

STORAGE NAME: h3881.cjc
DATE: March 4, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CIVIL JUSTICE & CLAIMS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 3881

RELATING TO: Litigation Reform

SPONSOR(S): Civil Justice and Claims

STATUTE(S) AFFECTED: s. 40.50 F.S., s. 44.1051 F.S., s.57.071 F.S., s. 768.77 F.S., s.768.79 F.S.

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CIVIL JUSTICE & CLAIMS YEAS 9 NAYS 0
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I. SUMMARY:

This bill addresses several areas of litigation reform as follows:

- * providing for an expedited civil trial upon motion of the parties which would be conducted with shortened discovery times and a one-day trial;
- * providing for a series of jury reforms including provisions that jurors in civil cases be furnished notebooks with preliminary instructions, be allowed to take notes, be allowed to submit written questions to witnesses with approval of the court, be permitted to discuss the evidence during trial recesses, and be given final written instructions subject to the court's discretion;
- * providing for voluntary civil trial resolution, allowing for the appointment of a trial resolution judge, to be selected and compensated by the parties;
- * providing standards for the award of expert witness fees as taxable costs;
- * providing for sanctions against parties and attorneys for filing unfounded claims or defenses, and for taking actions primarily intended to delay a civil case;
- * revising the requirements of the itemized jury verdict form to eliminate the itemization of future damages and reduction to present value;
- * revising the offer of judgment statute to address multiple party offers of judgments and the effect of subsequent offers of judgment.

This bill would have a positive fiscal impact should more civil cases be resolved expeditiously or by voluntary trial resolution.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

1. Expedited Trials

Trials in criminal cases are governed by a speedy trial rule, Rule 3.191, Florida Rules of Criminal Procedure, which provides that criminal misdemeanor cases shall be brought to trial within 90 days, and felony cases shall be brought to trial within 175 days. Civil cases, however, are not specifically governed by a speedy trial rule. Rule 2.085, Florida Rules of Judicial Administration, provides guidelines setting forth general time standards for trial and appellate courts. The guidelines state that civil jury trials should be conducted within 18 months from filing, and civil non-jury trial should be conducted within 12 months from filing. Civil cases which are not completed within the time standards of Rule 2.085, are reported on a quarterly basis to the Chief Justice of the Florida Supreme Court. The 1997 Pending Caseload Report Summary reflected a 29.87% over standard for civil jury cases, and a 24.57% over standard for civil non-jury cases.

The Trial Lawyers Section of the Florida Bar has developed and recommended a proposal for expedited trials in civil cases upon agreement and joint motion of the parties. Under this proposal civil trials would generally be conducted within 90 days from filing. This proposal has been recommended to the courts on a voluntary basis, but has not been adopted by rule.

2. Jury Duty

Chapter 40, Florida Statutes, sets out general provisions for qualification of jurors, and jury service. Additionally, Rule 1.431, Florida Rules of Civil Procedure, provides procedures for the impanelment of the jury, and for the exercise of challenges to potential jurors. No current statute or rules specifically provide that jurors may ask questions, be provided written instructions, or discuss the evidence prior to the commencement of deliberations. In certain circuits, trial judges as a matter of discretion, permit jurors in civil cases to present written questions for witnesses which the judge reviews with counsel prior to submission to a witness.

3. Voluntary Trial Resolution

Pursuant to Article V, sections 5 and 6, Florida Constitution, circuit and county courts have jurisdiction to conduct civil trials. The specific jurisdiction of the county courts is set forth in Section 34.01, Florida Statutes, and provides that the county courts shall have jurisdiction in civil cases in which the amount in controversy does not exceed \$15,000. Civil actions involving amounts in excess of \$15,000 are within the jurisdiction of the circuit courts. Circuit court judges and county court judges are constitutional officers whose qualifications for office are set forth in Article V, section 8, of the Florida Constitution. Under current law, both circuit court judges and county court judges must have been a member in good standing of the Florida Bar for the preceding five years to be eligible for the office of circuit or county court judge.

Additionally, pursuant to section 25.073, Florida Statutes, a retired Florida judge may be assigned on a temporary basis to conduct civil or criminal trials.

Florida has also adopted the Florida Arbitration Code, Chapter 682, Florida Statutes, which provides procedures for parties by agreement to submit a controversy to voluntary binding arbitration. No current Florida statutory or rule provisions authorize parties, on a voluntary basis, to select and privately compensate a trial resolution judge to conduct proceedings in a civil trial.

