

0/a 2-5-90

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENT TO FLORIDA
RULES OF CIVIL PROCEDURE }

CASE 75-151

FILED
JAN 5 1990

CLERK, SUPREME COURT
Deputy Clerk

RESPONSE OF HENRY P. TRAWICK, JR.

HENRY P. TRAWICK, JR. shows that he is a member of The Florida Bar and is responding to the proposed amendment to Rules 1.700-1.780 as recommended by the Florida Supreme Court's Standing Committee on Mediation and Arbitration Rules. Respondent has the following comments and suggestions about the rules listed below with the comment or suggestion listed opposite each rule number:

1. Rule 1.700(a).

A number of times are specified as mandatory. Respondent assumes that times can be enlarged under Rule 1.090(b). If this is not the case, a host of problems on scheduling will arise. A complex construction mediation with time limits of 60 days for the first hearing and 45 days for completion will be too short. usually there are multiple parties represented by busy trial lawyers whose schedules are set well in advance. It may not be possible to schedule a hearing in many cases within 60 days of the order. This is complicated by Rule 1.720(b) requiring the attendance of a party having authority to settle with the attorney. Mediation is not going to take precedence over previously scheduled trials. Respondent suggests that the mediator be given more flexibility so that applications to the court for enlargement of time are not necessary.

2. Rule 1.700(c).

The last word of the first sentence is "process." Process is a term of art in the law. The word proceeding should be substituted.

3. Rule 1.700(c). In respondent's circuit it is often impossible to set a hearing within 60 days before a particular judge. Of course, there is no penalty for not setting it before the scheduled date for mediation or arbitration. Respondent suggests that it would be better to leave the burden on the movant to obtain hearing time as soon as possible without specifying a time limit. One of the problems on time limits is exemplified by the former phraseology of the rule on injunctions when temporary injunctions expired unless further proceedings were undertaken within a specified time. It is simply not practicable in all situations to comply with time limits that appear to be mandatory.
4. Rule 1.710(c). Discovery under the bill for discovery or otherwise should also be excluded. Respondent suggests that the words "pursuant to Rule 1.280" be deleted.
5. Rule 1.720(b). The added material behind subdivision (b)(3) should not be a separate paragraph. This conflicts with the format of the rules.
6. Rule 1.760. This rule has no place in the civil rules. It is a rule of court administration and should be in that set of rules. The rule does not govern court proceedings, but is something entirely apart from the court proceedings.

The rules are not numbered in accordance with the format established for the Rules of Civil Procedure. The ten number differential between rules was adopted to provide room for expansion of a rule on the same general subject matter. For example, Rule 1.610 begins a series of rules dealing with procedure in certain types of actions. The same procedure should be followed in this proposal. Respondent suggests the following changes in rule numbers:

1.710 should be 1.711

1.720 should be 1.712

1.730 should be 1.13

1.740 should be 1.14

1.750 should be 1.715

1.800 should be 1.720

1.820 should be 1.721

1.830 should be 1.722

The reason for the renumbering is to provide additional available numbers for subject matters before reaching Rule 1.999. Under the present system of numbering rules with the prefix of 2 are in another set of rules. It is desirable to leave as much room for expansion as possible. That is the reason why the present system was adopted and why it has been followed systematically to date. As the rules are presently numbered, there is room for only nine new rules.

References to statutes in the rules should be consistent. The present Rule 1.760(b)(4) does not contain "Florida Statutes" at the end while 1.760(a)(5) contains the unnecessary date. All of the rules should conform to the present style by adding "Florida Statues" where omitted and by deleting the date of the statutory edition. The insertion of the date means that the rule must be construed in the light of the statute of that date. Respondent does not believe this is what was intended. Respondent believes that the court intended for rules to apply in accordance with amendments to the statutes.

Parenthetically and not bearing on the instant proceeding, this is a defect in Rule 9.800(e) as well although that rule has many and more serious defects.

The undersigned certifies that a copy of the foregoing has been furnished to The State Court Administrator, Stephen N. Zack, as president of The Florida Bar, James Fox Miller, as president-elect of The Florida Bar, John F. Harkness, Jr., as executive director of the Florida Bar and Bruce J. Berman, as chairman of the Civil Procedure Rules Committee by mail on January 3, 1990.

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o.a.2-5-90

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IN RE: AMENDMENT TO FLORIDA)
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CLERK OF THE SUPREME COURT
TALLAHASSEE, FLORIDA
pl

SUPPLEMENT TO RESPONSE OF HENRY P. TRAWICK, JR.

HENRY P. TRAWICK, JR. shows that he served a response in connection with the proposed amendment to Rules 1.700-1.780 on January 3, 1990 and omitted the following comments:

- 7. Rule 1.700(c). In the third line the words "with the court" are redundant. Motions are filed with the clerk even though he is the agent for the court. This might be misconstrued as a requirement that the motion go to the court.
- 8. Rule 1.700(d). The words "the court" in the first line are not only redundant, but ridiculous. Even when referring to a particular judge, it is not always easy to move a court.
- 9. Rule 1.730(b). The rules says that if the mediated agreement is not filed, a joint notice of dismissal shall be. There may be occasions when a court order is either necessary or desirable for termination of the litigation. This alternative should be afforded.

The undersigned certifies that a copy of the foregoing has been furnished to The State Court Administrator, Stephen N. Zack, as president of The Florida Bar, James Fox Miller, as president-elect of The Florida Bar, John F. Harkness, Jr., as executive

director of the Florida Bar and Bruce J. Berman, as chairman of the Civil Procedure Rules Committee by mail on January 8, 1990.

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