IN THE SUPREME COURT OF FLORIDA

IN RE: IMPLEMENTATION OF COMMITTEE ON PRIVACY AND COURT RECORDS RECOMMENDATIONS - AMENDMENTS TO THE FLORIDA RULES OF CIVIL PROCEDURE; THE FLORIDA RULES OF CRIMINAL PROCEDURE; THE FLORIDA PROBATE RULES; THE FLORIDA SMALL CLAIMS RULES; THE FLORIDA RULES OF APPELLATE PROCEDURE; AND THE FLORIDA FAMILY LAW RULES **CASE NO: SC08-2443**

RESPONSE OF THE CIVIL PROCEDURE RULES COMMITTEE TO THE COURT'S APRIL 1, 2010 COMMUNICATION REGARDING COMMITTEE ON PRIVACY AND COURT RECORDS

Mark A. Romance, Chair, Civil Procedure Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, file the Civil Procedure Rules Committee's (CPRC) response to the Court's April 1, 2010 communication concerning the implementation of the Committee on Privacy and Court Records recommendations. This response was approved by the Committee by a vote of 37-0 and by the Executive Committee of The Florida Bar Board of Governors by a vote of 11-0. The proposed rules amendments are attached in the full-page (*see* Appendix A) and two-column (*see* Appendix B) formats.

As to each of the seven issues raised by the Court, the Committee states as follows:

1. The CPRC believes that it might be helpful to reinforce the importance of redacting information from public access if new Rule 1.191 is referenced in Rule 7.020 or in any other Small Claims rule of procedure, but the CPRC defers to the Small Claims Rules Committee's knowledge and expertise as to its own rules.

2. CPRC believes that the lists of personal information that must be truncated or redacted should be consistent. After further

evaluation, CPRC recommends that new Rule 1.280(f) not repeat the list of information that must be redacted, but rather, that it simply refer back to Rule 1.191, which contains the list. CPRC believes that the list of information should be placed only in one rule of civil procedure in order to keep the rules as simple as possible. In addition, if in the future the list needs to be amended, the Court would only need to amend one rule.

Accordingly, CPRC suggests that the proposed Rule 1.280(f) previously submitted to the Court be revised as follows:

> **(f) Court Filing of Documents and Discovery.** Information obtained during discovery shall not be filed with the court until such time as it is filed for good cause. ***The requirement of good cause is satisfied only where the filing of the information is allowed or required by another applicable rule of procedure or by court order.*** ~~Compliance with specific mandatory filing requirements of any other rule of procedure shall constitute good cause except that~~ ***If information obtained during discovery is filed with the Court,*** ~~dates of birth, social security numbers~~ ***(except the last four digits)***, ~~and credit and financial account numbers shall be redacted from documents filed in reliance on this exception~~ ***by the filer.*** **All filings of discovery documents shall comply with rule 1.191.** The court shall have authority to impose sanctions for violation of this rule.

The italicized portion in the above version of the rule incorporates the changes suggested by the Court in paragraph 4 of the Court's April 1, 2010, communication.

CPRC agrees that the list of information contained in Rule 1.191 should be consistent with the family law discovery rules, and in particular, proposed Rule 12.280(a).

In addition, the CPRC believes that Rule 1.191(b), concerning exceptions to the redaction requirement, should

include an additional exception where personal identifying numbers might be required by statute.

Accordingly, CPRC recommends that the proposed Rule 1.191 be amended as follows:

RULE 1.191. FILING OF SENSITIVE INFORMATION

(a) Information ~~Not to Be Filed~~**to Be Redacted.** Unless the court orders otherwise, a filing made with the court that includes a social security number or an individual's tax identification number, a name of a person known to be a minor, a person's birth date, ~~or~~ a financial account number, an employee identification number, a driver's license number, a passport number or other personal identification numbers shall include only:

(1) the last four digits of the social security number ~~and~~or tax identification number;
(2) the minor's initials;
(3) the year of birth; ~~and~~
(4) the last four digits of the financial account number~~.~~;
(5) the last four digits of the employee identification number;
(6) the last four digits of the driver's license number;
(7) the last four digits of the passport number; and
(8) the last four digits of any other personal identification number.

A single "*" shall be used to indicate that numbers have been redacted.

(b) Exceptions. The redaction requirement of this rule does not apply to the following:

(1) In foreclosure or forfeiture proceedings, a financial account number that identifies the property alleged to be subject to foreclosure or forfeiture.

(2) The record of an administrative or agency proceeding.

(3) The record of a court or tribunal whose decision is being reviewed, if that record was not subject to this rule when originally filed.

(4) Information required by statute to be filed.

(c) Motions Not Restricted. This rule does not restrict a party's right to move for a protective order or move to file documents under seal.

3. Proposed new Rule 1.280(f) contains the general requirements for filing of all discovery materials and reiterates that certain information must be redacted before being filed. Rules 1.310, 1.340, and 1.350 previously included references to limits on filing of those particular discovery materials. CPRC has proposed amendments to each of those rules simply to refer back to Rule 1.280(f) as a reminder of the good cause requirement and the need to redact personal information.

Moreover, consistent with the modifications suggested in this response, CPRC recommends that the reference be made in Rules 1.310, 1.340, and 1.350 to both 1.280(f) and 1.191. CPRC therefore suggests that its prior proposals be amended as follows:

RULE 1.310. DEPOSITIONS UPON ORAL EXAMINATION

(3) A copy of a deposition may be filed only under the following circumstances:

(A) It may be filed in compliance with rules 1.191 and 1.280(f) by a party or the witness when the contents of the deposition must be considered by the court on any matter pending before the court. Prompt notice of the filing of the deposition shall be given to all parties unless notice is waived.

A party filing the deposition shall furnish a copy of the deposition or the part being filed to other parties unless the party already has a copy.

(B) If the court determines that a deposition previously taken is necessary for the decision of a matter pending before the court, the court may order that a copy be filed by any party at the initial cost of the party, and the filing party shall comply with rules 1.191 and 1.280(f).

