

**SUPREME COURT OF FLORIDA**

IN RE: AMENDMENTS TO FLORIDA  
RULES OF CIVIL PROCEDURE

CASE NO. SC2023-0962

---

**COMMENT OF THE INTERNATIONAL ASSOCIATION OF  
DEFENSE COUNSEL, DRI CENTER FOR LAW AND PUBLIC  
POLICY, FEDERATION OF DEFENSE & CORPORATE COUNSEL,  
ASSOCIATION OF DEFENSE TRIAL ATTORNEYS, FLORIDA  
CHAMBER OF COMMERCE, ASSOCIATED INDUSTRIES OF  
FLORIDA, FLORIDA INSURANCE COUNCIL, AMERICAN TORT  
REFORM ASSOCIATION, NATIONAL FEDERATION OF  
INDEPENDENT BUSINESS SMALL BUSINESS LEGAL CENTER,  
INC., AMERICAN PROPERTY CASUALTY INSURANCE  
ASSOCIATION, NATIONAL ASSOCIATION OF MUTUAL  
INSURANCE COMPANIES, COALITION FOR LITIGATION  
JUSTICE, INC., WASHINGTON LEGAL FOUNDATION,  
PHARMACEUTICAL RESEARCH AND MANUFACTURERS OF  
AMERICA, AND ALLIANCE FOR AUTOMOTIVE INNOVATION**

The above-listed organizations file this comment in strong support of the Court’s decision to amend Florida Rule of Civil Procedure 1.280(c) to state that discovery must be “proportional to the needs of the case” like Federal Rule of Civil Procedure 26(b)(1).<sup>1</sup> In 2023, the groups filed a lengthy [comment](#) supporting this change. For the sake of judicial economy we incorporate that [comment](#) by reference and only provide a brief summary here.

---

<sup>1</sup> For a summary of the signatory organizations, see Appendix.

Since FRCP 26(b)(1) was amended in 2015 to incorporate proportionality, federal courts have applied the approach without difficulty; the rule has proven to be noncontroversial. Proportionality provides a “common-sense” limitation on the scope of discovery that promotes harmony in Florida’s state and federal courts.<sup>2</sup>

Proportionality enjoys strong support nationally. Almost twenty states and the District of Columbia require proportional discovery.<sup>3</sup> Respected national groups including the Sedona Conference<sup>4</sup> and

---

<sup>2</sup> Chief Justice John Roberts, [2015 Year-End Report on the Federal Judiciary](#) 6 (Dec. 31, 2015) (the companion federal rule “crystalizes the concept of reasonable limits on discovery through increased reliance on the common-sense concept of proportionality....”).

<sup>3</sup> See Ala. R. Civ. P. 26(b)(1); Ariz. R. Civ. P. 26(b)(1); Colo. R. Civ. P. 26(b)(1); Del. Ch. Ct. R. 26(b)(1); Del. Super. Ct. R. Civ. P. 26(b)(1); D.C. Super. Ct. R. Civ. P. 26(b)(1); Ind. Commercial Ct. R. 6(A); Kan. Stat. § 60-226(b)(1); Mich. Ct. R. 2.302(B)(1); Minn. R. Civ. P. 26.02(b); Mo. Sup. Ct. R. 56.01(b); Nev. R. Civ. P. 26(b)(1); N.Y. R. Unif. Trial Cts. § 202.20-c; Ohio R. Civ. P. 26(B)(1); Okla. Sta. tit. 12 § 3226(B)(1); Utah R. Civ. P. 26(b)(1); Vt. R. Civ. P. 26(b)(1); Wis. Code § 804.01(2)(a); Wyo. R. Civ. P. 26(b)(1); Mark Behrens & Christopher Appel, [States Are Embracing Proportional Discovery, Moving Into Alignment With Federal Rules](#), 29:5 Legal Opinion Letter (Wash. Legal Found., July 17, 2020) (“The federal proportionality concept is well on its way to becoming the majority rule in the states....”).

