IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE FLORIDA RULES OF CIVIL PROCEDURE	)))	CASE NO.

REGULAR-CYCLE REPORT OF THE
FLORIDA CIVIL PROCEDURE RULES COMMITTEE

Mark Romance, Chair of the Civil Procedure Rules Committee of The Florida Bar, and John F. Harkness, Jr., Executive Director of The Florida Bar, file this regular-cycle report of proposed changes to the Florida Rules of Civil Procedure, pursuant to *Fla. R. Jud. Admin.* 2.140(b).

The Committee proposes amendments or additions to the rules and forms as shown on the table of contents (Appendix A). The voting record of the Committee for each change is shown on the table of contents. As required by *Fla. R. Jud. Admin.* 2.140(b)(2), the Committee's report was submitted to The Florida Bar Board of Governors. The board's vote on each amendment is also shown on the table of contents. The proposed amendments (Appendix B) follow the table of contents.

The rules and forms that the Committee recommends amending or adding are as follows:

Rule 1.071

This is a new rule, suggested by the Committee's standing subcommittee on federal rules. The federal rules (Rule 5.1, see Appendix D) were amended to provide for notice when a constitutional challenge to a statute is being made. Because section 86.091, Florida Statutes, requires notice to the state of such challenges, the Committee is proposing new rule 1.071 and new form 1.975.

Rule 1.080

A change was proposed by Committee member Judge Juan Ramirez (see Appendix D) to amend subdivision (b) to treat service by delivery after 5:00 p.m. the same as by mail. As Judge Ramirez's correspondence notes, and as stated in

Castillo v. Vlamick de Castillo, 771 So. 2d 609 (Fla. 3d DCA 2000), if a party mails a motion at 11:59 p.m. on the last day for serving, service would be timely even though opposing counsel would not actually receive it until at least two to three days later. Under the present rule, if the motion were hand delivered to opposing counsel at 5:01 p.m. on the same day but the office was closed, service would be untimely. This leads to an irrational and unfair result.

Subdivision (d) is amended to reconcile rule 1.080(d) with provisions of the Florida Statutes or other procedural rules that direct either that papers not be filed, or that the papers be filed after certain time periods elapse or events occur. The proposed amendment is in response to a letter from former Committee chair Stanford R. Solomon (see Appendix D) which addressed inconsistencies between rule 1.080(d), which requires service of a pleading or other paper before or immediately after the filing thereof, and section 57.105(4), Florida Statutes, which provides for a 21-day safe harbor between service of a motion for sanctions and the filing of that motion with the court. Inconsistency was also pointed out between rule 1.080(d) and rule 1.442, which requires that proposals for settlement be served but not filed, unless necessary to enforce the provisions of the rule. The Committee determined that the rule should expressly refer to the need to comply with general law and other Florida Rules of Civil Procedure when inconsistent with the requirements of rule 1.080(d).

Rule 1.100

Stephanie Daniel, a Committee member, proposed an amendment to rule 1.100(c)(1) (and form 1.901(b)) to authorize a case style for forfeiture proceedings consistent with that described in section 932.704(5)(a), Florida Statutes (see Appendix D). Rule 1.100(c)(1) requires that the style of a case include the first name of the party on each side of the proceeding. By expressly authorizing the use of the statutory case caption, the amendment ensures that the entity seeking forfeiture of the property does not prematurely list as a party a person or persons who may not make or have any claim of ownership or interest in the property. This procedural change in no way affects the requirement that notice be delivered to potentially interested persons as set forth in the forfeiture statute.

While the caption form, 1.901(b), envisions an alternative caption, with “In re the petition of A.B. for (insert type of relief),” it too presumes that an individual’s name will be listed somewhere in the style of a case. Section 932.704(5)(a), Florida Statutes, requires that the complaint in a forfeiture action be

styled, “In re: Forfeiture of _____ (followed by the name or description of the property).”

The Committee therefore recommends modification of rule 1.100 and form 1.910 to conform to the requirements of section 932.704 as it relates to in rem forfeiture proceedings. Because of the nature of the forfeiture action, unless an individual files a claim of ownership or interest in the property, the action is simply one over the property. If the seizing party is required to list a named individual as a defendant, that individual may be identified as a defendant in research by third parties for credit and other purposes, irrespective of whether the individual intends to make a claim on the property. Potential claimants include persons in possession of the property at the time of seizure (irrespective of whether they claim an ownership interest) as well as others who may have an ownership interest in the property.

Rule 1.285

In a letter dated June 13, 2007 (see Appendix D), the Florida Bar Attorney-Client Privilege Task Force requested the Committee to provide input regarding whether any rules should be added or amended to address (1) inadvertent disclosure of privileged communications, and (2) preventing discovery of draft expert reports and communications between experts and their lawyers. The Committee considered, but does not propose, a change to the rules concerning the second item. However, a new rule 1.285 is proposed to address the first item.

Rule 1.310

The amendment to subdivision (b)(4)(A) was suggested by the Committee’s standing subcommittee on federal rules. Fed. R. Civ. P. 45(a)(1)(B) was amended in 2005 to ensure that a nonparty deponent receives notice of the method by which a deposition will be recorded. (See Appendix D.) The Committee recommends adding to rule 1.310(b)(4)(A) a requirement that any subpoena served on the person to be examined state the method for recording the testimony. In conjunction with this proposed change, the Committee is proposing a similar change to rule 1.410(e)(1).

Subdivision (b)(5) is amended to clarify that the procedure set forth in rule 1.351 must be followed when requesting or receiving documents or things without testimony from nonparties pursuant to a subpoena. The amendment is intended to

prevent the use of rules 1.310 and 1.410 to request documents from nonparties pursuant to a subpoena without giving the opposing party the opportunity to object to the subpoena before it is served on the nonparty as required by rule 1.351. In conjunction with this proposed change the Committee is proposing a change to rule 1.351(a).

Rule 1.340

The proposed change to rule 1.340(a) was proposed by Bill Wagner, an attorney who was not a Committee member at the time. (See Appendix D.) The proposed change would provide that the standard form interrogatories do not all need to be propounded when a particular approved interrogatory is not necessary or appropriate.