RULE 1.340. INTERROGATORIES TO PARTIES

(e) Service and Filing. Interrogatories shall be arranged so that a blank space is provided after each separately numbered interrogatory. The space shall be reasonably sufficient to enable the answering party to insert the answer within the space. If sufficient space is not provided, the answering party may attach additional papers with answers and refer to them in the space provided in the interrogatories. The interrogatories shall be served on the party to whom the interrogatories are directed and copies shall be served on all other parties. A certificate of service of the interrogatories shall be filed, giving the date of service and the name of the party to whom they were directed. The answers to the interrogatories shall be served upon the party originally propounding the interrogatories and a copy shall be served on all other parties by the answering party. The original or any copy of the answers to interrogatories may be filed in compliance with rules 1.191 and 1.280(f) by any party when the court should consider the answers to interrogatories in determining any matter pending before the court. The court may order a copy of the answers to interrogatories filed at any time when the court determines that examination of the answers to interrogatories is necessary to determine any matter pending before the court.

RULE 1.350. PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES

(d) Filing of Documents. Unless required by the court, a party shall not file any of the documents or things produced with the response. Documents or things may be filed in compliance with rules 1.191 and 1.280(f) when they should be considered by the court in determining a matter pending before the court.

In addition, CPRC recommends that a Committee Note be added to each of those discovery rules to explain the interplay between those rules and Rules 1.191 and 1.280.

CPRC proposes that the following Committee Note be added to Rules 1.310, 1.340, and 1.350:

> **2010 Amendment.** A reference to rules 1.191 and 1.280(f) is added to require persons filing discovery materials with the court to make sure that good cause exists prior to filing discovery materials and that certain specific personal information is redacted.

CPRC also believes that a Committee note should be added to Rule 1.280 as follows:

> **2010 Amendment.** Subdivision (f) is added to ensure that information obtained during discovery is not filed with the court unless there is good cause for the documents to be filed, and that information obtained during discovery that includes certain private information shall not be filed with the court unless the private information is redacted as required by rule 1.191.

Finally, CPRC has conferred with the Family Law Rules Committee to suggest a consistent list of information. However, CPRC defers to the Family Law Rules Committee's knowledge and expertise as to changes that should be made to its own rules.

4. The Court's suggested revision to the second sentence of proposed Rule 1.280(f) does sufficiently clarify what constitutes "good cause." CPRC also agrees with some of the

other changes suggested by the Court, but CPRC has suggested additional changes as set forth in number 2 above.

5. Rules 1.310, 1.340, and 1.350 currently include provisions concerning filing of their particular types of discovery materials. Rules that govern other forms of discovery, such as Rules 1.351 and 1.370, should not be similarly amended. Those rules do not currently address limits on filing. CPRC believes that Rules 1.191 and 1.280(f) will sufficiently cover the limits upon filing of any discovery materials. Further references should not be added to those two rules or to any other discovery rules that do not already contain specific limits on filing of discovery.

6. This paragraph is not directed to CPRC.

7. This paragraph is not directed to CPRC.

Therefore, CPRC respectfully requests that the Court amend the Florida Rules of Civil Procedure as outlined in this response.

Respectfully submitted _____.

MARK ROMANCE
Chair
Civil Procedure Rules Committee
201 S. Biscayne Blvd., Ste. 1000
Miami, FL 33131
305/373-4000
FLORIDA BAR NO.: 21520

JOHN F. HARKNESS, JR.
Executive Director
The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399-2300
850/561-5600
FLORIDA BAR NO.: 123390

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was furnished by United States mail on _____to

Carol Jean LoCicero
400 N. Ashley Dr., Suite 1100
Tampa, FL 33602

Deanna Shullman
400 N. Ashley Dr., Suite 1100
Tampa, FL 33602

Hon. Judith Kreeger, Chair
Subcommittee on Access to Court Records
c/o Steve Henley, OSCA
Supreme Court Building
500 S. Duval St.
Tallahassee, FL 32399-1900

John G. Crabtree, Chair
Appellate Court Rules Committee
328 Crandon Blvd., Suite 225
Key Biscayne, FL 33149-1398

Hon. Robert W. Lee
201 S.E. 6th Street, Ste. 331
Ft. Lauderdale, FL 33301

Fleur J. Lobree, Chair
Criminal Procedure Rules Committee
1350 NW 12th Ave., Room S-539
Miami, FL 33136-2102

Jack A. Moring, Chair
Family Law Rules Committee
7655 W. Gulf to Lake Hwy, Suite 12
Crystal River, FL 34429-7910

Charles H. Davis, Chair
Juvenile Court Rules Committee
State Attorney's Office, 4th Circuit
220 E. Bay St.
Jacksonville, FL 32202-3429

Frank T. Pilotte, Chair
Probate Rules Committee
11300 US 1, Suite 401
Palm Beach Gardens, FL 33408-3293

Hon. Lisa Davidson, Chair
Rules of Judicial Administration Committee
2825 Judge Fran Jamieson Way
Viera, FL 32940-8006

Rick Silverman, Chair
Traffic Court Rules Committee
701 W. Azeele St.
Tampa, FL 33606-2337

Russell Robert Winer
821 16th Street, N.
St. Petersburg, FL 33705-1236

Jodi Jennings
Krys Godwin
The Florida Bar
651 E. Jefferson Street
Tallahassee, FL 32399-2300

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APPENDIX A

Note: Proposed changes from the Court's compilation of proposed amendments at www.floridasupremecourt.org indicated in bold and underline.

RULE 1.191. FILING OF SENSITIVE INFORMATION

(a) Information ~~Not to Be Filed~~to Be Redacted**.** Unless the court orders otherwise, a filing made with the court that includes a social security number or an individual's tax identification number, a name of a person known to be a minor, a person's birth date, ~~or~~ a financial account number**, an employee identification number, a driver's license number, a passport number, or other personal identification numbers** shall include only**:**

(1) the last four digits of the social security number ~~**and**~~**or** tax identification number;

(2) the minor's initials;

(3) the year of birth; ~~**and**~~

(4) the last four digits of the financial account number~~.~~**;**

(5) the last four digits of the employee identification number;

(6) the last four digits of the driver's license number;

(7) the last four digits of the passport number; and

(8) the last four digits of any other personal identication number.

A single "*" shall be used to indicate that numbers have been redacted.

(b) Exceptions. The redaction requirement of this rule does not apply to the following:

(1) In foreclosure or forfeiture proceedings, a financial account number that identifies the property alleged to be subject to foreclosure or forfeiture.

(2) The record of an administrative or agency proceeding.

(3) The record of a court or tribunal whose decision is being reviewed, if that record was not subject to this rule when originally filed.

(4) Information required by statute to be filed.

(c) Motions Not Restricted. This rule does not restrict a party's right to move for protective order or move to file documents under seal.