<sup>4</sup> The Sedona Conf., [Commentary on Proportionality in Electronic Discovery](#), 18 Sedona Conf. J. 141, 147 (2017) (“Achieving proportionality in civil discovery is critically important to securing the ‘just, speedy, and inexpensive resolution of civil disputes’”).

National Center for State Courts,<sup>5</sup> among others,<sup>6</sup> were early leaders calling for proportional discovery.

Florida’s chief legal officer, Attorney General Ashley Moody, has endorsed incorporating proportional discovery into the rules, explaining that “[h]ewing closely to the federal rules provides a source of caselaw that can help guide Florida trial courts and parties, reducing discovery disputes and forum shopping.<sup>7</sup> Further, adopting the proportionality requirement addresses an aspect of Florida’s legal climate that has been viewed as less competitive as compared to other states.<sup>8</sup>

---

<sup>5</sup> Nat’l Ctr. for State Courts, *Call to Action: Achieving Justice for All* 24 (2016) (“proportionality must be a guiding standard in discovery and the entire pretrial process.”).

<sup>6</sup> [Final Report on the Joint Project of The American College of Trial Lawyers Task Force on Discovery and The Institute for the Advancement of the American Legal System](#) 8 (rev. Apr. 15, 2009) (civil discovery “should be limited to documents or information that would enable a party to prove or disprove a claim or defense or enable a party to impeach a witness.”).

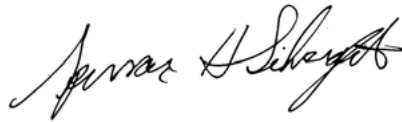
<sup>7</sup> Comment of Attorney General Ashley Moody, In re: Report and Recommendations of the Workgroup on Improved Resolution of Civil Cases, No. SC22-122, at 8 (June 1, 2022).

<sup>8</sup> A Harris Poll for the U.S. Chamber Institute for Legal Reform ranked Florida 47<sup>th</sup> in the nation for “proportional discovery.” U.S. Chamber Institute for Legal Reform, *2019 Lawsuit Climate Survey: Ranking the States* (2019).

For these reasons, we applaud the Court's leadership in adopting proportionality in Florida Rule of Civil Procedure 1.280(c) and thank the Court for the opportunity to file this Comment.

Respectfully submitted this 29<sup>th</sup> day of July, 2024.

Sincerely,

A handwritten signature in black ink, appearing to read "Spencer H. Silverglate". The signature is fluid and cursive, with the first name being the most prominent.

Spencer H. Silverglate  
IADC Past-President  
Florida Bar No. 769223  
CLARKE SILVERGLATE, P.A.  
5301 Blue Lagoon Drive, Suite 900  
Miami, FL 33126  
(305) 347-1557  
ssilverglate@cspalaw.com

## **APPENDIX: SUMMARY OF SIGNATORY ORGANIZATIONS**

- **International Association of Defense Counsel (IADC).** The IADC has served a distinguished membership of corporate and insurance defense attorneys and insurance executives since 1920. The IADC is an invitation-only, peer-reviewed membership organization of the world’s leading lawyers who primarily represent the interest of defendants in civil litigation. The IADC’s substantive committees cover over twenty different areas of law.
- **DRI Center for Law and Public Policy.** The Center for Law and Public Policy (“the Center”) is part of DRI, Inc. (“DRI”), the leading organization of civil defense attorneys and in-house counsel. Founded by DRI in 2012, the Center is the national policy arm of DRI. It acts as a think tank and serves as the public face of DRI. The Center undertakes in-depth studies on a variety of issues, such as class actions, judicial independence, climate change litigation, data privacy, legal system abuse, and artificial intelligence, and also advocates for meaningful changes to rules of civil procedure and evidence at both the state and federal level. Since its inception, the Center has been the voice of the civil defense bar on substantive issues of national importance.