Rule 1.351

The proposed change to subdivision (a) is to clarify that the procedure set forth in rule 1.351, not rule 1.310, is to be followed when requesting or receiving documents or things, without testimony, from nonparties pursuant to a subpoena. See the discussion above regarding rule 1.310(b)(5). The Committee had included changes to 1.351(a) in its 2007 cycle report. After publishing notice of those proposed changes, the Committee received comments from attorneys questioning whether the changes would clarify procedure or create more problems. While the majority of the 2007 Committee members thought the problems could be solved by alternative language to clarify that the rule would apply only to methods for obtaining documents or things from nonparties by subpoena, the Committee then voted 36-2 to withdraw the changes to subdivision (a) from the 2007 cycle report and work further on proposed changes for the 2010 cycle report. The Committee evaluated the proposal and approved the changes proposed in Appendix B.

The changes to subdivision (c) were originally proposed in an e-mail (see Attachment D) from attorney Robert Brazel (who is not a member of the Committee) and paralegal David McNabb, with the Hillsborough County Attorney's Office, who suggested that use of U.S. mail and other commercial delivery would be an efficient alternative to service of a subpoena on nonparties. A majority of the Committee approved the changes. The minority view expressed was that the current version of the rule is adequate and any change may conflict with Rule 1.410. (In conjunction with this proposed change, the Committee is proposing a change to rule 1.410(d).)

Rule 1.360

An attorney who was not a member of the Committee, Peter Kellogg, proposed a change by letter (see Appendix D) to the Committee. The principal concern raised was that because of the onerous nature of allowing attorneys, court reporters, and videographers to attend examinations, doctors willing to perform defense medical examinations were becoming scarce. Although not clear from Mr. Kellogg's letter, in a conversation with a Committee member he clarified that he wanted the rule to permit only a court reporter at these examinations. However, the Committee recommends only that the rule be modified to provide for notice to the opposing party regarding who will attend the examination, so that the physician or health care practitioner has advance notice as to how many people will be present. This will decrease the inconvenience for doctors and other examiners of having several lawyers, videographers, and court reporters attend examinations in their offices, which inconvenience on occasion results in the cancellation of an examination.

A dissenting viewpoint expressed by a judge on the Committee is that this proposal is contrary to and would be changing case law. The dissent explained that if there is a problem, the parties need to schedule a hearing before the examination. The dissent explained that under the case law, the examination can be recorded. However, the Committee voted 48-1 in favor of the change.

Rule 1.410

The amendment to subdivision (d) is intended to conform to the proposed changes to rule 1.351(c), discussed above. It provides for alternative service of subpoena on nonparties.

Regarding the amendment to subdivision (e), see the discussion above concerning rule 1.310(b)(4)(A).

Rule 1.420

The first change to 1.420(a)(1) was suggested by Committee member John Scarola, to allow voluntary dismissal of part, not just all, of a suit. The second change (to (a)(1)(B)) was suggested by Committee member Judge Juan Ramirez, so that only parties still in the litigation at the time of the dismissal are obligated to

sign the stipulation of dismissal.

The change to subdivision (d) follows the first change to subdivision (a)(1) and allows the court to assess costs when an action is concluded as to the party seeking taxation of costs. If other claims remain pending in the case against the moving party, the court must wait until all claims against the moving party are resolved before taxing costs.

Rule 1.442

In *Lamb v. Matetzschk*, 906 So. 2d 1037 (Fla. 2005), the majority of the Justices concluded that rule 1.442(c)(3) requires that offers of settlement be differentiated between the parties, even if a party's liability is purely vicarious. Justice Pariente, specially concurring, asked the Civil Procedure Rules Committee to "study this matter further and reconsider modified amendments to rule 1.442(c)." 906 So. 2d at 1044. Justice Lewis, in a separate concurring opinion, also asked the committee to "consider modifications to its language to provide a system that is functional in cases such as this — where a vicariously liable party is involved in a case and an offer of settlement may be made." *Id.* at 1045. The proposed addition to the rule is in response to those requests.

Although there was not a minority view within the Committee on this issue, during consideration of the matter, a nonmember attorney, Irene Porter, appeared, on behalf of her client (First Professional Insurance Company), and requested adding mandatory language to the rule that eliminates the apportionment requirements when purely vicarious liability is at issue. The Committee disagreed, and determined that if a party believes that it can make a differentiated offer, when purely vicarious liability is at issue, it should be permitted to do so.

Rule 1.470

This change was requested by Judge Ralph Artigliere on behalf of the Florida Standard Jury Instructions Committee (Civil) (see Appendix D). Since 1967, when Florida standard jury instructions were first approved by the Supreme Court, form 1.985 was the exclusive location for the important language encouraging judges to use standard form jury instructions. A judge has the duty to instruct on the law applicable in a given case and may modify or vary from the standard if necessary to accurately and sufficiently instruct the jury in the circumstances of a given case. However, when a judge varies from an applicable

standard instruction when the standard instruction has been requested by a party, the judge is required to state on the record why the standard instruction is erroneous or inadequate. By this requirement, the courts have held that form 1.985 limits the range of discretion of judges in determining instructions for the jury and creates a presumption in favor of the applicable standard jury instructions. See *McConnell v. Union Carbide Corp*., 937 So. 2d 148, 153 (Fla. 4th DCA 2006). The important language is difficult to find in its unlikely current location among forms. This proposed rule change relocates the content of form 1.985 to the more appropriate location in the specific rule on jury instructions, rule 1.470; updates the wording to current civil rule language standards; makes an applicable standard instruction a requirement unless a litigant makes a showing otherwise; and adds the requirement for contemporaneous objection to improper or misleading jury instructions. Contemporaneous objection is added to allow the judge the opportunity to correct errors in an instruction or provide curative instructions rather than the more costly alternative of correction by reversal on appeal.

Rule 1.480

This amendment was suggested by the Committee's standing subcommittee on federal rules. Fed. R. Civ. P. 50(b) (see Appendix D) was amended in 2006 to eliminate the requirement that a party renew, at the close of all the evidence, a motion for directed verdict already made at the close of an adverse party's evidence. The proposed amendment to rule 1.480 tracks that change. The commentaries to the federal rule change generally fell into two categories: (1) the current rule is a needless trap for the unwary; and (2) practitioners should know the rule and what they are doing. The Committee believes that the proposed change provides a bright line that will help practitioners avoid a trap.

Rule 1.510

The proposed changes were suggested by Rohan Kelley, an attorney who was not a member of the Committee, to improve the rule grammatically and for clarity. (See Mr. Kelley's letter in Appendix D.)