RULE 1.280. GENERAL PROVISIONS GOVERNING DISCOVERY

(a) Discovery Methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property for inspection and other purposes; physical and mental examinations; and requests for admission. Unless the court orders otherwise and under subdivision (c) of this rule, the frequency of use of these methods is not limited, except as provided in rules 1.200, 1.340, and 1.370.

(b) Scope of Discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) Indemnity Agreements. A party may obtain discovery of the existence and contents of any agreement under which any person may be liable to satisfy part or all of a judgment that may be entered in the action or to indemnify or to reimburse a party for payments made to satisfy the judgment. Information concerning the agreement is not admissible in evidence at trial by reason of disclosure.

(3) Trial Preparation: Materials. Subject to the provisions of subdivision (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that party's representative, including that party's attorney, consultant, surety, indemnitor, insurer, or agent, only upon a showing that the party seeking discovery has need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial

equivalent of the materials by other means. In ordering discovery of the materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation. Without the required showing a party may obtain a copy of a statement concerning the action or its subject matter previously made by that party. Upon request without the required showing a person not a party may obtain a copy of a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for an order to obtain a copy. The provisions of rule 1.380(a)(4) apply to the award of expenses incurred as a result of making the motion. For purposes of this paragraph, a statement previously made is a written statement signed or otherwise adopted or approved by the person making it, or a stenographic, mechanical, electrical, or other recording or transcription of it that is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial Preparation: Experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A)(i) By interrogatories a party may require any other party to identify each person whom the other party expects to call as an expert witness at trial and to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(ii) Any person disclosed by interrogatories or otherwise as a person expected to be called as an expert witness at trial may be deposed in accordance with rule 1.390 without motion or order of court.

(iii) A party may obtain the following discovery regarding any person disclosed by interrogatories or otherwise as a person expected to be called as an expert witness at trial:

1. The scope of employment in the pending

case and the compensation for such service.

2. The expert's general litigation experience, including the percentage of work performed for plaintiffs and defendants.

3. The identity of other cases, within a reasonable time period, in which the expert has testified by deposition or at trial.

4. An approximation of the portion of the expert's involvement as an expert witness, which may be based on the number of hours, percentage of hours, or percentage of earned income derived from serving as an expert witness; however, the expert shall not be required to disclose his or her earnings as an expert witness or income derived from other services.

An expert may be required to produce financial and business records only under the most unusual or compelling circumstances and may not be compelled to compile or produce nonexistent documents. Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and other provisions pursuant to subdivision (b)(4)(C) of this rule concerning fees and expenses as the court may deem appropriate.

(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in rule 1.360(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions (b)(4)(A) and (b)(4)(B) of this rule; and concerning discovery from an expert obtained under subdivision (b)(4)(A) of this rule the court may require, and concerning discovery obtained under subdivision (b)(4)(B) of this rule shall require, the party seeking discovery to pay the other party a fair part of the

fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(D) As used in these rules an expert shall be an expert witness as defined in rule 1.390(a).

(5) Claims of Privilege or Protection of Trial Preparation Materials. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(c) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending may make any order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; and (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court. If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of rule 1.380(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) Sequence and Timing of Discovery. Except as provided in subdivision (b)(4) or unless the court upon motion for the convenience of parties and witnesses and in the interest of justice orders otherwise, methods

of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not delay any other party's discovery.

(e) Supplementing of Responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information thereafter acquired.

(f) Court Filing of Documents and Discovery. Information obtained during discovery shall not be filed with the court until such time as it is filed for good cause. ***The requirement of good cause is satisfied only where the filing of the information is allowed or required by another applicable rule of procedure or by court order.*** ~~Compliance with specific mandatory filing requirements of any other rule of procedure shall constitute good cause except that~~ ***If information obtained during discovery is filed with the Court,*** ~~dates of birth, social security numbers~~ ***(except the last four digits),*** ~~and credit and financial account numbers shall be redacted from documents filed in reliance on this exception~~ ***by the filer.*** **All filings of discovery documents shall comply with rule 1.191.** The court shall have authority to impose sanctions for violation of this rule.

Committee Notes
~~[No change]~~

1972 Amendment. The rule is derived from Federal Rule of Civil Procedure 26 as amended in 1970. Subdivisions (a), (b)(2), and (b)(3) are new. Subdivision (c) contains material from former rule 1.310(b). Subdivisions (d) and (e) are new, but the latter is similar to former rule 1.340(d). Significant changes are made in discovery from experts. The general rearrangement of the discovery rule is more logical and is the result of 35 years of experience under the federal rules.

1988 Amendment. Subdivision (b)(2) has been added to enable discovery of the existence and contents of indemnity agreements and is the result of the enactment of sections 627.7262 and 627.7264, Florida Statutes, proscribing the joinder of insurers but providing for disclosure. This rule is derived from Federal Rule of Civil Procedure 26(b)(2). Subdivisions (b)(2) and (b)(3) have been redesignated as (b)(3) and (b)(4) respectively.

The purpose of the amendment to subdivision (b)(3)(A) (renumbered (b)(4)(A)) is to allow, without leave of court, the depositions of experts who have been disclosed as expected to be used at trial. The purpose of subdivision (b)(4)(D) is to define the term "expert" as used in these rules.

1996 Amendment. The amendments to subdivision (b)(4)(A) are derived from the Supreme Court's decision in *Elkins v. Syken*, 672 So. 2d 517 (Fla. 1996). They are intended to avoid annoyance, embarrassment, and undue expense while still permitting the adverse party to obtain relevant information regarding the potential bias or interest of the expert witness.

Subdivision (b)(5) is added and is derived from Federal Rule of Civil Procedure 26(b)(5) (1993).

2010 Amendment. Subdivision (f) is added to ensure that information obtained during discovery is not filed with the court unless there is good cause for the documents to be filed, and that information obtained during discovery that includes certain private information shall not be filed with the court unless the private information is redacted as required by rule 1.191.

Court Commentary

2000 Amendment. *Allstate Insurance Co. v. Boecher*, 733 So. 2d 993, 999 (Fla. 1999), clarifies that subdivision (b)(4)(A)(iii) is not intended "to place a blanket bar on discovery from parties about information they have in their possession about an expert, including the party's financial relationship with the expert."

