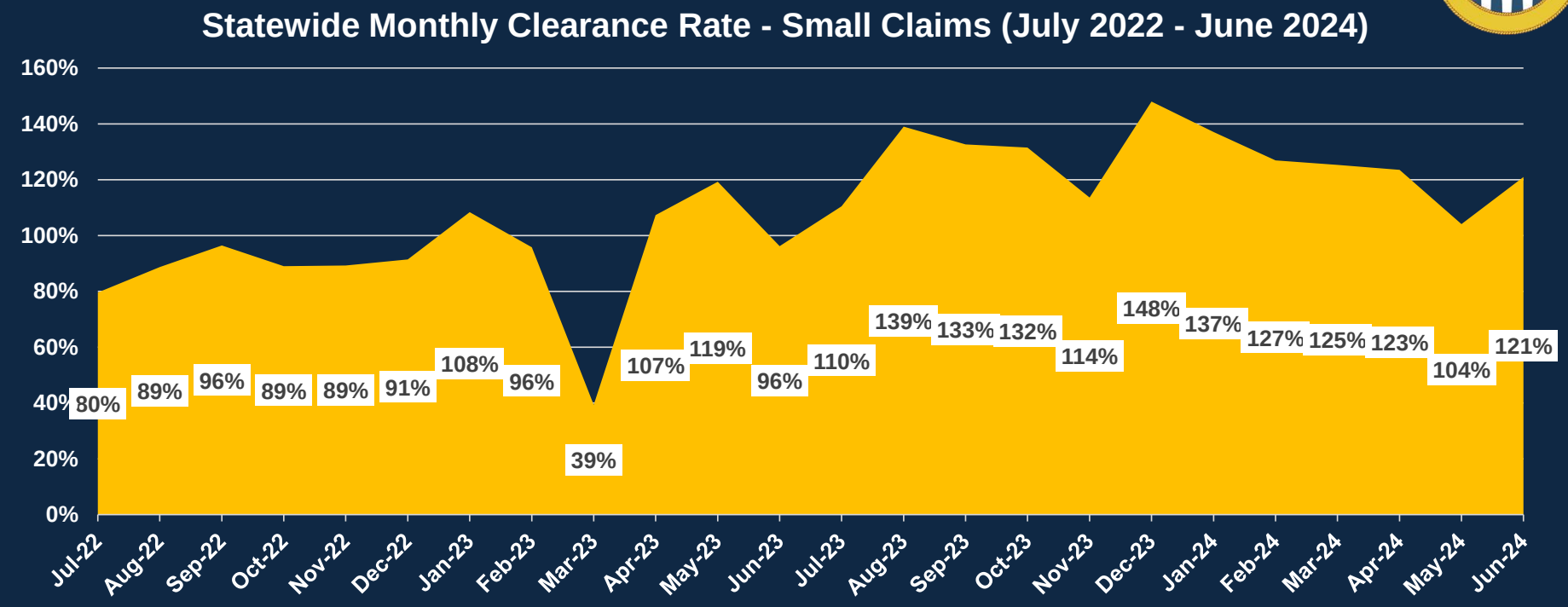
Statewide Clearance Rate
Auto Negligence



Statewide Clearance Rate
Commercial Premises Liability



Statewide Clearance Rate
Small Claims



Supreme Court
Civil Case Management Framework

The Supreme Court has continued to build a framework for active case management of civil cases. The Court recently adopted further amendments to the Florida Rules of General Practice and Judicial Administration, the Florida Rules of Civil Procedure, and multiple other rules to “promote the timely resolution of civil cases through effective case management.” (**SC2023-0962 and SC2024-0662**).

The amended rules create a framework for the active management of civil cases with a focus on adhering to deadlines established early based on the complexity of the case.

- Each civil case must be assigned to one of three case management tracks (complex, general, or streamlined) within 120 days.
- Chief judges must enter an administrative order addressing certain case management deadlines.
- Deadlines in case management orders “must be strictly enforced unless changed by court order.”
- Detailed procedures for modifying the deadlines.
- Motions to continue trial are disfavored and should rarely be granted (and then only upon good cause shown).

New rules went into effect January 1, 2025.

Questions?

Judge Mark H. Mahon
Circuit Court Judge, Fourth Judicial Circuit

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The Florida Senate

APPEARANCE RECORD

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1/14/2025
Meeting Date

Judiciary Committee
Committee

Litigation Reform
Bill Number or Topic

Amendment Barcode (if applicable)

Name Judge Mark H. Mahon

Phone 904-255-1052

Address Duval County Courthouse, 501 W Adams Street
Street

Email

Jacksonville FL 32202
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

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S-001 (08/10/2021)

Problem-Solving Courts

Jennifer Grandal
Chief, Office of Problem-Solving Courts
Office of the State Courts Administrator

What are Problem-Solving Courts?

- Problem-Solving Courts (PSCs) offer evidence-based treatment services to eligible individuals with substance use and mental health disorders combined with judicial supervision.

- PSCs address the root causes of justice involvement through specialized dockets, multi-disciplinary teams, and a non-adversarial approach.

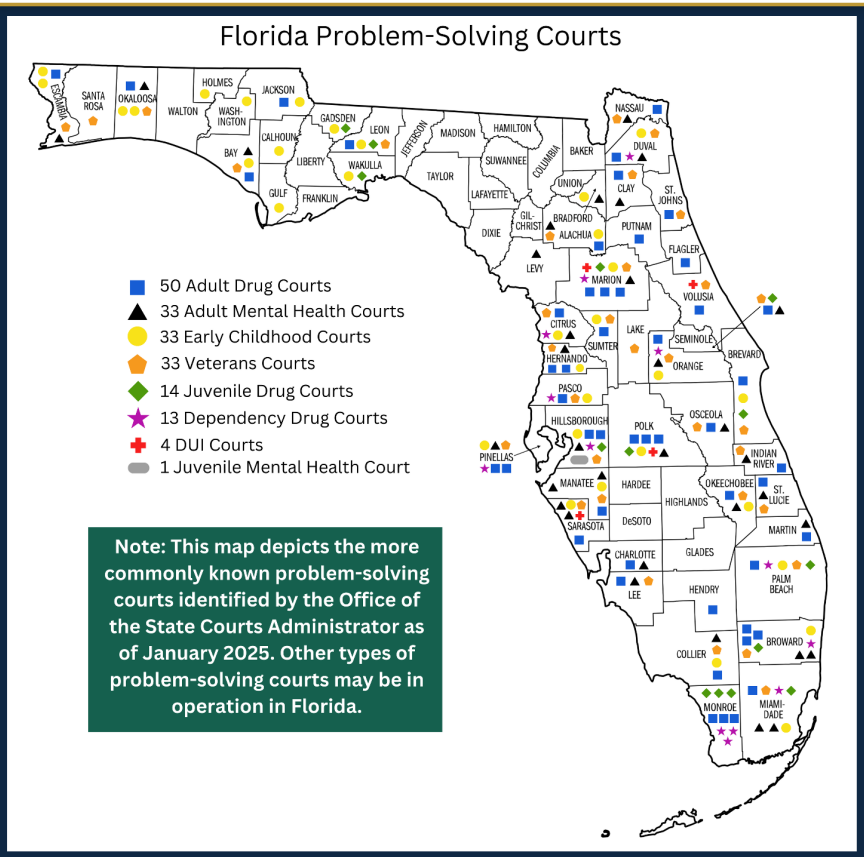
Types of Problem-Solving Courts

- **Drug Courts** (s. 397.334, F.S.) – 83
  - *Adult Drug Courts – 50*
  - *Juvenile Drug Courts – 14*
  - *Dependency Drug Courts – 13*
  - *DUI Courts – 4*
  - *Other (Marchman Act & Domestic Violence) – 2*

Types of Problem-Solving Courts

- **Mental Health Courts** (s. 394.47892, F.S.) – 35
  - *Adult Mental Health Court* – 33
  - *Juvenile Mental Health Court – 1*
  - *Other (Domestic Violence Mental Health Court)* – 1
- **Veterans Courts** (s. 394.47891, F.S.) – 33
- **Early Childhood Courts** (s. 39.01304, F.S.) – 33

Problem-Solving Courts Statewide



Best Practice Standards and Guidelines

- Evidence-based practices proven to be effective through research.
- National best practice standards established for adult treatment courts (i.e., adult drug courts, adult mental health courts, and veterans courts) and dependency drug courts.
- Florida best practice *standards* established for adult drug courts, dependency drug courts, and early childhood courts.
- Florida best practice *guidelines* established for mental health courts and veterans courts.

Legislative Oversight

- **Section 43.51, F.S., requires an annual report on:**
  - Number of participants in each PSC for each fiscal year the PSC has been operating;
  - Types of services provided by the PSC;
  - Sources of PSC funding for each fiscal year; and
  - Performance of each PSC based on outcome measures.

- Next annual report anticipated in February 2025.

Legislative Appropriation

- Special category recurring appropriation in the General Appropriations Act.
- $11.5 million for FY 2024-25.
  - Allowable costs specified in proviso.
- Portion of funds ($9.6M) allocated by Trial Court Budget Commission.

Other Funding Resources

- County and city government
- Local trust funds
- County ordinances / court fees and fines
- State agencies (e.g., DCF, DOC, DJJ)
- Federal and state grants
- Participant fees

Performance Measurement

- Various ways of measuring performance at the local level.

- Critical performance indicators for drug courts include:
  - Recidivism;
  - Retention;
  - Sobriety; and
  - Units of Service (for outpatient, inpatient, and ancillary services).

- Need to define critical performance indicators for other PSCs.

Statewide Data Collection

- Florida Drug Court Case Management System (FDCCMS)
  - 117 problem-solving courts currently utilizing
  - 800+ system users
- Florida Dependency Court Information System (FDCIS)
  - 30 early childhood courts currently utilizing
- State court-funded PSCs are required to collect and report participant data to OSCA (as of July 1, 2024).

Key Research Findings

- Reduced recidivism.
- Higher rates of treatment completion.
- Cost savings / cost avoidance.
- Improved functioning for veterans.
- Reduced out-of-home placement for children and increased family reunification.

Problem-Solving Courts: Observations from the Bench

The Honorable Nina Ashenafi Richardson
County Court Judge, Leon County

Leon County Adult Drug Court

- Program implemented in 1993.
- 19 new admissions in calendar year 2023.
- 62 participants served in FY 2023-24.
- State-funded.
- Financial assistance provided for individuals with no income or health insurance.

Leon County Adult Drug Court

- Program cost is less than incarceration.
- Reductions in criminal behavior and drug abuse.
- Frees up prison and county jail beds for violent offenders and serious criminal cases.
- Stops revolving door that police officers see in the community involving individuals whose criminal conduct is due to an addiction issue.

Leon County Adult Drug Court

- The drug court team strives to be non-adversarial with emphasis on being supportive and creative in developing personalized assessments and treatment plans and providing care to participants.

Leon County Adult Drug Court

Drug court works!

It is the court of second chances, giving participants an opportunity to start anew.

Questions?

Jennifer Grandal
Chief, Office of Problem-Solving Courts
Office of the State Courts Administrator
grandalj@flcourts.org

Judge Nina Ashenafi Richardson
County Court Judge, Leon County
(850) 606-4316

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1/14/25
Meeting Date

Judiciary Committee
Committee

Problem-Solving Courts
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jennifer Grandal

Phone 850-922-5081

Address OSCA, 500 S. Duval Street
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Tallahassee FL 32399
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information **OR** Waive Speaking: ☐ In Support ☐ Against

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Amendment Barcode (if applicable)

Name Judge Nina Ashenafi Richardson

Phone 850-606-4316

Address Leon County Courthouse, 301 S. Monroe Street
Street

Email

Tallahassee FL 32399
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information **OR** **Waive Speaking:** ☐ In Support ☐ Against

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S-001 (08/10/2021)

Vexatious Litigants

The Honorable Rachel E. Nordby
District Court of Appeal Judge, First District Court of Appeal
Chair, Judicial Management Council Workgroup on Vexatious Litigants

Florida Vexatious Litigant Law

- Section 68.093, Florida Statutes
- Enacted in 2000 to deter repeat filings of frivolous civil suits by "vexatious" *pro se* litigants.
  - Existing sanctions, such as the imposition of costs and attorneys fees against proponents of frivolous or meritless suits, are seen as ineffective against such litigants who are often collection proof.
- Balances right to access courts with the need to preserve the orderly process of judicial administration.

Who is a Vexatious Litigant?

- A person who:
  - In the immediately preceding five-year period commenced, prosecuted, or maintained, *pro se*, five or more civil (excluding family and small claims) or probate actions in any Florida court that were finally and adversely determined against the person; OR
  - Was previously found to be a vexatious litigant.

Remedies Against Vexatious Litigants

- **Order to Furnish Security**
  - Covers the defendant's anticipated, reasonable expenses of litigation.
  - Action must be dismissed with prejudice if security is not timely furnished.
- **Prefiling Order**
  - Prohibits the vexatious litigant from commencing *pro se* any new action in a circuit without first obtaining leave of the court. The clerk of court is also prohibited from filing any new *pro se* action on behalf of a litigant subject to a prefiling order in the circuit without leave of the court.

Supreme Court Workgroup on Sanctions for Vexatious and Sham Litigation

- **Established December 9, 2021 (AOSC21-62)**

- **Workgroup Charges:**
  - Review rule and statutory provisions relating to vexatious and sham litigation in noncriminal cases.
  - Survey judges, court staff, and clerks on use of such provisions and challenges they encounter in the use of such provisions.
  - Recommend rule or statutory amendments that may be warranted to address vexatious or sham litigation more effectively.

Supreme Court Workgroup on Sanctions for Vexatious and Sham Litigation

Final Report and Recommendations (June 15, 2022)

- Amend the Florida Vexatious Litigant Law to:
  - Expand the law to include family and small claims cases.
  - Reduce the number of actions required to qualify as “vexatious.”
  - Extend the length of the qualifying period (currently 5 years).
- Create a public records exemption for scandalous, sham, and other improper matters stricken from a filing if such matter would defame and harm a litigant or third party.

Judicial Management Council Workgroup on Vexatious Litigants

- **Established April 26, 2024 (AOSC24-19)**
- **Workgroup Charges:**
  - Review the initial workgroup's findings and recommendations.
  - Examine the laws of other states.
  - Make recommendations to improve the effectiveness of the Florida Vexatious Litigant Law and to protect individuals from the public disclosure of defamatory and harmful matters stricken from noncriminal court filings.

Judicial Management Council Workgroup on Vexatious Litigants

Final Report and Recommendations (Sept. 6, 2024)

- Florida Vexatious Litigant Law
  - Extend the law to family and small claims cases.
  - Consider conduct in other state or federal courts.
  - Lower the threshold for the number of qualifying actions from five to three.
  - Extend the qualifying period from five to seven years.
  - Create a “good faith” exception.
  - Address pro se litigants who repeatedly relitigate a finally and adversely determined action against the same party; file papers that have been the subject of previous court rulings in the action; and file unmeritorious papers, conduct unnecessary discovery, or engage in tactics that are frivolous or solely intended to cause delay.
  - Expand the applicable remedies to any party to the action, not only the plaintiff.

Judicial Management Council Workgroup on Vexatious Litigants

Final Report and Recommendations (Sept. 6, 2024)

- Public Records Exemption
  - The “litigation privilege” creates an opportunity for litigants to file false and defamatory allegations in a court file.
  - Immaterial, impertinent, or sham matters stricken by the court remains accessible as a public record in the court file.
  - A public records exemption would be needed to prevent the ongoing publication of defamatory information in a court file.

2025 Judicial Branch Substantive Legislative Agenda

- In November 2024, the Florida Supreme Court approved the recommended statutory amendments to the Florida Vexatious Litigant Law and the proposed public records exemption for inclusion in the judicial branch substantive legislative agenda.

Questions?

Judge Rachel E. Nordby
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2025 Judicial Branch Legislative Agenda

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2025 Judicial Branch Legislative Agenda: Branch-Wide Issues

- **Vexatious Litigants (s. 68.093, F.S.)**
  - Broaden the scope of the Florida Vexatious Litigant Law to cover a wider array of improper conduct.
- **Public Records Exemption - Matters Stricken from Court Filings (s. 119.0714, F.S.)**
  - Exempt immaterial, impertinent, or sham matters stricken from noncriminal court filings if the matters are defamatory, would cause unwarranted damage, or jeopardize safety.
  - Complements amendments to the Florida Vexatious Litigant Law.
- **Modernization of Duty Judge Requirements (s. 26.20, F.S.)**
  - Clarify that each judicial circuit must designate a duty judge and repeal a limitation on the location of duty judge hearings.
- **SMS Retirement for Nonjudicial Branch Managerial Positions (s. 121.055, F.S.)**
  - Authorize the Chief Justice to designate a specified number of nonjudicial, managerial branch positions as Senior Management Service positions for purposes of the Florida Retirement System.
  - Mirrors the authority of legislative presiding officers.

2025 Judicial Branch Legislative Agenda: Branch-Wide Issues

FY 25-26 Judicial Certification Opinion (SC2024-1721)

- **Certifies the need for 23 circuit court judges and 25 county court judges.**
  - An objective caseload methodology is the primary basis for assessing judicial need. The methodology applies case weights to circuit and county court forecasted filings.
  - The state courts recently conducted a trial court workload assessment with the assistance of the National Center for State Courts and adopted revised case weights based upon the assessment.
  - The Supreme Court did not certify the full trial court need as indicated by the methodology. Instead, based on several considerations, the Court adopted a certification approach that was more incremental but still reasonable and fair.
- **Certifies the need for 2 additional judges for the Sixth District Court of Appeal.**
  - The opinion cites that the current number of judges on the Sixth District Court of Appeal is insufficient to keep pace with growing workload.

FY 25-26 CERTIFIED TRIAL COURT JUDGES

Circuit	Circuit Court Judges Certified	County	County Court Judges Certified
1	1	Walton	1
4	1	Clay	1
		Duval	2
		Nassau	1
5	3	Hernando	1
		Lake	1
		Marion	1
		Sumter	1
7	2	N/A	0
9	1	Orange	1
		Osceola	1
10	2	Polk	1
11	0	Miami-Dade	7
12	1	Manatee	1
13	0	Hillsborough	1
14	1	Bay	1
15	2	Palm Beach	2
18	1	N/A	0
19	1	N/A	0
20	7	Lee	1
Circuit Total	**23**	**County Total**	**25**

2025 Judicial Branch Legislative Agenda: Court Committee & Judicial Conference Issues

- **Arbitrator Compensation (s. 44.103, F.S.)**
  - *Supreme Court Committee on Alternative Dispute Resolution Rules and Policy*
  - Repeal the statutory cap on arbitrator compensation rates in court-ordered, nonbinding arbitration.
- **Public Records Exemption – Appellate Court Clerks (s. 119.071, F.S.)**
  - *Florida Conference of District Court of Appeal Judges*
  - Expand a public records exemption for the personal identification and location information of clerks of the circuit courts to include clerks of the appellate courts.
- **Judicial Notarization (s. 92.50, F.S.)**
  - *Florida Conference of District Court of Appeal Judges*
  - Authorize an alternative option for judicial notarization of oaths, affidavits, and acknowledgements which would not require application of an official or court seal.
- **Guardian ad Litem Hearsay Exception (s. 61.403, F.S.)**
  - *Supreme Court Steering Committee on Families and Children in the Court*
  - Create a hearsay exception for guardian ad litem testimony and written reports in family court proceedings.

Questions?

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Workgroup on Vexatious Litigants

Final Report and Recommendations

September 6, 2024

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WORKGROUP MEMBERS

The Honorable Rachel E. Nordby, First District Court of Appeal

The Honorable Edwin A. Scales, III, Third District Court of Appeal

The Honorable Christopher Kelly, Seventh Judicial Circuit

Mr. Christopher N. Ligori, Attorney at Law

Mr. Eliot Pedrosa, Attorney at Law

Staff support provided by the Office of the State Courts Administrator.

EXECUTIVE SUMMARY

The Workgroup on Vexatious Litigants was established by Administrative Order No. AOSC24-19 to enhance the effectiveness of Florida's Vexatious Litigant Law and to address issues related to the public disclosure of harmful and defamatory content in noncriminal court filings. Composed of judicial and legal professionals, the Workgroup was tasked with analyzing similar laws from other states and proposing both statutory and procedural amendments to achieve these objectives.

This report outlines the Workgroup's findings and recommendations aimed at improving the management and deterrence of vexatious litigation in Florida courts. The key areas of focus include:

- Expansion of the Vexatious Litigant Law: The Workgroup recommends broadening the scope of the Florida Vexatious Litigant Law to include additional case types, reduce the threshold for designating a litigant as vexatious, and incorporate remedies applicable to a wider range of litigants. The proposed amendments are designed to cover a wider range of improper conduct and address the increasing impact of vexatious litigation on the judicial system.

- Public Records Exemption: To protect individuals from the continued publication of defamatory and harmful material stricken from noncriminal court records, the Workgroup concludes that a legislative amendment would be necessary to exempt such matter from public disclosure. The Workgroup has prepared a draft legislative amendment that seeks to balance the public's right to access court records with the need to protect individuals from harm.

- Procedural Amendments: If the public records exemption is adopted, the Workgroup recommends amending Rule of General Practice and Judicial Administration 2.420 to ensure

that defamatory and harmful matter stricken from a noncriminal court file is not accessible to the public.