Rule 1.525

This proposed amendment is necessitated by the proposed amendments to rule 1.420 that allow voluntary dismissal of part, not just all, of a suit.

Form 1.901

See the discussion above about rule 1.100.

Form 1.923

The proposed changes are in response to an e-mail from George Savage, an attorney who is not a member of the Committee (see Appendix D). Mr. Savage sought to amend eviction form 1.923, based on his personal experience that proper service was not being accomplished on defendants who were appearing in court in response to eviction notices but who then became subject to unpaid rent damages claims.

Form 1.923 is for "eviction summons/residential." It is a five-day summons and may be served by posting to the property. However, eviction proceedings often involve damages for unpaid rent. Suits to recover damages require personal service of the summons. Posting the summons to the property in cases where damages are sought would not be proper service.

The proposed amendment removes "or were posted at your home" from the fourth sentence of subdivision (5), to properly reflect Florida case law and remove any misleading language that might imply that "posting" the summons is sufficient in a claim for money damages.

Eviction proceedings are often accomplished on an expedited basis and the parties frequently do not have lawyers. A potential problem of the proposed change is that service of process by both posting on the premises for the eviction and by personal service for a damages claim may extend and complicate resolution of matters that could otherwise be accomplished at the eviction hearing. However, to allow otherwise compromises, if not violates, due process to the potential detriment of viable defenses of unknowing defendants to damages claims.

Form 1.975

This is a new form, suggested by the Committee's standing subcommittee on federal rules. The federal rules (Rule 5.1, see Appendix D) were amended to provide for notice when a constitutional challenge to a statute is being made. Because section 86.091, Florida Statutes, requires notice to the state of such challenges, the Committee is proposing new rule 1.071 and new form 1.975 to

accompany that new rule.

Form 1.985

This form would be deleted in connection with the changes made to rule 1.470, discussed above.

Form 1.986

Committee member Geralyn Passaro raised the issue (see Appendix D) that form 1.986 (jury verdicts) is antiquated and unnecessary in light of the itemized verdicts and model verdicts in the Florida Civil Standard Jury Instructions. Those instructions are incorporated by reference in form 1.985 (which, in the Committee's proposed changes in this cycle report, would be moved to rule 1.470(b)).

Comments received (see Appendix E for full text of comments) and Committee action taken based on the comments:

Comments were received on the following rules:
1.080 - Kurt Lee; Henry Trawick
1.285 - Arthur Berger; Henry Trawick
1.351 - Edward O'Sheehan; Henry Trawick
1.360 - Kurt Lee
1.420 - Henry Trawick
1.510 - Henry Trawick

Rule 1.080(b):

Attorneys Kurt Lee and Henry Trawick commented on the addition of five days if service is made by delivery after 5 p.m. This issue was fully discussed by the Committee before the proposed change was approved, and the Committee believes that this change represents an improvement and removes any real or perceived encouragement to serve by delivery after 5 p.m.

Rule 1.285:

Attorney Arthur Berger's comment on this proposed new rule inquired

whether the original proposed subdivision (e) implies that the trial court's decision is not appealable. If the decision were appealable, "the prompt disposal of the material will deny the appellate court reference to the material, or the use (reference) of the material in preparing the brief."

The original proposed (e) read as follows:

> **(e) Effect of Determination that Privilege Applies.** Upon the entry of any final court order determining that a privilege may be asserted under this rule, or waiver of the right to challenge the privilege, the recipient of the materials shall promptly dispose of the materials and any copies of them in accordance with the court's direction. Thereafter, no recipient shall make use of the materials. The recipient shall also give prompt notice of the court's determination to any other party, person, or entity to whom it had disclosed the materials.

The Committee agreed that "any final order" and "dispose of" could be seen as ambiguous, and that changes should be made to the proposed rule. The Committee re-wrote (e) to read:

> **(e) Effect of Determination that Privilege Applies.** ~~Upon the entry of any final court order determining that a privilege may be asserted under this rule, or waiver of the right to challenge the privilege, the recipient of the materials shall promptly dispose of the materials and any copies of them in accordance with the court's direction.~~When an order is entered determining that materials are privileged or that the right to challenge the privilege has been waived, the court shall direct what shall be done with the materials and any copies so as to preserve all rights of appellate review. ~~Thereafter, no recipient shall make use of the materials.~~The recipient of the materials shall also give prompt notice of the court's determination to any other party, person, or entity to whom it had disclosed the materials.

Henry Trawick suggested language to improve proposed new rule 1.285. The Committee agrees with some of the changes and has changed the last two sentences of its original proposed (c) as follows:

The notice of the recipient's challenge ~~hereunder~~ shall specify the

grounds for the challenge. Failure ~~of any party~~ to ~~timely~~ serve timely notice of ~~its~~ challenge ~~to an asserted privilege hereunder constitutes~~is a waiver of the right to challenge ~~the same~~.

As to Mr. Trawick's suggestion to eliminate the specified grounds in (c) and (d), the Committee believes that the inclusion of the nonexclusive list of grounds to challenge an assertion of privilege, and the nonexclusive list of things that the court may consider in resolving these issues, is both helpful and appropriate.

Rule 1.351(c):

Attorney Edward O'Sheehan suggested a clarification that the only subpoenas that can be served by mail, according to the proposed amendments to rules 1.351 and 1.410, are subpoenas for records without testimony. The Committee discussed this comment and considered amending the 2010 Committee Note to add more detail, but the consensus (30-0) was that the proposed rule change is clear enough as is.

Attorney Henry Trawick commented that service should be made by a sheriff or process server. This comment is substantially the same as comments raised by members of the Committee during the debate over this proposed rule change. The Committee determined that obtaining and filing the written confirmation of delivery is sufficient proof of service, and otherwise deemed the changes appropriate.

Rule 1.360:

Attorney Kurt Lee commented that the proposed change "appears to invite motion practice if someone not listed is present for an examination, someone fails to appear for an examination, or if someone is not adequately described." The Committee disagrees and still recommends (38-0) that the proposed changes be adopted.

Rule 1.420(a)(1):

Attorney Henry Trawick disagrees with the need for this proposed rule change that, in defined circumstances, would authorize a plaintiff to dismiss particular claims rather than dismissing the entire action. The Committee believes this proposed rule change is needed and appropriate because (1) there is currently

no rule that permits a plaintiff to "withdraw" a claim or any part of an action or claim, and (2) a plaintiff's ability to amend the complaint is governed by rule 1.190(a), which addresses a different set of circumstances than this proposed rule change.