RULE 1.310. DEPOSITIONS UPON ORAL EXAMINATION

(a) When Depositions May Be Taken. After commencement of the action any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition within 30 days after service of the process and initial pleading upon any defendant, except that leave is not required (1) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (2) if special notice is given as provided in subdivision (b)(2) of this rule. The attendance of witnesses may be compelled by subpoena as provided in rule 1.410. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

(b) Notice; Method of Taking; Production at Deposition.

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced under the subpoena shall be attached to or included in the notice.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice states that the person to be examined is about to go out of the state and will be unavailable for examination unless a deposition is taken before expiration of the 30-day period under subdivision (a). If a party shows that when served with notice under this subdivision that party was unable through the exercise of diligence to obtain counsel to represent the party at the taking of the deposition, the deposition may not be used against that party.

(3) For cause shown the court may enlarge or shorten the time for taking the deposition.

(4) Any deposition may be recorded by videotape without leave of the court or stipulation of the parties, provided the deposition is taken in accordance with this subdivision.

(A) Notice. A party intending to videotape a deposition shall state in the notice that the deposition is to be videotaped and shall give the name and address of the operator.

(B) Stenographer. Videotaped depositions shall also be recorded stenographically, unless all parties agree otherwise.

(C) Procedure. At the beginning of the deposition, the officer before whom it is taken shall, on camera: (i) identify the style of the action, (ii) state the date, and (iii) swear the witness.

(D) Custody of Tape and Copies. The attorney for the party requesting the videotaping of the deposition shall take custody of and be responsible for the safeguarding of the videotape, shall permit the viewing of it by the opposing party, and, if requested, shall provide a copy of the videotape at the expense of the party requesting the copy.

(E) Cost of Videotaped Depositions. The party requesting the videotaping shall bear the initial cost of videotaping.

(5) The notice to a party deponent may be accompanied by a request made in compliance with rule 1.350 for the production of documents and tangible things at the taking of the deposition. The procedure of rule 1.350 shall apply to the request.

(6) In the notice a party may name as the deponent a public or private corporation, a partnership or association, or a governmental agency, and designate with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to do so, to testify on its behalf and may state the matters on which each person designated will testify. The persons so designated shall testify about matters known or reasonably available to the organization. This subdivision does not preclude taking a deposition by any other procedure authorized in these rules.

(7) On motion the court may order that the testimony at a deposition be taken by telephone. The order may prescribe the manner in which the deposition will be taken. A party may also arrange for a stenographic transcription at that party's own initial expense.

(8) Any minor subpoenaed for testimony shall have the right to be accompanied by a parent or guardian at all times during the taking of testimony notwithstanding the invocation of the rule of sequestration of section 90.616, Florida Statutes, except upon a showing that the presence of a parent or guardian is likely to have a material, negative impact on the credibility or accuracy of the minor's testimony, or that the interests of the parent or guardian are in actual or potential conflict with the interests of the minor.

(c) Examination and Cross-Examination; Record of Examination; Oath; Objections. Examination and cross-examination of witnesses may proceed as permitted at the trial. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness, except that when a deposition is being taken by telephone, the witness shall be sworn by a person present with the witness who is qualified to administer an oath in that location. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with subdivision (b)(4) of this rule. If requested by one of the parties, the testimony shall be transcribed at the initial cost of the requesting party and prompt notice of the request shall be given to all other parties. All objections made at time of the examination to the qualifications of the officer taking the deposition, the manner of taking it, the evidence presented, or the conduct of any party, and any other objection to the proceedings shall be noted by the officer upon the deposition. Any objection during a deposition shall be stated concisely and in a nonargumentative and nonsuggestive manner. A party may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the court, or to present a motion under subdivision (d). Otherwise, evidence objected to shall be taken subject to the objections. Instead of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and that party shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) Motion to Terminate or Limit Examination. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, or that objection and instruction to a deponent not to answer are being made in violation of rule 1.310(c), the court in which the action is pending or the circuit court where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition or may limit the scope and manner of the taking of the deposition under rule 1.280(c). If the order terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of any party or the deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of rule 1.380(a) apply to the award of expenses incurred in relation to the motion.

(e) Witness Review. If the testimony is transcribed, the transcript shall be furnished to the witness for examination and shall be read to or by the witness unless the examination and reading are waived by the witness and by the parties. Any changes in form or substance that the witness wants to make shall be listed in writing by the officer with a statement of the reasons given by the witness for making the changes. The changes shall be attached to the transcript. It shall then be signed by the witness unless the parties waived the signing or the witness is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within a reasonable time after it is furnished to the witness, the officer shall sign the transcript and state on the transcript the waiver, illness, absence of the witness, or refusal to sign with any reasons given therefor. The deposition may then be used as fully as though signed unless the court holds that the reasons given for the refusal to sign require rejection of the deposition wholly or partly, on motion under rule 1.330(d)(4).

(f) Filing; Exhibits.

(1) If the deposition is transcribed, the officer shall certify on each copy of the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. Documents and things produced for inspection during the examination of the witness shall be marked for identification and annexed to and returned with the deposition upon the request of a party, and may be inspected and copied

by any party, except that the person producing the materials may substitute copies to be marked for identification if that person affords to all parties fair opportunity to verify the copies by comparison with the originals. If the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them and the materials may then be used in the same manner as if annexed to and returned with the deposition.

(2) Upon payment of reasonable charges therefor the officer shall furnish a copy of the deposition to any party or to the deponent.

(3) A copy of a deposition may be filed only under the following circumstances:

(A) It may be filed in compliance with rule**s 1.191 and** 1.280(f) by a party or the witness when the contents of the deposition must be considered by the court on any matter pending before the court. Prompt notice of the filing of the deposition shall be given to all parties unless notice is waived. A party filing the deposition shall furnish a copy of the deposition or the part being filed to other parties unless the party already has a copy.

(B) If the court determines that a deposition previously taken is necessary for the decision of a matter pending before the court, the court may order that a copy be filed by any party at the initial cost of the party, and the filing party shall comply with rule**s 1.191 and** 1.280(f).

(g) Obtaining Copies. A party or witness who does not have a copy of the deposition may obtain it from the officer taking the deposition unless the court orders otherwise. If the deposition is obtained from a person other than the officer, the reasonable cost of reproducing the copies shall be paid to the person by the requesting party or witness.

(h) Failure to Attend or to Serve Subpoena; Expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to the other party the reasonable expenses incurred by the other party and the other party's attorney in attending, including reasonable attorneys' fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of the failure does not attend and if another party attends in person or by attorney because that other party expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to the other party the reasonable expenses incurred by that other party and that other party's attorney in attending, including reasonable attorneys' fees.