The report concludes that these proposals, if implemented, will strengthen the legal framework for managing vexatious litigation and protect individuals from the adverse effects of improper litigation. The Workgroup urges the Florida Supreme Court and the Legislature to consider these proposals during the upcoming legislative session.

BACKGROUND

ADMINISTRATIVE ORDER & WORKGROUP MEETINGS

By Administrative Order No. AOSC24-19, Chief Justice Carlos Muñiz established the Workgroup on Vexatious Litigants ("Workgroup") to:

- make recommendations to improve the effectiveness of the Florida Vexatious Litigant Law,[1] and

- address the public disclosure of improper matters stricken from noncriminal court filings that would defame and harm individuals.[2]

The order directed the Workgroup to review the findings and recommendations of the earlier Workgroup on Sanctions for Vexatious and Sham Litigation (hereinafter "Initial Workgroup"),[3] examine the laws of other states, make the recommendations above, and propose revisions to practices, rules of court, or statutes to implement the Workgroup's recommendations.

The Workgroup includes two appellate court judges, one circuit court judge, and two private attorneys, all of whom are members of the Judicial Management Council.[4] The Workgroup was allotted approximately five months to complete its charges, with its findings and recommendations due to the Judicial Management Council by September 6, 2024. The Workgroup remains constituted through a term ending June 30, 2025, to address any issues that may arise during the 2025 Regular Session regarding the legislation proposed in this report.

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[1] § 68.093, Fla. Stat. (2024).

[2] *In re: Workgroup on Vexatious Litigants*, Fla. Admin. Order No. AOSC24-19 (April 26, 2024) (https://supremecourt.flcourts.gov/content/download/2424918/file/AOSC24-19.pdf).

[3] The Initial Workgroup was established via *In re: Workgroup on Sanctions for Vexatious and Sham Litigation*, Fla. Admin Order No. AOSC21-62 (Dec. 9, 2021) (https://supremecourt.flcourts.gov/content/download/813326/file/AOSC21-62.pdf).

[4] *See* Fla. R. Gen. Prac. & Jud. Admin. 2.225.

The Workgroup met five times. At its initial meeting, the Workgroup reviewed Administrative Order No. AOSC24-19, discussed the Initial Workgroup's findings and recommendations, and developed a plan to fulfill the charges of the administrative order. At its second meeting, the Workgroup reviewed and analyzed vexatious litigant laws in other states, considered draft statutory and rule amendment language, and began formulating its findings and recommendations. At its third meeting, the Workgroup continued refining its findings and drafting statutory and rule amendments. The development of the findings and recommendations continued through its fourth meeting and a draft of this final report was reviewed. At its fifth meeting, the Workgroup finalized its findings and recommendations and approved this final report.

INITIAL WORKGROUP

On June 15, 2022, the Initial Workgroup issued its *Final Report and Recommendations*.[5] After reviewing rule and statutory provisions relating to vexatious and sham litigation in noncriminal cases, and the responses to several surveys, the Initial Workgroup recommended enhanced education for multiple justice system partners, several operational changes, and potential statutory and rule amendments. The Florida Supreme Court approved the report on June 21, 2022, and referred the Initial Workgroup's recommendations to several entities.

The Court requested the Florida Court Education Council (FCEC) to develop educational programs for judges and court staff, bench cards, and template forms. A one-hour course entitled "The Court Playbook on Vexatious Litigation: We Don't Have to Take It" was scheduled to be offered to circuit court judges at the 2024 Florida Conference of Circuit Judges Education Program that was canceled because of Hurricane Debby. An additional one-hour course entitled "Vexatious Litigation" was also scheduled to be presented to trial

[5] Workgroup on Sanctions for Vexatious and Sham Litigation, Final Report and Recommendations (June 15, 2022), https://www.flcourts.gov/content/download/2438387/file/Report of the Workgroup on Sanctions for Vexatious and Sham Litigation.pdf [hereinafter Initial Workgroup's Final Report].

court administrators (TCAs) at the same conference. Plans are underway to reschedule these courses. As of the date of this report, the bench cards and template forms remain under development.

The Florida Bar was requested to develop educational materials and training for attorneys on the effective use of the various tools to combat improper litigation.[6] A free, two-hour webinar titled "Florida's Playbook on Vexatious Litigation: We're Not Gonna Take It" was initially offered on December 1, 2023, and has been attended by 482 attorneys as of July 30, 2024.[7] Additionally, 19 judges attended the course and obtained continuing judicial education credit.[8]

The Florida Court Clerks and Comptrollers (FCCC) was requested to develop educational programming for clerk staff and operational changes to ensure compliance with the Vexatious Litigant Law. In response, the FCCC appointed a Vexatious Litigant Workgroup (FCCC Workgroup) to develop the recommended educational programming and operational processes. The FCCC Workgroup reviewed the Vexatious Litigant Law, current practices in clerk's offices, and educational opportunities for clerks. The FCCC Workgroup developed a comprehensive set of recommendations, including educational materials for clerks and clerk staff and best practices for clerks to address vexatious litigants. The FCCC also coordinated with the Florida Courts Technology Commission (FCTC) to develop template orders to be used by judges when issuing prefiling orders and other related issues assigned to the FCTC.

The Florida Courts E-Filing Authority ("Authority") was requested to develop modifications to the Florida Courts E-Filing

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[6] The Florida Bar, Free Vexatious Litigation Webinar Set For December 1, Florida Bar News (Nov. 15, 2023), https://www.floridabar.org/the-florida-bar-news/free-vexatious-litigation-webinar-set-for-december-1/.

[7] E-mail from Katie Jones, Assistant Dir., Henry Latimer Ctr. for Professionalism, to Dustin Metz, Chief of Innovations and Outreach, Off. of the St. Cts. Admin'r (July 30, 2024) (on file with Off. of the St. Cts. Admin'r).

[8] E-mail from Ray Ford, Ct. Educ. Consultant, Off. of the St. Cts. Admin'r, to Dustin Metz, Chief of Innovations and Outreach, Off. of the St. Cts. Admin'r (Aug. 1, 2024) (data regarding judges' attendance at vexatious litigant course) (on file with Off. of the St. Cts. Admin'r).

Portal ("E-Portal"). The requested modifications included adding features to discourage personal service on judges and court staff, requiring filers to provide a justification when designating a filing as an emergency, and adding a notice explaining that filings should not be designated as an emergency except when appropriate. Currently, the E-Portal is configured to exclude judges registered with the E-Portal from the service list after initial service. A potential modification to mask the e-mail address of judges who are not registered with the E-Portal is scheduled for consideration at the September 2024 Authority meeting. Regarding filer justification for emergencies, the E-Portal now includes a drop-down list of justifications that filers can select when requesting emergency action in an appellate court. However, implementing a similar feature for trial courts is more complex due to the broader range of emergency issues that may arise. The Authority is open to adding emergency justification drop-downs for trial courts following guidance from the appropriate rules committees or the Supreme Court. Concerning the recommended notice to filers about reserving emergencies for specific circumstances, the Authority notes that both the FCTC and The Florida Bar rules committees generally discourage the Authority from adding specific explanatory language to the E-Portal. However, the Authority would consider adding specific language if proposed by a rules committee or the Supreme Court.

The FCTC was requested to evaluate modifications to clerk case maintenance systems and the Court Application Processing System (CAPS)[9] so that filings from vexatious litigants are automatically flagged and rejected. The Court also requested the FCTC to establish a statewide database searchable by judges, clerks, attorneys, and litigants that lists all pro se litigants subject to prefiling orders.[10] In response, the FCTC developed a template "Order Finding a Party to

[9] CAPS is an information technology system that provides judges and court staff with access to electronic case file information from a variety of sources. *See* Off. of the St. Cts. Admin'r, History of Court Processes, Programs, and Initiatives, Florida Courts, https://www.flcourts.gov/Publications-Statistics/Publications/Short-History/Modernizing-Administration (last modified Feb. 16, 2024).

[10] A prefiling order prohibits a vexatious litigant from commencing, pro se, any new action in the courts of the judicial circuit without first obtaining leave of the administrative judge of the circuit. § 68.093(4), Fla. Stat. (2024).

be a Vexatious Litigant and Imposing Sanctions" and "Order Directing a Party to Show Cause Why They Should Not Be Declared a Vexatious Litigant Pursuant to Section 68.093, Fla. Stat." to assist judges enforcing the Vexatious Litigant Law. Additionally, the FCTC will include a requirement in the next version of the Functional Requirements for CAPS to have the vexatious litigant template orders linked in CAPS for use by all judges. However, the FCTC declined to establish the requested database because the current population of vexatious litigants is small, and the searchable spreadsheet maintained by the Clerk of the Supreme Court is adequate for purposes of identifying prefiling orders entered against vexatious litigants.

The chairs of the Civil Procedure Rules Committee (CPRC), Family Law Rules Committee (FLRC), and Probate Rules Committee (PRC) were requested to review the Initial Workgroup's recommended rule amendments to determine whether such amendments were advisable. The CPRC, FLRC, and PRC submitted a joint report to amend Family Law Rules 12.140 and 12.150 by combining the rules and expanding the definition of sham pleadings.[11] The CPRC determined that no amendments to the civil rules were warranted. Because the CPRC did not recommend any changes, the PRC did not recommend any amendments. Ultimately, the Supreme Court declined to adopt the proposed amendments to Rules 12.140 and 12.150.[12]

Finally, the Initial Workgroup's report was submitted to the presiding officers of both houses of the Florida Legislature. As of the date of this report, no bills have been filed to amend the Vexatious Litigant Law.

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[11] Joint Rep. of the Fam. L. Rules Comm., the Civil Proc. Rules Comm., and the Fla. Prob. Rules Comm., *In re: Amends. to the Fla. Fam. L. Rules of Proc. 12.140 and 12.150*, SC2023-0465, 2023 WL 8013089 (Fla. Nov. 20, 2023), https://acis-api.flcourts.gov/courts/68f021c4-6a44-4735-9a76-5360b2e8af13/cms/case/f2830876-0761-4638-8d66-967cea4bb4ec/docketentrydocuments/8a13606f-5fce-4bcd-8fa1-0290e1714b0e.

[12] *In re: Amends. to the Fla. Fam. L. Rules of Proc.–12.140 and 12.150*, SC2023-0465, 2023 WL 8013089 (Fla. Nov. 20, 2023).

IMPROVING THE EFFECTIVENESS OF THE FLORIDA VEXATIOUS LITIGANT LAW

Administrative Order No. AOSC24-19 charged the Workgroup to "make recommendations, for ultimate consideration by the Legislature, to improve the effectiveness of the Florida Vexatious Litigant Law." The Workgroup's review, analysis, findings, and recommendations related to this charge are set out below.

IMPACT OF IMPROPER LITIGATION ON FLORIDA COURTS

Vexatious conduct by litigants impedes the court system's ability to timely and justly process cases. This conduct can take many forms. Common examples include: (1) filing multiple meritless lawsuits; (2) attempting to relitigate matters already decided by the court; and (3) submitting documents with harassing, scandalous, or sham material to the court. Such conduct generates significant work for judges and court personnel and diverts judicial time and resources away from other cases that present legitimate legal matters. And parties that find themselves opposite a vexatious litigant must expend significant time and money to end the case.[13]

To quantify the impact of vexatious litigation on the court system, the Initial Workgroup surveyed district court of appeal (DCA) judges, trial court judges, TCAs, DCA clerks, and trial court clerks regarding improper litigation [14] in noncriminal cases. [15] Survey participants were asked to estimate the percentage of workload attributable to improper litigation in noncriminal cases. The responses indicated that 18.2% of circuit court judges believed that improper litigation comprises over 10% of their workload, and that 24.7% of these judges saw the same impact on the workload of their

[13] *Smith v. Fisher*, 965 So. 2d 205, 209 (Fla. 4th DCA 2007) ("In a frivolous lawsuit, justice delayed is justice denied to a defendant who expends time and money to bring the case to an end.").

[14] For the purposes of this report, "improper litigation" means litigation that is frivolous, sham, harassing, malicious, or vexatious.

[15] Initial Workgroup's Final Report, *supra* note 5, at 7.

judicial assistants (JAs). Among county court judges, 14% identified improper litigation as comprising more than 10% of their workload, while 23.3% saw the same impact on their JA's workload. Additionally, 14.2% of TCAs reported this issue as comprising more than 10% of nonjudicial court administration workload. 8.4% of trial court clerks attributed more than 10% of their staff's workload to improper litigation. By contrast, only 3.1% of DCA judges reported that improper litigation comprised more than 10% of their workload.[16] Several TCAs noted that lawsuits and subpoenas served against judges are reviewed by court staff, which results in additional workload taken away from resolving legitimate legal matters.

Recent data also reflects a surge in both lawsuits filed against judges and subpoenas served on judges. The Office of the Attorney General (OAG) provides representation to judges under these circumstances[17] and the Office of the State Courts Administrator (OSCA) monitors the representations. OSCA data indicates the OAG represented 142 judges in 2021, 160 judges in 2022, and 231 judges in 2023, a 62.7% increase since 2021.[18] Likewise, complaints filed against judges through the Judicial Qualifications Commission (JQC) increased from 616 in fiscal year (FY) 2020-21 and 711 in FY 2021-22 to 921 in FY 2022-23, a 49.5% increase since FY2020-21.[19] Although

[16] Initial Workgroup's Final Report, *supra* note 5, at 7-9.

[17] Off. of the Att'y Gen., Civil Litigation Division, Off. of the Att'y Gen. (last visited July 26, 2024), https://www.myfloridalegal.com/civil-litigation-division; *see also Salfi v. Ising*, 464 So. 2d 687, 688 (Fla. 5th DCA 1985) (stating that judges are entitled to free representation by the attorney general when sued in their official capacity).

[18] E-mail from Bart Schneider, Senior Att'y, Off. of the St. Cts. Admin'r, to Judge Rachel E. Nordby, Chair, Workgroup on Vexatious Litigants (May 15, 2024) (on file with Workgroup).

[19] The number of complaints filed each year was determined using data provided in the Florida Supreme Court's Long Range Program Plan (LRPP). The LRPP provides both the clearance rate and number of complaints disposed during the prior fiscal year. Fla. Sup. Ct., Long Range Program Plan – Fiscal years 2022-23 through 2026-27, 41 (2021), http://floridafiscalportal.state.fl.us/Document.aspx?ID=23201&DocType=PDF; Fla. Sup. Ct., Long Range Program Plan – Fiscal years 2023-24 through 2027-28, 41 (2022), http://floridafiscalportal.state.fl.us/Document.aspx?ID=24426&DocType=PDF; Fla. Sup. Ct., Long Range Program Plan – Fiscal years 2024-25 through 2028-29, 46 (2023), http://floridafiscalportal.state.fl.us/Document.aspx?ID=26912&DocType=PDF. The formula to find the total number of complaints received is derived by dividing the

data on the proportion of well-founded complaints is unavailable, the recent increase in complaints may support other evidence suggesting that the impact of vexatious litigation on the judicial branch is continuing to rise.

Only 27% of trial court judges surveyed found the Vexatious Litigant Law sufficient for addressing improper litigation.[20] Almost half of the responding trial court judges reported having never used the Vexatious Litigant Law or having no opinion about the law's effectiveness.[21] Based on this lack of awareness, the Initial Workgroup recommended the development of educational programming for judges, court staff, clerk staff, and attorneys.

Although follow-up survey data is unavailable, the educational materials and operational changes recommended by the Initial Workgroup appear to have raised awareness of the Vexatious Litigant Law, as shown by the addition of 118 entries, reflecting 29 individuals, and 16 counties to the vexatious litigant registry since the Initial Workgroup issued its final report.[22]

INHERENT AUTHORITY TO SANCTION

Courts have the inherent authority to sanction litigants for vexatious, bad-faith, and oppressive conduct.[23] Many states rely solely on the court's inherent authority to address vexatious conduct

number of cleared complaints by the clearance rate (expressed as a decimal), which can be written as: Total complaints received = Number of cleared complaints ÷ (Clearance rate/100).

[20] Initial Workgroup's Final Report, *supra* note 5, Appendix B, 12.

[21] Initial Workgroup's Final Report, *supra* note 5, at Appendix B, 12.

[22] When the Initial Report was submitted on May 29, 2002, the registry had 92 total entries for 78 individuals (some names appear multiple times). *Id.* at 21. As of July 13, 2024, the registry has a total of 210 entries for 107 individuals. The Off. of the Clerk, Florida Supreme Court Vexatious Litigant List (July 18, 2024), https://supremecourt.flcourts.gov/About-the-Court/Departments-of-the-Court/Clerk-s-Office (last visited July 31, 2024) [hereinafter Florida's Vexatious Litigant List].

[23] *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240, 258 (1975) (quoting *F.D. Rich Co. v. United States ex rel. Indus. Lumber Co.*, 417 U.S. 116, 129 (1974)).

and have not enacted a vexatious litigant statute.[24] Many of these jurisdictions adopt the framework announced in *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 766 (1980), in which the U.S. Supreme Court held that federal district courts have the inherent authority to impose attorneys' fees against counsel for bad-faith conduct.

Florida courts possess the inherent authority "to do those things necessary to enforce its orders, to conduct its business in a proper manner, and to protect the court from acts obstructing the administration of justice."[25] This authority includes awarding attorneys' fees for bad-faith conduct against an attorney[26] or a party, even though no statute authorizes the award.[27] Even so, the authority must be exercised sparingly and cautiously after notice and an opportunity to be heard.[28] Sanctions awarded under the court's inherent authority must be based on an express finding of bad-faith

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[24] *See, e.g.*, *Eberly v. Eberly*, 489 A.2d 433, 449 (Del. 1985) (holding that trial court had inherent authority to assess attorneys' fees against attorney who "unreasonably and vexatiously prolonged the proceedings below and increased the cost of representation to both parties"); *Charles v. Charles*, 505 A.2d 462, 467 (D.C.1986) (holding that trial court has inherent authority to impose attorneys' fees against attorney who repeatedly failed to obey court orders to file an answer or affidavit in lieu thereof); *State v. Grant*, 487 A.2d 627, 629 (Me. 1985) (holding that trial court had inherent authority to compel attorney who improperly took money from client to return money to client); *Battryn v. Indian Oil Co.*, 472 A.2d 937, 941–42 (Me. 1984) (holding that trial court had inherent authority to impose sanctions against attorney for discovery abuses); *Winters v. City of Oklahoma City*, 740 P.2d 724, 727 (Okla. 1987) (holding that the intentional filing and prosecution of a claim under Oklahoma law that lacked any plausible factual or legal basis constituted a bad faith action and justified the award of sanctions against the attorney); *Van Eps v. Johnston*, 553 A.2d 1089, 1091 (Vt. 1988) (holding that trial courts have inherent authority to impose sanctions against attorneys for "bad faith," which encompasses both the filing and the conduct of litigation and includes "abuse of the judicial process"); *Daily Gazette Co. v. Canady*, 332 S.E.2d 262, 266 (W. Va. 1985) (holding that trial court has inherent authority to "order payment by an attorney to a prevailing party reasonable attorney fees and costs incurred as the result of his or her vexatious, wanton, or oppressive assertion of a claim or defense that cannot be supported by a good faith argument for the application, extension, modification, or reversal of existing law").

[25] *Levin, Middlebrooks, Mabie, Thomas, Mayes & Mitchell, P.A. v. U.S. Fire Ins. Co.*, 639 So. 2d 606, 608–09 (Fla. 1994).

[26] *Moakley v. Smallwood*, 826 So. 2d 221, 226-27 (Fla. 2002).

[27] *Bitterman v. Bitterman*, 714 So. 2d 356, 365 (Fla. 1998).

[28] *Moakley*, 826 So. 2d at 225.

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.[29]

The inherent authority of Florida courts to sanction parties and attorneys for vexatious conduct has been significantly constrained by case law. Before sanctioning a party or attorney for acts of malfeasance or disobedience, Florida courts are required to consider: (1) whether the attorney's disobedience was willful, deliberate, or contumacious, rather than an act of neglect or inexperience; (2) whether the attorney has been previously sanctioned; (3) whether the client was personally involved in the act of disobedience; (4) whether the delay prejudiced the opposing party through undue expense, loss of evidence, or in some other fashion; (5) whether the attorney offered reasonable justification for noncompliance; and (6) whether the delay created significant problems of judicial administration.[30]

If a specific statute or rule applies, the trial court should rely on the applicable rule or statute rather than on inherent authority.[31] One such statute is the Vexatious Litigant Law.

FLORIDA VEXATIOUS LITIGANT LAW

The Florida Vexatious Litigant Law was enacted in 2000 to deter repeat filings of frivolous lawsuits by pro se litigants.[32]

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

[29] *Id.* at 227.

[30] *Kozel v. Ostendorf*, 629 So. 2d 817, 818 (Fla. 1993).

[31] *Id.* (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 50 (1991)).

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

court,[33] all of which have been finally and adversely determined[34] against the litigant.[35] "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.[36] An action commenced by counsel who then withdraws is not counted as a pro se action for purposes of the statute.[37] A "vexatious litigant" is also defined as "[a]ny person or entity previously found to be a vexatious litigant pursuant to this section."[38]

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

First, "in any action pending in any court of this state, including actions governed by the Florida Small Claims Rules,"[39] a defendant may move the court to order the plaintiff to furnish "security,"[40] 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."[41] Such a motion must show that the plaintiff: (1) is a vexatious litigant; and (2) is not likely to prevail

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

[34] An action is not finally and adversely determined if an appeal is pending. § 68.093(2)(d)(1), Fla. Stat. (2024).