Rule 1.510(c):

Attorney Henry Trawick's comment is not addressed to any proposed rule change, but rather suggests a further change to rule 1.510(c) as it currently reads by deleting the use of the defined term "summary judgment evidence." The Committee determined that the use of the defined term is helpful and appropriate.

The Committee respectfully requests that this Court adopt these proposed amendments to the Florida Rules of Civil Procedure.

Respectfully submitted _____, 2010.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was furnished by United States mail to: Rohan Kelly, 3365 Galt Ocean Dr., Fort Lauderdale, FL 33308-7002; George Savage, 777 Brickell Ave., Suite 114, Miami, FL 33131-2867; Bill Wagner, 601 Bayshore Blvd., Suite 910, Tampa, FL 33606-2786; Hon. Ralph Artigliere, 573 Ridge Rd., Blue Ridge, GA 30513-8042; Stanford Solomon, 1881 W. Kennedy Blvd., Tampa, FL 33606-1606; Peter Kellogg, 1301 Riverplace Blvd., Suite 620, Jacksonville, FL 32207-9023; David McNabb, Hillsborough County Attorney's Office, 601 E. Kennedy Blvd., Fl. 27, Tampa, FL 33602-4932; Robert Brazel, Hillsborough County Attorney's Office, 601 E. Kennedy Blvd., Fl. 27, Tampa, FL 33602-4932; Kurt Lee, 118 E. Garden St., Pensacola, FL 32502; Edward O'Sheehan, 200 E. Broward Blvd., Suite 2100, Fort Lauderdale, FL 33301; Arthur Berger, DOT, Office of the General Counsel, 605 Suwannee Street, MS-58, Tallahassee, FL 32399-0458; and Henry Trawick, 2033 Wood St., Suite 318, Sarasota, FL 34237, this ____ day of _____, 2010.

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).

_____
MADELON HORWICH

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1.946.	MOTOR VEHICLE NEGLIGENCE WHEN PLAINTIFF IS UNABLE TO DETERMINE WHO IS RESPONSIBLE	[NO CHANGE]
1.947.	TENANT EVICTION	[NO CHANGE]
1.948.	THIRD-PARTY COMPLAINT. GENERAL FORM	[NO CHANGE]

1.949.	IMPLIED WARRANTY	[NO CHANGE]
1.951.	FALL-DOWN NEGLIGENCE COMPLAINT	[NO CHANGE]
1.960.	BOND. GENERAL FORM	[NO CHANGE]
1.961.	VARIOUS BOND CONDITIONS	[NO CHANGE]
1.965.	DEFENSE. STATUTE OF LIMITATIONS	[NO CHANGE]
1.966.	DEFENSE. PAYMENT	[NO CHANGE]
1.967.	DEFENSE. ACCORD AND SATISFACTION	[NO CHANGE]
1.968.	DEFENSE. FAILURE OF CONSIDERATION	[NO CHANGE]
1.969.	DEFENSE. STATUTE OF FRAUDS	[NO CHANGE]
1.970.	DEFENSE. RELEASE	[NO CHANGE]
1.971.	DEFENSE. MOTOR VEHICLE CONTRIBUTORY NEGLIGENCE	[NO CHANGE]
1.972.	DEFENSE. ASSUMPTION OF RISK	[NO CHANGE]
1.975.	NOTICE OF COMPLIANCE WHEN CONSTITUTIONAL CHALLENGE IS BROUGHT Committee vote: 30-0 Board of Governors vote: 41-0	[NEW FORM]
1.976.	STANDARD INTERROGATORIES	[NO CHANGE]
1.977.	FACT INFORMATION SHEET	[NO CHANGE]
1.980.	DEFAULT	[NO CHANGE]
1.981.	SATISFACTION OF JUDGMENT	[NO CHANGE]
1.982.	CONTEMPT NOTICE	[NO CHANGE]
1.983.	PROSPECTIVE JUROR QUESTIONNAIRE	[NO CHANGE]
1.984.	JUROR VOIR DIRE QUESTIONNAIRE	[NO CHANGE]
1.985.	STANDARD JURY INSTRUCTIONS Committee vote: 42-1 Board of Governors vote: 41-0	[DELETED]
1.986.	VERDICTS Committee vote: 38-0 Board of Governors vote: 41-0	[AMENDED]
1.988.	JUDGMENT AFTER DEFAULT	[NO CHANGE]
1.989.	ORDER OF DISMISSAL FOR LACK OF PROSECUTION	[NO CHANGE]
1.990.	FINAL JUDGMENT FOR PLAINTIFF. JURY ACTION FOR DAMAGES	[NO CHANGE]
1.991.	FINAL JUDGMENT FOR DEFENDANT. JURY ACTION FOR DAMAGES	[NO CHANGE]
1.993.	FINAL JUDGMENT FOR PLAINTIFF. GENERAL FORM. NON-JURY	[NO CHANGE]

1.994.	FINAL JUDGMENT FOR DEFENDANT. GENERAL FORM. NON-JURY	[NO CHANGE]
1.995.	FINAL JUDGMENT OF REPLEVIN	[NO CHANGE]
1.996.	FINAL JUDGMENT OF FORECLOSURE	[NO CHANGE]
1.997.	CIVIL COVER SHEET	[NO CHANGE]
1.998.	FINAL DISPOSITION FORM	[NO CHANGE]

APPENDIX

STANDARD INTERROGATORIES FORMS	[NO CHANGE]
STATEWIDE UNIFORM GUIDELINES FOR TAXATION OF COSTS IN CIVIL ACTIONS	[NO CHANGE]

APPENDIX B

Proposed Changes to Rules and Forms in Legislative Format

RULE 1.071. CONSTITUTIONAL CHALLENGE TO STATE STATUTE OR COUNTY OR MUNICIPAL CHARTER, ORDINANCE, OR FRANCHISE; NOTICE BY PARTY

A party that files a pleading, written motion, or other paper drawing into question the constitutionality of a state statute or a county or municipal charter, ordinance, or franchise must promptly

(a) file a notice of constitutional question stating the question and identifying the paper that raises it; and

(b) serve the notice and the pleading, written motion, or other paper drawing into question the constitutionality of a state statute or a county or municipal charter, ordinance, or franchise on the Attorney General or the state attorney of the judicial circuit in which the action is pending, by either certified or registered mail.