Committee Notes
~~[No change]~~

1972 Amendment. Derived from Federal Rule of Civil Procedure 30 as amended in 1970. Subdivision (a) is derived from rule 1.280(a); subdivision (b) from rule 1.310(a) with additional matter added; the first sentence of subdivision (c) has been added and clarifying language added throughout the remainder of the rule.

1976 Amendment. Subdivision (b)(4) has been amended to allow the taking of a videotaped deposition as a matter of right. Provisions for the taxation of costs and the entry of a standard order are included as well. This new amendment allows the contemporaneous stenographic transcription of a videotaped deposition.

1988 Amendment. The amendments to subdivision (b)(4) are to provide for depositions by videotape as a matter of right.

The notice provision is to ensure that specific notice is given that the deposition will be videotaped and to disclose the identity of the operator. It was decided not to make special provision for a number of days' notice.

The requirement that a stenographer be present (who is also the person likely to be swearing the deponent) is to ensure the availability of a transcript (although not required). The transcript would be a tool to ensure the accuracy of the videotape and thus eliminate the need to establish other procedures aimed at the same objective (like time clocks in the picture and the like). This does not mean that a transcript must be made. As at ordinary depositions, this would be up to the litigants.

Technical videotaping procedures were not included. It is anticipated that technical problems may be addressed by the court on motions to quash or motions for protective orders.

Subdivision (c) has been amended to accommodate the taking of depositions by telephone. The amendment requires the deponent to be sworn by a person authorized to administer oaths in the deponent's location and who is present with the deponent.

1992 Amendment. Subdivision (b)(4)(D) is amended to clarify an ambiguity in whether the cost of the videotape copy is to be borne by the party requesting the videotaping or by the party requesting the copy. The amendment requires the party requesting the copy to bear the cost of the copy.

1996 Amendment. Subdivision (c) is amended to state the existing law, which authorizes attorneys to instruct deponents not to answer questions only in specific situations. This amendment is derived from Federal Rule of Civil Procedure 30(d) as amended in 1993.

2010 Amendment. A reference to rules 1.191 and 1.280(f) is added to require persons filing discovery materials with the court to make sure that good cause exists prior to filing discovery materials and that certain specific personal information is redacted.

Court Commentary

~~[No change]~~

1984 Amendment. Subdivision (b)(7) is added to authorize deposition by telephone, with provision for any party to have a stenographic transcription at that party's own initial expense.

Subdivision (d) is changed to permit any party to terminate the deposition, not just the objecting party.

Subdivision (e) is changed to eliminate the confusing requirement that a transcript be submitted to the witness. The term has been construed as requiring the court reporter to travel, if necessary, to the witness, and creates a problem when a witness is deposed in Florida and thereafter leaves the state before signing. The change is intended to permit the parties and the

court reporter to handle such situations on an ad hoc basis as is most appropriate.

Subdivision (f) is the committee's action in response to the petition seeking amendment to rule 1.310(f) filed in the Supreme Court Case No. 62,699. Subdivision (f) is changed to clarify the need for furnishing copies when a deposition, or part of it, is properly filed, to authorize the court to require a deposition to be both transcribed and filed, and to specify that a party who does not obtain a copy of the deposition may get it from the court reporter unless ordered otherwise by the court. This eliminates the present requirement of furnishing a copy of the deposition, or material part of it, to a person who already has a copy in subdivision (f)(3)(A).

Subdivision (f)(3)(B) broadens the authority of the court to require the filing of a deposition that has been taken, but not transcribed.

Subdivision (g) requires a party to obtain a copy of the deposition from the court reporter unless the court orders otherwise. Generally, the court should not order a party who has a copy of the deposition to furnish it to someone who has neglected to obtain it when the deposition was transcribed. The person should obtain it from the court reporter unless there is a good reason why it cannot be obtained from the reporter.

RULE 1.340. INTERROGATORIES TO PARTIES

(a) Procedure for Use. Without leave of court, any party may serve upon any other party written interrogatories to be answered (1) by the party to whom the interrogatories are directed, or (2) if that party is a public or private corporation or partnership or association or governmental agency, by any officer or agent, who shall furnish the information available to that party. Interrogatories may be served on the plaintiff after commencement of the action and on any other party with or after service of the process and initial pleading upon that party. The interrogatories shall not exceed 30, including all subparts, unless the court permits a larger number on motion and notice and for good cause. If the supreme court has approved a form of interrogatories for the type of action, the initial interrogatories shall be in the form approved by the court. Other interrogatories may be added to the approved forms without leave of court, so long as the total of approved and additional interrogatories does not exceed 30. Each interrogatory shall be answered separately and fully in writing under oath unless it is objected to, in which event the grounds for objection shall be stated and signed by the attorney making it. The party to whom the interrogatories are directed shall serve the answers and any objections within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the process and initial pleading upon that defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under rule 1.380(a) on any objection to or other failure to answer an interrogatory.

(b) Scope; Use at Trial. Interrogatories may relate to any matters that can be inquired into under rule 1.280(b), and the answers may be used to the extent permitted by the rules of evidence except as otherwise provided in this subdivision. An interrogatory otherwise proper is not objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or calls for a conclusion or asks for information not within the personal knowledge of the party. A party shall respond to such an interrogatory by giving the information the party has and the source on which the information is based. Such a qualified answer may not be used as direct evidence for or impeachment against the party giving the answer unless the court finds it otherwise admissible under the rules of evidence. If a party introduces an answer to an interrogatory, any other party may require that party to introduce any other interrogatory and answer that in fairness ought to be considered with it.

(c) Option to Produce Records. When the answer to an interrogatory may be derived or ascertained from the records of the party to whom the interrogatory is directed or from an examination, audit, or inspection of the records or from a compilation, abstract, or summary based on the records and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party to whom it is directed, an answer to the interrogatory specifying the records from which the answer may be derived or ascertained and offering to give the party serving the interrogatory a reasonable opportunity to examine, audit, or inspect the records and to make copies, compilations, abstracts, or summaries is a sufficient answer. An answer shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party interrogated, the records from which the answer may be derived or ascertained, or shall identify a person or persons representing the interrogated party who will be available to assist the interrogating party in locating and identifying the records at the time they are produced.

(d) Effect on Co-Party. Answers made by a party shall not be binding on a co-party.