[35] § 68.093(2)(d)(1), Fla. Stat. (2024).

[36] § 68.093(2)(a), (d)(1), Fla. Stat. (2024).

[37] § 68.093(2)(d)(1), Fla. Stat. (2024).

[38] § 68.093(2)(d)(2), Fla. Stat. (2024).

[39] 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), Fla. Stat. (2024), 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."

[40] § 68.093(3)(a), Fla. Stat. (2024).

[41] § 68.093(2)(d), Fla. Stat. (2024).

on the merits.[42] 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.[43] If the plaintiff fails to timely provide security, the court must immediately dismiss the action with prejudice as to the moving defendant.[44]

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."[45]

Disobedience of a prefiling order is punishable by contempt.[46] 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."[47] The administrative judge of the circuit may condition the filing of the proposed action upon the furnishing of security.[48] 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.[49] The notice stays the proceeding.[50] If the plaintiff fails to move for leave within 10 days after the filing of the notice, the court must dismiss the action with prejudice.[51]

Trial court clerks must provide copies of prefiling orders to the clerk of the Supreme Court, who must maintain a registry of "all

[42] § 68.093(3)(a), Fla. Stat. (2024).

[43] § 68.093(3)(b), Fla. Stat. (2024).

[44] § 68.093(3)(c), Fla. Stat. (2024).

[45] § 68.093(4), Fla. Stat. (2024).

[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] § 68.093(5), Fla. Stat. (2024).

[50] *Id.*

[51] *Id.*

vexatious litigants."[52] As of July 13, 2024, the registry had 210 entries since 2003 for 107 individuals (some names appear multiple times). All 20 judicial circuits and 52 of Florida's 67 counties (78%) are reflected on the registry. Although these figures may give the impression that the Vexatious Litigant Law is not being used to great effect, it may also be the case that the circuits are not forwarding prefiling orders to the clerk of the Supreme Court for entry into the registry. For example, the registry identifies six vexatious litigants in Liberty County, which has a population of 7,978; yet only one vexatious litigant appears on the registry for Hillsborough County, with a population of 1,459,779.[53]

The relief provided by the Vexatious Litigant Law is cumulative to any relief available "under the laws of this state and the Florida Rules of Civil Procedure."[54]

Two appellate courts have upheld the Vexatious Litigant Law against constitutional challenges brought under the Florida Constitution's "access to courts" provision in article I, section 21.[55] Noting that a "litigant's right to access may be properly restricted if the litigant is abusing the legal process," the Third District Court of Appeal agreed with the Fourth District Court of Appeal that the law was constitutional, as "it was narrowly tailored to serve the state's compelling interest in preventing vexatious litigants from interfering with the court system's proper administration of justice." [56]

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[52] § 68.093(6), Fla. Stat. (2024). The registry is posted by the clerk at this link: https://supremecourt.flcourts.gov/About-the-Court/Departments-of-the-Court/Clerk-s-Office (last visited July 13, 2024).

[53] *Id.*; U.S. Census Bureau, *Population Division*, Annual Estimates of the Resident Population for Counties in Florida: April 1, 2020 to July 1, 2023 (March 2024) U.S. Census Bureau, https://www2.census.gov/programs-surveys/popest/tables/2020-2023/counties/totals/co-est2023-pop-12.xlsx.

[54] § 68.093(7), Fla. Stat. (2024).

[55] *Brown v. Miami-Dade Cnty.*, 319 So. 3d 81, 83 (Fla. 3d DCA 2021); *Smith v. Fisher*, 965 So. 2d 205, 208 (Fla. 4th DCA 2007).

[56] *Brown*, 319 So. 3d at 83-84.

VEXATIOUS LITIGATION IN OTHER STATES

California enacted the nation's first vexatious litigant law in 1963.[57] In the 1980s and 1990s, four other states followed: Iowa, Hawaii, Ohio, and Texas.[58] In 2000, Florida became the sixth state to enact such a statute. Since then, eight additional states have enacted statutes or rules of procedure to address vexatious litigation: Arizona,[59] Idaho,[60] Michigan,[61] Minnesota,[62] New Hampshire,[63] North Dakota,[64] Nevada,[65] and Utah.[66] A chart summarizing the vexatious litigant laws in other states is attached to this report as Appendix A. All these statutes have either been upheld as constitutional[67] or have not been challenged on appeal.[68]

States employ various strategies to mitigate vexatious litigation. A majority of the other states that have enacted vexatious litigant statutes or rules define "vexatious litigation" or "vexatious conduct" much like Florida, tying the designation, at least in part, to the number of finally and adversely determined actions filed within a

[57] Ch. 391, Cal. Civ. Proc. Code (1963).

[58] Iowa Code Ann. § 617.16 (1986); Haw. Rev. Stat. Ann. § 634J (1993); Ohio Rev. Code Ann. § 2323.52 (1996); Ch. 11, Tex. Civ. Prac. & Rem. Code (1997).

[59] Ariz. Rev. Stat. Ann. § 12-3201 (2014); Ariz. Rev. Stat. Ann. § 12-302(K)(3), (M) (2016).

[60] Idaho Ct. Admin. R. 59 (2011).

[61] Mich. Ct. R. 7.216(C); Mich. Ct. R. 7.316(C).

[62] Rule 9, Minn. Gen. R. Prac. (1999).

[63] N.H. Rev. Stat. Ann. § 507:15-a (2013).

[64] N.D. Sup. Ct. Admin. R. 58 (2017).

[65] Nev. Rev. Stat. Ann. § 155.165 (2011); Nev. Rev. Stat. Ann. § 159.0486 (2009).

[66] Utah R. Civ. P. 83 (2012).

[67] *See* California, *In re Whitaker*, 8 Cal. Rptr. 2d 249 (Ct. App. 1992); Hawaii, *Ek v. Boggs*, 75 P.3d 1180 (Haw. 2003); Idaho, *In Re Cook*, 481 P.3d 107 (2021); Ohio, *Mayer v. Bristow*, 740 N.E.2d 656, 662–68 (Ohio 2000); Pennsylvania, *Com. v. Lewis*, 307 Pa. Super. 468, 453 A.2d 982 (1982); Texas, *Leonard v. Abbott*, 171 S.W.3d 451, 456–58 (Tex. App. 2005).

[68] The constitutionality of the vexatious litigant laws in Arizona, Iowa, Michigan, Minnesota, Nevada, New Hampshire, North Dakota, and Utah have not been challenged.

certain number of years.[69] Among these other states, the minimum number of finally and adversely determined actions is three.[70] The longest look-back period is seven years.[71]

Unlike Florida, half of these states permit courts to act against a vexatious litigant based on conduct in a single case.[72] For example, in Arizona, "vexatious conduct" includes the following activity in a single case: (a) unreasonably expanding or delaying court proceedings; (b) engaging in abuse of discovery that has resulted in the imposition of sanctions; (c) a pattern of making unreasonable, repetitive, and excessive requests for information; and (d) repeated filing of documents or requests for relief that have been the subject of previous rulings by the court.[73] Similarly, in North Dakota, the following conduct in a single case is considered vexatious:

[69] Seven out of 14 states with such statutes or rules define vexatious litigation in terms of the number of actions finally and adversely determined within a certain number of years. These states are California, Cal. Civ. Proc. Code § 391(b)(1) (2024); Hawaii, Haw. Rev. Stat. Ann.§ 634J-1(1) (2024); Idaho, Idaho Ct. Admin. R. 59(d)(1) (2024); Iowa, Iowa Code § 617.16 (2024); North Dakota, N.D. Sup. Ct. Admin. R. 58(Sec. 4)(a) (2024); Texas, Tex. Civ. Prac. & Rem. Code Ann. § 11.054(1) (2024); and Utah, Utah R. Civ. P. 83(a)(1)(A) (2024).

[70] *See* Idaho Ct. Admin. R. 59(d)(1) (2024); Iowa Code Ann. § 617.16 (2024); N.H. Rev. Stat. Ann. § 507:15-a(I) (2024); N.D. Sup. Ct. Admin. R. 58(Sec. 4)(a) (2024).

[71] *See* Cal. Civ. Proc. Code § 391(b)(1) (2024); Haw. Rev. Stat. § 634J-1(1) (2024); Idaho Ct. Admin. R. 59(d)(1) (2024); N.D. Sup. Ct. Admin. R. 58(Sec. 4)(a) (2024); Tex. Civ. Prac. & Rem. Code Ann. § 11.054(1) (2024); Utah R. Civ. P. 83(a)(1)(A) (2024).

[72] *See, e.g.*, Ariz. Rev. Stat. Ann. § 12-3201(E)(1) (2024); Cal. Civ. Proc. Code § 391(b)(3) (2024); Haw. Rev. Stat. § 634J-1(3) (2024); Idaho Ct. Admin. R. 59(d)(3) (2024); Nev. Rev. Stat. Ann. §§ 155.165(1), 159.0486(1)(a) 2024); N.D. Sup. Ct. Admin. R. 58(Sec. 4)(c) (2024); Utah R. Civ. P. 83(C) (2024).

[73] Ariz. Rev. Stat. Ann. § 12-3201(E)(1) (2024).

(a) repeatedly[74] filing unmeritorious[75] motions, pleadings, or other papers; and (b) engaging in tactics that are frivolous or solely intended to cause unnecessary burden, expense, or delay.[76]

California,[77] Hawaii,[78] Idaho,[79] Minnesota,[80] North Dakota,[81] Texas,[82] and Utah[83] statutes or rules consider it vexatious conduct for a person who, after the conclusion of litigation, relitigates or attempts to relitigate issues of fact or law or the validity of the determination against the same party in whose favor the litigation was determined.

Most vexatious litigant laws extend the designation to any pro se litigant who engages in vexatious conduct, while the Florida statute applies to plaintiffs only. The states with more expansive laws

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[74] Although there is no North Dakota precedent interpreting the term "repeatedly" under North Dakota Supreme Court Administrative Rule 58, California's vexatious litigant statute uses similar language. California courts have held: "While there is no bright-line rule as to what constitutes 'repeatedly,' most cases affirming the vexatious litigant designation involve situations where litigants have filed dozens of motions either during the pendency of an action or relating to the same judgment." *Morton v. Wagner*, 67 Cal. Rptr. 3d 818, 825 (Ct. App. 2007) (citing *Bravo v. Ismaj*, 120 Cal. Rptr. 2d 879 (Ct. App. 2002)).

[75] Although there is no North Dakota precedent interpreting the term "unmeritorious" under N.D. Sup. Ct. Admin. R. 58, California's vexatious litigant statute uses similar language. California courts have held: "Not all failed motions can support a vexatious litigant designation. The repeated motions must be so devoid of merit and be so frivolous that they can be described as a 'flagrant abuse of the system,' have 'no reasonable probability of success,' lack 'reasonable or probable cause or excuse' and are clearly meant to 'abuse the processes of the courts and to harass the adverse party than other litigants.'" *Morton*, 67 Cal. Rptr. 3d at 825 (quoting *Wolfgram v. Wells Fargo Bank*, 61 Cal. Rptr. 2d 694 (Ct. App. 1997)).

[76] N.D. Sup. Ct. Admin. R. 58(Sec. 4)(c) (2024).

[77] Cal. Civ. Proc. Code § 391(b)(2) (2024).

[78] Haw. Rev. Stat. Ann. § 634J-1(2) (2024).

[79] Idaho Ct. Admin. R. 59(d)(2) (2024).

[80] Minn. Gen. R. Prac., Rule 9.06(b)(1) (2024).

[81] N.D. Sup. Ct. Admin. R. 58(Sec. 4)(b) (2024).

[82] Tex. Civ. Prac. & Rem. Code Ann. § 11.054(2) (2024).

[83] Utah R. Civ. P. 83(a)(1)(B) (2024).

in this regard are Arizona,[84] California,[85] Idaho,[86] Minnesota,[87] North Dakota,[88] Ohio,[89] and Utah.[90]

There is also a split among the states regarding whether activity in another state or federal court is considered for purposes of the designation. Florida is among the majority of states that apply the designation solely to litigation within the state.[91] In contrast, these states apply the designation to activity in any state or federal court: California,[92] Hawaii,[93] Idaho,[94] North Dakota,[95] and Texas.[96]

In addition to the applicability and scope of the designation, the states are split regarding the remedies available to limit the impact of vexatious litigation. Most states authorize the court to require security, enter a prefiling order, or both.[97] Some states expressly authorize the appointment of counsel for pro se litigants subject to

[84] Ariz. Rev. Stat. Ann. § 12-3201 (2024).

[85] Cal. Civ. Proc. Code § 391 (2024).

[86] Idaho Ct. Admin. R. 59 (2024).

[87] Minn. Gen. R. Prac., Rule 9.06 (2024).

[88] N.D. Sup. Ct. Admin. R. 58 (2024).

[89] Ohio Rev. Code Ann. § 2323.52 (2024); Ohio S. Ct. Prac. R. 4.03 (2024).

[90] Utah R. Civ. P. 83 (2024).

[91] Arizona, Ariz. Rev. Stat. Ann. § 12-3201 (2024); Iowa, Iowa Code Ann. § 617.16 (2024); Michigan, Mich. Ct. R. 7.216(C) (2024); Mich. Ct. R. 7.316(C) (2024); Minnesota, Minn. Gen. R. Prac., Rule 9.06(a) (2024); Nevada, Nev. Rev. Stat. Ann. § 155.165 (2024); Nev. Rev. Stat. Ann. § 159.0486 (2024); New Hampshire, N.H. Rev. Stat. Ann. § 507:15-a (2024); Ohio, Ohio Rev. Code Ann. § 2323.52(3) (2024); Pennsylvania, 18 Pa. Stat. and Cons. Stat. Ann. § 5109 (2024); and Utah, Utah R. Civ. P. 83 (2024).

[92] Cal. Civ. Proc. Code § 391(b)(5) (2024).

[93] Haw. Rev. Stat. Ann. § 634J-1(4) (2024).

[94] Idaho Ct. Admin. R. 59(d)(4) (2024).

[95] N.D. Sup. Ct. Admin. R. 58(Sec. 4)(d) (2024).

[96] Tex. Civ. Prac. & Rem. Code Ann. § 11.054(3) (2024).

[97] *See e.g.*, Ariz. Rev. Stat. Ann. § 12-3201(d) (2024) (prefiling order); Cal. Civ. Proc. Code §§ 391.3, 391.7 (2024) (both); Idaho Ct. Admin. R. 59(c), (e)-(k) (pre-filing order); Iowa Code Ann. § 617.16 (2024) (security); Minn. Gen. R. Prac., Rule 9.01 (2024) (both).

the designation.[98] Pennsylvania adopts the most stringent approach by classifying "barratry"—the act of vexing others with unjust and vexatious suits—as a third-degree misdemeanor.[99]

The Workgroup reviewed the vexatious litigant laws in other states, seeking to identify provisions that could increase the effectiveness of Florida's Vexatious Litigant Law. The Workgroup identified several such provisions, which are more fully explained in the findings and recommendations below.

FINDINGS

The Workgroup finds that the Florida Vexatious Litigant Law should be expanded to cover a wider range of improper conduct. The recent increase in lawsuits filed against judges and entries in the vexatious litigant registry may suggest an uptick in vexatious litigation over the past three years. Since the Initial Workgroup's report, the registry has grown by 56%, while the number of individuals has grown by only 27%. Similarly, the number of counties that have submitted orders to the registry has grown from 36 to 52 counties, comprising 77% of the state, compared to 53% of the state just two years ago. This data could suggest that a relatively small number of individuals are moving on to other circuits after being designated as vexatious in their home circuit. On the other hand, this data could also suggest that the education and training implemented in response to the Initial Workgroup's recommendations has raised awareness of the Vexatious Litigant Law, leading to increased enforcement and compliance with the requirement to forward orders to the Clerk of the Supreme Court.

Although the educational materials recommended by the Initial Workgroup appear to have enhanced awareness of the Vexatious Litigant Law, it remains underutilized when compared to other

[98] *See* N.H. Rev. Stat. Ann. § 507:15-a(II)(a) (2024); Utah R. Civ. P. 83(b)(2)-(3) (2024).

[99] 18 Pa. Cons. Stat. Ann. § 5109 (2024).

states, particularly those with similar populations.[100] Based on this discrepancy among Florida's registry and other states with more expansive vexatious litigant laws enacted after Florida's, the Workgroup concludes that the Florida Vexatious Litigant Law is underutilized because it is too narrow in scope.

The Initial Workgroup's report included a summary of judicial survey responses highlighting why the narrow scope of the Vexatious Litigant Law limits its effectiveness.[101] These responses, sampled below, encouraged a broadening of the law:

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[100] Florida's vexatious litigant law went into effect on October 1, 2000, and as of July 13, 2024, the vexatious litigant registry has 210 total entries for 107 individuals. *See* § 68.093, Fla. Stat. (2000); Florida's Vexatious Litigant List, *supra* note 22. In comparison, Arizona's Supreme Court issued an administrative order on November 4, 2020, requiring the creation of a vexatious litigation list, and as of July 12, 2024, it had 62 entries. *See In the Matter of: Establishing a Central Repository for Vexatious Litigant Information*, Ariz. Admin. Order No. 2020-171 (Ariz. Nov. 4, 2024), https://www.azcourts.gov/Portals/22/admorder/Orders20/2020-171.pdf?ver=2020-11-04-172923-400; Admin. Off. of the Cts., Vexatious Litigant List (July 12, 2024), https://www.azcourts.gov/Portals/0/Vexatious/Vexatious%207_12_2024.pdf?ver=2L-8o_DW5Zq-3EnYB13Ujg%3d%3d (last visited Aug. 4, 2024). California's vexatious litigant registry started in September 1990 and has 3,168 entries as of July 1, 2024. *See* Cal. Civ. Proc. Code § 391.7 (1990); Jud. Council of Cal., Vexatious Litigant List (July 1, 2024), https://www.courts.ca.gov/documents/vexlit.pdf (last visited August 4, 2024). Idaho's vexatious litigant rule went into effect on July 1, 2011, and its vexatious litigant registry had 31 entries as of July 13, 2024. *See* Idaho Ct. Admin. R. 59 (2011); Admin. Dir. Of the Cts., Roster of Idaho's Vexatious Litigants, State of Idaho Judicial Branch–Supreme Court, https://isc.idaho.gov/main/vexatious-litigants (last visited Aug. 4, 2024). Nevada's Supreme Court Rule 9.5—requiring the administrative office of the courts to maintain a list of vexatious litigants—went into effect on December 13, 2012, and as of August 1, 2024, it had 139 entries. *See* NV St. Sup. Ct. Rule 9.5; Admin. Off. of the Cts., Vexatious Litigant List, https://nvcourts.gov/__data/assets/pdf_file/0023/13496/Vexatious_Litigant_web_8_1_2024_web.pdf (last visited Aug. 4, 2024). North Dakota's State Court Administrator was required to maintain a list of vexatious litigants effective March 1, 2017, and this list has 30 entries as of the last update on May 5, 2023. *See* N.D. Sup. Ct. Admin. R. 58 (2017); St. Ct. Admin., Roster of Vexatious Litigants, https://www.ndcourts.gov/Media/Default/legal-resources/rules/ndsupctadminr/58/2023-05-05-Roster-of-Vexatious-Litigants-prefiled-restrict.pdf (last visited Aug. 4, 2024). Texas established its vexatious litigant list on September 1, 1997, and this list has 408 entries as of July 1, 2024. *See* Tex. Civ. Prac. & Rem. Code Ann. § 11.104 (1997); Off. of Ct. Admin., List of Vexatious Litigants Subject to a Prefiling Order, Texas Judicial Branch, https://www.txcourts.gov/judicial-data/vexatious-litigants.aspx (last visited Aug. 4. 2024).

[101] Initial Workgroup report, Appendix B, at 21-22

- Small claims and family cases should be included: "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."

- "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."

- 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."

- "'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 [voluntarily] dismiss it[])]."

The Workgroup finds that incorporating provisions from other states that have been upheld as constitutional, or remain unchallenged, would increase the effectiveness of Florida's Vexatious Litigant Law. The Workgroup concludes that the statute's effectiveness would be improved by extending its scope to more case types, considering vexatious conduct in other state and federal courts, lowering the threshold for the number of finally and adversely determined actions, extending the look-back period, designating certain conduct within a single action as vexatious, and expanding the applicable remedies to any party.

Florida appellate courts will interpret and determine the scope of the undefined terms in the proposed statute. For example, no state's vexatious litigant law defines the terms "repeatedly" or "unmeritorious" for purposes of the designation. In states that use this language, the appellate courts have interpreted the provisions in a manner that survives review.[102]

The ineffectiveness of monetary sanctions to deter vexatious litigants, combined with the court's limited inherent authority to sanction parties for improper litigation tactics,[103] bolsters the conclusion that the Vexatious Litigant Law should be expanded.

RECOMMENDATION - EXPAND THE VEXATIOUS LITIGANT LAW

The Workgroup recommends the Florida Supreme Court, through the OSCA Office of Legislative Affairs, seek legislative sponsors to file and advance the Workgroup's proposed amendment to the Vexatious Litigant Law. The proposed amendment is attached to this report as Appendix B. A description of the effects of the amendment to section 68.093, Florida Statutes, follows.

The term "action" now includes cases governed by the Florida Family Law Rules of Procedure and the Florida Small Claims Rules. The Initial Workgroup recommended this change.[104] Additionally, eight states extend the definition to family law cases,[105] and six states

[102] *See* footnotes 67 and 68, *supra*.