- **Federation of Defense & Corporate Counsel (FDCC).** The FDCC is a not-for-profit corporation with national and international membership of over 1,500 defense and corporate counsel working in private practice or as in-house counsel, and as insurance claims representatives, including over 110 members in Florida.
- **Association of Defense Trial Attorneys (ADTA).** The ADTA is a select group of diverse and experienced civil defense trial attorneys whose mission is to improve their practices through collegial relationships, educational programs, and business referral opportunities, while maintaining the highest standards of professionalism and ethics.
- **Florida Chamber of Commerce.** Established in 1916 as Florida's first statewide business advocacy organization, the Florida Chamber of Commerce is the voice of business and the state's largest federation of employers, chambers of commerce and associations aggressively representing small and large businesses from every industry and every region. Consisting of more than 139,000 member businesses that employ more than three million workers in Florida, the Florida Chamber advocates among all

branches of government for policies necessary to secure Florida's future.

- **Associated Industries of Florida (AIF).** Known as “The Voice of Florida Business,” AIF has represented the principles of prosperity and free enterprise before the three branches of state government since 1920. A voluntary association of diversified businesses, AIF was created to foster an economic climate in Florida conducive to the growth, development, and welfare of industry and business and the people of the state.
- **Florida Insurance Council (FIC).** FIC is a state trade association representing companies writing most lines of insurance.
- **American Tort Reform Association (ATRA).** ATRA is a broad-based coalition of businesses, corporations, municipalities, associations, and professional firms that have pooled their resources to promote the goal of ensuring fairness, balance, and predictability in civil litigation.
- **National Federation of Independent Business Small Business Legal Center, Inc.** The NFIB Legal Center is a nonprofit, public interest law firm established to provide legal resources and be the voice for small business in the nation's courts through

representation on issues of public interest affecting small businesses. It is an affiliate of the National Federation of Independent Business, Inc. (NFIB), which is the nation's leading small business association. NFIB's mission is to promote and protect the right of its members to own, operate and grow their businesses. NFIB represents, in Washington, D.C., and all fifty state capitals, the interests of its members.

- **American Property Casualty Insurance Association (APCIA).**

APCIA is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA members represent all sizes, structures, and regions—protecting families, communities, and businesses in Florida, throughout the U.S., and across the globe.

- **National Association of Mutual Insurance Companies (NAMIC).**

NAMIC consists of more than 1,500 member companies, including seven of the top ten property/casualty insurers in the United States. The association supports local and regional mutual insurance companies on main streets across America as well as



many of the country's largest national insurers. NAMIC member companies write \$391 billion in annual premiums and represent sixty-eight percent of homeowners, fifty-six percent of automobile, and thirty-one percent of the business insurance markets. Through its advocacy programs NAMIC promotes public policy solutions that benefit member companies and the policyholders they serve and fosters greater understanding and recognition of the unique alignment of interests between management and policyholders of mutual companies.

- **Coalition for Litigation Justice, Inc.** The Coalition is a nonprofit association formed by insurers in 2000 to address the litigation environment for asbestos and other toxic tort claims. The Coalition has filed over 200 *amicus* briefs in asbestos and other toxic tort cases, including cases before this Court. The Coalition includes Century Indemnity Company; Great American Insurance Company; Nationwide Indemnity Company; Allianz Reinsurance America, Inc.; Resolute Management, Inc., a third-party administrator for numerous insurers; and TIG Insurance Company.