4. Court Costs

Section 57.041, Florida Statutes, provides that a party recovering judgment shall all legal costs and charges which shall be included in the judgment. Section 57.071, Florida Statutes, specifies costs which shall be taxable, including court reporting expenses, and the costs of any bonds executed. Section 92.231, Florida Statutes, provides for expert witness fees, and specifically authorizes the taxation of expert witness fees as costs. There is no current provision of law that conditions the taxation of expert witness fees as costs upon disclosure or notice to the opposing party, or parties.

5. Assertion of Unfounded Claims or Defenses

Section 57.105, Florida Statutes, provides for the award of attorneys fees to a prevailing party in any civil action in which the court finds there was a complete absence of a justiciable issue of fact or law raised by the complaint or by a defense asserted by a losing party. Under this statute, the award of attorneys fees is paid in equal amounts by the losing party and the losing party's attorney.

In federal civil cases, Rule 11, Federal Rules of Civil Procedure, provides the court with discretion to impose a wide range of sanctions, including the award of attorneys fees, upon an attorney, law firm or party for asserting a claim or defense that is not warranted by existing law, except if the court determines that the claim or defense was a nonfrivolous argument for the extension, modification or reversal of existing law. Sanctions may also be imposed if the court determines that there was no factual basis for the assertion of a claim or defense.

6. Itemized Jury Verdicts

Section 768.77(1), Florida Statutes, requires the trier of fact (which is the jury in civil jury trials, and the court in civil non-jury trials) to itemize the amounts awarded to a claimant for economic damages, non-economic damages, and for punitive damages, if awarded. Additionally, subsection (2) of the statute requires that each category of damages other than punitive damages be further itemized into amounts which have been incurred prior to the verdict and amounts intended to compensate the claimant for future damages. The trier of fact is further required to compute itemized future damages before and after reduction to present value and to specify the period of time for which future damages are intended to provide compensation. Trial judges have reported that the complexity of the current itemized verdict form has resulted in confusion for jurors and inconsistent verdicts.

Section 768.78, Florida Statutes, provides that future damages in excess of \$250,000 shall be subject to alternative methods of payment, including either by lump sum payment reduced to present value, or by periodic payments.

7. Offer of Judgment and Demand for Judgment

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Section 768.79, Florida Statutes, provides that in any civil action for damages if the defendant makes an offer of judgment that is not accepted by the plaintiff within 30 days, and the plaintiff does not prevail, or fails to obtain a judgment of at least 25% of the amount of the defendant's offer of judgment, then the court shall award costs and attorneys fees against the plaintiff. Correspondingly, where a plaintiff makes a demand for judgment which is not accepted by the defendant within 30 days, and the plaintiff recovers a judgment at least 25% greater than the demand for judgment, the plaintiff shall be entitled to recover reasonable costs and attorneys fees from the date the demand for judgment was made. In the case of Kaufman v. Smith, 693 So. 2d 133 (Fla. 4th DCA 1997) the court held that a first offer of judgment remained in effect after a second offer was made and rejected.

Additionally, section 44.102(6), Florida Statutes provides for offers of settlement in cases under court-ordered mediation, and section 45.061, Florida Statutes, provides generally for offers of settlement in other cases.

In the case of Timmons v. Combs, 608 So. 2d 1 (Fla. 1992) the Florida Supreme Court considered a challenge to the constitutionality of section 768.79, Florida Statutes, on the grounds that the offer of judgment statute was an infringement on the court's exclusive rule-making authority. Although the court found that the statute contained procedural aspects, the court adopted the procedural aspects of the statute which are presently contained in Rule 1.442, Florida Rules of Civil Procedure. The rule reconciles the procedural aspects of the statutes providing for offers of judgment and settlement with the decisions of the Florida Supreme Court.

B. EFFECT OF PROPOSED CHANGES:

Section 1 of this bill incorporates the recommendations of the Trial Section of the Florida Bar providing for expedited trials. Upon joint motion of the parties in a civil action or in a simplified civil action, upon motion of any party, the court would be authorized to conduct an expedited trial. Unless otherwise ordered by the court or agreed to by the parties, discovery would be completed within 60 days, and the trial would be conducted within 30 days after the completion of discovery. Expedited jury trials would be permitted; however, any trial whether jury or non-jury, would be limited to one day, with each side being permitted to present its case within a three-hour time frame. Expedited jury trials would not require a unanimous verdict, a 5-1 vote of the jurors would be sufficient to reach a verdict.

Section 2 of this bill provides a number of reforms to the jury process. The bill requires that jurors be given preliminary instructions regarding their duties, and the conduct of the proceedings. The bill allows jurors to discuss the evidence prior to deliberations when all members of the jury are present. Jurors will be given notebooks with preliminary instructions, and be allowed to have access to their notes and notebooks during all proceedings. The court shall allow the jurors to submit written questions which may be asked of the witnesses after review by the court and opportunity given to counsel for objection. The court in its discretion may also give the jury its final instructions prior to closing arguments of counsel if the court finds the instructions would enhance the jury's ability to understand the case and perform its service.