[103] *See Kozel*, *supra* note 30.

[104] Initial Workgroup's Final Report, *supra* note 5, at 32.

[105] Although each of these states' vexatious litigant laws apply to civil actions, reviewing courts have applied the statute in family law cases as follows: *McCurdy v. English*, 2021 WL 289305 (Ariz. Ct. App. 2021); *In re Marriage of Deal*, 259 Cal. Rptr. 3d 1 (Ct. App. 2020); *Giles v. Giles*, 37 P.3d 589 (Haw. Ct. App. 2001), as amended (Jan. 25, 2002); *In re Cook*, 481 P.3d 107 (Idaho 2021); *Beland v. Beland*, 2024 WL 1986006 (Minn. Ct. App. 2024); *Prime Equip. Group, Inc. v. Schmidt*, 66 N.E.3d 305 (Ohio Ct. App. 2016); *In re Potts*, 399 S.W.3d 685 (Tex. App. 2013); *Cox v. Hefley*, 441 P.3d 769 (Utah Ct. App. 2019).

extend the definition to small claims cases.[106] The current Florida statute excludes family and small claims cases, except that a plaintiff previously declared to be a vexatious litigant who files a small claims case may be required to furnish security in the small claims case.[107]

Adversary probate proceedings governed by Florida Probate Rule 5.025 are also included in the definition of the term "action."[108] While many probate proceedings are routine and uncontested,[109] contested probate proceedings fall under Rule 5.025, and are expressly governed by the Rules of Civil Procedure, except for Rule 1.525.[110] The Workgroup concludes that any vexatious litigation in a probate proceeding would naturally fall under Rule 5.025, and therefore application of the statute should be limited to adversary probate proceedings. Other states that apply the vexatious litigant statute or rule to probate proceedings include Arizona,[111] California,[112] and Nevada.[113]

The definition of "security" is expanded to authorize the court to require any party designated as a vexatious litigant, not just a plaintiff, to ensure the payment of another party's reasonable

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[106] Idaho Ct. Admin. R. 59 (2024); Iowa Code Ann. § 617.16 (2024); Minn. Gen. R. Prac.,9.06 (2024); N.H. Rev. Stat. Ann. § 507:15-a (2024); ND Sup. Ct. Admin. R. 58 (2024); Ohio Rev. Code Ann. § 2323.52 (2024).

[107] § 68.093(3)(a), Fla. Stat. (2024).

[108] § 68.093(1)(a), Fla. Stat. (2024).

[109] E-mail from The Honorable Gregory C. Harrell, Marion Cnty. Clerk of Ct. and Comptroller, to Dustin Metz, Chief of Innovations and Outreach, Off. of the St. Cts. Admin'r (June 28, 2024) (providing data on annual probate cases in Florida) (on file with Off. of the St. Cts. Admin'r). The data provided by Clerk Harrell shows that between 2019 and 2023 over 98% of probate cases in Florida were non-adversarial. *See id.*

[110] Fla. Prob. R. 5.025(d)(2); Florida Rules of Civil Procedure 1.525 establishes procedures for seeking a judgment taxing attorneys' fees or costs in civil cases.

[111] *See Matter of Estate of Davis*, 1 CA-CV 22-0140, 2023 WL 3714852 at *5 (Ariz. Ct. App. May 30, 2023).

[112] Cal. Civ. Proc. Code § 391.7.

[113] *See* Nev. Rev. Stat. Ann. § 155.165; Nev. Rev. Stat. Ann. § 159.0486; NV ST S CT Rule 9.5.

expenses of litigation. Minnesota,[114] Nevada,[115] New Hampshire,[116] and Utah[117] take this approach.

The definition of "vexatious litigant" is substantially amended. The look-back period is expanded from five to seven years in conformity with California,[118] Hawaii,[119] Idaho,[120] North Dakota,[121] Texas,[122] and Utah[123] law. The number of actions commenced, prosecuted, or maintained is decreased from five to three finally and adversely determined actions—the same number of qualifying lawsuits in Idaho,[124] Iowa,[125] New Hampshire,[126] and North Dakota.[127] The exclusion of cases governed by the Florida Small Claims Rules is struck to conform with the proposed amendment to the definition of "action," and in recognition of the adverse impact on the justice system posed by vexatious litigation, even in small claims case.

The amendment carves out actions finally and adversely determined against a person if the court finds the actions were commenced, prosecuted, or maintained in good faith. This amendment is intended to forestall application of the designation to parties that may commence, prosecute, or maintain a high volume of

[114] Minn. Gen. R. Prac., 9.01, 9.06 (2024).

[115] Nev. Rev. Stat. Ann. § 155.165(2) (2024); Nev. Rev. Stat. Ann. § 159.0486(2) (2024).

[116] N.H. Rev. Stat. Ann. § 507:15-a(II), b (2024).

[117] Utah R. Civ. P. 83(b), (c) (2024).

[118] Cal. Civ. Proc. Code § 391(b)(1) (2024).

[119] Haw. Rev. Stat. Ann. § 634J-1(1) (2024).

[120] Idaho Ct. Admin. R. 59(d)(1) (2024).

[121] N.D. Sup. Ct. Admin. R. 58(Sec. 4)(a) (2024).

[122] Tex. Civ. Prac. & Rem. Code Ann. § 11.054(1) (2024).

[123] Utah R. Civ. P. 83(a)(1)(a) (2024).

[124] Idaho Ct. Admin. R. 59(d)(1) (2024).

[125] Iowa Code Ann. § 617.16 (2024).

[126] N.H. Rev. Stat. Ann. § 507:15-a(I) (2024).

[127] N.D. Sup. Ct. Admin. R. 58(Sec. 4)(a) (2024).

cases pro se and in good faith, but who lose three or more actions over seven years through no fault of their own.

The Workgroup recommends broadening the definition of "vexatious litigant" to include any person who, after an action has been finally and adversely decided against them, repeatedly relitigates or attempts to relitigate the validity of the determination, cause of action, claim, controversy, or any issues of fact or law against the same party. California, [128] Hawaii, [129] Idaho, [130] Minnesota, [131] North Dakota, [132] Texas, [133] and Utah [134] take this approach.

To expressly authorize court intervention based on vexatious conduct in a single case, two additional amendments are recommended by the Workgroup. First, pro se litigants who repeatedly file pleadings, motions, and other papers that have been the subject of a previous ruling by the court are included in the definition of "vexatious litigant," as in Arizona. [135] Second, pro se litigants who repeatedly file unmeritorious pleadings, motions, and other papers, or engage in other tactics that are frivolous or solely intended to cause unnecessary delay are considered vexatious litigants under the amendment. Arizona,[136] California,[137] Hawaii,[138]

[128] Cal. Civ. Proc. Code § 391(b)(2) (2024).

[129] Haw. Rev. Stat. Ann. § 634J-1(2) (2024).

[130] Idaho Ct. Admin. R. 59(d)(2) (2024).

[131] Minn. Gen. R. Prac. 9.06(b)(1) (2024).

[132] N.D. Sup. Ct. Admin. R. 58(Sec. 4)(b) (2024).

[133] Tex. Civ. Prac. & Rem. Code Ann. § 11.054(2) (2024).

[134] Utah R. Civ. P. 83(a)(1)(B) (2024).

[135] Ariz. Rev. Stat. Ann. § 12-3201(E)(1)(f) (2024).

[136] Ariz. Rev. Stat. Ann. § 12-3201(E)(1)(e) (2024).

[137] Cal. Civ. Proc. Code § 391(b)(3) (2024).

[138] Haw. Rev. Stat. Ann. § 634J-1(3) (2024).

Idaho,[139] Nevada,[140] North Dakota,[141] Ohio,[142] and Utah[143] adopt this approach.

The amendment brings Florida in line with five states that consider activity in another state or federal court. These states are California,[144] Hawaii,[145] Idaho,[146] Minnesota,[147] and Texas.[148]

The amendment strikes language specifying that actions are not deemed pro se even if the action was commenced on behalf of a party by an attorney who later withdraws, and the party does not retain new counsel. The Workgroup noted that this current language allows a pro se litigant to evade the reach of the law—despite engaging in vexatious conduct—based merely on an attorney's representation at the commencement of the action. The Workgroup concluded that any vexatious conduct by a non-criminal pro se litigant in maintaining an action after an attorney's withdrawal should be eligible for consideration under the Vexatious Litigant Law.

The remedies provided by the Vexatious Litigant Law are substantially amended. The amendment authorizes any party, not just a defendant, to move the court for an order requiring security.[149] Likewise, the court may order any party to furnish the payment of security to an opposing party if the court determines the nonmoving party is a vexatious litigant and not reasonably likely to prevail on

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[139] Idaho Ct. Admin. R. 59(d)(3) (2024).

[140] Nev. Rev. Stat. Ann. § 155.165(1) (2024); Nev. Rev. Stat. Ann. § 159.0486(1)(a) (2024).

[141] N.D. Sup. Ct. Admin. R. 58 (Sec. 2)(b)(3) (2024).

[142] Ohio Rev. Code Ann. § 2323.52(2)(c) (2024).

[143] Utah R. Civ. P. 83(a)(1)(C)(iv) (2024).

[144] Cal. Civ. Proc. Code § 391(b)(4) (2024).

[145] Haw. Rev. Stat. Ann. § 634J-1(4) (2024).

[146] Idaho Ct. Admin. R. 59(d)(4) (2024).

[147] Minn. Gen. R. Prac. 9.06(a) (2024).

[148] Tex. Civ. Prac. & Rem. Code Ann. § 11.054(3) (2024).

[149] Minn. Gen. R. Prac. 9.01 (2024). Nev. Rev. Stat. Ann. § 155.165(2) (2024); Nev. Rev. Stat. Ann. § 159.0486(2) (2024); N.H. Rev. Stat. Ann. § 507:15-a (2024); Utah R. Civ. P. 83(c) (2024).

the merits of the action against the moving party.[150] In contrast, the current version of the statute authorizes the court to require security only from a plaintiff and only for the benefit of a defendant in an action.

Because the amendment authorizes the court to require security from a defendant or respondent, a new subparagraph specifies the remedies available if a defendant or respondent fails to furnish the required security. The amendment retains the court's existing authority to dismiss a vexatious plaintiff's action with prejudice under these circumstances and extends the remedy to petitioners. [151] For noncompliant vexatious defendants and respondents,[152] the amendment expressly authorizes the court to impose one or more of the following sanctions in an action: deny a pending motion, strike the pleadings, and render a default judgment. Although several states require defendants or respondents to post security for the moving party,[153] no other state expressly authorizes these specific remedies for the failure to post security. However, similar remedies are available for failure to comply with discovery

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[150] This language is used by both Minnesota and Utah. *See* Minn. Gen. R. Prac. 9.02(b)(2) (2024); Utah R. Civ. P. 83(c) (2024).

[151] The distinction between a "petitioner" and a "plaintiff" hinges on the type of initial filing and the nature of the legal action. *See Bredin v. Bredin*, 111 So. 2d 265, 266 (Fla. 1959) ("… [plaintiff] simply means the party who originates or institutes the law suit by the filing of the complaint."); *In re Amends. to the Fla. Sup. Ct. Approved Fam. Law Forms-Nomenclature.*, 235 So. 3d 357, 360 (Fla. 2018) ("[t]he person who originally asks for legal action is called the petitioner…"); *State Farm Fla. Ins. Co. v. Roof Pros Storm Div., Inc.*, 346 So. 3d 163, 165 (Fla. 5th DCA 2022) ("Florida Statutes describe many different civil petitions that litigants may avail themselves of…").

[152] The distinction between a "defendant" and a "respondent" also hinges on the type of initial filing and the nature of the legal action. *See Lee v. Lang*, 192 So. 490, 492 (Fla. 1939) ("A civil action is a proceeding in a court of justice in which one party, known as the plaintiff, demands against another party, known as the defendant, the enforcement or protection of a private right, or the prevention or redress of a private wrong."); *Amends. to The Fla. Rules of App. Proc., The Fla. Rules of Civ. Proc., The Fla. Rules of Crim. Proc., The Fla. Fam. Law Rules of Proc., The Fla. Rules of Juv. Proc., & The Fla. Prob. Rules*, 887 So. 2d 1090, 1162 (Fla. 2004) ("The person against whom the original legal action is being requested is called the respondent, because he or she is expected to respond to the petition.").

[153] Minn. Gen. R. Prac. 9.02 (2024). Nev. Rev. Stat. Ann. § 155.165(2) (2024); Nev. Rev. Stat. Ann. § 159.0486(2) (2024); N.H. Rev. Stat. Ann. § 507:15-a(II)(b) (2024); Utah R. Civ. P. 83(c) (2024).

under Florida Rule of Civil Procedure 1.380(b)(2)(C). The proposed remedies for defendants and respondents who fail to furnish security are intended to impose similar consequences as those for vexatious plaintiffs and petitioners, whose actions must be dismissed with prejudice. The Workgroup concluded that granting the court discretion to impose sanctions against vexatious defendants and respondents would allow the court to tailor the remedy to the nature of the vexatious conduct and avoid unjust application of the statute.

The amendment clarifies that when a motion for an order to post security is filed before trial, the action is stayed, and the moving party need not respond to the vexatious litigant's complaint, pleading, request for relief, or other paper until ten days after the motion is denied. Unlike the current law, which only stays the action for the moving defendant in response to a plaintiff's complaint, the amendment applies the stay to any moving party. Regarding adversary probate proceedings, the Workgroup concludes that the court's authority to "enter orders to avoid undue delay in the main administration" allows the court to stay only the portion of the proceeding involving vexatious litigation, enabling the main administration to continue without delay.[154]

The amendment authorizes the court to enter a prefiling order restricting any new filing by a pro se litigant in an action. Currently, the statute authorizes prefiling orders restricting only the filing of new actions.

The term "administrative judge" in the statute may lead to confusion. While the chief judge of each judicial circuit acts as the chief administrative officer,[155] they are also authorized to appoint an administrative judge for any court or division to assist with its administrative supervision.[156] However, not all courts or divisions have an administrative judge. To address this potential ambiguity, and to empower individual judges to manage vexatious litigation in a

[154] *See* Fla. Prob. R. 5.025(d)(3).

[155] Fla. R. Gen. Prac. & Jud. Admin. 2.215(b)(2).

[156] Fla. R. Gen. Prac. & Jud. Admin. 2.215(b)(5).

single case, the amendment replaces all references to the administrative judge with "the court."

Conforming edits are made to the duties of the clerk of court, specifying that the clerk must not file any pleading, request for relief, or other paper in an action by a vexatious litigant subject to a prefiling order unless the court has granted leave.

Additional conforming changes clarify that parties may file a notice if the clerk of court mistakenly allows a vexatious litigant subject to a prefiling order to file a pleading, request for relief, or other document in an action. This notice automatically stays any new action, pleading, motion, or other document filed by the vexatious litigant. The amendment specifies that, in these circumstances, a defendant or respondent's pleading, request for relief, or other document must be denied. In contrast, the current statute only authorizes dismissing a vexatious plaintiff's action. As noted above, the probate court's authority to "enter orders to avoid undue delay in the main administration" allows the court to stay only the portion of an adversary proceeding involving vexatious litigation, enabling the main administration to continue without delay.[157] The amendment also includes conforming changes regarding the entities entitled to request leave from a prefiling order and those entitled to a stay of the litigation. The requirement to serve an order granting leave from a prefiling order by U.S. mail is struck based on the proliferation of service by electronic means since the statute was enacted in 2000.[158]

The amendment clarifies that the relief provided under the Vexatious Litigant Law is cumulative to any other remedy available under the rules of court. This conforming amendment accounts for the new case types included in the definition of "action."

The amendment affirms the court's continuing authority to vacate a stay imposed under the statute at the court's discretion. The Workgroup concludes that this provision is necessary given the expansion of the statute's stay provisions to additional case types,

[157] *Id.*

[158] *See* Fla. R. Gen. Prac. & Jud. Admin. 2.516.

parties—not merely the plaintiff—and filings, not just the complaint. The Workgroup also notes that extending the automatic stay to any filing in an action, which may have been pending for some time, could create opportunities for gamesmanship and unreasonable delay. Recognizing the court's discretion to vacate the stay provides an important safeguard for litigants, especially in emergency matters, cases set for trial, and in actions governed by the Family Law Rules of Procedure. Although the Workgroup is not aware of any abuses of the statute's existing stay provisions, the Supreme Court may find it beneficial to monitor the impact of these amendments on the time to disposition in cases involving vexatious litigants.

The Workgroup notes that the existing law has been upheld against constitutional challenges brought under the Florida Constitution's "access to courts" provision in article 1, section 21. The Workgroup believes the amendment includes sufficient safeguards to avoid unconstitutional infringement upon a litigant's right of access. This conclusion is bolstered by the amendment's adoption of provisions from other states that have either been upheld or remain unchallenged.

Effective January 1, 2025, new Rule of Civil Procedure 1.201 will require parties to confer before filing non-dispositive motions and include a certification that the movant has conferred with the opposing party and indicating whether there is agreement on the motion's resolution.[159] The Workgroup notes that this requirement could be impractical and might lead to unnecessary delay in actions involving vexatious litigants. The Supreme Court may find it beneficial to monitor how these requirements impact cases involving vexatious litigants and consider waiving the "meet and confer" requirement when the opposing party is a vexatious litigant.

[159] *In re Amends. to Fla. Rule of Civil Proc. 1.510*, 386 So. 3d 117 (Fla. 2024).

PREVENTING PUBLIC DISCLOSURE OF DEFAMATORY AND HARMFUL MATTER IN NONCRIMINAL COURT FILINGS

Administrative Order No. AOSC24-19 also charged the Workgroup to "make recommendations, for ultimate consideration by the Legislature, . . . to address the public disclosure of improper matters stricken from noncriminal court filings that would defame and harm individuals." The Workgroup's review, analysis, findings, and recommendation related to this charge are set out below.

STRIKING MATTER FROM A PLEADING

Motions to strike the pleadings are authorized for different purposes depending on the nature of the proceeding. Under the Family Law Rules of Procedure, the Rules of Civil Procedure, and the Probate Rules, a motion to strike may be filed to eliminate redundant,[160] immaterial,[161] impertinent,[162] or scandalous[163] allegations from a pleading,[164] or to test the legal sufficiency of a sham defense in an answer or reply.[165]

In appellate practice, motions to strike are typically granted when a party's brief references matter outside the record on appeal[166] or fails to meet the rules governing the form and

[160] "Redundant" means the allegations are foreign to the issues or needlessly repetitive. Trawick, Fla. Prac. & Proc. § 11:12 (2023-2024 ed.).

[161] "Immaterial" means the allegations have no essential or important relationship to the issues or are unnecessary elaboration of material allegations. *Id.*

[162] "Impertinent" means the allegations do not relate to the issue and are unnecessary for its resolution. *Id.*

[163] "Scandalous" means unnecessarily censorial or criminatory. *See id.*; *Burke v. Mesta Mach. Co.*, 5 F.R.D. 134, 138 (W.D. Pa. 1946).

[164] Fla. R. Civ. P. 1.140(f); Fla. Fam. L. R. P. 12.140(f); Fla. Prob. R. 5.025(d)(2).

[165] Fla. R. Civ. P. 1.150(a); Fla. Fam. L. R. P. 12.150(a); Fla. Prob. R. 5.025(d)(2).

[166] *Ullah v. State*, 679 So. 2d 1242, 1244 (Fla. 1st DCA 1996).

content of appellate briefs.[167] These grounds include instances where briefs are unduly argumentative.[168]

When the court strikes the pleadings or portions of them, the stricken matter is removed from consideration by the jury and court, effectively treating the stricken matter as though it does not exist.[169] The striking of a pleading or entering a default for noncompliance with an order is the most severe sanction and should be employed only in extreme circumstances.[170]

Despite the imposition of the drastic relief of striking a pleading, the stricken immaterial, impertinent, scandalous, or sham information and material remain accessible as a public record in the court file.

LITIGATION PRIVILEGE

Defamatory statements[171] 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."[172]

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[167] *Greenfield v. Westmoreland*, 156 So. 3d 1 (Fla. 3d DCA 2007).

[168] *Id.*

[169] *See Bay Colony Office Bldg. Joint Venture v. Wachovia Mortg. Co.*, 342 So. 2d 1005, 1006 (Fla. 4th DCA 1977) ("Matter should be stricken as redundant or immaterial only if it is wholly irrelevant and can have no bearing on the equities and no influence at all on the decision.") (citing *Gossett v. Ullendorff*, 154 So. 177 (Fla. 1934); *Pentecostal Holiness Church, Inc. v. Mauney*, 270 So. 2d 762 (Fla. 4th DCA 1972)).

[170] *Mercer v. Raine*, 443 So. 2d 944, 946 (Fla. 1983) (citing *Hart v. Weaver*, 364 So. 2d 524 (Fla. 2d DCA 1978)).

[171] Under Florida law, to state a claim for defamation, that is, libel or slander, a plaintiff must allege that: (1) the defendant published a false statement; (2) about the plaintiff; (3) to a third party; and (4) that the falsity of the statement caused injury to the plaintiff. *See, e.g.*, *Rubinson v. Rubinson*, 474 F. Supp. 3d 1270, 1274-75 (S.D. Fla. 2020); *Jews For Jesus, Inc. v. Rapp*, 997 So. 2d 1098, 1105-06 (Fla. 2008).