(e) Service and Filing. Interrogatories shall be arranged so that a blank space is provided after each separately numbered interrogatory. The space shall be reasonably sufficient to enable the answering party to insert the answer within the space. If sufficient space is not provided, the answering party may attach additional papers with answers and refer to them in the space provided in the interrogatories. The interrogatories shall be served on the party to whom the interrogatories are directed and copies shall be served on all other parties. A certificate of service of the interrogatories shall be filed, giving the date of service and the name of the party to whom they were directed. The answers to the interrogatories shall be served upon the party originally propounding the interrogatories and a copy shall be served on all other parties by the answering party. The original or any copy of the answers to interrogatories may be filed in compliance with rule**s 1.191 and** 1.280(f) by any party when the court should consider the answers to interrogatories in determining any matter pending before the court. The court may order a copy of the answers to interrogatories filed at any time when the court determines that examination of the answers to interrogatories is necessary to determine any matter pending before the court.

Committee Notes

~~[No change]~~

1972 Amendment. Subdivisions (a), (b), and (c) are derived from Federal Rule of Civil Procedure 33 as amended in 1970. Changes from the existing rule expand the time for answering, permit interrogatories to be served with the initial pleading or at any time thereafter, and eliminate the requirement of a hearing on objections. If objections are made, the interrogating party has the responsibility of setting a hearing if that party wants an answer. If the interrogatories are not sufficiently important, the interrogating party may let the matter drop. Subdivision (b) covers the same matter as the present rule 1.340(b) except those parts that have been transferred to rule 1.280. It also eliminates the confusion between facts and opinions or contentions by requiring that all be given. Subdivision (c) gives the interrogated party an option to produce business records from which the interrogating party can derive the answers to questions. Subdivision (d) is former subdivision (c) without change. Former subdivision (d) is repealed because it is covered in rule 1.280(e). Subdivision (e) is derived from the New Jersey rules and is intended to place both the interrogatories and the answers to them in a convenient place in the court file so that they can be referred to with less confusion. The requirement for filing a copy before the answers are received is necessary in the event of a dispute concerning what was done or the appropriate times involved.

1988 Amendment. The word "initial" in the 1984 amendment to subdivision (a) resulted in some confusion, so it has been deleted. Also the total number of interrogatories which may be propounded without leave of court is enlarged to 30 from 25. Form interrogatories which have been approved by the supreme court must be used; and those so used, with their subparts, are included in the total number permitted. The amendments are not intended to change any other requirement of the rule.

2010 Amendment. A reference to rules 1.191 and 1.280(f) is added to require persons filing discovery materials with the court to make sure that good cause exists prior to filing discovery materials and that certain specific personal information is redacted.

Court Commentary

1984 Amendment. Subdivision (a) is amended by adding the reference to approved forms of interrogatories. The intent is to eliminate the burden of unnecessary interrogatories.

Subdivision (c) is amended to add the requirement of detail in identifying records when they are produced as an alternative to answering the interrogatory or to designate the persons who will locate the records.

Subdivision (e) is changed to eliminate the requirement of serving an original and a copy of the interrogatories and of the answers in light of the 1981 amendment that no longer permits filing except in special circumstances.

Subdivision (f) is deleted since the Medical Liability Mediation Proceedings have been eliminated.

RULE 1.350. PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES

(a) Request; Scope. Any party may request any other party (1) to produce and permit the party making the request, or someone acting in the requesting party's behalf, to inspect and copy any designated documents, including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the party to whom the request is directed through detection devices into reasonably usable form, that constitute or contain matters within the scope of rule 1.280(b) and that are in the possession, custody, or control of the party to whom the request is directed; (2) to inspect and copy, test, or sample any tangible things that constitute or contain matters within the scope of rule 1.280(b) and that are in the possession, custody, or control of the party to whom the request is directed; or (3) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation on it within the scope of rule 1.280(b).

(b) Procedure. Without leave of court the request may be served on the plaintiff after commencement of the action and on any other party with or after service of the process and initial pleading on that party. The request shall set forth the items to be inspected, either by individual item or category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection or performing the related acts. The party to whom the request is directed shall serve a written response within 30 days after service of the request, except that a defendant may serve a response within 45 days after service of the process and initial pleading on that defendant. The court may allow a shorter or longer time. For each item or category the response shall state that inspection and related activities will be permitted as requested unless the request is objected to, in which event the reasons for the objection shall be stated. If an objection is made to part of an item or category, the part shall be specified. When producing documents, the producing party shall either produce them as they are kept in the usual course of business or shall identify them to correspond with the categories in the request. The party submitting the request may move for an order under rule 1.380 concerning

any objection, failure to respond to the request, or any part of it, or failure to permit inspection as requested.

(c) Persons Not Parties. This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.

(d) Filing of Documents. Unless required by the court, a party shall not file any of the documents or things produced with the response. Documents or things may be filed in compliance with rule**s 1.191 and** 1.280(f) when they should be considered by the court in determining a matter pending before the court.

Committee Notes

~~**[No change]**~~

1972 Amendment. Derived from Federal Rule of Civil Procedure 34 as amended in 1970. The new rule eliminates the good cause requirement of the former rule, changes the time for making the request and responding to it, and changes the procedure for the response. If no objection to the discovery is made, inspection is had without a court order. While the good cause requirement has been eliminated, the change is not intended to overrule cases limiting discovery under this rule to the scope of ordinary discovery, nor is it intended to overrule cases limiting unreasonable requests such as those reviewed in *Van Devere v. Holmes*, 156 So. 2d 899 (Fla. 3d DCA 1963); *IBM v. Elder*, 187 So. 2d 82 (Fla. 3d DCA 1966); and *Miami v. Florida Public Service Commission*, 226 So. 2d 217 (Fla. 1969). It is intended that the court review each objection and weigh the need for discovery and the likely results of it against the right of privacy of the party or witness or custodian.

1980 Amendment. Subdivision (b) is amended to require production of documents as they are kept in the usual course of business or in accordance with the categories in the request.

2010 Amendment. A reference to rules 1.191 and 1.280(f) is added to require persons filing discovery materials with the court to make sure that good cause exists prior to filing discovery materials and that certain specific personal information is redacted.