Section 3 of this bill provides for voluntary trial resolution. Upon agreement of the parties to a civil action in which no constitutional issues are raised, a trial resolution judge may be selected by the parties to conduct either a jury or non-jury trial. The trial resolution judge shall have the same qualifications as a circuit court or county court judge, which is membership in

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good standing of the Florida Bar for the preceding five years. Application for voluntary trial resolution and filing fees shall be filed with the clerk of the court. The parties shall be responsible for the compensation of the trial resolution judge according to their agreement. The trial resolution judge shall have the power to administer oaths, and conduct the proceedings in accordance with the Florida Rules of Civil Procedure. Subpoenas shall be enforceable under law as in any other civil matter. A party may enforce a judgment obtained in a voluntary trial resolution by filing a petition for enforcement in circuit court. Appeals may be taken from the circuit court. Factual findings determined in a voluntary trial resolution shall not be subject to appellate review. Voluntary trial resolution shall not apply to any dispute involving child custody, visitation, or child support, or any dispute involving the rights of a party not participating in voluntary trial resolution.

Section 4 of this bill amends section 57.071, Florida Statutes, and provides that expert witness fees shall not be awarded as taxable costs to a prevailing party unless the party retaining the expert witness files a written notice within 30 days of retention of the expert witness, setting out the expertise and experience of the witness, the subjects upon which the expert is expected to render an opinion, and an estimate of the fee of the expert witness. The party retaining the expert witness must also furnish each opposing party a written report signed by the expert witness which summarizes the opinions expressed, the factual basis therefor, and the authorities relied upon in reaching such opinions.

Section 5 of this bill amends section 57.105, Florida Statutes, to provide for imposing sanctions against parties and attorneys for raising unfounded claims or defenses. The current requirement that a complete absence of justiciable fact or law must be found prior to the imposition of sanctions is deleted. Instead, it would be necessary to establish that a losing party or the party's attorney knew at the time the claim or defense was asserted that the claim or defense was not supported by material facts necessary to establish the claim or defense, or that the application of then existing law would not support the claim or defense asserted. The imposition of sanctions may include costs and attorneys fees to be paid by the party or the party's attorney. The section would not apply in cases where the court determined that the claim or defense was raised in a good faith attempt to change existing law. Section 5 of the bill also would allow for the imposition of sanctions against a party where the court determines by a preponderance of the evidence that any pleading, claim or defense was asserted primarily for the purpose of delay.

Section 6 of this bill amends Section 768.77, Florida Statutes, relating to itemized verdicts, to repeal the requirements that the trier of fact itemize each category of future economic damages and compute such damages before and after to present value. The trier of fact would still be required to itemize damages as to economic and non-economic losses, and to itemize punitive damages when awarded.

Section 7 of this bill is a conforming provision which amends Section 768.78, Florida Statutes, to conform the provisions of the alternative payment statute with the elimination of the itemization of future economic losses set forth in section 6 of the bill.

Section 8 of this bill amends Section 768.79, Florida Statutes, relating to offers of judgment and demands for judgment, and provides that in multiple party cases, any offer of judgment must specify its applicability to each party; however, a plaintiff may continue to make a global offer for all defendants without specifying amounts applicable to each defendant. The bill also provides that a subsequent offer of judgment shall have the effect of voiding any previous

offer. The court prior to awarding costs and attorneys fees shall determine if an offer was reasonable at the time and under the circumstances known when the offer was made.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The bill provides for voluntary trial resolution and allows expedited trials in civil cases upon agreement of the parties.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

N/A

- b. Does the bill require or authorize an increase in any fees?

N/A

- c. Does the bill reduce total taxes, both rates and revenues?

N/A

- d. Does the bill reduce total fees, both rates and revenues?

N/A

- e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Parties agreeing to voluntary trial resolution would be responsible for compensation of the trial resolution judge.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

The bill allows parties to participate in expedited civil trials and voluntary trial resolution.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

A. STATUTE(S) AFFECTED:

s. 40.50 F.S., s. 44.1051 F.S., s.57.071 F.S., s. 768.77 F.S., s. 768.79 F.S.

B. SECTION-BY-SECTION RESEARCH:

This section need be completed only in the discretion of the Committee.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

The bill should have a positive fiscal impact should parties resolve cases more expeditiously or use voluntary trial resolution.

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

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C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

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VII. SIGNATURES:

COMMITTEE ON CIVIL JUSTICE AND CLAIMS:

Prepared by:

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