[172] *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

The privilege applies to a broad range of judicial participants, including judges, parties, counsel, and witnesses, and covers both communicative and non-communicative acts as long as they are pertinent to the judicial proceedings.[173] It encompasses all types of judicial proceedings, whether they are based on common law, statutory authority, or other origins.[174]

The Initial Workgroup noted that many vexatious litigants are judgment-proof and are undeterred by the imposition of sanctions.[175] The ineffectiveness of sanctions as a deterrent, combined with the litigation privilege, creates an opportunity for litigants to file patently false and defamatory allegations in a court file.

FLORIDA PUBLIC RECORDS REQUIREMENTS

FLORIDA CONSTITUTION

Article I, section 24(a), of the Florida Constitution guarantees every person the right to inspect any public record made or received in connection with the official business of the state, except with respect to records made exempt under the Constitution. The right of access to public records extends to records of the judicial branch.[176]

Exemptions from public records requirements may be enacted by general law passed by a two-thirds vote of each house of the Legislature.[177] Such general laws "shall state with specificity the

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.").

[173] *Levin,* 639 So. 2d at 608.

[174] *Echevarria, McCalla, Raymer, Barrett & Frappier v. Cole*, 950 So. 2d 380, 384 (Fla. 2007).

[175] Initial Workgroup's Final Report, *supra* note 5, at 19.

[176] Art. I, § 24(a), Fla. Const.

[177] Art. I, § 24(c), Fla. Const.

public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law."[178] Additionally, rules of court restricting access to records that were in effect on July 1, 1993, remain in effect until repealed.[179] But effective July 1, 1993, only the Legislature may exempt records from the right of public access.[180]

Although Article I, section 24(a) of Florida Constitution solely authorizes the Legislature to exempt records from the public right of access after July 1, 1993, under the separation of powers enumerated in Article II, section 3 of the Florida Constitution, the Florida Supreme Court retains the authority to regulate access to and the protection of judicial branch records.[181] To implement its inherent authority to regulate access to and the protection of judicial branch records, the Florida Supreme Court adopted what is now Rule of General Practice and Judicial Administration 2.420.[182]

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[178] *Id.*

[179] *Id.*

[180] *See In re Amends. to Fla. R. Jud. Admin.-Pub. Access to Jud. Rec.*, 608 So. 2d 472 (Fla. 1992) ("The proposed amendment essentially provides that all records of the judicial branch shall be public except those exempted by Court rule in effect on the date of the adoption of the amendment or those exempted by the [L]egislature.").

[181] *See, e.g.*, *Locke v. Hawkes*, 595 So. 2d 32, 37 (Fla. 1992) (holding the term "agency" in chapter 119, Florida Statute, applies only to the executive branch); *Barron v. Florida Freedom Newspapers, Inc.*, 531 So. 2d 113, 118 (Fla. 1988) (acknowledging the judicial branch's inherent authority to govern access to civil proceedings); *Times Pub. Co. v. Ake*, 660 So. 2d 255, 257 (Fla. 1995) (holding the clerk of court is subject to the oversight and control of the Florida Supreme Court regarding access to records of the judicial branch).

[182] *In re Amends. to Fla. Rules of Jud. Admin.-Pub. Access to Jud. Recs.*, 608 So. 2d 472 (Fla. 1992) (adopting rule 2.051); *In re Amends. to the Fla. Rules of Jud. Admin.—Reorganization of the Rules*, 939 So. 2d 966 (Fla. 2006) (renumbering rule 2.051 to 2.420).

RULE OF GENERAL PRACTICE AND JUDICIAL ADMINISTRATION 2.420

The public has the right to access judicial branch records except as provided by Rule 2.420.[183] The rule specifies which records are deemed confidential and establishes procedures for providing access to and for protecting judicial branch records. The rule expressly adopts the confidentiality provisions of Florida law.[184] To the extent reasonably practicable, restriction of access to confidential information is implemented to avoid restricting access to any portion of a record that is not confidential.[185]

The clerk of court must maintain certain records as confidential.[186] These records include, among others, memoranda that are part of the court's decision-making process in disposing cases, performance evaluations, dependency records, social security numbers, bank accounts, and so forth.[187]

For noncriminal records, the clerk of court is not required to maintain information as confidential unless the filer follows the notice procedures of subdivision (d)(2), files a "Motion to Determine Confidentiality of Court Records" under subdivision (d)(3), and the filing is deemed confidential by court order or the case itself is confidential by law.[188]

The filer of any document containing confidential information described in Rule 2.420(d)(1)(B) (the "list of 25"), must, at the time of filing, file with the clerk a "Notice of Confidential Information within Court Filing" to indicate that either the entire document is confidential or identify the precise location of the confidential

[183] Fla. R. Gen. Prac. & Jud. Admin. 2.420(a).

[184] Fla. R. Gen. Prac. & Jud. Admin 2.420(c)(7).

[185] Fla. R. Gen. Prac. & Jud. Admin 2.420(b)(4).

[186] Fla. R. Gen. Prac. & Jud. Admin. 2.420(d)(1)(A), (B).

[187] *Id.*

[188] Fla. R. Gen. Prac. & Jud. Admin. 2.420(d)(1)(C).

information within the document being filed.[189] If the filer fails to file the required notice, a party or any affected non-party may file a notice.[190]

Upon receipt of a "Notice of Confidential Information within Court Filing" the clerk must review the filing to determine whether the purported confidential information is facially subject to confidentiality under the "list of 25."[191] Information that is facially confidential will be maintained as confidential by the clerk.[192] If the clerk determines the information is not facially confidential, the clerk must notify the filer within five days of filing the notice.[193] After the clerk notifies the filer that the information is not facially confidential, the clerk must maintain the information as confidential for ten days.[194] After 10 days, the information becomes public unless a "Motion to Determine Confidentiality of Court Records" is filed under subdivision (d)(3).

A "Motion to Determine Confidentiality of Court Records" may be filed (1) to ascertain whether information that is not identified in the "list of 25" is confidential, or (2) in response to the clerk determining information is not facially confidential.[195] The motion must: (1) identify the court record, or the portion thereof, that the movant seeks to have determined as confidential with as much specificity as possible without revealing the information; (2) specify the bases for determining the records are confidential without revealing the information; and (3) set forth the specific legal authority and applicable standards for determining the records are confidential.[196]

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[189] Fla. R. Gen. Prac. & Jud. Admin. 2.420(d)(2).

[190] Fla. R. Gen. Prac. & Jud. Admin. 2.420(d)(2)(A).

[191] Fla. R. Gen. Prac. & Jud. Admin 2.420(d)(2)(B).

[192] Fla. R. Gen. Prac. & Jud. Admin. 2.420(d)(1)(C).

[193] Fla. R. Gen. Prac. & Jud. Admin 2.420(d)(2)(B).

[194] *Id.*

[195] Fla. R. Gen. Prac. & Jud. Admin. 2.420(d)(3), (e)(1).

[196] Fla. R. Gen. Prac. and Jud. Admin. 2.420(e)(1).

Under current law, there is no public records exemption for records stricken by the court pursuant to a rule of procedure. As a result, immaterial, impertinent, scandalous, and sham matter remain in the public record despite being struck by the court under rules 1.140(f), 1.150(a), 5.025(d)(2), 9.410(a), 12.140(f), or 12.150(a).

PUBLIC RECORD STATUS OF STRICKEN MATTER IN OTHER STATES

Florida is often characterized as having among the broadest public records access requirements in the nation.[197] This reputation for openness stems from the fact that Florida enacted the nation's first public records act in 1909.[198] Florida is among a small minority of states that have an express right to access public records in the state constitution. [199] These other states include California, [200] Illinois,[201] Louisiana,[202] Montana,[203] New Hampshire,[204] and North Dakota.[205]

An even smaller minority of states directly address the public records status of improper matter stricken from a court file. South Carolina has taken the most aggressive approach by expressly authorizing the clerk of court or register of deeds to remove documents from the public record if the documents are believed to be materially false, fraudulent, or sham.[206] Kentucky courts interpret the striking of sham, redundant, immaterial, impertinent, or

[197] Ralph A. DeMeo & Lauren M. DeWeil, *The Florida Public Records Act in the Era of Modern Technology*, 92 FLA. B.J. 33 (2018)

[198] Ch. 5942, § 1, Laws of Fla. (1909).

[199] Art. I, § 24, Fla. Const.

[200] Cal. Const. art. I, § 3(b).

[201] Ill. Const. 1970, art. VIII, § 1(c), however, this provision is limited to reports and records of the obligation, receipt, and use of public funds.

[202] La. Const., art. XII, § 3.

[203] Mont. Const., art. II, § 9.

[204] N.H. Const., Part I, Art. 8.

[205] N.D. Const., art. XI, § 6.

[206] S.C. Code Ann. § 30-9-30(B).

scandalous matter to include the power to physically remove the stricken matter from the public record.[207] That said, neither state has a constitutional right of access to public records.

As for removing defamatory statements from the public record, Idaho courts are required to determine, before redacting or sealing court records, whether the documents "contain highly intimate facts or statements, the publication of which would be highly objectionable to a reasonable person or that the documents or materials contain facts or statements that the court finds might be libelous."[208] The Alabama Supreme Court authorizes the sealing of court records that "promote scandal or defamation."[209] However, neither state has a constitutional right of access to public records.

FINDINGS

PUBLIC RECORDS EXEMPTION

To satisfy its charge under the administrative order, the Workgroup drafted a public records exemption to protect individuals from defamatory and harmful matter stricken from a court file. This section of the report describes findings that support the creation of a public records exemption.

Under current law, even the most inflammatory and palpably false allegations struck by the court remain in the public record. Despite granting such drastic relief, false allegations are immune from defamation liability if they are relevant and material to the

[207] *Roman Cath. Diocese of Lexington v. Noble*, 92 S.W.3d 724, 733 (Ky. 2002) ("[T]here is nothing to indicate that the public and the press historically have had access to sham, immaterial, impertinent, redundant or scandalous material that is without 'legal effect.' Further, allowing access to such material serves a negative rather than a positive role, as is exemplified by this case.").

[208] Idaho Ct. Admin. R. 32(i)(2)(B). The rule further directs the court to consider "the traditional legal concepts in the law of the right to a fair trial, invasion of privacy, defamation, and invasion of proprietary business records as well as common sense respect for shielding highly intimate material about persons." I.C.A.R. 32(i)(3).

[209] *Holland v. Eads*, 614 So. 2d 1012, 1016 (Ala. 1993).

litigation.[210] The litigation privilege, combined with the ineffective deterrent of sanctions for many pro se litigants, leaves the door open for litigants to file patently false and defamatory allegations in court.

The court's authority to seal records is limited. Rule of General Practice and Judicial Administration 2.420(c)(9) authorizes the court to seal records when confidentiality is required, in relevant part, to avoid 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. As to injury to a party, only 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 sealed by the court under current law.[211]

Given the court's limited authority to seal defamatory and harmful information, even after taking the drastic step of striking the pleadings, a public records exemption enacted by the Legislature is the only tool available to prevent the ongoing publication of this information in a court record. The Legislature has enacted exemptions from public records requirements of such information in these contexts: workers' compensation investigations, [212] investigations of the Inspector General,[213] and investigations under the Insurance Code.[214]

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[210] *See Levin,* 639 So. 2d at 607 ("Traditionally, defamatory statements made in the course of judicial proceedings are absolutely privileged, no matter how false or malicious the statements may be, so long as the statements are relevant to the subject of inquiry.").

[211] *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).

[212] § 440.108(2)(e), Fla. Stat. (2024).

[213] § 112.31901(2), Fla. Stat. (2024).

[214] § 624.310(3)(f)(5)., Fla. Stat. (2024); § 624.319(3)(a)(3)(e), Fla Stat. (2024); § 626.989(5)(e), Fla. Stat. (2024); § 636.064(3), Fla. Stat. (2024); § 655.057(1)(e), Fla. Stat. (2024).

Moreover, one of the recognized identifiable public purposes for creating a public records exemption is the "protect[ion of] information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals."[215] In other words, the Legislature is the only body with the authority to exempt this information, which is expressly recognized as appropriate for protection and has been extended to similar records in other contexts.

Although the Workgroup explored other strategies to protect this information at the time of filing, it declined to extend the exemption to filings that have not been stricken by the court. To shield such information at the time of filing would require the exemption to apply to the mere allegation that information in a court file is defamatory or harmful. The Workgroup concludes that mere allegations of defamation and harm do not outweigh the public's right to access court records. Instead, the public records exemption applies only when the court has expressly found that the stricken matter: (1) is impertinent, immaterial, or sham, and (2) would be defamatory to individuals or cause unwarranted damage to the good name or reputation of individuals or would jeopardize the safety of individuals.

RULES OF PROCEDURE

The Workgroup drafted a proposed amendment to Rule 2.420 to satisfy its charge to protect individuals harmed by defamatory matter stricken from a court file. The amendment incorporates the public records exemption into Rule 2.420. Incorporating the exemption into the "list of 25" will enable any affected person to immediately notify the clerk of court that defamatory or harmful information has been stricken from a court record. The clerk of court will be able to maintain the information as confidential under the existing framework for providing access to judicial branch records

[215] § 119.15(6)(b)(2), Fla. Stat (2024).

upon receiving a Notice of Confidential Information or a Motion to Determine Confidentiality of Court Records under Rule 2.420.

RECOMMENDATION – LEGISLATIVE PUBLIC RECORDS EXEMPTION

As detailed in the findings above, a legislative public records exemption would be required to prohibit the public disclosure of harmful or defamatory matter in noncriminal court filings. However, there is presently no available data from which the Workgroup can definitively conclude whether there exists a public necessity justifying such an exemption. The Workgroup acknowledges that quantifying the extent and impact of defamatory matter stricken from court records is a challenging, if not impossible task. This challenge stems from the difficulty in identifying specific individuals who have been defamed or harmed, as such matter can affect judges, attorneys, represented and self-represented litigants, and other court system users. Determining whether there is a need to protect these individuals through a public records exemption may be a more qualitative policy decision of the Legislature, rather than one that can be quantitatively assessed by the Workgroup. This section of the report describes the public records exemption (Appendix C) and amendment to Rule 2.420 (Appendix D) drafted by the Workgroup to satisfy its charge.

Section 119.0714, Florida Statutes, exempts certain court records from public records requirements, including attorney work product, data processing software, law enforcement resources, and other sensitive information. The Workgroup concludes that this statute is the most logical choice for amendment in the Florida Statues to create a new public records exemption for immaterial, impertinent, or sham stricken matter that would defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual.

Under the amendment, subsection (1)(m) is created to exempt from public records requirements matter in a pleading, request for relief, or other paper that the court has stricken under the rules of court based on a finding that the stricken matter is impertinent,

immaterial, or sham and would defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual. The proposed bill provides a public necessity statement[216] and an effective date.[217]

If the Florida Legislature approves the public records exemption, the Florida Supreme Court should amend[218] Rule 2.420. A brief description of the rule amendment follows.

Subdivision (d)(1)(B)(xxvi) is created to incorporate the provisions of the public records exemption for matter stricken from a pleading, request for relief, or other paper under the rules of court if the court finds that such matter is immaterial, impertinent, or sham and would defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual.

The amendment adds the public records exemption to the "list of 25," resulting in a new "list of 26" confidentiality provisions subject to subdivision (d)(1)(B).

[216] Art. I § 24(c), Fla. Const. (The Legislature may enact public records exemptions "… provided that such law shall state with specificity the public necessity justifying the exemption…").

[217] *See* Art. III, § 9, Fla. Const. ("Each law shall take effect on the sixtieth day after adjournment sine die of the session of the legislature in which enacted or as otherwise provided therein.").

[218] Pursuant to its authority under Fla. R. Gen. Prac. & Jud. Admin. 2.140(d).

APPENDICES

- **Appendix A –** Summary of vexatious litigant laws in other states
- **Appendix B –** Proposed Amendment to the Florida Vexatious Litigant Law
- **Appendix C –** Proposed Public Records Exemption
- **Appendix D –** Proposed Amendment to Rule of General Practice and Judicial Administration 2.420

APPENDIX A

Vexatious Litigant Laws in Other States

Other States' Vexatious Litigant Laws

State	Statute	Court Rule	Lookback Period	Nature of Qualifying Conduct	Who can File	Consequences
Florida	§ 68.093, Fla. Stat.		Immediately preceding 5-year period for commencing actions. Otherwise, none.	(1) A person or entity who has commenced, prosecuted, or maintained, pro se, **five or more** civil actions in any court in this state, except small claims cases, which actions have been finally and adversely determined against such person or entity. (2) Any person or entity previously found to be a vexatious litigant pursuant to the statute. An "action" is governed by the Florida Rules of Civil Procedure and proceedings governed by the Florida Probate Rules, but does not include actions concerning family law matters governed by the Florida Family Law Rules of Procedure or any action in which the Florida Small Claims Rules apply.	Any defendant may move for an order requiring a vexatious litigant to furnish security in any civil action, including small claims cases. Any party may move for, or the court on its own motion may enter, a prefiling order.	Security: The court must require a vexatious plaintiff who is not reasonably likely to prevail on the merits of the action to post security in an amount reasonably sufficient to cover the defendant's anticipated, reasonable expenses of litigation, including attorney's fees and taxable costs. If the plaintiff fails to post security required by an order, the court shall immediately issue an order dismissing the action with prejudice as to the defendant for whose benefit the security was ordered. Prefiling Order: The court may 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. The clerk of the court shall not file any new action by a pro se vexatious litigant who is subject to a prefiling order.

Other States' Vexatious Litigant Laws

State	Statute	Court Rule	Lookback Period	Nature of Qualifying Conduct	Who can File	Consequences
						The clerk shall provide all prefiling orders to the Clerk of the Florida Supreme Court who shall maintain a registry of all vexatious litigants.
Arizona	Ariz. Rev. Stat. Ann. § 12-3201 Ariz. Rev. Stat. Ann. § 12-302	AZ ST CJA § 5-206 Q	None	The pro se litigant engaged in "vexatious conduct," which includes: (a) repeated filing of court actions solely or primarily for the purpose of harassment; (b) unreasonably expanding or delaying court proceedings; (c) court actions brought or defended without substantial justification; (d) engaging in abuse of discovery or conduct in discovery that has resulted in the imposition of sanctions against the pro se litigant; (e) a pattern of making unreasonable, repetitive and excessive requests for information; or (f) repeated filing of documents or requests for relief that have been the subject of previous rulings by the court in the same litigation.	In noncriminal cases, at the request of a party or on the court's own motion, the court may designate a pro se litigant as a vexatious litigant.	Prefiling Order: A pro se litigant who is designated a vexatious litigant may not file a new pleading, motion, or other document without prior leave of the court. A vexatious litigant may not obtain a waiver of fees or costs in civil actions other than cases of dissolution of marriage, legal separation, annulment or establishment, enforcement or modification of child support filed by a pro se litigant who has been previously declared a vexatious litigant by any court. Effective November 4, 2020, the Arizona Supreme Court issued Administrative Order No. 2020-171, which established a central repository for vexatious litigant information so that it would be available to the public. The Order requires that the presiding judge of

State	Statute	Court Rule	Lookback Period	Nature of Qualifying Conduct	Who can File	Consequences
						the superior court, or designee, who designates a vexatious litigant and issues an order preventing the litigant from initiating new cases, to forward a copy of the order to the Administrative Office of the Courts.
California	Cal. Civ. Proc. Code § 391 to 391.8		Immediately preceding 7-year period for commencing actions. Otherwise, none.	A person who does any of the following: (1) Commenced, prosecuted, or maintained in propria persona **at least five litigations** other than in a small claims court that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing. (2) After a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in propria persona, either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the	In any civil litigation pending in any court of the state, a defendant may move the court for an order requiring the plaintiff to furnish security or for an order dismissing the litigation. The court may, on its own motion or the motion of any party, enter a prefiling order.	Security: The court must order a vexatious litigant who has no reasonable probability of prevailing in the litigation against the moving defendant to furnish security for the benefit of the moving defendant in such amount and within such time as the court shall fix. The court must dismiss the litigation if the court finds the litigation has no merit and has been filed for the purposes of harassment or delay. However, this provision only applies to litigation filed by a vexatious litigant subject to a prefiling order who was represented by counsel at the time of filing and the attorney subsequently withdrew. Prefiling Order:

State	Statute	Court Rule	Lookback Period	Nature of Qualifying Conduct	Who can File	Consequences
				same defendant or defendants as to whom the litigation was finally determined. (3) In any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay. (4) Has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction, or occurrence. (5) After being restrained pursuant to a restraining order that remains in place, has commenced, prosecuted, or maintained one or more litigations against a person protected by the restraining order in this or any other court or jurisdiction that are determined to be meritless and caused the person protected by the order to be harassed or intimidated.		The court may enter a prefiling order, which prohibits a vexatious litigant from filing any new litigation in the courts of the state without first obtaining leave of the presiding justice or presiding judge of the court where the litigation is proposed to be filed. The clerk may not file any litigation presented by a vexatious litigant subject to a prefiling order unless the vexatious litigant first obtains an order from the presiding justice or presiding judge permitting the filing. The clerk of the court shall provide the Judicial Council a copy of any prefiling orders. The Judicial Council shall maintain a record of vexatious litigants subject to those prefiling orders and shall annually disseminate a list of those persons to the clerks of the courts. A vexatious litigant subject to a prefiling order may file an application to vacate the prefiling order and remove his or her name from the Judicial Council's list of

State	Statute	Court Rule	Lookback Period	Nature of Qualifying Conduct	Who can File	Consequences
						vexatious litigants upon a showing of a material change in the facts upon which the order was granted and that the ends of justice would be served by vacating the order. A vexatious litigant may not file more than one such application in a 12-month period after denial of a previous application.
Hawaii	Haw. Rev. Stat. Ann. § 634J-1 to 7		The immediately preceding 7-year period for commencing actions. Otherwise, none.	(1) Commenced, prosecuted, or maintained in propria persona **at least five civil actions** other than in a small claims court that have been (a) finally determined adversely to the plaintiff; or (b) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing. (2) After litigation has been finally resolved against the plaintiff, relitigates or attempts to relitigate in propria persona and in bad faith, either (a) the validity of the determination against the same defendant or defendant; or (b) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants.	In any litigation in the state, a defendant may move the court for an order requiring security. Any party may move for, or the court on its own motion may enter, a prefiling order.	Security: The court must order a vexatious plaintiff who has no reasonable probability of prevailing on the merits to furnish security for the benefit of the moving defendant in an amount and within a time as the court shall fix. When security that has been ordered is not furnished, the litigation shall be dismissed with prejudice as to the defendant for whose benefit it was ordered. Prefiling Order: The court may enter a prefiling order which prohibits a vexatious litigant from filing any new litigation in the courts of the state on the litigant's own behalf

State	Statute	Court Rule	Lookback Period	Nature of Qualifying Conduct	Who can File	Consequences
				(3) In any litigation while acting in propria persona, files, in bad faith, unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay. (4) Has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction, or occurrence. "Litigation" means any civil action or proceeding, commenced, maintained, or pending in any state or federal court of record.		without first obtaining leave of the presiding judge of the court where the litigation is proposed to be filed. The clerk shall not file any litigation presented by a vexatious litigant subject to a prefiling order unless the vexatious litigant first obtains an order from the presiding judge permitting the filing. The clerk of the court shall provide the supreme court clerk's office a copy of any prefiling order. The supreme court clerk's office shall maintain a record of vexatious litigants subject to prefiling orders and shall annually disseminate a list of vexatious litigants to the clerks of the courts of the state.
Idaho		Idaho Ct. Admin. R. 59	Immediately preceding 7-year period for commencing actions. Otherwise, none.	A person is a "vexatious litigant" upon finding that the person has done any of the following: (1) commenced, prosecuted or maintained pro se **at least three litigations**, other than in the small claims department of the magistrate division, that have	Unclear, but it appears that a party can make a motion.	Prefiling Order: An administrative judge may enter a prefiling order prohibiting a vexatious litigant from filing any new litigation in the courts of the state pro se without first obtaining leave of a judge of the court where the litigation is proposed to be filed.

