Legal Update
ROPER TOWNSEND & SUTPHEN
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2025 AMENDMENTS TO THE FLORIDA RULES OF CIVIL PROCEDURE

In a memorandum dated May 23, 2024, the Supreme Court of Florida made several changes to the Florida Rules of Civil Procedure to be effective starting January 1, 2025. These amendments include addressing the classification of cases, deadlines, and the removal of the "at issue" requirement contained in Rule 1.440.

Rule 1.200, as written, governs pre-trial procedure specific to case management conferences, pretrial conferences, notices for the same, and orders therefrom. The Court has rewritten this rule entirely requiring each civil case to be assigned one of three case management tracks within 120 days of the Complaint being filed. *In re Amends. to Fla. Rules of Civ. Proc*., 386 So. 3d 497, 500 (Fla. 2024). Starting in the new year, cases are required to be classified as complex, general, or streamlined. *Id*. The chief judge of each circuit is required to enter an administrative order addressing certain case management requirements. *Id*.

Further, Rule 1.200 will require case management orders in streamlined matters to specify the projected or actual trial period based on the administrative order entered by the chief judge of that circuit. *Id*. Additionally, the deadlines in case management orders

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SOVEREIGN IMMUNITY STANDS STRONG AVOIDING A CHIP IN ITS ARMOR

Recently, the Fourth District Court of Appeals decided an appeal filed by the City of Pompano Beach related to a nonfinal order from the Circuit Court for the Seventeenth Judicial Circuit, Broward County, in the case of *Coral Rock Development Group, LLC, and Coral Rock Pompano, LLC v. City of Pompano Beach*, Case No. CACE21-004071.

The City of Pompano Beach appealed an order denying its sovereign immunity-based motion to dismiss of plaintiffs' third amended complaint, which alleged the City violated a section of Florida's Fair Housing Act. *See* Florida Statutes, Section 760.26. It was an issue of first impression as to whether the Florida Legislature waived the sovereign immunity of governmental entities for claims brought under section 760.26, within Florida's Fair Housing Act.

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must be differentiated depending on whether the matter is considered streamlined or general. *Id*. These deadlines must be consistent with Florida Rule of General Practice and Judicial Administration 2.250(a)(1)(B). *Id*.

The deadlines contained in these case management orders must be strictly enforced unless changed by court order. *Id*. However, the parties are permitted to submit an agreed order so long as the proposed changes do not affect their ability to comply with the remaining deadlines. *Id*. If trial is not reached during the trial period set by the court, the court is required to submit a new trial order as soon as practicable. *Id*.

New provisions regarding case management conferences were added, including that a court may set one at any time by its own motion or proper notice by any party. *Id*. When a party notices a conference, the notice must identify the specific issues to be addressed. *Id*. Scheduling issues may be addressed by the court along with any pending motions. *Id*.

Rule 1.201, governing complex cases, allows a court to hold a hearing to determine whether the case is complex. *Id*. The parties are required to notify the court immediately if a hearing is required to determine whether the case should be classified as complex. *Id*. The Court incorporated the proportionality language of Federal Rules of Civil Procedure 26(b)(1) into Rule 1.280 as it pertains to the scope of discovery. *Id* at 501. The amendment further requires discovery disclosures within 60-days after service of the Complaint. The parties are also required to supplement their discovery responses when required. *Id*.

Rule 1.440 was amended to eliminate the requirement of a case being "at issue" and instead provides that the failure of pleadings to be closed will not prevent a case to be set for trial. *Id*. Courts are required to enter an order fixing the trail period 45-days prior to any projected trial period in a case management order. *Id*. The final amendment was made to Rule 1.460 providing that motions to continue trial are disfavored and should rarely be granted. *Id*. Requirements for what must be included with the motion is set forth and if a continuance is granted based on dilatory conduct by an attorney or party, sanctions may be imposed. *Id*.