Service of the notice and pleading, written motion, or other paper does not require joinder of the Attorney General or the state attorney as a party to the action.

Committee Notes

2010 Adoption. This rule clarifies that, with respect to challenges to a state statute or municipal charter, ordinance, or franchise, service of the notice does not require joinder of the Attorney General or the state attorney as a party to the action; however, consistent with section 86.091, Florida Statutes, the Florida Attorney General or applicable state attorney has the discretion to participate and be heard on matters affecting the constitutionality of a statute. See, *e.g.*, *Mayo v. National Truck Brokers, Inc.*, 220 So. 2d 11 (Fla. 1969); *State ex rel. Shevin v. Kerwin*, 279 So. 2d 836 (Fla. 1973) (Attorney General may choose to participate in appeal even though he was not required to be a party at the trial court). The rule imposes a new requirement that the party challenging the statute, charter, ordinance, or franchise file verification with the court of compliance with section 86.091, Florida Statutes. See form 1.975.

RULE 1.080. SERVICE OF PLEADINGS AND PAPERS

(a) Service; When Required. Unless the court otherwise orders, every pleading subsequent to the initial pleading and every other paper filed in the action, except applications for witness subpoena, shall be served on each party. No service need be made on parties against whom a default has been entered, except that pleadings asserting new or additional claims against them shall be served in the manner provided for service of summons.

(b) Service; How Made. When service is required or permitted to be made upon a party represented by an attorney, service shall be made upon the attorney unless service upon the party is ordered by the court. Service on the attorney or party shall be made by delivering a copy or mailing it to the attorney or the party at the last known address or, if no address is known, by leaving it with the clerk of the court. Service by mail shall be complete upon mailing. Delivery of a copy within this rule shall be complete upon: (1) handing it to the attorney or to the party, (2) leaving it at the attorney's or party's office with a clerk or other person in charge thereof, (3) if there is no one in charge, leaving it in a conspicuous place therein, (4) if the office is closed or the person to be served has no office, leaving it at the person's usual place of abode with some person of his or her family above 15 years of age and informing such person of the contents, or (5) transmitting it by facsimile to the attorney's or party's office with a cover sheet containing the sender's name, firm, address, telephone number, and facsimile number, and the number of pages transmitted. When service is made by facsimile, a copy shall also be served by any other method permitted by this rule. Facsimile service occurs when transmission is complete. Service by delivery after 5:00 p.m. shall be deemed ~~to have been made on the next day that is not a Saturday, Sunday, or legal holiday~~ as if it had been made by mailing on the date of delivery.

(c) Service; Numerous Defendants. In actions when the parties are unusually numerous, the court may regulate the service contemplated by these rules on motion or on its initiative in such manner as may be found to be just and reasonable.

(d) Filing. All original papers shall be filed with the court either before service or immediately thereafter, unless otherwise provided for by general law or other rules. If the original of any bond or other paper is not placed in the court file, a certified copy shall be so placed by the clerk.

(e) Filing Defined. The filing of papers with the court as required by these rules shall be made by filing them with the clerk, except that the judge may permit papers to be filed with the judge, in which event the judge shall note the filing date before him or her on the papers and transmit them to the clerk. The date of filing is that shown on the face of the paper by the judge's notation or the clerk's time stamp, whichever is earlier.

(f) Certificate of Service. When any attorney shall certify in substance:

"I certify that a copy hereof has been furnished to (here insert name or names) by (delivery) (mail) (fax) on .....(date).....

_____
Attorney"

the certificate shall be taken as prima facie proof of such service in compliance with these rules.

(g) Service by Clerk. If a party who is not represented by an attorney files a paper that does not show service of a copy on other parties, the clerk shall serve a copy of it on other parties as provided in subdivision (b).

(h) Service of Orders.

(1) A copy of all orders or judgments shall be transmitted by the court or under its direction to all parties at the time of entry of the order or judgment. No service need be made on parties against whom a default has been entered except orders setting an action for trial as prescribed in rule 1.440(c) and final judgments that shall be prepared and served as provided in subdivision (h)(2). The court may require that orders or judgments be prepared by a party, may require the party to furnish the court with stamped, addressed envelopes for service of the order or judgment, and may require that proposed orders and judgments be furnished to all parties before entry by the court of the order or judgment.

(2) When a final judgment is entered against a party in default, the court shall mail a conformed copy of it to the party. The party in whose favor the judgment is entered shall furnish the court with a copy of the judgment, unless it is prepared by the court, and the address of the party to be served. If the address is unknown, the copy need not be furnished.

(3) This subdivision is directory and a failure to comply with it does not affect the order or judgment or its finality or any proceedings arising in the action.

Committee Notes

1971 Amendment. Subdivision (g) is added to cover the situation when a party responds by a letter to the clerk and the letter may constitute the party's answer. The clerk is then required to furnish copies to parties who have appeared in the action and who are not shown to have received copies. It is not intended to apply to those litigious persons appearing in proper person who are familiar with the requirements of the rules. Subdivision (h) is added and the first part regulates the service of copies of orders. When a party is charged with preparation of an order, it requires service of the proposed form on other parties and delivery of sufficient copies to the court to be conformed and furnished to all parties after entry. The second part is intended to notify defendant whose address is known of the determination of the action by the court. Failure to comply with either part of subdivision (h) does not affect the order or judgment in any manner.

1972 Amendment. Subdivision (h) is amended because confusion has resulted in its application. Use of the term "party" has been misconstrued. It must be read in conjunction with subdivision (b) of the rule. When service can be made on an attorney, it should be made on the attorney. The term "party" is used throughout the rules because subdivision (b) makes the necessary substitution of the party's attorney throughout the rules. No certificate of service is required. The notation with the names of the persons served with a proposed form is not to be signed. The committee intended for the court to know who had been served only. Otherwise, the committee would have used the form of certificate of service in subdivision (f). Submission of copies and mailing of them by the court has proved cumbersome in practice and so it is deleted. The purpose of the rule was to ensure that all parties had an opportunity to see the proposed form before entry by the court.

1976 Amendment. The amendment made to this rule on July 26, 1972, was intended according to the committee notes "[t]o assure that all parties had an opportunity to see the proposed form before entry by the Court." This change followed on the heels of the 1971 amendment, which the committee felt had been confusing.