State	Statute	Court Rule	Lookback Period	Nature of Qualifying Conduct	Who can File	Consequences
				been finally determined adversely to that person; (2) After a litigation has been finally determined against the person, the person has repeatedly relitigated or attempted to relitigate, pro se, either (A) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (B) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined; (3) In any litigation while acting pro se, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay. (4) Has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding. "Litigation" means any civil action or proceeding, and includes any		If a vexatious litigant subject to a prefiling order files any litigation without first obtaining the required leave of a judge to file the litigation, the court may dismiss the action. The clerk of the court shall provide a copy of any prefiling order issued pursuant to this rule to the Administrative Director of the Courts, who shall maintain a list of vexatious litigants subject to prefiling orders.

State	Statute	Court Rule	Lookback Period	Nature of Qualifying Conduct	Who can File	Consequences
				appeal from an administrative agency, any appeal from the small claims department of the magistrate division, any appeal from the magistrate division to the district court, and any appeal to the Supreme Court.		
Iowa	Iowa Code Ann. § 617.16	Iowa R. Civ. P. 1.413(2)	The preceding 5-year period.	Plaintiff in a civil action who has unsuccessfully prosecuted **three or more civil actions** found to have been frivolous. In objective sense, claim is "frivolous" if proponents can present no rational argument based upon evidence or law in support of the claim. In subjective sense, claim may be said to be "frivolous" if it is taken primarily for purpose of harassing or maliciously injuring a person.	Unclear, but it appears a party may move to, or the court on its own motion may, find the actions frivolous.	Security: The court may order a plaintiff to furnish an undertaking secured by cash or approved sureties to pay all costs resulting to opposing parties to the action.
Michigan		Mich. Ct. R. 7.216(C); Mich. Ct. R. 7.316(C)	None	Vexatious Appellate Proceedings: The court may determine that an appeal or original proceeding is vexatious if (a) the matter was filed for purposes of hindrance or delay or is not reasonably well-grounded in fact or warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; or	Any party or the court on its own motion.	Damages may not exceed actual damages and expenses incurred by the opposing party because of the vexatious appeal or proceeding, including reasonable attorney fees, and punitive damages in an added amount not exceeding the actual damages. The Court may remand the case to the trial court or tribunal for a

State	Statute	Court Rule	Lookback Period	Nature of Qualifying Conduct	Who can File	Consequences
				(b) a pleading, motion, argument, brief, document, or record filed in the case or any testimony presented in the case was grossly lacking in the requirements of propriety, violated court rules, or grossly disregarded the requirements of a fair presentation of the issues to the Court. Vexatious Litigator: A party who habitually, persistently, and without reasonable cause engages in vexatious conduct under subrule (C)(1) [vexatious proceedings].		determination of actual damages. Upon finding a party to be a vexatious litigator, the court may impose filing restrictions on the party. The restrictions may include prohibiting the party from continuing or instituting legal proceedings in the court without first obtaining leave, prohibiting the filing of actions in the court without the filing fee or security for costs required by MCR 7.209 or MCR 7.219, or other restriction the court deems just.
Minnesota		Minn. Gen. Prac. Rule 9, Frivolous Litigation	None	A "frivolous litigant" is a person who, after requesting relief in the form of a claim, counterclaim, cross claim, third party claim, or lien filed, served, commenced, maintained, or pending in any federal or state court, which has been finally determined against the person, **repeatedly relitigates or attempts to relitigate** either: (a) the validity of the determination against the same party or parties; or (b) the cause of action, claim, controversy, or any of the issues of fact or law determined or concluded by the final determination against the same party or parties.	Any party or the court on its own motion.	Security: The court may require furnishing of security to the party for whose benefit the undertaking is required to be furnished, incurred in or in connection with a claim instituted, caused to be instituted, or maintained or caused to be maintained by a frivolous litigant-- if there is no reasonable probability that the litigant will prevail on the claim. If security is required and not furnished as ordered, the claim(s) subject to the

State	Statute	Court Rule	Lookback Period	Nature of Qualifying Conduct	Who can File	Consequences
				In any action or proceeding in any court of the state, the court must consider: (1) the frequency and number of claims pursued by the frivolous litigant with an adverse result; (2) whether the claim, motion, or request was made for purposes of harassment, delay, or vexatiousness, or otherwise in bad faith; (3) injury incurred by other litigants prevailing against the frivolous litigant and to the efficient administration of justice as a result of the claim, motion, or request in question; (4) effectiveness of prior sanctions in deterring the frivolous litigant from pursuing frivolous claims.		security requirement may be dismissed with or without prejudice as to the offending party. Prefiling Order: The court may impose preconditions on a frivolous litigant's service or filing of any new claims, motions or requests upon a finding that no less severe sanction will sufficiently protect the rights of other litigants, the public, or the courts.
Nevada	Nev. Rev. Stat. Ann. § 155.165; Nev. Rev. Stat. Ann. § 159.0486	NV ST S CT Rule 9.5	None	Wills & Estates – Vexatious Litigants: A person, including, without limitation, a personal representative or trustee, is a vexatious litigant if the person files a petition, objection, motion or other pleading which is without merit, intended to harass or annoy the personal representative or a trustee, or	Any party or the court on its own motion.	Wills & Estates – Sanctions: If a court finds that a person is a vexatious litigant pursuant to subsection 1[§ 155.165], the court may impose sanctions on the person in an amount sufficient to reimburse the estate or trust for all or part of the expenses, including, without limitation,

State	Statute	Court Rule	Lookback Period	Nature of Qualifying Conduct	Who can File	Consequences
				intended to unreasonably oppose or frustrate the efforts of an interested person who is acting in good faith to enforce his or her rights. Guardianships & Trusts – Vexatious Litigants: A court may find that a petitioner is a vexatious litigant if a person, other than the protected person: (a) Files a petition which is without merit or intended to harass or annoy the guardian; and (b) Has previously filed pleadings in a guardianship proceeding that were without merit or intended to harass or annoy the guardian.		reasonable attorney's fees, incurred by the estate or trust to respond to the petition, objection, motion or other pleading and for any other pecuniary losses which are associated with the actions of the vexatious litigant. If a court finds that a personal representative or trustee is a vexatious litigant, the court may remove the personal representative or trustee and any sanctions imposed by the court must be imposed against the personal representative or trustee personally and not against the estate or trust. The court may make an order directing entry of judgment for the amount of such sanctions. Guardianships & Trusts – Sanctions: If a court finds a person is a vexatious litigant pursuant to subsection 1 [§ 159.0486], the court may impose sanctions on the petitioner in an amount sufficient to reimburse the estate of the protected person for all or part of the expenses incurred by the estate of the protected person to defend the petition, to respond to the

State	Statute	Court Rule	Lookback Period	Nature of Qualifying Conduct	Who can File	Consequences
						petition and for any other pecuniary losses which are associated with the petition. Vexatious Litigant Registry: Upon entering an order declaring a litigant to be vexatious, each court must submit a copy of the order to the director of the administrative office of courts or his or her designee. The administrative office of the courts must maintain a list of litigants that have been declared as vexatious by any court, at any level of jurisdiction, throughout the state.
New Hampshire	N.H. Rev. Stat. Ann. § 507:15-a; N.H. Rev. Stat. Ann. § 507:15		None	Individual who has filed **three or more** frivolous lawsuits that were initiated for the primary purpose of harassment.	Unclear, but it appears a party may move to, or the court on its own motion may, find the lawsuits were initiated for the primary purpose of harassment.	Security: The court may require posting of a cash or surety bond sufficient to cover all attorney fees and anticipated damages. Appointment of Counsel: May be required to retain an attorney or other person of good character to represent him or her in all actions.
North Dakota		ND R ADMIN AR 58	Immediately preceding 7-year period for commencing actions.	Person who has: (a) commenced, prosecuted or maintained as a self-represented	Court's own motion or by motion of a party.	Prefiling Order: Judge may enter pre-filing order prohibiting a vexatious litigant from filing any new

State	Statute	Court Rule	Lookback Period	Nature of Qualifying Conduct	Who can File	Consequences
			Otherwise, none.	party **at least three litigations** that have been finally determined adversely to that person; (b) after a litigation has been finally determined against the person, the person has repeatedly relitigated or attempted to relitigate, as a self-represented party, either (1) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined; or (2) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined; (c) in any litigation while acting as a self-represented party, the person repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary burden, expense or delay; (d) in any litigation, the person has previously been declared to		litigation or any new documents in existing litigation in the courts of this state as a self-represented party without first obtaining leave of a judge of the court where the litigation is proposed to be filed. The clerk of court must provide a copy of any pre-filing order to the state court administrator, who will maintain a list of vexatious litigants subject to pre-filing orders.

State	Statute	Court Rule	Lookback Period	Nature of Qualifying Conduct	Who can File	Consequences
				be a vexatious litigant by any state or federal court of record in any action or proceeding; or (e) in any disciplinary proceeding, the person has previously been declared to be a vexatious litigant in a disciplinary proceeding. Vexatious litigant means a person who habitually, persistently, and without reasonable grounds engages in conduct that: (1) serves primarily to harass or maliciously injure another party in litigation; (2) is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law; (3) is imposed solely for delay; (4) hinders the effective administration of justice; (5) imposes an unacceptable burden on judicial personnel and resources; or (6) impedes the normal and essential functioning of the judicial process.		

State	Statute	Court Rule	Lookback Period	Nature of Qualifying Conduct	Who can File	Consequences
				"Litigation" means any civil or disciplinary action or proceeding, including any appeal from an administrative agency, any review of a referee order by the district court, and any appeal to the supreme court.		
Ohio	Ohio Rev. Code Ann. § 2323.52	Ohio S. Ct. Prac. R. 4.03	None	A "vexatious litigator" is any person who has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions, whether in the court of claims or in a court of appeals, court of common pleas, municipal court, or county court, whether the person or another person instituted the civil action or actions, and whether the vexatious conduct was against the same party or against different parties in the civil action or actions. Vexatious conduct means conduct of a party that satisfies any of the following: (a) The conduct obviously serves merely to harass or maliciously injure another party to the civil action. (b) The conduct is not warranted under existing law and cannot be supported by a good faith	A person who has defended against habitual and persistent vexatious conduct may commence a civil action in a court of common pleas with jurisdiction over the person who allegedly engaged in the habitual and persistent vexatious conduct to have that person declared a vexatious litigator.	Prefiling Order: The court may issue an order prohibiting the vexatious litigator from doing one or more of the following without first obtaining the leave of that court to proceed: (a) Instituting legal proceedings in the court of claims or in a court of common pleas, municipal court, or county court; (b) Continuing any legal proceedings that the vexatious litigator had instituted in any of the courts specified in this statute prior to the entry of the order; (c) Making any application, other than an application for leave to proceed under this statute. The clerk of the court must send a certified copy of the

State	Statute	Court Rule	Lookback Period	Nature of Qualifying Conduct	Who can File	Consequences
				argument for an extension, modification, or reversal of existing law. (c) The conduct is imposed solely for delay.		order to the supreme court for publication in a manner that the supreme court determines is appropriate and that will facilitate the clerk of the court of claims and a clerk of a court of appeals, court of common pleas, municipal court, or county court in refusing to accept pleadings or other papers submitted for filing by persons who have been found to be a vexatious litigator.
Pennsylvania	18 Pa. Cons. Stat. Ann. § 5109		None	Vexes others with unjust and vexatious suits.	The state via indictment.	Misdemeanor of the third degree.
Texas	Tex. Civ. Prac. & Rem. Code Ann. § 11.001 to 11.104		Immediately preceding 7-year period for commencing actions. Otherwise, none.	Plaintiff does not have a reasonable probability of prevailing in the litigation and: (1) Plaintiff has commenced, prosecuted, or maintained at least five litigations as a pro se litigant other than in small claims court that have been: (a) finally determined adversely to the plaintiff; (b) permitted to remain pending at least two years without having been brought to trial or hearing; or	A defendant may move for an order determining that the plaintiff is a vexatious litigant and requiring the plaintiff to furnish security. Any party may move for, or the court on its own motion	Security: The court must order the plaintiff to furnish security to assure payment for the benefit of the moving defendant of his or her reasonable expenses incurred in or in connection with a litigation commenced, caused to be commenced, maintained, or caused to be maintained-- if the court determines that the plaintiff is a vexatious litigant. The court must dismiss a litigation as to a moving

Other States' Vexatious Litigant Laws

State	Statute	Court Rule	Lookback Period	Nature of Qualifying Conduct	Who can File	Consequences
				(c) determined by a trial or appellate court to be frivolous or groundless under state or federal laws or rules of procedure. (2) after a litigation has been finally determined against the plaintiff, the plaintiff repeatedly relitigates or attempts to relitigate, pro se, either: (A) the validity of the determination against the same defendant as to whom the litigation was finally determined; or (B) the cause of action, claim, controversy, or any of the issues of fact or law determined or concluded by the final determination against the same defendant as to whom the litigation was finally determined; or (3) the plaintiff has previously been declared to be a vexatious litigant by a state or federal court in an action or proceeding based on the same or substantially similar facts, transition, or occurrence. "Litigation" means a civil action commenced, maintained, or	may enter, a prefiling order.	defendant if a plaintiff ordered to furnish security does not furnish the security within the time set by the order. <u>Prefiling Order:</u> The court may enter an order prohibiting a person from filing, pro se, a new litigation without permission of the appropriate local administrative judge. The clerk may not file any litigation presented by a pro se vexatious litigant subject to a prefiling order unless the vexatious litigant first obtains an order from the presiding justice or presiding judge permitting the filing. A clerk of a court must provide the Office of Court Administration of the Texas Judicial System a copy of any prefiling order issued not later than the 30th day after the date the prefiling order is signed.

State	Statute	Court Rule	Lookback Period	Nature of Qualifying Conduct	Who can File	Consequences
				pending in any state or federal court. "Plaintiff" means an individual who commences or maintains a litigation pro se.		
Utah		Utah R. Civ. P. 83	Immediately preceding 7-year period for commencing actions. Otherwise, none.	A vexatious litigant is: (1) a person that has filed at least five claims for relief, other than small claims actions, that have been finally determined against the person, and the person does not have within that time at least two claims, other than small claims actions, that have been finally determined in that person's favor; (2) after a claim for relief or an issue of fact or law in the claim has been finally determined, the person two or more additional times re-litigates or attempts to re-litigate the claim, the issue of fact or law, or the validity of the determination against the same party in whose favor the claim or issue was determined; (3) in any action, the person three or more times does any one or any combination of the following: (i) files unmeritorious pleadings or other papers, (ii) files	Any party or on the court's own motion.	Upon a showing that the party is a vexatious litigant and there is no reasonable probability of prevailing on the merits, the court may enter an order requiring a party to: (1) furnish security to assure payment of the moving party's reasonable expenses, costs and, if authorized, attorney fees incurred in a pending action; (2) obtain legal counsel before proceeding in a pending action; (3) obtain legal counsel before filing any future claim for relief; (4) abide by a prefiling order requiring the vexatious litigant to obtain the court's permission before filing any paper, pleading, or motion, in a pending action, except that the court may not require a

Other States' Vexatious Litigant Laws

State	Statute	Court Rule	Lookback Period	Nature of Qualifying Conduct	Who can File	Consequences
				pleadings or other papers that contain redundant, immaterial, impertinent or scandalous matter, (iii) conducts unnecessary discovery or discovery that is not proportional to what is at stake in the litigation, or (iv) engages in tactics that are frivolous or solely for the purpose of harassment or delay. "Claim" and "claim for relief" mean a petition, complaint, counterclaim, cross claim or third-party complaint.		vexatious litigant to obtain the court's permission before filing a notice of or petition for permission to appeal; (5) abide by a prefiling order requiring the vexatious litigant to obtain the court's permission before filing any future claim for relief in any court; or (6) take any other action reasonably necessary to curb the vexatious litigant's abusive conduct.

APPENDIX B

Proposed Amendment to Florida's Vexatious Litigant Law

Proposed Amendment to the Florida Vexatious Litigant Law

A bill to be entitled

An act relating to vexatious litigants; amending s. 68.093, F.S.; providing an effective date.

Be it Enacted by the Legislature of the State of Florida.

Section 1. Section 68.093, Florida Statutes, is amended to read:

(1) This section may be cited as the "Florida Vexatious Litigant Law."

(2) As used in section, the term:

(a) "Action" means an ~~a civil~~ action governed by the Florida Family Law Rules of Procedure, the Florida Rules of Civil Procedure, ~~and proceedings governed by the~~ Florida Probate Rule~~s~~ 5.025, or the Florida Small Claims Rules, or an action in another state court or federal court governed by comparable rules of procedure ~~but does not include actions concerning family law matters governed by the Florida Family Law Rules of Procedure or any action in which the Florida Small Claims Rules apply~~.

~~(b) "Defendant" means any person or entity, including a corporation, association, partnership, firm, or governmental entity, against whom an action is or was commenced or is sought to be commenced.~~

(b~~e~~) "Security" means an undertaking by a vexatious litigant to ensure payment to a party ~~defendant~~ in an amount reasonably sufficient to cover the

party's ~~defendant's~~ anticipated, reasonable expenses of litigation, including attorney's fees and taxable costs.

(c~~d~~) "Vexatious litigant" means a person as defined in s. 1.01(3), proceeding pro se, who:

1. In ~~A person as defined in s. 1.01(3) who, in~~ the immediately preceding 7~~5~~-year period has commenced, prosecuted, or maintained, pro se, three ~~five~~ or more ~~civil~~ actions in any court that ~~in this state, except an action governed by the Florida Small Claims Rules, which actions~~ have been finally and adversely determined against such person, except that an action may not be included for purposes of this subparagraph if the court finds that the action was commenced, prosecuted, or maintained in good faith ~~or entity~~; ~~or~~

2. After an action has been finally and adversely determined against the person, repeatedly relitigates or attempts to relitigate, either the validity of the determination against the same party as to whom the action was finally determined or the cause of action, claim, controversy, or any of the issues of fact or law determined by the final and adverse determination against the same party as to whom the action was finally determined;

3. Repeatedly files pleadings, requests for relief, or other papers that have been the subject of previous rulings by the court in the same action;

4. Repeatedly files unmeritorious pleadings, requests for relief, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay in any action; or

5. Was ~~2. Any person or entity~~ previously found to be a vexatious litigant pursuant to this section or by another state court or a federal court.

An action is not deemed to be "finally and adversely determined" if an appeal in that action is pending. ~~If an action has been commenced on behalf of a party by an attorney licensed to practice law in this state, that action is not deemed to be pro se even if the attorney later withdraws from the representation and the party does not retain new counsel.~~

(3)(a) In any action pending in any court of this state~~, including actions governed by the Florida Small Claims Rules~~, any party ~~defendant~~ may move the court, upon notice and hearing, for an order requiring an opposing party ~~the plaintiff~~ to furnish security. The motion shall be based on the grounds, and supported by a showing, that the opposing party subject to the motion ~~plaintiff~~ is a vexatious litigant and is not reasonably likely to prevail on the merits of the action against the moving party ~~defendant~~.

