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## Summary of Rule Revision in the Business Court

In early 2016, the judges assigned to the Business Court Subdivision of the Civil Division of the Ninth Judicial Circuit Court of Florida (“BCP 1.2”), along with the chief judge of the Ninth Judicial Circuit, Frederick Lauten, requested that a Business Court Commission (the “Commission”) be formed to review and revise the existing Business Court Procedures (“BCP 1.1”). The Commission included practitioners from a diverse set of backgrounds and a diverse set of experiences. Among the Commission members were large and small firm practitioners, practitioners who typically represent plaintiffs, and practitioners who typically represent defendants. There were construction lawyers, business lawyers, commercial litigators, appellate lawyers, and other highly respected members of The Florida Bar. Mayanne Downs, Esq., the president and managing director of GrayRobinson, chaired the Commission.

Chair Downs conducted Commission meetings from January through September, 2016. Various subcommittees were tasked with reviewing the Business Court rules and suggested revisions. The Commission also solicited and considered comments from members of the Orange County Bar Association, The Florida Bar (in particular, the Business Law Section), practitioners from other parts of Florida who practice in the Business Court, members of the general public, attorneys who conducted a statewide survey of individuals who have appeared in business courts, and other interested stakeholders. Additionally, the Orange County Bar Association’s Business Law Committee met and provided comments to the Business Court judges and omissions. After considering these numerous and helpful comments and suggestions, the commission drafted revisions to the BCP.

The purpose of the BCP is to provide a prompt, predictable, and efficient procedure to resolve business disputes in the Ninth Judicial Circuit. Since its inception, the Business Court has been a model for other business courts throughout the State. The practicing lawyers and litigants in Orange County have expressed satisfaction with the predictability, efficiency, and high level of expertise of both the practitioners and the judiciary within the Business Court.

In late 2016, the BCP were revised to provide clarity and address the realities of practicing in the Business Court that may not have been reflected previously.

For example, the BCP relating to the resolution of contested motions needed to better complement the Florida Rules of Civil Procedure with regard to summary judgment motions. The Florida Rules of Civil Procedure provide for the filing of affidavits in advance of summary judgment hearings. In order to accommodate the hearing requirements in the Florida Rules of Civil Procedure, and to allow for the consideration of affidavits in opposition, the Commission revised the BCP as follows:

### 5.5 – Motions for Summary Judgment and for Partial Summary Judgment.

Motions for summary judgment and for partial summary judgment shall be considered and decided by the court on the affidavits, answers to interrogatories, admissions, depositions and other materials as would be admissible in evidence (“summary judgment evidence”) and, if a hearing is not waived, based on arguments at the summary judgment hearing.

The court will hold a hearing if the right to a hearing is not waived in the Case Management Report under BCP 6.3. In the event of a hearing, the court will also consider any additional summary judgment evidence filed in accordance with the provisions of Florida Rule of Civil Procedure 1.510(c). In order to obtain a hearing, the moving party shall (but either party may) schedule a hearing on the motion immediately after filing the motion. The parties shall also comply with the provisions of BCP 5.14 on submission of proposed orders.

In the event the hearing referenced in Florida Rule of Civil Procedure 1.510(c) is waived by the parties in the Case Management Report, the motion for summary judgment or a motion for partial summary judgment shall be decided by the court based on the summary judgment evidence in the court file. In order to obtain a ruling from the court, the moving party shall (but either party may) provide notice to the court that the motion for summary judgment or for partial summary judgment is fully briefed by filing a Notice of Fully Briefed Motion pursuant to BCP 5.14 which shall advise the court that the right to a hearing is waived. The form and content of the notice of fully briefed motion is available at the Business Court page on the court’s

website at <http://www.ninthcircuit.org/about/divisions/civil-circuit-courts/complex-business-litigation-court>. The parties shall also comply with the provisions of BCP 5.14 on submission of orders.

Moreover, the BCP have been amended to reflect the litigants' strong preference for case management conferences at the beginning of the litigation and the parties' required attendance at those conferences. Recognizing inconsistencies in practice, the Commission reaffirmed the parties' attendance requirement at case management conferences. In doing so, the revised BCP provide for penalties to parties who fail to attend and to attorneys who fail to give timely notice that their clients do not intend to attend the case management conference. Those penalties are intended to be strictly enforced. The procedures now provide in pertinent part:

**6.3 – Joint Case Management Report...** b. In the Joint Case Management Report, Lead Trial Counsel for each party shall certify that the party (if an individual) or an authorized representative of the party (if an entity) will attend the Case Management Conference in person, unless the court has entered an order excusing compliance

with this requirement. In the certificate, Lead Trial Counsel for any entity party shall provide the name and title of the representative who will attend the Case Management Conference and shall certify that the representative has authority to make appropriate decisions regarding such issues listed in BCP 6.2 above as are pertinent to the case or on which there are material differences of opinion. If the court has entered an order permitting the attendance of a party or authorized representative by telephone, videoconference, or other means, Lead Trial Counsel shall certify that the party or authorized representative shall attend the Case Management Conference in the manner permitted by the court's order.