Two changes have been made to subdivision (h)(1), which have resulted in a wholesale redrafting of the rule. First, the provision requiring the submission of proposed orders to all counsel prior to entry by the court has been deleted, any inaccuracies in an order submitted to the court being remediable either by the court's own vigilance or later application by an interested party. Secondly, the rule now requires that conformed copies of any order entered by the court must be mailed to all parties of record in all instances (and to defaulted parties in 2 specified instances), for purposes of advising them of the date of the court's action as well as the substance of such action. Nothing in this new rule is meant to limit the power of the court to delegate the ministerial function of preparing orders.

1992 Amendment. Subdivisions (b) and (f) are amended to allow service pursuant to this rule to be made by facsimile. "Facsimile" or "fax" is a copy of a paper transmitted by electronic means to a printer receiving the transmission at a designated telephone number. When service is made by facsimile or fax, a second copy must be served by any other method permitted by this rule to ensure that a legible copy is received.

2010 Amendment. Subdivision (b) is amended to comport with *Castillo v. Vlaminck de Castillo*, 771 So. 2d 609 (Fla. 3d DCA 2000), so that a delivery made after 5:00 p.m. is deemed as if it had been made by mail (*i.e.*, completed upon mailing), but it will also give the additional time after service by mail provided under rule 1.090(e).

Court Commentary

1984 Amendment. The committee is recommending an amendment to rule 1.530(b) to cure the confusion created by *Casto v. Casto*, 404 So. 2d 1046 (Fla. 4th DCA 1980). That recommendation requires an amendment to rule 1.080(e) specifying that the date of filing is that shown on the face of the paper.

RULE 1.100. PLEADINGS AND MOTIONS

(a) Pleadings. There shall be a complaint or, when so designated by a statute or rule, a petition, and an answer to it; an answer to a counterclaim denominated as such; an answer to a crossclaim if the answer contains a crossclaim; a third-party complaint if a person who was not an original party is summoned as a third-party defendant; and a third-party answer if a third-party complaint is served. If an answer or third-party answer contains an affirmative defense and the opposing party seeks to avoid it, the opposing party shall file a reply containing the avoidance. No other pleadings shall be allowed.

(b) Motions. An application to the court for an order shall be by motion which shall be made in writing unless made during a hearing or trial, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion. All notices of hearing shall specify each motion or other matter to be heard.

(c) Caption.

(1) Every pleading, motion, order, judgment, or other paper shall have a caption containing the name of the court, the file number, and except for in rem proceedings, including forfeiture proceedings, the name of the first party on each side with an appropriate indication of other parties, and a designation identifying the party filing it and its nature or the nature of the order, as the case may be. In any in rem proceeding, every pleading, motion, order, judgment, or other paper shall have a caption containing the name of the court, the file number, the style "In re" (followed by the name or general description of the property), and a designation of the person or entity filing it and its nature or the nature of the order, as the case may be. In an in rem forfeiture proceeding, the style shall be "In re forfeiture of" (followed by the name or general description of the property). All papers filed in the action shall be styled in such a manner as to indicate clearly the subject matter of the paper and the party requesting or obtaining relief.[1]

(2) A civil cover sheet (form 1.997) shall be completed and filed with the clerk at the time an initial complaint or petition is filed by the party initiating the action. If the cover sheet is not filed, the clerk shall accept the complaint or petition for filing; but all proceedings in the action shall be abated until a properly executed cover sheet is completed and filed. The clerk shall

complete the civil cover sheet for a party appearing pro se.

(3) A final disposition form (form 1.998) shall be filed with the clerk by the prevailing party at the time of the filing of the order or judgment which disposes of the action. If the action is settled without a court order or judgment being entered, or dismissed by the parties, the plaintiff or petitioner immediately shall file a final disposition form (form 1.998) with the clerk. The clerk shall complete the final disposition form for a party appearing pro se, or when the action is dismissed for lack of prosecution pursuant to rule 1.420(e).

(d) Motion in Lieu of Scire Facias. Any relief available by scire facias may be granted on motion after notice without the issuance of a writ of scire facias.

[1]E.g., "Order Denying Plaintiff's Motion for Summary Judgment," "Defendant's Motion to Compel," "Order Denying Defendant's Motion to Dismiss," "Final Judgment for Plaintiff," etc.

Committee Notes

1971 Amendment. The change requires a more complete designation of the document that is filed so that it may be more rapidly identified. It also specifies the applicability of the subdivision to all of the various documents that can be filed. For example, a motion to dismiss should now be entitled "defendant's motion to dismiss the complaint" rather than merely "motion" or "motion to dismiss."

1972 Amendment. Subdivision (a) is amended to make a reply mandatory when a party seeks to avoid an affirmative defense in an answer or third-party answer. It is intended to eliminate thereby the problems exemplified by *Tuggle v. Maddox*, 60 So. 2d 158 (Fla. 1952), and *Dickerson v. Orange State Oil Co.*, 123 So. 2d 562 (Fla. 2d DCA 1960).

1992 Amendment. Subdivision (b) is amended to require all notices of hearing to specify the motions or other matters to be heard.

2010 Amendment. Subdivision (c) is amended to address separately the caption for in rem proceedings, including in rem forfeiture proceedings.

RULE 1.285. INADVERTENT DISCLOSURE OF PRIVILEGED MATERIALS

(a) Assertion of Privilege as to Inadvertently Disclosed Materials. Any party, person, or entity, after inadvertent disclosure of any materials pursuant to these rules, may thereafter assert any privilege recognized by law as to those materials. This right exists without regard to whether the disclosure was made pursuant to formal demand or informal request. In order to assert the privilege, the party, person, or entity shall, within 10 days of actually discovering the inadvertent disclosure, serve written notice of the assertion of privilege on the party to whom the materials were disclosed. The notice shall specify with particularity the materials as to which the privilege is asserted, the nature of the privilege asserted, and the date on which the inadvertent disclosure was actually discovered.

(b) Duty of the Party Receiving Notice of an Assertion of Privilege. A party receiving notice of an assertion of privilege under subdivision (a) shall promptly return, sequester, or destroy the materials specified in the notice, as well as any copies of the material. The party receiving the notice shall also promptly notify any other party, person, or entity to whom it has disclosed the materials of the fact that the notice has been served and of the effect of this rule. That party shall also take reasonable steps to retrieve the materials disclosed. Nothing herein affects any obligation pursuant to R. Regulating Fla. Bar 4-4.4(b).