(b) At the hearing upon any party's ~~defendant's~~ motion for an order to post security, the court shall consider any evidence, written or oral, by witness or affidavit, which may be relevant to the consideration of the motion. No determination made by the court in such a hearing shall be admissible on the merits of the action or deemed to be a determination of any issue in the action. If, after hearing the evidence, the court determines that the opposing party subject to the motion ~~plaintiff~~ is a vexatious litigant and is not reasonably likely to prevail on the merits of the action against the moving party ~~defendant~~, the

court shall order the vexatious litigant ~~plaintiff~~ to furnish security to the moving party ~~defendant~~ in an amount and within such time as the court deems appropriate.

(c) If the vexatious litigant ~~plaintiff~~ fails to post security required by an order of the court under this section and the vexatious litigant is:~~,~~

1. A plaintiff or petitioner, the court shall immediately issue an order dismissing the action with prejudice as to the moving party ~~defendant~~ for whose benefit the security was ordered; or

2. A defendant or respondent, the court may immediately issue an order imposing one or more of the following sanctions, as appropriate:

a. Denial of the vexatious litigant's request for relief;

b. Striking of the vexatious litigant's pleading or other paper or part thereof; or

c. Rendition of a judgment by default against the vexatious litigant.

(d) If a motion for an order to post security is filed prior to the trial in an action, the action shall be automatically stayed and the moving party ~~defendant~~ need not plead or otherwise respond to the vexatious litigant's complaint, pleading, request for relief, or other paper until 10 days after the motion for an order to post security is denied. If the motion is granted, the moving party ~~defendant~~ shall respond or plead no later than 10 days after the required security has been furnished.

(4) In addition to any other relief provided in this section, the court in any judicial circuit 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 or from filing, pro se, any pleading, request for relief, or other paper in an action in the courts of that circuit without first obtaining leave of the court ~~administrative judge of that circuit~~. Disobedience of such an order may be punished as contempt of court ~~by the administrative judge of that circuit~~. Leave of court shall be granted by the court ~~administrative judge~~ only upon a showing that the proposed action or pleading, request for relief, or other paper is meritorious and is not being filed for the purpose of delay or harassment. The court ~~administrative judge~~ may condition the filing of the proposed action or pleading, request for relief, or other paper upon the furnishing of security as provided in this section.

(5) The clerk of the court shall not file any new action or any pleading, request for relief, or other paper in an action on behalf of a pro se ~~by a~~ vexatious litigant against whom a prefiling order has been entered ~~pro se~~ unless the vexatious litigant has obtained an order from the court ~~administrative judge~~ permitting such filing. If the clerk of the court mistakenly permits a pro se vexatious litigant to file an action or a pleading, request for relief, or other paper in an action ~~pro se~~ in contravention of a prefiling order, any party to that action may file with the clerk and serve on the vexatious litigant ~~plaintiff~~ and all other parties ~~defendants~~ a notice stating that the ~~plaintiff is a pro se~~ vexatious litigant is subject to a prefiling order. The filing of such a notice shall automatically stay the litigation against all parties ~~defendants~~ to the action. The court ~~administrative judge~~ shall automatically dismiss the action or deny the pleading,

request for relief, or other paper in an action filed by the vexatious litigant with prejudice within 10 days after the filing of such notice unless the vexatious litigant ~~plaintiff~~ files a motion for leave to file the action or the pleading, request for relief, or other paper in the action. If the court ~~administrative judge~~ issues an order granting leave ~~permitting the action to be filed~~, pleadings or other responses ~~the defendants need not plead or otherwise respond~~ to the complaint or the pleading, request for relief, or other paper need not be filed until 10 days after the date of service by the vexatious litigant ~~plaintiff, by United States mail,~~ of a copy of the order granting leave ~~to file the action~~.

(6) The clerk of a court shall provide copies of all prefiling orders to the Clerk of the Florida Supreme Court, who shall maintain a registry of all vexatious litigants.

(7) An automatic stay imposed under this section remains in effect until the court:

(a) In its discretion, vacates the stay;

(b) Rules, as applicable, on the motion for an order to post security under paragraph (3)(d) or the motion for leave under subsection (5); or

(c) Dismisses the action or denies the pleading, request for relief, or other paper under subsection (5).

(8) The relief provided under this section shall be cumulative to any other relief or remedy available ~~to a defendant~~ under the laws of this state or the rules of court, ~~and the Florida Rules of Civil Procedure,~~ including, but not limited to, the relief provided under s. 57.105.

Section 2: This act shall take effect July 1, 2025.

APPENDIX C

Proposed Public Records Exemption

Proposed Public Record Exemption

A bill to be entitled

An act relating to public records; amending s. 119.0714, F.S.; creating an exemption from public records requirements for immaterial, impertinent, or sham matter stricken from a noncriminal court filing under the applicable rules of court if disclosure of such stricken matter would defame or cause unwarranted damage to the good name or reputation of a person or jeopardize the safety of an individual; providing an effective date.

Be it Enacted by the Legislature of the State of Florida.

Section 1. Subsection (1) of section 119.0714, Florida Statutes, is amended to read:

(1) COURT FILES.—Nothing in this chapter shall be construed to exempt from s. 119.07(1) a public record that was made a part of a court file and that is not specifically closed by order of court, except:

(a) A public record that was prepared by an agency attorney or prepared at the attorney's express direction as provided in s. 119.071(1)(d).

(b) Data processing software as provided in s. 119.071(1)(f).

(c) Any information revealing surveillance techniques or procedures or personnel as provided in s. 119.071(2)(d).

(d) Any comprehensive inventory of state and local law enforcement resources, and any comprehensive policies or plans compiled by a criminal justice agency, as provided in s. 119.071(2)(d).

(e) Any information revealing the substance of a confession of a person arrested as provided in s. 119.071(2)(e).

(f) Any information revealing the identity of a confidential informant or confidential source as provided in s. 119.071(2)(f).

(g) Any information revealing undercover personnel of any criminal justice agency as provided in s. 119.071(4)(c).

(h) Criminal intelligence information or criminal investigative information that is confidential and exempt as provided in s. 119.071(2)(h) or (m).

(i) Social security numbers as provided in s. 119.071(5)(a).

(j) Bank account numbers and debit, charge, and credit card numbers as provided in s. 119.071(5)(b).

(k)1. A petition, and the contents thereof, for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking that is dismissed without a hearing, dismissed at an ex parte hearing due to failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being issued on or after July 1, 2017, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. A petition, and the contents thereof, for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence,

stalking, or cyberstalking that is dismissed without a hearing, dismissed at an ex parte hearing due to failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being issued before July 1, 2017, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution only upon request by an individual named in the petition as a respondent. The request must be in the form of a signed, legibly written request specifying the case name, case number, document heading, and page number. The request must be delivered by mail, facsimile, or electronic transmission or in person to the clerk of the court. A fee may not be charged for such request.

3. Any information that can be used to identify a petitioner or respondent in a petition for an injunction against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking, and any affidavits, notice of hearing, and temporary injunction, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the respondent has been personally served with a copy of the petition for injunction, affidavits, notice of hearing, and temporary injunction.

(l) Personal identifying information and annuity contract numbers of a payee of a structured settlement as defined in s. 626.99296(2) and the names of family members, dependents, and beneficiaries of such payee contained within a court file relating to a proceeding for the approval of the transfer of structured settlement payment rights under s. 626.99296. Such information shall remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution during the

pendency of the transfer proceeding and for 6 months after the final court order approving, or not approving, the transferee's application. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.

(m) Matter in a pleading, request for relief, or other paper that has been stricken by the court in a noncriminal case pursuant to the rules of court if the court finds that the stricken matter:

1. Is immaterial, impertinent, or sham; and

2. Would defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual.

Such stricken matter is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

Section 2. The Legislature finds that it is a public necessity that immaterial, impertinent, or sham matter that would defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual, when such matter has been stricken from a noncriminal court file pursuant to the rules of court, be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Under the "litigation privilege," defamatory statements made in court filings are exempted from liability in an action for defamation, 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. *See, e.g., 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"); *Wright v. Yurko*, 446 So. 2d 1162, 1164 (Fla. 5th DCA 1984) ("[p]arties, 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."). Moreover, the striking of even parts of a pleading is considered drastic relief to be applied sparingly by the court, with any doubts resolved in favor of the pleading. *See generally*, Bruce J. Berman & Peter D. Webster, *Berman's Florida Civil Procedure* § 1.140:45. Harmful statements remain in the public record despite the drastic relief of being struck by the court as immaterial impertinent, or sham. The protection of such stricken matter concerning an individual, the release of which would be defamatory to such individual, would cause unwarranted damage to the good name or reputation of such individual, or would jeopardize the safety of such individual, serves an identifiable public purpose justifying the creation of an exemption from public records requirements. § 119.15(6)(b)2., Fla. Stat. The Legislature finds that the harm that may result from the release of such stricken matter outweighs any public benefit that may be derived from the disclosure of the stricken matter.

Section 3: This act shall take effect July 1, 2025.

APPENDIX D

Proposed Amendment to Rule 2.420

RULE 2.420. PUBLIC ACCESS TO AND PROTECTION OF JUDICIAL BRANCH RECORDS

(d) Procedures for Determining Confidentiality of Court Records.

(1) Except as provided in this subdivision, the clerk of the court must designate and maintain the confidentiality of any information contained within a court record that is described in this subdivision.

(A) The clerk of the court must maintain as confidential information described by any of subdivisions (c)(1) through (c)(6) of this rule.

(B) Except as provided by court order, the clerk of the court must maintain as confidential information subject to subdivision (c)(7) or (c)(8) of this rule that is currently confidential or exempt from section 119.07, Florida Statutes, and article I, section 24(a) of the Florida Constitution as specifically stated in any of the following statutes or as they may be amended or renumbered:

(i) Chapter 39 records relating to dependency matters, termination of parental rights, guardians ad litem, child abuse, neglect, and abandonment. §§ 39.0132(3), 39.0132(4)(a), 39.202, Fla. Stat.

(ii) Adoption records. § 63.162, Fla. Stat.

(iii) Social Security, bank account, charge, debit, and credit card numbers. § 119.0714(1)(i)-(j), (2)(a)-(e), Fla. Stat. (Unless redaction is requested under § 119.0714(2), Fla. Stat., this information is exempt only as of January 1, 2012.)

(iv) HIV test results and the identity of any person upon whom an HIV test has been performed. § 381.004(2)(e), Fla. Stat.

(v) Records, including test results, held by the Department of Health or its authorized representatives relating to sexually transmissible diseases. § 384.29, Fla. Stat.

(vi) Birth records and portions of death and fetal death records. §§ 382.008(6), 382.025(1), Fla. Stat.

(vii) Information that can be used to identify a minor petitioning for a waiver of parental or guardian notice or consent when seeking to terminate pregnancy. §§ 390.01116, 390.01118, Fla. Stat.

(viii) Clinical records under the Baker Act, § 394.4615(7), Fla. Stat., and all petitions, court orders, and related records under the Baker Act, including all personal identifying information of a person subject to the Act, § 394.464, Fla. Stat.

(ix) Records of substance abuse service providers which pertain to the identity, diagnosis, and prognosis of and service provision to individuals, § 397.501(7), Fla. Stat., and all petitions, court orders, and related records for involuntary assessment and stabilization of an individual, § 397.6760, Fla. Stat.

(x) Clinical records of criminal defendants found incompetent to proceed or acquitted by reason of insanity. § 916.107(8), Fla. Stat.

(xi) Estate inventories and accountings. § 733.604(1), Fla. Stat.

(xii) The victim's address in a domestic violence action on petitioner's request. § 741.30(3)(b), Fla. Stat.

(xiii) Protected information regarding victims of child abuse or sexual offenses. §§ 119.071(2)(h), 119.0714(1)(h), Fla. Stat.

(xiv) Gestational surrogacy records. § 742.16(9), Fla. Stat.

(xv) Guardianship reports, orders appointing court monitors, orders relating to findings of no probable cause in guardianship cases, and documents related to the settlement of a minor's claim or the settlement of a claim for a ward. §§ 744.1076, 744.3025, 744.3701, Fla. Stat.

(xvi) Grand jury records. §§ 905.17, 905.28(1), Fla. Stat.

(xvii) Records acquired by courts and law enforcement regarding family services for children. § 984.06(3)-(4), Fla. Stat.

(xviii) Juvenile delinquency records. §§ 985.04(1), 985.045(2), Fla. Stat.

(xix) Records disclosing the identity of persons subject to tuberculosis proceedings and records held by the Department of Health or its authorized representatives relating to known or suspected cases of tuberculosis or exposure to tuberculosis. §§ 392.545, 392.65, Fla. Stat.

(xx) Complete presentence investigation reports. Fla. R. Crim. P. 3.712.

(xxi) Forensic behavioral health evaluations under Chapter 916. § 916.1065, Fla. Stat.

(xxii) Eligibility screening, substance abuse screening, behavioral health evaluations, and treatment status reports for defendants referred to or considered for referral to a drug court program. § 397.334(10)(a), Fla. Stat.

(xxiii) Information that can be used to identify a petitioner or respondent in a petition for an injunction against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking, and any affidavits, notice of hearing, and temporary injunction until the respondent has been personally

served with a copy of the petition for injunction, affidavits, notice of hearing, and temporary injunction. § 119.0714(1)(k) 3., Fla. Stat.

(xxiv) a court record in the case giving rise to the Department of Law Enforcement's sealing of a criminal history record. § 943.0595, Fla. Stat.

(xxv) Petitions, pleadings, and related documents for human trafficking victim expunction. § 943.0583(12)(a), Fla. Stat.

(xxvi) Immaterial, impertinent, or sham matter stricken from a pleading, request for relief, or other paper pursuant to the rules of court if the court finds that the stricken matter would defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual. § 119.0714(m), Fla. Stat.

(C) In civil cases, the clerk of the court is not required to designate and maintain information as confidential unless the filer follows the notice procedures in subdivision (d)(2), files a Motion to Determine Confidentiality of Court Records as set forth in subdivision (d)(3), and the filing is deemed confidential by court order or the case itself is confidential by law. “Civil cases” as used in this rule includes only civil case types in the circuit, county, or small claims courts (identified by the Court Type Designator CA, CC, and SC in the uniform case numbering system), except those case types listed as “Viewable on Request (VOR)” in the Standards for Access to Electronic Court Records and Access Security Matrix, as adopted by the supreme court in Administrative Order AOSC14-19 or the then-current standards for access.

(2) The filer of any document containing confidential information described in subdivision (d)(1)(B) must, at the time of filing, file with the clerk a “Notice of Confidential Information within Court Filing” to indicate that confidential information described in subdivision (d)(1)(B) of this rule is included within the document being filed and also indicate that either the entire document is confidential or identify the precise location of the confidential

information within the document being filed. If an entire court file is maintained as confidential, the filer of a document in that file is not required to file the notice form. A form Notice of Confidential Information within Court Filing accompanies this rule.

(A) If any document in a court file contains confidential information as described in subdivision (d)(1)(B), the filer, a party, or any affected non-party may file the Notice of Confidential Information within Court Filing if the document was not initially filed with a Notice of Confidential Information within Court Filing and the confidential information is not maintained as confidential by the clerk. The Notice of Confidential Information within Court Filing filed under this subdivision must also state the title and type of document, date of filing (if known), date of document, docket entry number, indicate that either the entire document is confidential or identify the precise location of the confidential information within the document, and provide any other information the clerk may require to locate the confidential information.

(B) The clerk of court must review filings identified as containing confidential information to determine whether the purported confidential information is facially subject to confidentiality under subdivision (d)(1)(B). If the clerk determines that filed information is not subject to confidentiality under subdivision (d)(1)(B), the clerk must notify the filer of the Notice of Confidential Information within Court Filing in writing within 5 days of filing the notice and must maintain the information as confidential for 10 days from the date the notification by the clerk is served. The information must not be held as confidential for more than that 10-day period unless a motion has been filed under subdivision (d)(3).

(3) The filer of a document with the court must ascertain whether any information contained within the document may be confidential under subdivision (c) of this rule even if the information is not itemized at subdivision (d)(1) of this rule. If the filer believes in good faith that information is confidential but is not described in subdivision (d)(1) of this rule, the filer may request that the

information be maintained as confidential by filing a "Motion to Determine Confidentiality of Court Records" under the procedures in subdivision (e), (f), or (g), unless:

(A) the filer is the only individual whose confidential information is included in the document to be filed or is the attorney representing the filer; and

(B) a knowing waiver of the confidential status of that information is intended by the filer. Any interested person may request that information within a court file be maintained as confidential by filing a motion as provided in subdivision (e), (f), or (g).

(4) If a notice of confidential information is filed under subdivision (d)(2), or a motion is filed under subdivision (e)(1) or (g)(1) seeking to determine that information contained in court records is confidential, or a motion is filed under subdivision (e)(5) or (g)(5) seeking to vacate an order that has determined that information in a court record is confidential or seeking to unseal information designated as confidential by the clerk of court, then the person filing the notice or motion must give notice of that filing to any affected non-party. Notice under this provision must:

(A) be filed with the court;

(B) identify the case by docket number;

(C) describe the confidential information with as much specificity as possible without revealing the confidential information, including specifying the precise location of the information within the court record; and

(D) include the applicable statement that:

(i) if a motion to determine confidentiality of court records is denied then the subject material will not be treated as confidential by the clerk; and

(ii) if a motion to unseal confidential records or vacate an order deeming records confidential is granted, the subject material will no longer be treated as confidential by the clerk.

Any notice in this subdivision must be served under subdivision (k), if applicable, together with the motion that gave rise to the notice in accordance with subdivision (e)(5) or (g)(5).

(5) If a judge, magistrate, or hearing officer files any document containing confidential information, the confidential information within the document must be identified as "confidential" and the title of the document must include the word "confidential," except when the entire court file is maintained as confidential. The clerk must maintain the confidentiality of the identified confidential information. A copy of the document edited to omit the confidential information must be provided to the clerk for filing and recording purposes.

Supreme Court of Florida

No. SC2024-1721

IN RE: CERTIFICATION OF NEED FOR ADDITIONAL JUDGES.

December 12, 2024

PER CURIAM.

Consistent with the process set out in article V, section 9 of the Florida Constitution, this opinion addresses the need to increase or decrease the number of judges in fiscal year 2025-26 and certifies our "findings and recommendations concerning such need" to the Florida Legislature.[1] We certify the need for 23

1. Article V, section 9 of the Florida Constitution provides in pertinent part:

> **Determination of number of judges.—**The supreme court shall establish by rule uniform criteria for the determination of the need for additional judges except supreme court justices, the necessity for decreasing the number of judges and for increasing, decreasing or redefining appellate districts and judicial circuits. If the supreme court finds that a need exists for increasing or decreasing the number of judges or increasing, decreasing or redefining appellate districts and judicial

additional circuit court judgeships and 25 additional county court judgeships, as identified in the appendix, as well as the need for two additional district court judgeships on the Sixth District Court of Appeal. We certify there is no need to decrease the number of circuit court judgeships, county court judgeships, or district court judgeships. However, we acknowledge excess judicial capacity in the Second District Court of Appeal and recommend that the Legislature address this excess capacity over time by reducing the number of statutorily authorized judgeships based on attrition, without requiring a judge to vacate his or her position involuntarily.

I. TRIAL COURT JUDICIAL WORKLOAD ASSESSMENT

Under Florida Rule of General Practice and Judicial Administration 2.240, this Court assesses trial court judicial need "based primarily on the application of case weights to circuit and county court caseload statistics." The rule requires the Commission on Trial Court Performance and Accountability to "review the trial court workload trends and case weights and

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> circuits, it shall, prior to the next regular session of the legislature, certify to the legislature its findings and recommendations concerning such need.

consider adjustments no less than every five years." As noted in our certification opinion last year, this cyclical review was delayed due to the impacts of the Coronavirus Disease 2019 pandemic and jurisdictional threshold changes on the court data the Commission relies on to determine case weight adjustments.[2] After those impacts subsided, the Court determined it was appropriate to conduct a trial court workload assessment to ensure the case weights—which had last been updated in 2016—accurately reflect the current judicial workload.

To advance this effort, the Court directed the Commission to "[m]anage and oversee all efforts needed to review, update, and extend Florida's trial court judicial workload model (case weights) to address recent developments in statutory and case law and other practices that impact judicial workload."[3,4] The Office of the State

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2. *In re Certif. of Need for Add'l Judges*, 375 So. 3d 204, 205 (Fla. 2023).

3. *In re Commission on Trial Court Performance and Accountability*, Fla. Admin. Order No. AOSC22-36 (July 28, 2022).

4. This assessment builds upon our three previous efforts to evaluate trial court judicial workload. *See Florida Delphi-based Weighted Caseload Project Final Report* (Jan. 2000), https://www.flcourts.gov/content/download/217995/file/DelphiF

Courts Administrator (OSCA) contracted with the National Center for State Courts (NCSC) to assist the Commission with the assessment. The NCSC has conducted judicial workload assessments in more than 30 states,[5] including two previous Florida assessments that resulted in final reports issued in 2000 and 2016.[6]

A. Judicial Workload Assessment Methodology

The Florida courts system implemented a multi-phase methodology to assess the judicial workload of trial courts. The methodology was both quantitative and qualitative in nature and structured to allow for maximum circuit and county court judge

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ullReport.pdf; Commission on Trial Court Performance & Accountability, *Judicial Resource Study Final Report* (2007), https://supremecourt.flcourts.gov/content/download/242776/file/JRSReport_Introduction.pdf; *Florida Judicial Workload Assessment Final Report* (May 16, 2016), https://www.flcourts.gov/content/download/778447/file/Florida%20Judicial%20Workload%20Assessment%20Final%20Report%202016.pdf.