Clearly, based on these amendments, the Court is seeking to expedite civil suits filed after January 1, 2025. Lower courts are required to enter case management orders and set matters for trial based on the classification of the case. Specifically, 30 months for complex matters and 18 months for standard matters. *See Florida Rule of General Practice and Judicial Administration* 2.250(a)(1)(B). Parties will no longer be required to show that a matter is at issue to have it set for trial. Parties are expected to strictly comply with a court's case management order and continuances are disfavored. Prior to the amendments, deadlines were mostly considered a blueprint or roadmap for a case. Now, these deadlines will be considered the rule and failure to comply with the same will likely result in sanctions for any conduct considered dilatory.

By: David A. Belford

Florida Statutes, Section 760.26 provides:

> "It is unlawful to discriminate in land use decisions or in the permitting of development based on race, color, national origin, sex, disability, familial status, religion, or, except as otherwise provided by law, ***the source of financing of a development or proposed development.*** (emphasis original)."

The plaintiffs are developers who assert that the City violated Section 760.26, by discriminating against their affordable housing townhome project based on its source of funding -- affordable housing financing. Through a third amended complaint, the developers seek remedies against the City under Section 760.35(4) of the Act, including declaratory relief, injunctive relief, damages, and attorneys' fees and costs. *See* Florida Statutes, Section 760.35 (4). The City moved to dismiss the complaint, arguing that sovereign immunity protected the City from the developers' claims. The trial court denied the motion without explanation.

The 4th DCA agreed with the City that the Act does not include an express waiver of sovereign immunity and absent an express waiver provision, or unambiguous text permitting claims against governmental entities, the City's protection from suit remains in place. *Sch. Bd. of Broward Cnty. v. State Farm Mut. Auto. Ins. Co.*, 390 So. 3d 27, 33 (Fla. 4th DCA 2024).

The Court based its decision on the analysis of a previously considered matter of a school board's claim of sovereign immunity from suit by an automobile insurer seeking to recover reimbursement of personal injury protection benefits paid because of accidents between school buses and private passenger motor vehicles. *Sch. Bd.*, 390 So. 3d at 27. There the 4th DCA detailed that a statute "purportedly waiving immunity should be strictly construed," and any waiver "must be clear and unequivocal." *Sch. Bd.*, 390 So. 3d. at 29. As such, waiver "should not be found where it can only be inferred from or implied by the text of a statute." *Id.* at 29-30.

These rules of strict construction pertaining to waivers of sovereign immunity exist "for the obvious reason that the immunity of the sovereign is a part of the public policy of the state," which is enforced "as a protection of the public against profligate encroachments on the public treasury." *Spangler v. Fla. State Tpk. Auth.*, 106 So. 2d 421, 424 (Fla. 1958). Separation of powers principles also underpin the doctrine of sovereign immunity. *Am. Home Assur. Co.*, 908 So. 2d at471 (citing *Commercial Carrier Corp. v. Indian River County*, 371 So. 2d 1010, 1022 (Fla. 1979)). *Sch. Bd.*, 390 So. 3d at 30.

The developer argued that Florida Statutes, Section 760.26, necessarily applies only to local governments by prohibiting specified discriminatory practices in "land use decisions" and, therefore, it waives sovereign immunity. The Court agreed with the City's position that the fact local governments often make land use and permitting decisions only gives rise to an inference that the legislature intended to subject local governments to lawsuits when it adopted Section 760.26.

