

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO FLORIDA Case No.: . SC2024-0662
RULE OF CIVIL PROCEDURE 1.510
AND NEW FLORIDA RULE OF CIVIL
PROCEDURE 1.202.

COMMENT OF ATTORNEY STEVEN P. COMBS

COMES NOW Steven P. Combs¹, pursuant to this Court's invitation in *In re: Amendments to Florida Rule of Civil Procedure 1.510 and New Florida Rule of Civil Procedure 1.202*, 386 So.3d 117, 118 (Fla. 2024), and respectfully submits the following comment:

1. This comment addresses the new Florida Rule of Civil Procedure 1.202 and advocates that additional motions, similar or

¹I have been a Florida-licensed attorney for over thirty years. I have served in various capacities, including law clerk, general master/magistrate in family law and dependency divisions, child support hearing officer, as well as general counsel/court counsel for the Fourth Judicial Circuit. Additionally, I have chaired the Florida Bar Family Law Rules Committee and represented it on the Florida Bar Rules of Judicial Administration Committee, now known as the Florida Bar Rules of General Practice and Judicial Administration Committee. I have also served as President of the Florida Magistrate and Hearing Officer's Association. I have served as an adjunct professor at the Florida Coastal School of Law, where I taught Florida Constitutional Law, Remedies, Alternative Dispute Resolution, and legal research and writing. I am currently in private practice, primarily handling personal injury cases.

analogous to motions to dismiss for failure to state a cause of action, be included in the matters exempted from the rule's conferral requirement.

2. The new Rule 1.202 exempts several types of motions from the rule's conferral requirement. One of the exempted motions is a motion to dismiss for failure to state a cause of action. The undersigned respectfully suggests that other motions, such as those based on the six additional defenses outlined in Rule 1.140(b), should also be exempt.

3. Failure to state a cause of action is one of seven defenses that may be raised by motion at the option of the pleader. The others defenses which can be asserted by motion include those relating to: "(1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process ... and (7) failure to join indispensable parties." Fla. R. Civ. P. 1.140(b).

4. From a practical perspective, the undersigned does not believe that a motion for failure to state a cause of action should be treated any differently than a motion to dismiss based on any of the

other six defenses that may be raised by motion. Each is aimed at an issue arising from the initial pleading, and none is more likely to be better received or acquiesced to by the pleader than another. As such, it seems incongruous for motions based on these other defenses, when brought as motions to dismiss, to be treated any differently for conferral purposes. Therefore, it is respectfully submitted that they should all be exempted from the rule's conferral requirement.

5. Similarly, when a motion challenging the sufficiency of an affirmative defense is asserted, such motion is properly denominated as a motion to strike. Such motions to strike are authorized by Rule 1.140(b). As explained in the *Committee Note to the 1972 amendment to Rule 1.140(b)*:

A motion to strike an insufficient legal defense will now be available under subdivision (b) and continue to toll the time for responsive pleading. Subdivision (b) is amended to include the defense of failure to state a sufficient legal defense. The proper method of attack for failure to state a legal defense remains a motion to strike.

6. Given the analogous nature between a motion to dismiss for failure to state a cause of action and a motion to strike for failure to

state a legal defense, both brought pursuant to Rule 1.140(b), the exemption from the conferral requirement should be consistent for both.²

7. Finally, a motion for more definite statement brought pursuant to Rule 1.140(e), while often pled in the alternative to a motion to dismiss for failure to state a cause of action, serves a similar purpose in attacking the pleadings, though for clarity rather than legal sufficiency. This type of motion is also unlikely to be well received or acquiesced to by the pleader. As such, it also seems that this type of motion should be treated no differently than a motion to dismiss brought pursuant to Rule 1.140(b) for purposes of exemption from the rule's conferral requirement.

8. Based on the foregoing, the undersigned respectfully suggests the following edit to subsection (a) of the new proposed rule be considered:

(a) **Duty.** Before filing a motion, except for a

²This comment does not advocate any change in the conferral requirement for the separately treated (and often misused) motion to strike for “redundant, immaterial, impertinent, or scandalous matter” authorized by Rule 1.140(f), Fla. R. Civ. P.

motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or to permit maintenance of a class action, to dismiss pursuant to Rule 1.140(b), for failure to state a claim upon which relief can be granted, or to strike pursuant to Rule. 1.140(b), to involuntarily dismiss an action, or for more definite statement, the movant must confer with the opposing party in a good-faith effort to resolve the issues raised in the motion.

9. In summary, the undersigned respectfully submits that the proposed exemptions under Rule 1.202 be broadened to include additional motions that are similarly focused on addressing fundamental issues introduced by the pleadings. Doing so aligns with the underlying objectives of the rule to streamline litigation and reduce unnecessary burdens on both the courts and the litigants, while maintaining procedural fairness and consistency.

**RESPECTFULLY SUBMITTED,
COMBS GREENE, P.A.**



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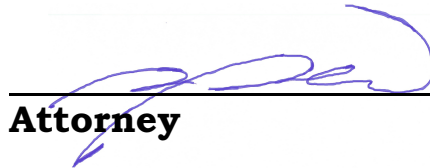
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CERTIFICATE OF SERVICE


I HEREBY CERTIFY that a true and correct copy of the foregoing was filed with the Clerk of Court on August 1, 2024,, via the Florida Courts E-Filing Portal, which will serve a notice of electronic filing to all counsel of record.



Attorney

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing brief complies with the font requirements of Florida Rule of Appellate Procedure 9.045(b) and the word limit requirements of Rule 9.210(a)(2), and does not exceed 13,000 words (excluding the words in any caption, cover page, table of contents, table of citations, certificate of compliance, certificate of service, and signature block) as indicated by the word count of the word-processing system used to prepare this document.



Attorney