- **Washington Legal Foundation (WLF).** The WLF is a nonprofit, public-interest law firm and policy center dedicated to defending the economic freedoms that are the bedrock of America’s free-enterprise system. WLF supports efforts, in Florida and nationwide, to improve the resolution of civil cases.
- **Pharmaceutical Research and Manufacturers of America (PhRMA).** PhRMA represents the country’s leading innovative biopharmaceutical research companies, which are devoted to discovering and developing medicines that enable patients to live longer, healthier and more productive lives. Over the last decade, PhRMA member companies have more than doubled their annual investment in the search for new treatments and cures, including nearly \$101 billion in 2022 alone. PhRMA’s mission is to advocate public policies that encourage the discovery of life-saving and life-enhancing medicines.
- **Alliance for Automotive Innovation.** From the manufacturers producing most vehicles sold in the U.S. to autonomous vehicle innovators to equipment suppliers, battery producers and semiconductor makers – Alliance for Automotive Innovation represents the full auto industry, a sector supporting 10 million

American jobs and five percent of the economy. Active in Washington, D.C. and all fifty states, the association is committed to a cleaner, safer and smarter personal transportation future.

cc:

Donna M. Lamontagne  
IADC President  
LAMONTAGNE, SPAULDING & HAYES, LLP  
100 Midway Road, Suite 15  
Garden City Center  
Cranston, RI 02920

Larry Ebner  
Chair  
DRI CENTER FOR LAW AND PUBLIC POLICY  
222 South Riverside Plaza, Suite 1870  
Chicago, IL 60606

Craig A. Marvinney  
FDCC President  
The Marvinney Law Firm  
707 Village Club Drive  
Cleveland, Ohio 44067

Dyan J. Ebert  
ADTA President  
Quinlivan & Hughes, P.A.  
1740 W. St. German  
St. Cloud, MN 56302

Mark Wilson  
FLORIDA CHAMBER OF COMMERCE  
136 S Bronough Street  
Tallahassee, FL 32301

Brewster Bevis  
ASSOCIATED INDUSTRIES OF FLORIDA  
516 N. Adams Street  
Tallahassee, FL 32301

Cecil Pearce  
FLORIDA INSURANCE COUNCIL  
150 South Monroe Street, Suite 206  
Tallahassee, FL 32301

H. Sherman Joyce  
AMERICAN TORT REFORM ASSOCIATION  
1101 Connecticut Avenue, NW, Suite 400  
Washington, DC 20036

Elizabeth Milito  
NATIONAL FEDERATION OF INDEPENDENT BUSINESS  
SMALL BUSINESS LEGAL CENTER, INC.  
1201 F Street, NW  
Washington, DC 20004

Colleen Shiel  
AMERICAN PROPERTY CASUALTY  
INSURANCE ASSOCIATION  
8700 W Bryn Mawr Avenue, Suite 1200S  
Chicago, IL 60631

Andrew Pauley  
NATIONAL ASSOCIATION OF  
MUTUAL INSURANCE COMPANIES  
3601 Vincennes Road  
Indianapolis, IN 46268

Cory Andrews  
WASHINGTON LEGAL FOUNDATION  
2009 Massachusetts Avenue, NW  
Washington, DC 20036

Melissa Kimmel  
PHRMA  
950 F Street, NW, Suite 300  
Washington, DC 20004

Jessica Simmons  
ALLIANCE FOR AUTOMOTIVE INNOVATION  
1050 K Street, NW, Suite 650  
Washington, DC 20001

**CERTIFICATE OF COMPLIANCE**

I certify that this comment was prepared in Bookman Old Style 14-point font and complies with the font requirements in Florida Appellate Rule of Procedure 9.045.

/s/ Spencer H. Silverglate  
Spencer H. Silverglate

**CERTIFICATE OF SERVICE**

I certify that on July 29, 2024, the foregoing was filed via the Florida Courts E-Filing Portal with a copy sent by U.S. Mail to:

Judson Lee Cohen  
Committee Chair  
WEINSTEIN & COHEN, P.A.  
14125 NW 80th Ave., Suite 400  
Miami Lakes, FL 33016-2350  
jcohen@weinsteincohen.com

Heather Telfer  
Bar Staff Liaison  
to the Committee  
651 E. Jefferson Street  
Tallahassee, FL 32399  
htelfer@floridabar.org

/s/ Spencer H. Silverglate  
Spencer H. Silverglate