

Supreme Court of Florida

AMENDMENT TO FLORIDA RULE OF CIVIL PROCEDURE 1.070(j)--TIME LIMIT FOR SERVICE.

No. 93,367

[March 4, 1999]

PER CURIAM.

In Amendment to Florida Rule of Civil Procedure 1.070(j)--Time Limit for Service, 720 So. 2d 505 (Fla. 1998), we proposed on our own motion to amend Florida Rule of Civil Procedure 1.070(j), as follows:

(j) Summons; Time Limit. If service of the initial process and initial pleading is not made upon a defendant within 120 days after filing of the initial pleading ~~and the party on whose behalf service is required does not show good cause why service was not made within that time,~~ the court, on its own initiative after notice or on motion, shall direct that service be effected within a specified time or shall dismiss the action ~~shall be~~

dismissed without prejudice or drop that defendant dropped as a party ~~on the court's own initiative after notice or on motion;~~ provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period. A dismissal under this subdivision shall not be considered a voluntary dismissal or operate as an adjudication on the merits under rule 1.420(a)(1).

We directed that the proposed amendment be published in The Florida Bar News, and we invited interested persons to file comments. Based on the comments received, we conclude that we should slightly modify our proposal. Accordingly, we adopt the following modified amendment to rule 1.070:

(j) Summons; Time Limit. If service of the initial process and initial pleading is not made upon a defendant

within 120 days after filing of the initial pleading ~~and the party on whose behalf service is required does not show good cause why service was not made within that time,~~ the court, on its own initiative after notice or on motion, shall direct that service be effected within a specified time or shall dismiss the action shall be dismissed without prejudice or drop that defendant ~~dropped as a party on the court's own initiative after notice or on motion;~~ provided that if the plaintiff shows good cause or excusable neglect for the failure, the court shall extend the time for service for an appropriate period. A dismissal under this subdivision shall not be considered a voluntary dismissal or operate as an adjudication on the merits under rule 1.420(a)(1).

This amendment shall become effective immediately. Consistent with the United States Supreme Court's recent modification to the federal counterpart to this rule, we conclude that the amendment shall apply to all civil cases commenced after the date of this

opinion and, insofar as just and practicable, to all civil cases pending as of the date of this opinion. See Petrucelli v. Bohringer & Ratzinger, 46 F.3d 1298 (3d Cir. 1995).

It is so ordered.

HARDING, C.J., SHAW, WELLS, ANSTEAD, and PARIENTE, JJ., and OVERTON and KOGAN, Senior Justices, concur.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THIS AMENDMENT.

Original Proceeding - Florida Rules of Civil Procedure

Henry P. Trawick, Jr., Sarasota, Florida; Dan Cytryn, Tamarac, Florida; Bernard Penn, Pensacola, Florida; and Philip M. Burlington of Caruso, Burlington, Bohn & Compiani, P.A., West Palm Beach, Florida, on behalf of the Academy of Florida Trial Lawyers,

Responding