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CONFLICT REMAINS ON THE WAIVER OF SOVEREIGN IMMUNITY IN PIP REIMBURSEMENT SUITS – BUT THE SPLIT IS NOW 2 TO 1 IN FAVOR OF GOVERNMENT ENTITIES

The Fifth District Court of Appeal recently decided in *School Board of Marion County v. State Farm Mutual Automobile Insurance Company*, 5D2023-2963, 2024 WL 4846524 (Fla. 5th DCA Nov. 21, 2024), that a motor vehicle insurer cannot sue a school board under section 627.7405(1), Florida Statutes, for reimbursement of personal injury protection ("PIP") benefits that the insurer paid for the medical treatment of its insured. This holding agrees with the recent decision by the Fourth District in *School Board of Broward County v. State Farm Mutual Automobile Insurance*, 390 So. 3d 27 (Fla. 4th DCA 2024). However, a conflict exists in Florida. The Second District found oppositely in *Lee County School Board v. State Farm Mutual Automobile Insurance*, 276 So. 3d 352 (Fla. 2d DCA 2019). The issue has not been addressed by the First, Third or Sixth Districts, as of yet.

The facts of the three cases are similar. State Farm's insured was an occupant on a school bus owned by the school board and sustained injuries when the bus was involved in a vehicle accident. The insured submitted a PIP claim under their State Farm policy for payment of medical expenses incurred from the accident and State Farm paid benefits. Then, State Farm filed suit against the school board under section 627.7405 for reimbursement of the PIP benefits paid, plus costs. In each case, the trial court entered judgment in favor of State Farm and the school board appealed.

The split between the courts lies in the differing interpretations of Sections 627.7405(1) and 627.732(3)(b), and whether those statutes make a clear and unequivocal waiver of sovereign immunity. Section 627.7405(1) states that an insurer providing PIP benefits on a private passenger motor vehicle has a right of reimbursement *against the owner or the insurer of a commercial motor vehicle* for the benefits paid for the insured "having been an occupant of the commercial motor vehicle or having been struck by the commercial motor vehicle …" Section 627.732(3)(b) defines a "commercial motor vehicle" as "any motor vehicle which is not a private passenger motor vehicle" but the term "does not include a mobile home or any motor vehicle which is used in mass transit, *other than public school transportation*, … and which is owned by a municipality, a transit authority, or a political subdivision of the state."

The Second District addressed the issue first and held sovereign immunity was not a defense to the PIP carrier's suit. The Court reasoned that because Section 627.732(3)(b) includes vehicles used for "public school transportation" in the definition of a commercial motor vehicle, and Section 627.7405(1) creates a right of reimbursement against the owner of a commercial motor vehicle, the legislature waived sovereign immunity for PIP reimbursement actions against school boards. The Court focused on the prior version of Section 627.732, which before 1997, excluded public school buses from the definition of a commercial motor vehicle. In the Court's view, the Legislature's inclusion of public school buses in the current statute's definition waived the sovereign immunity of school boards in actions brought pursuant to Section 627.7405(1).

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Earlier this year, the Fourth District decided the issue and disagreed, finding no clear and unequivocal waiver of sovereign immunity in Chapter 627. The Court explained that while Section 627.732(3)(b) includes school buses in the category of vehicles subject to suit under Section 627.7405(1), Chapter 627 does not define a school board or any government entity as a proper party to be sued. In other words, the chapter creating a cause of action for PIP reimbursement against the "owner" or the "insurer" of a commercial motor vehicle does not define "owner" or "insurer" to include school boards or any other state entity. Thus, the waiver of sovereign immunity could only be made by inferring that Section 627.7405 authorizes PIP suits against state entities and school boards, and an inference is not a proper basis for the waiver of sovereign immunity. The Fifth District recently agreed with the Fourth District, finding no clear and unequivocal waiver of sovereign immunity for PIP reimbursement suits against school boards.

The divide amongst Florida's appellate courts means a PIP carrier's decision to bring these actions will likely depend on the venue where the accident occurred. Insurers can continue to rely on the *Lee County* case to file PIP reimbursement lawsuits in counties in the Second District (Pasco, Hillsborough, Pinellas, Manatee, Sarasota, and DeSoto), and use the case as persuasive authority in counties within the First, Third and Sixth Districts. However, courts within the Fourth District (Indian River, Okeechobee, St. Lucie, Martin, Palm Beach, and Broward) and Fifth (from Brevard north to Nassau, Seminole, Lake, Marion, Citrus, Hernando, etc.) should follow the binding precedent and dismiss these cases at the trial court level. The uncertainty created from the conflict will likely require that the Florida Supreme Court determine the issue, but so far, no case is pending.