(c) Right to Challenge Assertion of Privilege. Any party receiving a notice made under subdivision (a) has the right to challenge the assertion of privilege. The grounds for the challenge may include, but are not limited to, the following:

(1) The materials in question are not privileged.

(2) The disclosing party, person, or entity lacks standing to assert the privilege.

(3) The disclosing party, person, or entity has failed to serve timely notice under this rule.

(4) The circumstances surrounding the production or disclosure of the materials warrant a finding that the disclosing party, person, or entity has waived its assertion that the material is protected by a privilege.

Any party seeking to challenge the assertion of privilege shall do so by serving notice of its challenge on the party, person, or entity asserting the privilege. Notice

of the challenge shall be served within 20 days of service of the original notice given by the disclosing party, person, or entity. The notice of the recipient's challenge shall specify the grounds for the challenge. Failure to serve timely notice of challenge is a waiver of the right to challenge.

(d) Resolution of Disputes as to Asserted Privileges. If notices contemplated by subdivisions (a) and (c) have been served, any party, person, or entity that has served a notice contemplated by subdivisions (a) and (c) may apply to the court for an order resolving the dispute framed by the notices. In resolving disputes as to the asserted privilege, the court may consider, in addition to the issues framed by the notices, the following:

(1) The reasonableness of the precautions that the disclosing party, person, or entity had taken to prevent inadvertent disclosure.

(2) The scope of discovery.

(3) The extent of the disclosure.

(4) Whether the interests of justice would be served by relieving the disclosing party, person, or entity of its error.

(5) Any other factor necessary to meet the best interests of justice.

(e) Effect of Determination that Privilege Applies. When an order is entered determining that materials are privileged or that the right to challenge the privilege has been waived, the court shall direct what shall be done with the materials and any copies so as to preserve all rights of appellate review. The recipient of the materials shall also give prompt notice of the court's determination to any other party, person, or entity to whom it had disclosed the materials.

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. Any subpoena served on the person to be examined shall state the method or methods for recording the testimony.

(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. Rule 1.351 provides the exclusive procedure for obtaining documents or things by subpoena from nonparties without deposing the custodian or other person in possession of the documents.

(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.

(**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 therefore 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 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.

(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

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. Subdivision (b)(5) is amended to clarify that the procedure set forth in rule 1.351 must be followed when requesting or receiving documents or things without testimony, from nonparties pursuant to a subpoena. The amendment is intended to prevent the use of rules 1.310 and 1.410 to request documents from nonparties pursuant to a subpoena without giving the opposing party the opportunity to object to the subpoena before it is served on the nonparty as required by rule 1.351.

Court Commentary

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.

Subdivison (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 on a subject included therein shall be ~~in~~from the form approved by the court. A party may serve fewer than all of the approved interrogatories within a form. 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 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

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.

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 1.351. PRODUCTION OF DOCUMENTS AND THINGS WITHOUT DEPOSITION

(a) Request; Scope. A party may seek inspection and copying of any documents or things within the scope of rule 1.350(a) from a person who is not a party by issuance of a subpoena directing the production of the documents or things when the requesting party does not seek to depose the custodian or other person in possession of the documents or things. This rule provides the exclusive procedure for obtaining documents or things by subpoena from nonparties without deposing the custodian or other person in possession of the documents or things pursuant to rule 1.310.

(b) Procedure. A party desiring production under this rule shall serve notice on every other party of the intent to serve a subpoena under this rule at least 10 days before the subpoena is issued if service is by delivery and 15 days before the subpoena is issued if the service is by mail. The proposed subpoena shall be attached to the notice and shall state the time, place, and method for production of the documents or things, and the name and address of the person who is to produce the documents or things, if known, and if not known, a general description sufficient to identify the person or the particular class or group to which the person belongs; shall include a designation of the items to be produced; and shall state that the person who will be asked to produce the documents or things has the right to object to the production under this rule and that the person will not be required to surrender the documents or things. A copy of the notice and proposed subpoena shall not be furnished to the person upon whom the subpoena is to be served. If any party serves an objection to production under this rule within 10 days of service of the notice, the documents or things shall not be produced pending resolution of the objection in accordance with subdivision (d).

(c) Subpoena. If no objection is made by a party under subdivision (b), an attorney of record in the action may issue a subpoena or the party desiring production shall deliver to the clerk for issuance a subpoena together with a certificate of counsel or pro se party that no timely objection has been received from any party, and the clerk shall issue the subpoena and deliver it to the party desiring production. Service within the state of Florida of a nonparty subpoena shall be deemed sufficient if it complies with rule 1.410(d) or if (1) service is accomplished by mail or hand delivery by a commercial delivery service, and (2) written confirmation of delivery, with the date of service and the name and signature of the person accepting the subpoena, is obtained and filed by the party

seeking production. The subpoena shall be identical to the copy attached to the notice and shall specify that no testimony may be taken and shall require only production of the documents or things specified in it. The subpoena may give the recipient an option to deliver or mail legible copies of the documents or things to the party serving the subpoena. The person upon whom the subpoena is served may condition the preparation of copies on the payment in advance of the reasonable costs of preparing the copies. The subpoena shall require production only in the county of the residence of the custodian or other person in possession of the documents or things or in the county where the documents or things are located or where the custodian or person in possession usually conducts business. If the person upon whom the subpoena is served objects at any time before the production of the documents or things, the documents or things shall not be produced under this rule, and relief may be obtained pursuant to rule 1.310.

(d) Ruling on Objection. If an objection is made by a party under subdivision (b), the party desiring production may file a motion with the court seeking a ruling on the objection or may proceed pursuant to rule 1.310.

(e) Copies Furnished. If the subpoena is complied with by delivery or mailing of copies as provided in subdivision (c), the party receiving the copies shall furnish a legible copy of each item furnished to any other party who requests it upon the payment of the reasonable cost of preparing the copies.

(f) Independent Action. This rule does not affect the right of any party to bring an independent action for production of documents and things or permission to enter upon land.

Committee Notes

1980 Adoption. This rule is designed to eliminate the need of taking a deposition of a records custodian when the person seeking discovery wants copies of the records only. It authorizes objections by any other party as well as the custodian of the records. If any person objects, recourse must be had to rule 1.310.