APPENDIX B

Proposed rule

RULE 1.191. FILING OF SENSITIVE INFORMATION

(a) Information ~~Not to Be Filed~~to Be Redacted. Unless the court orders otherwise, a filing made with the court that includes a social security number or an individual's tax identification number, a name of a person known to be a minor, a person's birth date, ~~or~~ a financial account number**, an employee identification number, a driver's license number, a passport number, or other personal identification numbers** shall include only**:**

(1) the last four digits of the social security number ~~and~~**or** tax identification number;

(2) the minor's initials;

(3) the year of birth;~~ and~~

(4) the last four digits of the financial account number~~.~~**;**

(5) the last four digits of the employee identification number;

(6) the last four digits of the driver's license number;

Reasons for change

Creates a new rule regarding filing of sensitive information in court files. Amends list of information to be redacted in subdivision (a) to conform to *Fla. Fam. L. R. P.* 12.280 and adds an additional exception in subdivision (b) for information required by statute.

(7) the last four digits of the passport number; and

(8) the last four digits of any other personal identication number.

A single "*" shall be used to indicate that numbers have been redacted.

(b) Exceptions. The redaction requirement of this rule does not apply to the following:

(1) In foreclosure or forfeiture proceedings, a financial account number that identifies the property alleged to be subject to foreclosure or forfeiture.

(2) The record of an administrative or agency proceeding.

(3) The record of a court or tribunal whose decision is being reviewed, if that record was not subject to this rule when originally filed.

(4) Information required by statute to be filed.

(c) Motions Not Restricted. This rule does not restrict a party's right to move for protective order or move to file documents under seal.

Proposed rule

RULE 1.280. GENERAL PROVISIONS GOVERNING DISCOVERY

(a) - (e) [No change]

(f) Court Filing of Documents and Discovery. Information obtained during discovery shall not be filed with the court until such time as it is filed for good cause. ***The requirement of good cause is satisfied only where the filing of the information is allowed or required by another applicable rule of procedure or by court order.*** ~~Compliance with specific mandatory filing requirements of any other rule of procedure shall constitute good cause except that~~ ***If information obtained during discovery is filed with the Court,*** ~~dates of birth, social security numbers~~ ***(except the last four digits)***, ~~and credit and financial account numbers shall be redacted from documents filed in reliance on this exception~~ ***by the filer.*** **All filings of discovery documents shall comply with rule 1.191.** The court shall have authority to impose sanctions for violation of this rule.

Committee Notes
~~[No change]~~

1972 Amendment. The rule is derived from Federal Rule of Civil Procedure 26 as amended in 1970. Subdivisions (a), (b)(2), and (b)(3) are new. Subdivision (c) contains material from former rule 1.310(b). Subdivisions (d) and (e) are new, but

Reasons for change

Amends subdivision (f) to refer to new *Rule* 1.191 for the list of items that should be redacted and incorporates changes suggested by Court.

the latter is similar to former rule 1.340(d). Significant changes are made in discovery from experts. The general rearrangement of the discovery rule is more logical and is the result of 35 years of experience under the federal rules.

1988 Amendment. Subdivision (b)(2) has been added to enable discovery of the existence and contents of indemnity agreements and is the result of the enactment of sections 627.7262 and 627.7264, Florida Statutes, proscribing the joinder of insurers but providing for disclosure. This rule is derived from Federal Rule of Civil Procedure 26(b)(2). Subdivisions (b)(2) and (b)(3) have been redesignated as (b)(3) and (b)(4) respectively.

The purpose of the amendment to subdivision (b)(3)(A) (renumbered (b)(4)(A)) is to allow, without leave of court, the depositions of experts who have been disclosed as expected to be used at trial. The purpose of subdivision (b)(4)(D) is to define the term "expert" as used in these rules.

1996 Amendment. The amendments to subdivision (b)(4)(A) are derived from the Supreme Court's decision in *Elkins v. Syken*, 672 So. 2d 517 (Fla. 1996). They are intended to avoid annoyance, embarrassment, and undue expense while still permitting the adverse party to obtain relevant information regarding the potential bias or interest of the expert witness.

Subdivision (b)(5) is added and is derived from Federal Rule of Civil Procedure 26(b)(5) (1993).

2010 Amendment. Subdivision (f) is added to ensure

As suggested by the Court, adds new committee note to explain

that information obtained during discovery is not filed with the court unless there is good cause for the documents to be filed, and that information obtained during discovery that includes certain private information shall not be filed with the court unless the private information is redacted as required by rule 1.191.

amendments.

Court Commentary

[No change]

Proposed rule	Reasons for change
RULE 1.310. DEPOSITIONS UPON ORAL EXAMINATION	
(a) - (e) [No change]	
(f) Filing; Exhibits.	
(1) - (2) [No change]	
(3) A copy of a deposition may be filed only under the following circumstances:	
(A) It may be filed <u>in compliance with rule**s 1.191 and** 1.280(f)</u> by a party or the witness when the contents of the deposition must be considered by the court on any matter pending before the court. Prompt notice of the filing of the deposition shall be given to all parties unless notice is waived. A party filing the deposition shall furnish a copy of the deposition or the part being filed to other parties unless the party already has a copy.	Amends subdivision to require that any information filed with the court be in compliance with *Rules* 1.191 and 1.280(f).
(B) If the court determines that a deposition previously taken is necessary for the decision of a matter pending before the court, the court may order that a copy be filed by any party at the initial cost of the party<u>, and the filing party shall comply with rule 1.280(f).</u>	Amends subdivision to require that filing be conformity with *Rule* 1.280(f).
(g) - (h) [No change]	

Committee Notes
~~[No change]~~

1972 Amendment. Derived from Federal Rule of Civil Procedure 30 as amended in 1970. Subdivision (a) is derived from rule 1.280(a); subdivision (b) from rule 1.310(a) with additional matter added; the first sentence of subdivision (c) has been added and clarifying language added throughout the remainder of the rule.

1976 Amendment. Subdivision (b)(4) has been amended to allow the taking of a videotaped deposition as a matter of right. Provisions for the taxation of costs and the entry of a standard order are included as well. This new amendment allows the contemporaneous stenographic transcription of a videotaped deposition.

1988 Amendment. The amendments to subdivision (b)(4) are to provide for depositions by videotape as a matter of right.

The notice provision is to ensure that specific notice is given that the deposition will be videotaped and to disclose the identity of the operator. It was decided not to make special provision for a number of days' notice.

The requirement that a stenographer be present (who is also the person likely to be swearing the deponent) is to ensure the availability of a transcript (although not required). The transcript would be a tool to ensure the accuracy of the

videotape and thus eliminate the need to establish other procedures aimed at the same objective (like time clocks in the picture and the like). This does not mean that a transcript must be made. As at ordinary depositions, this would be up to the litigants.