5. *See* Workload Assessment, National Center for State Courts, https://www.ncsc.org/consulting-and-research/areas-of-expertise/court-management-and-performance/workload-assessment (last visited Nov. 4, 2024).

6. *See supra* note 4.

participation.[7] A detailed discussion of the judicial workload assessment methodology follows.

In October 2022, OSCA contracted with the NCSC to conduct the trial court workload assessment. An administrative order constituted a Judicial Needs Assessment Committee (JNAC) comprised of 23 judges representing every judicial circuit to oversee and guide the assessment.[8] To help define the scope of the project and ensure its completion, the JNAC reviewed and approved all the methodological steps of the assessment. Specific project elements the JNAC reviewed and approved included the determinations of a standard judge day and a standard judge year, identification of case- and non-case-related activities, delineation of case-type categories, administration of the time study process, administration of the quality adjustment process, assignment of final proposed

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7. Senior judges and quasi-judicial officers, including magistrates, child support enforcement hearing officers, and civil traffic infraction hearing officers, also participated in the assessment. Capturing this workload helps document their important contribution to the resolution of cases and will inform the standards used to allocate quasi-judicial officers based on workload.

8. *In re Trial Court Judicial Needs Assessment Committee*, Fla. Admin. Order No. AOSC22-77 (Oct. 20, 2022).

case weights, and selection of a qualifying judicial threshold methodology.

B. Time Study and Quality Adjustment Process

The workload assessment was performed in two stages: first, a time study, and second, a quality adjustment process.[9] The formal assessment process began with a one-month time study in which circuit and county court judges recorded their time spent on case- and non-case-related activities in a web-based application in five-minute increments.[10] Statewide, 586 circuit court judges and 321 county court judges participated in the time study, a participation rate of 99 percent.

The time study provided an empirically grounded basis for analyzing judicial workload in each of Florida's trial courts, as it captured the actual amount of time judges spent on case- and non-case-related activity each day, including time spent handling cases

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9. *See Florida Judicial Workload Assessment Final Report* (June 2024), https://www.flcourts.gov/content/download/2438568/file/Judicial_Workload_Report_Final.pdf.

10. The time study occurred from September 18 through October 15, 2023.

on and off the bench and any after-hours or weekend work. Separately, OSCA provided counts of filings by case-type category and court location. The NCSC used the time study and filings data to calculate preliminary case weights based on the number of minutes circuit and county court judges spent resolving cases within each case-type category.

The quality adjustment process, like those used in previous assessments, was designed to ensure that the final case weights for circuit and county court judges incorporate adequate time for case processing. This process included a statewide sufficiency of time survey and a structured quality review of the preliminary case weights by a set of experienced judges from across the state. The quality adjustment process served an important role in the workload assessment because the preliminary case weights derived from the time study reflected data collected during a one-month period only. This one-month period may not have captured the variability that can occur throughout the year in certain case-type categories or other factors affecting the time dedicated to handling case-related activities during that period. Additionally, the preliminary case weights did not account for whether sufficient time

was available to deliver quality performance. The quality adjustment process, therefore, provided an opportunity to refine the weights so they accurately allocate sufficient time for effective case processing.

All circuit and county court judges were asked to complete a sufficiency of time survey in October 2023. The survey asked judges about the amount of time currently available to perform various case-related and non-case-related tasks. Specifically, within certain case-type categories, judges were asked to identify tasks, if any, where additional time would improve the "quality of justice." The survey enabled judges to freely comment on their workload. Seventy-one percent of circuit court judges and seventy-three percent of county court judges completed the survey.

The second component of the quality adjustment process was a series of Delphi[11] quality adjustment group sessions with circuit and county court judges in April 2024. A Delphi process has been

11. The Delphi method is a structured iterative process for decision-making by a panel of experts; in this instance, judges. *See Delphi Method*, RAND Corporation, http://www.rand.org/topics/delphi-method.html (last visited Nov. 4, 2024).

used by each of Florida's three previous workload assessments.[12] During the current assessment, six Delphi groups, facilitated by NCSC staff and comprised of six to eight judges representing different circuit sizes, met to review and assess the preliminary case weights. Each group focused on one of the following divisions of court: circuit criminal, circuit civil/probate, family, juvenile, county criminal, or county civil. Thirty-seven judges participated, with each judge experienced in the division of court that was the focus of the group. Considering the preliminary case weights and the results of the sufficiency of time survey, the groups identified any case-type categories and activities where additional time may be needed to enhance performance and recommended corresponding adjustments to the preliminary case weights. The groups ultimately recommended case weight changes for 25 percent of the case-type categories.

Throughout the quality adjustment process, judges reported that many case-type categories are more complex now than during the previous assessment, thus requiring additional time. Examples

12. *See supra* note 4.

of the areas where judges believed more time would improve the overall quality of justice included the review and hearing of non-dispositive pretrial motions in circuit and county criminal cases; the review and hearing of dispositive pretrial motions in circuit civil cases; the preparation of findings and orders related to trials and final hearings in circuit family cases; and the hearing of cases involving pro se litigants and interpreters. Judges also indicated, among other things, that more time is needed for case management, particularly in civil cases.[13]

The JNAC and the Commission, in April and May 2024, respectively, approved the proposed case weights and the recommendations advanced by the NCSC in its final report. This Court adopted the proposed case weights in June 2024 and directed OSCA staff to use the revised case weights starting with the certification analysis for fiscal year 2025-26.

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13. In 2021, this Court implemented differentiated case management requirements to promote the timely resolution of civil cases. *See In re Comprehensive COVID-19 Emergency Measures for Florida Trial Courts*, Fla. Admin. Order No. AOSC20-23, Amend. 10 (Mar. 9, 2021); *see also In re Amends. to Fla. Rules of Civ. Proc.*, 386 So. 3d 497, 500 (Fla. 2024); *In re Amends. to Fla. Rules of Civ. Proc.*, 49 Fla. L. Weekly S289 (Dec. 5, 2024).

II. TRIAL COURT CERTIFICATION OF JUDICIAL NEED

As described above, the Court continues to use a verified objective weighted caseload methodology as a primary basis for assessing judicial need for the trial courts. Total annual workload is calculated by multiplying a three-year average of forecasted filings for each case-type category by the corresponding case weight, then summing the workload across all case-type categories. Each court's workload is then divided by a judge year value to determine the total number of full-time equivalent judges needed to handle the workload.

Judgeship needs applications submitted by the chief judges of the judicial circuits supplement the objective data. Those applications provide the chief judges with an opportunity to describe how secondary factors[14] are affecting the courts within their judicial circuits. The secondary factors identified by each chief judge reflect local differences in support of their requests for more judgeships or in support of their requests for this Court to not

14. Other factors that may be used in the determination of trial court judicial need are prescribed in Florida Rule of General Practice and Judicial Administration 2.240(b)(1)(B) and (c).

certify the need to decrease judgeships in situations in which the objective weighted caseload methodology alone would indicate excess judicial capacity.

We have examined case filing data, reviewed the secondary factors supplied by the chief judges as part of their judgeship needs applications, and used the final case weights from the workload assessment to evaluate judicial need. Applying this methodology and using an objective threshold for evaluating when judicial workload indicates a need for more or fewer judges, this Court certifies the need for 48 additional trial court judgeships statewide—23 in circuit court and 25 in county court. Our specific certifications for circuit and county court judges are set out in the appendix accompanying this opinion. We recommend no decrease in circuit court judgeships and no decrease in county court judgeships.

To arrive at our certifications, the Court accounted for the relative needs of each circuit and county court as reflected in the weighted caseload methodology, but we have not certified the need for the full complement of judges indicated by that methodology. Instead, based on several considerations, the Court has chosen to

adopt an approach that is more incremental but still reasonable and fair.

The Court recognizes that funding new judgeships is a significant investment, and we are mindful of the Legislature's challenge in addressing myriad state budget priorities with limited resources. Further, the court system's capacity to absorb additional judges at one time is limited by factors such as courthouse space, with expansion of courtrooms and chambers subject to the availability of county funding. The Court also recognizes that establishment of new judgeships results in operational and potential fiscal impacts for justice-partner entities such as the clerks of the circuit courts, state attorneys, and public defenders. Finally, the court system requires some time to establish workload trends using the newly adopted case weights. It is for this same reason that the Court is necessarily cautious about certifying the need to decrease judgeships, as we are not yet able to determine trends that would indicate a sustained surplus in judicial capacity.

The Court is committed to ensuring that the allocation of any additional resources to the judicial branch budget results in

operational outcomes that benefit users of the court system. Although there is not an increase in forecasted filings, the revised case weights resulting from the comprehensive trial court workload assessment demonstrate that many cases have become more complex and require additional judicial engagement and time to resolve—warranting additional judges. If the Legislature elects to fund the judgeships certified in this opinion as an initial step in addressing the increased workload of circuit and county courts, this Court will use the new case weights to monitor the impact of the new resources and evaluate outstanding need in subsequent certification opinions under article V, section 9 of the Florida Constitution.

III. DISTRICT COURT OF APPEAL CERTIFICATION OF JUDICIAL NEED

In furtherance of our constitutional obligation to determine the State's need for additional judges in fiscal year 2025-26,[15] this opinion certifies the need for two additional district court judgeships on the Sixth District Court of Appeal. In accordance with Florida Rule of General Practice and Judicial Administration

15. *See supra* note 1.

2.240(b)(2), the Court continues to rely on a verified, objective weighted caseload methodology—primarily based on the number of cases disposed—as the main criterion for evaluating judicial need in the district courts. This methodology also considers factors related to workload, efficiency, effectiveness, and professionalism as outlined in the rule.

A. Sixth District Court of Appeal Judicial Need

The Sixth District requested two additional judgeships. In its request, the chief judge noted that the district court began its work on January 1, 2023,[16] with nearly 1,700 transferred cases from two other district courts, and that filings in the district court continue to grow. According to the chief judge, the current judge complement is insufficient to keep pace with this growing workload. Additionally, the district court is currently supported by a temporarily assigned appellate judge from a neighboring district court, an assignment that is not a long-term solution to the district court's workload challenges.

The chief judge of the Sixth District also noted that despite

16. *See* §§ 35.01, .044, Fla. Stat. (2023).

high caseloads, the judges and staff have made every effort to properly execute their responsibilities. But they do so knowing that trying to absorb this increased workload limits the time available for the consideration of each case and the writing of opinions. This Court shares the concerns of the chief judge about the potential for negative effects resulting from continued high workload and strained judicial resources. We find the workload for the Sixth District and other secondary factors cited in the request from the chief judge persuasive.

B. District Court of Appeal Excess Judicial Capacity

As addressed in previous certifications of need for additional judges,[17] the Court recognizes excess judicial capacity in the Second District Court of Appeal based on the addition of a sixth district, corresponding jurisdictional boundary changes in three existing districts, and the policy decision not to require judges to relocate. However, the Court continues to recommend that this excess capacity be addressed over time through attrition; therefore,

17. *See In re Redefinition of App. Dists. & Certif. of Need for Add'l App. Judges*, 345 So. 3d 703, 706 (Fla. 2021); *In re Certif. of Need for Add'l Judges*, 353 So. 3d 565, 568 (Fla. 2022); *In re Certif. of Need for Add'l Judges*, 375 So. 3d at 205, 207-08.

we do not certify the need to decrease any district court judgeships.

To address the estimated excess judicial capacity in the Second District, this Court recommends that during the 2025 Regular Session the Legislature consider enacting legislation that provides for a reduction in the number of statutorily authorized district court judgeships based on attrition and without requiring a judge to vacate his or her position involuntarily. Such legislation could specify that, upon each occurrence of an event that otherwise would have resulted in a vacancy in the office of judge of the Second District, the number of authorized judges shall be reduced by one. We recommend that eventually, after attrition, there be 13 judges authorized for the Second District.[18]

The goal of the Court's recommended approach, consistent with previous opinions, is to address excess district court judicial capacity without prematurely ending an existing judge's judicial career. This approach reflects the policy embodied in the 2022 law

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18. The Court previously recommended that, after attrition, there be 12 judges authorized for the Second District. *See* Fla. SB 490 (2024) (died in Judiciary Committee) (proposed amendment to § 35.06, Fla. Stat.); Fla. HB 457 (died in Civil Justice Subcommittee) (same). After further analysis, the Court now finds that the appropriate target is 13 judges.

establishing the Sixth District and realigning the jurisdictional boundaries of the first, second, and fifth appellate districts.[19]

In recent years, the Court had noted excess judicial capacity within the First District Court of Appeal, based on the same factors articulated above for the Second District.[20] However, the Court has since determined it would be prudent to continue to monitor the workload in the First District and recommend no additional changes to judgeships on that court at this time. The weighted workload per judge is higher in the First District than in the Second District and is more closely aligned with the other four district courts.

IV. CONCLUSION

Having conducted both a quantitative and qualitative assessment of trial court judicial workload, we certify the need for 48 additional trial court judges, consisting of 23 in circuit court and 25 in county court, as set forth in the appendix to this opinion. We also recommend no decrease in circuit court and county court

19. *See supra* note 17.

20. *See supra* note 17.

judgeships.

The recently completed judicial workload assessment was an extensive effort involving the participation of more than 900 trial court judges representing all 20 judicial circuits. The Court extends its sincere thanks and appreciation to all who participated in that assessment.

We certify the need for two additional judgeships in the Sixth District. Finally, we recommend legislation to reduce the number of statutorily authorized judgeships in the Second District based on attrition and without requiring a judge to vacate his or her position involuntarily, as noted in this certification.

It is so ordered.

MUÑIZ, C.J., and CANADY, LABARGA, COURIEL, GROSSHANS, FRANCIS, and SASSO, JJ., concur.

Original Proceeding – Certification of Need for Additional Judges

APPENDIX
Trial Court Need

Circuit	Number of Circuit Court Judges Certified	County	Number of County Court Judges Certified
1	1	Walton	1
2	0	N/A	0
3	0	N/A	0
4	1	Clay	1
		Duval	2
		Nassau	1
5	3	Hernando	1
		Lake	1
		Marion	1
		Sumter	1
6	0	N/A	0
7	2	N/A	0
8	0	N/A	0
9	1	Orange	1
		Osceola	1
10	2	Polk	1
11	0	Miami-Dade	7
12	1	Manatee	1
13	0	Hillsborough	1
14	1	Bay	1
15	2	Palm Beach	2
16	0	N/A	0
17	0	N/A	0
18	1	N/A	0
19	1	N/A	0
20	7	Lee	1
Circuit Total	**23**	**County Total**	**25**

STATE COURTS SYSTEM
2025 Substantive Legislative Agenda

BRANCH-WIDE ISSUES

Vexatious Litigants

Amends the Florida Vexatious Litigant Law, s. 68.093, F.S., to broaden its scope to include additional case types, reduce the threshold for designating a litigant as vexatious, and incorporate remedies applicable to a broader range of vexatious litigants.

Public Records Exemption for Matters Stricken from Noncriminal Court Records

Amends s. 119.0714, F.S., to create a public records exemption for an immaterial, impertinent, or sham matter stricken from a noncriminal court filing that would defame or cause unwarranted damage to the good name or reputation of a person or jeopardize the safety of an individual.

Modernization of Duty Judge Requirements

Amends s. 26.20, F.S., to clarify that each judicial circuit must designate a duty judge and to repeal a provision limiting the location of duty judge hearings to the judge's chambers. The amendment will allow for greater efficiencies for judges and court users and better access to courts.

SMS Retirement for Nonjudicial Managerial Branch Positions

Amends s. 121.055, F.S., to authorize the Chief Justice to designate a specified number of nonjudicial, managerial branch positions as Senior Management Service positions for purposes of the Florida Retirement System. Mirrors the authority of legislative presiding officers.

COURT COMMITTEE & JUDICIAL CONFERENCE ISSUES

Arbitrator Compensation

(*Supreme Court Committee on ADR Rules and Policy*)

Amends s. 44.103, F.S., to repeal the statutory cap on arbitrator compensation rates in court-ordered, non-binding arbitration. The repeal of the cap, which was last adjusted in 2005,will allow the chief judge in each circuit to set rates that are more consistent with current rates.

Public Records Exemption for Appellate Court Clerks

(*Florida Conference of District Court of Appeal Judges*)

Amends s. 119.071, F.S., to expand a public records exemption for the personal identification and location information of clerks of the circuit courts to include clerks of the appellate courts.

Guardian ad Litem Hearsay Exception

(*Supreme Court Steering Committee on Families and Children in the Court*)

Amends s. 61.403, F.S., to create a hearsay exception for guardian ad litem testimony and written reports in family court proceedings.

Judicial Notarization

(*Florida Conference of District Court of Appeal Judges*)

Amends s. 92.50, F.S., to authorize an alternative option for judicial notarization of oaths, affidavits, and acknowledgements which would not require application of an official or court seal. The amendment does not affect judicial authentication of court orders or other official instruments of the court.

DUPLICATE

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

1/14/25
Meeting Date

Judiciary Committee
Committee

Vexatious Litigants
Bill Number or Topic

Amendment Barcode (if applicable)

Name Judge Rachel E. Nordby

Phone 850-487-1000

Address First District Court of Appeal, 2000 Drayton Drive
Street

Email

Tallahassee FL 32399
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

DUPLICATE

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

1/14/25
Meeting Date

Judiciary Committee
Committee

Judicial Branch Legislative Agenda
Bill Number or Topic

Amendment Barcode (if applicable)

Name Eric Maclure, State Courts Administrator

Phone 850-922-5081

Address OSCA, 500 S. Duval Street
Street

Email

Tallahassee FL 32399
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

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This form is part of the public record for this meeting.

S-001 (08/10/2021)

CourtSmart Tag Report

Room: SB 110 **Case No.:** **Type:**
Caption: Senate Committee on Judiciary **Judge:**

Started: 1/14/2025 4:01:21 PM
Ends: 1/14/2025 5:27:18 PM Length: 01:25:58

4:01:20 PM Chair Yarborough calls meeting to order
4:01:33 PM Roll Call
4:01:39 PM Quorum present
4:01:51 PM Chair Yarborough Opening Remarks
4:02:17 PM Tab 1
4:02:25 PM Presentation by the Office of the State Courts Administrator, Judge Mark Mahon
4:19:42 PM Questions Back and Forth
4:20:50 PM Senator Polsky
4:21:15 PM Mark Mahon
4:21:52 PM Senator Polsky
4:22:37 PM Mark Mahon
4:22:58 PM Senator Polsky
4:24:01 PM Mark Mahon
4:24:56 PM Senator Polsky
4:25:29 PM Senator Gaetz
4:26:31 PM Mark Mahon
4:28:47 PM Senator Gaetz
4:29:03 PM Senator Leek
4:31:09 PM Member Introductions
4:33:00 PM Staff Introductions
4:33:43 PM Tab 2
4:33:48 PM Presentation on problem-solving courts by the Office of the State Courts Administrator, Jennifer Grandal
4:45:13 PM Questions
4:45:17 PM Vice Chair Burton
4:45:31 PM Jennifer Grandal
4:46:04 PM Presentation on problem-solving courts- Observations from the Bench by Judge Nina Ashenafi Richardson, County Court Judge, Leon County
4:56:47 PM Questions
4:57:47 PM Chair Yarborough
4:58:01 PM Judge Richardson
5:00:56 PM Tab 3
5:01:23 PM Presentation by the Office of State Courts Administrator, Judge Rachel Nordby on the Workgroup on Vexatious Litigants and the Judicial Branch Legislative Agenda
5:14:16 PM Presentation on the Judicial Branch Legislative Agenda by Eric McClure, State Courts Administrator
5:26:00 PM Closing Remarks by Chair Yarborough
5:26:29 PM Senator DiCeglie moves to adjourn
5:27:01 PM Adjourned

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Committee on Pre-K - 12 Education, *Vice Chair*
Education Postsecondary
Education Pre-K - 12
Fiscal Policy
Judiciary
Military and Veterans Affairs, Space, and Domestic Security
Rules

SENATOR GERALDINE F. "GERI" THOMPSON
15th District

January 15, 2025

The Honorable Chair Yarborough
Chairman
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Yarborough,

I am writing to formally request a leave of absence due to a medical condition from the Committee on Judiciary during the interim committee meetings scheduled from January 13 through February 21, 2025. While I regret being unable to actively participate in Senate proceedings during this period, this temporary leave is essential to enable me to return to my duties fully restored.

I greatly appreciate your understanding and support during this time. If additional documentation or details are needed, please let me know.

Thank you for your attention to this matter.

Sincerely,

Geraldine F. Thompson

Senator Geraldine F. Thompson
FL Senate District 15

Cc: Tim Cibula, Staff Director
Lisa Larson, Committee Administrative Assistant
Maggie Gerson, Staff Director

REPLY TO:
❒ 511 W. South Street, Suite 205, Orlando, Florida 32805 (407) 245-0194
❒ 205 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: *www.flsenate.gov*

BEN ALBRITTON
President of the Senate

JASON BRODEUR
President Pro Tempore