Ultimately, the decisions of the Fourth and Fifth Districts are a positive development for government entities within those districts. The cases have larger implications for PIP suits involving other types of government owned vehicles falling within the statute's definition of a commercial motor vehicle, such as pickup trucks and vans, opening the door for argument that as a whole, Chapter 627 lacks an express waiver of sovereign immunity and therefore, the lawsuit should be barred.

By: Jennifer C. Barron

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The developers' position requires the Court to infer an immunity waiver where the Act's express language does not clearly or unequivocally do so. Accordingly, the Court reversed the lower court order denying the City's motion to dismiss and remanded back to the trial court to grant the City's motion.

NOTE: OPINION RELEASED DECEMBER 6, 2024 – 49 FLA. L. WEEKLY D2425a – DECISION SUBJECT TO APPEAL

By: Sherry G. Sutphen

RECENT COURT CASES ENFORCING THE NOTICE REQUIREMENT OF FLORIDA STATUTES §768.28

Although the notice provision of Florida Statutes §768.28 has been on the books for many years, there is a continued trend among Florida courts to interpret the statute strictly in conformity with its text and the common law. Some recent cases, highlighted below, show that the courts are enforcing strict compliance with the statute.

In *City of Miami v. Alvarez*, 390 So.3d 248 (Fla. 3d DCA 2024) the plaintiff filed suit against the City of Miami. The City raised a defense that the City had not been provided with notice until after the suit had already been filed. The Third District noted that "[s]ince the requirements of notice are 'conditions precedent to maintaining an action' under §768.28(6)(b), providing notice *after* initiating an action does not satisfy the statutory requirement." *Id.* at 250 (emphasis in original). On that alone, the Third District reversed the trial court and remanded with instructions to dismiss the action against the City. *See also Duval County Public Schools v. Jackson*, 390 So.3d 270 (Fla. 5th DCA 2024) (Mem) (holding that a motion for summary judgment should be granted if it is established that a plaintiff failed to provide a proper sovereign entity notice pursuant to the requirements of Fla. Stat. 768.28).

In *Soto v. Franklin Academy Foundation, Inc*., 386 So.3d 150 (Fla. 4th DCA 2024) the plaintiff filed suit against a charter school. The plaintiff failed to provide notice under Section 768.28, and the school moved to dismiss. The trial court granted the dismissal, and the plaintiff appealed, arguing that a charter school was not a "state" agency but rather a "county" agency, and thus compliance with the notice requirement was not warranted. *Id.* at 151. The Fourth District held that as a matter of first impression, a charter school was a "state" agency, and because plaintiff had failed to send the requisite notice, upheld the dismissal due to the lack of notice being provided. *Id.* at 152.

In *Fagan v. Jackson County Hospital District*, 379 So.3d 1213 (Fla. 1st DCA 2024) the trial court dismissed the lawsuit filed by plaintiff due to the lack of notice provided under the wrongful death provision of Section 768.28. On appeal, the plaintiff argued that the deadline of filing a lawsuit and the notice provision should be in conformity with one another. *Id.* at 1214. The First District declined to create exceptions to the notice provision of the statute, and noted that such a requested reading of the notice provision with purported "equitable" considerations in mind are contrary to the text of the statute, which must be strictly construed. *Id.* at 1215.

"[S]overeign immunity waivers must be strictly construed with any ambiguities being resolved against waiver." *Seminole Tribe of Florida v. Manzini*, 361 So.3d 883 (Fla. 4th DCA 2023) (emphasis in original). The recent court decisions noted above encapsulate the refusal of the courts to re-write Section 768.28 due to its clear and commanding language.

By: Syed M. Qadri

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