**6.4 – Case Management Conference.** The attendance in person by Lead Trial Counsel for all parties is mandatory. All parties and representatives of any entity parties with the authority described in BCP 6.3(b) must attend the Case Management Conference in person unless excused by the court upon a timely motion and order thereon. A motion for relief from the personal attendance requirement must be filed before the deadline for filing the Joint

Case Management Report as set forth in BCP 6.3(a), unless the basis for the request could not reasonably have been anticipated at that time. At the Case Management Conference, the court will hear the views of counsel on such issues listed in BCP 6.2 above as are pertinent to the case or on which there are material differences of opinion. If Lead Trial Counsel, a party, or a representative of an entity party with the authority described in BCP 6.3(b) fails to attend the Case Management Conference in person or in such other manner as is permitted by order of the court, the court may impose appropriate sanctions on the noncomplying party, attorney, or both.

The procedures allow for attendance at hearings via videoconference or telephone conferences. The procedures require the party seeking a videoconference to arrange the videoconference facilities and the party who wishes to appear by telephone conference to provide the conference line log in information on the Notice of Hearing.

The Commission also recommended the BCP to provide clarity on page limits for filings. The procedures now provide:

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**5.1 – Form...** For the purposes of calculating the page limits, the signature block, certificate of service, certificate of good faith conference and case caption are excluded. ...

The Commission also amended the BCP to provide clarity on filing discovery (discouraged, per BCP 5.17 and 7.5); continuances (trial date continuance signed by party, per BCP 13.4); scheduling (10 days' notice if no cooperation, per BCP 7.2(ii)); and motions in limine (discouraged in bench trials, per BCP 10.2).

The Commission adopted procedures for addressing pleadings that do not comply with the requirements of the BCP. The procedures now provide:

**12.2 – Notice of Noncompliance.** If a filing does not comply on its face with the formatting, certification, page limit, timeliness, or other requirements of the Business Court Procedures, any party may file a Notice of Noncompliance. The Notice of Noncompliance shall be limited to identifying the filing and the facial defect(s) at issue and shall not contain argument or raise factual disputes. The party filing the Notice of Noncompliance shall send copies of the Notice of Noncompliance and the filing to which it relates to the division email address: div32copies@ocnjcc.org for Division 32 and div43copies@ocnjcc.org for Division 43. In response to a Notice of Noncompliance or acting *sua sponte*, the court may in its sole discretion strike the noncompliant filing or impose other sanctions. The filing of a Notice of Noncompliance shall not toll any response time or suspend any other obligation unless the court orders otherwise.

Finally, the Commission amended the BCP to refer professionalism disputes to the Florida Supreme Court approved professionalism panels. With regard to professionalism disputes, the procedures now provide:

**14.3 – Professionalism.** The Court expects all who practicing [sic] before it to practice with professionalism and the Court would prefer that professionalism disputes be resolved outside of the Courtroom. On June 6, 2013, the Supreme Court of Florida adopted SC13-688 which includes a Code for Resolving Professionalism Complaints. In the Ninth Judicial Circuit, Administrative Order No. 2014-07-A established the Ninth Judicial Circuit Court Local Professionalism Panel (the "Professionalism Panel") to receive, screen, evaluate, and act upon such reasonable complaints of unprofessional conduct as may be referred to the Professionalism Panel. Such complaints are reviewed and evaluated in the context of the standards of professionalism set forth in the Oath of Admission to The Florida Bar, The Florida Bar Creed of Professionalism, The Florida Bar Ideals and Goals of Professionalism, the Rules Regulating The Florida Bar, the decisions and administrative directives of the Florida Supreme Court, the professional standards of the Osceola County Bar Association and the Orange County Bar Association's Professionalism Guidelines. The Professionalism Panel will seek to resolve complaints informally if possible, and, if necessary and appropriate, refer such complaints to The Florida Bar. Proceedings before the Professionalism Panel will remain confidential.

The Commission's work on these rules is intended to provide the framework for the just and efficient resolution of disputes in the Business Court context. The members of the Commission hope that these rules accomplish that purpose.

The members of the Commission were Mayanne Downs, Esq., chair; Circuit Judge Alice L. Blackwell; Circuit Judge Lisa Munyon; Kimberly Ashby, Esq.; Richard Lee Barrett, Esq; Euri Cerrud, Esq.; Daniel Coultoff, Esq.; Richard S. Dellinger, Esq.; Vincent Falcone, Esq.; Suzanne Gilbert, Esq.; Todd Hoepker, Esq.; Atheseus Lockhart, Esq.; Michael Sasso, Esq.; Nicolette Vilmos, Esq.; and Carrie Ann Wozniak, Esq.

**Richard S. Dellinger, Esq.,** Lowndes, Drosdick, Doster, Kantor & Reed, P.A., is an AV-Rated litigation attorney with more than 16 years of experience. His practice includes complex litigation, civil litigation, commercial litigation, business litigation, intellectual property litigation, significant dissolution of marriages, and probate and trust litigation. He is currently treasurer of the OCBA and has been a member since 2000.