Technical videotaping procedures were not included. It is anticipated that technical problems may be addressed by the court on motions to quash or motions for protective orders.

Subdivision (c) has been amended to accommodate the taking of depositions by telephone. The amendment requires the deponent to be sworn by a person authorized to administer oaths in the deponent's location and who is present with the deponent.

1992 Amendment. Subdivision (b)(4)(D) is amended to clarify an ambiguity in whether the cost of the videotape copy is to be borne by the party requesting the videotaping or by the party requesting the copy. The amendment requires the party requesting the copy to bear the cost of the copy.

1996 Amendment. Subdivision (c) is amended to state the existing law, which authorizes attorneys to instruct deponents not to answer questions only in specific situations. This amendment is derived from Federal Rule of Civil Procedure 30(d) as amended in 1993.

2010 Amendment. A reference to rules 1.191 and 1.280(f) is added to require persons filing discovery materials with the court to make sure that good cause exists prior to filing discovery materials and that certain specific

As suggested by the Court, adds Committee Note to explain amendments.

personal information is redacted.

Court Commentary

[No change]

Proposed rule

Reasons for change

RULE 1.340. INTERROGATORIES TO PARTIES

(a) - (d) [No change]

(e) Service and Filing. Interrogatories shall be arranged so that a blank space is provided after each separately numbered interrogatory. The space shall be reasonably sufficient to enable the answering party to insert the answer within the space. If sufficient space is not provided, the answering party may attach additional papers with answers and refer to them in the space provided in the interrogatories. The interrogatories shall be served on the party to whom the interrogatories are directed and copies shall be served on all other parties. A certificate of service of the interrogatories shall be filed, giving the date of service and the name of the party to whom they were directed. The answers to the interrogatories shall be served upon the party originally propounding the interrogatories and a copy shall be served on all other parties by the answering party. The original or any copy of the answers to interrogatories may be filed in compliance with rule**s 1.191 and** 1.280(f) by any party when the court should consider the answers to interrogatories in determining any matter pending before the court. The court may order a copy of the answers to interrogatories filed at any time when the court determines that examination of the answers to interrogatories is necessary to determine any matter pending before the court.

Adds requirement that any documents filed with court be in compliance with *Rules* 1.191 and 1.280(f).

Committee Notes

~~**[No change]**~~

1972 Amendment. Subdivisions (a), (b), and (c) are derived from Federal Rule of Civil Procedure 33 as amended in 1970. Changes from the existing rule expand the time for answering, permit interrogatories to be served with the initial pleading or at any time thereafter, and eliminate the requirement of a hearing on objections. If objections are made, the interrogating party has the responsibility of setting a hearing if that party wants an answer. If the interrogatories are not sufficiently important, the interrogating party may let the matter drop. Subdivision (b) covers the same matter as the present rule 1.340(b) except those parts that have been transferred to rule 1.280. It also eliminates the confusion between facts and opinions or contentions by requiring that all be given. Subdivision (c) gives the interrogated party an option to produce business records from which the interrogating party can derive the answers to questions. Subdivision (d) is former subdivision (c) without change. Former subdivision (d) is repealed because it is covered in rule 1.280(e). Subdivision (e) is derived from the New Jersey rules and is intended to place both the interrogatories and the answers to them in a convenient place in the court file so that they can be referred to with less confusion. The requirement for filing a copy before the answers are received is necessary in the event of a dispute concerning what was done or the appropriate times involved.

1988 Amendment. The word “initial” in the 1984 amendment to subdivision (a) resulted in some confusion, so it has been deleted. Also the total number of interrogatories which may be propounded without leave of court is enlarged to 30

from 25. Form interrogatories which have been approved by the supreme court must be used; and those so used, with their subparts, are included in the total number permitted. The amendments are not intended to change any other requirement of the rule.

2010 Amendment. A reference to rules 1.191 and 1.280(f) is added to require persons filing discovery materials with the court to make sure that good cause exists prior to filing discovery materials and that certain specific personal information is redacted.

As suggested by the Court, adds Committee Note to explain amendment.

Court Commentary

[No change]

Authors' Comment — 1967

[No change]

Proposed rule

RULE 1.350. PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES

(a) - (c) [No change]

(d) Filing of Documents. Unless required by the court, a party shall not file any of the documents or things produced with the response. Documents or things may be filed in compliance with rule**s 1.191 and** 1.280(f) when they should be considered by the court in determining a matter pending before the court.

Reasons for change

Adds requirement that any documents filed with court be in compliance with *Rules* 1.191 and 1.280(f).

Committee Notes

~~**[No change]**~~

1972 Amendment. Derived from Federal Rule of Civil Procedure 34 as amended in 1970. The new rule eliminates the good cause requirement of the former rule, changes the time for making the request and responding to it, and changes the procedure for the response. If no objection to the discovery is made, inspection is had without a court order. While the good cause requirement has been eliminated, the change is not intended to overrule cases limiting discovery under this rule to the scope of ordinary discovery, nor is it intended to overrule cases limiting unreasonable requests such as those reviewed in *Van Devere v. Holmes*, 156 So. 2d 899 (Fla. 3d DCA 1963); *IBM v. Elder*, 187 So. 2d 82 (Fla. 3d DCA 1966); and *Miami v.*

Florida Public Service Commission, 226 So. 2d 217 (Fla. 1969). It is intended that the court review each objection and weigh the need for discovery and the likely results of it against the right of privacy of the party or witness or custodian.

1980 Amendment. Subdivision (b) is amended to require production of documents as they are kept in the usual course of business or in accordance with the categories in the request.

2010 Amendment. A reference to rules 1.191 and 1.280(f) is added to require persons filing discovery materials with the court to make sure that good cause exists prior to filing discovery materials and that certain specific personal information is redacted.

As suggested by the Court, adds Committee Note to explain amendment.

CERTIFICATE OF COMPLIANCE

I certify that this report was prepared in accordance with the font requirements of *Fla. R. App. P.* 9.210(a)(2).

I also certify that these rules were read against West's *Rules of Court - 2010.*

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Ellen Sloyer
Bar Staff Liaison, Civil Procedure Rules Committee
The Florida Bar
651 E. Jefferson St.
Tallahassee, FL 32399-2300
(850) 561-5709