1996 Amendment. This rule was amended to avoid premature production of documents by nonparties, to clarify the clerk's role in the process, and to further clarify that any objection to the use of this rule does not contemplate a hearing before the court but directs the party to rule 1.310 to obtain the desired production. This amendment is not intended to preclude all communication between parties

and nonparties. It is intended only to prohibit a party from prematurely sending to a nonparty a copy of the required notice or the proposed subpoena. This rule was also amended along with rule 1.410 to allow attorneys to issue subpoenas. See Committee Note for rule 1.410.

2007 Amendment. Subdivisions (b) and (d) were amended to permit a party seeking nonparty discovery to have other parties' objections resolved by the court.

2010 Amendment. Subdivision (a) is amended to clarify that the procedure set forth in rule 1.351, not rule 1.310, shall be followed when requesting or receiving documents or things, without testimony, from nonparties pursuant to a subpoena.

RULE 1.360. EXAMINATION OF PERSONS

(a) Request; Scope.

(1) Any party may request any other party to submit to, or to produce a person in that other party's custody or legal control for, examination by a qualified expert when the condition which is the subject of the requested examination is in controversy.

(A) When the physical condition of a party or other person under subdivision (a)(1) is in controversy, the request may be served on the plaintiff without leave of court after commencement of the action, and on any other person with or after service of the process and initial pleading on that party. The request shall specify a reasonable time, place, manner, conditions, and scope of the examination and the person or persons by whom the examination is to be made. The party to whom the request is directed shall serve a response within 30 days after service of the request, except that a defendant need not serve a response until 45 days after service of the process and initial pleading on that defendant. The court may allow a shorter or longer time. The response shall state that the examination will be permitted as requested unless the request is objected to, in which event the reasons for the objection shall be stated. <u>If the examination is to be recorded or observed by others, the request or response shall also include the number of people attending, their role, and the method or methods of recording.</u>

(B) In cases where the condition in controversy is not physical, a party may move for an examination by a qualified expert as in subdivision (a)(1). The order for examination shall be made only after notice to the person to be examined and to all parties, and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(C) Any minor required to submit to examination pursuant to this rule shall have the right to be accompanied by a parent or guardian at all times during the examination, except upon a showing that the presence of a parent or guardian is likely to have a material, negative impact on the minor's examination.

(2) An examination under this rule is authorized only when the party submitting the request has good cause for the examination. At any hearing the party submitting the request shall have the burden of showing good cause.

(3) Upon request of either party requesting the examination, or the party or person to be examined, the court may establish protective rules governing such examination.

(b) Report of Examiner.

(1) If requested by the party to whom a request for examination or against whom an order is made under subdivision (a)(1)(A) or (a)(1)(B) or by the person examined, the party requesting the examination to be made shall deliver to the other party a copy of a detailed written report of the examiner setting out the examiner's findings, including results of all tests made, diagnosis, and conclusions, with similar reports of all earlier examinations of the same condition. After delivery of the detailed written report, the party requesting the examination to be made shall be entitled upon request to receive from the party to whom the request for examination or against whom the order is made a similar report of any examination of the same condition previously or thereafter made, unless in the case of a report of examination of a person not a party the party shows the inability to obtain it. On motion, the court may order delivery of a report on such terms as are just; and if an examiner fails or refuses to make a report, the court may exclude the examiner's testimony if offered at the trial.

(2) By requesting and obtaining a report of the examination so ordered or requested, or by taking the deposition of the examiner, the party examined waives any privilege that party may have in that action or any other involving the same controversy regarding the testimony of every other person who has examined or may thereafter examine that party concerning the same condition.

(3) This subdivision applies to examinations made by agreement of the parties unless the agreement provides otherwise. This subdivision does not preclude discovery of a report of an examiner or taking the deposition of the examiner in accordance with any other rule.

(c) Examiner as Witness. The examiner may be called as a witness by any party to the action, but shall not be identified as appointed by the court.

Committee Notes

1972 Amendment. Derived from Federal Rule of Civil Procedure 35 as

amended in 1970. The good cause requirement under this rule has been retained so that the requirements of *Schlagenhauf v. Holder*, 379 U.S. 104, 85 S. Ct. 234, 13 L. Ed. 2d 152 (1964), have not been affected. Subdivision (b) is changed to make it clear that reports can be obtained whether an order for the examination has been entered or not and that all earlier reports of the same condition can also be obtained.

1988 Amendment. This amendment to subdivision (a) is intended to broaden the scope of rule 1.360 to accommodate the examination of a person by experts other than physicians.

RULE 1.410. SUBPOENA

(a) Subpoena Generally. Subpoenas for testimony before the court, subpoenas for production of tangible evidence, and subpoenas for taking depositions may be issued by the clerk of court or by any attorney of record in an action.

(b) Subpoena for Testimony Before the Court.

(1) Every subpoena for testimony before the court shall be issued by an attorney of record in an action or by the clerk under the seal of the court and shall state the name of the court and the title of the action and shall command each person to whom it is directed to attend and give testimony at a time and place specified in it.

(2) On oral request of an attorney or party and without praecipe, the clerk shall issue a subpoena for testimony before the court or a subpoena for the production of documentary evidence before the court signed and sealed but otherwise in blank, both as to the title of the action and the name of the person to whom it is directed, and the subpoena shall be filled in before service by the attorney or party.

(c) For Production of Documentary Evidence. A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein, but the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable and oppressive, or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things. A party seeking production of evidence at trial which would be subject to a subpoena may compel such production by serving a notice to produce such evidence on an adverse party as provided in rule 1.080(b). Such notice shall have the same effect and be subject to the same limitations as a subpoena served on the party.

(d) Service. A subpoena may be served by any person authorized by law to serve process or by any other person who is not a party and who is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made as provided by law. Proof of such service shall be made by affidavit of the person

making service except as applicable under rule 1.351(c) for the production of documents and things by a nonparty without deposition, if not served by an officer authorized by law to do so.

(e) Subpoena for Taking Depositions.

(1) Filing a notice to take a deposition as provided in rule 1.310(b) or 1.320(a) with a certificate of service on it showing service on all parties to the action constitutes an authorization for the issuance of subpoenas for the persons named or described in the notice by the clerk of the court in which the action is pending or by an attorney of record in the action. The subpoena shall state the method for recording the testimony. The subpoena may command the person to whom it is directed to produce designated books, papers, documents, or tangible things that constitute or contain evidence relating to any of the matters within the scope of the examination permitted by rule 1.280(b), but in that event the subpoena will be subject to the provisions of rule 1.280(c) and subdivision (c) of this rule. Within 10 days after its service, or on or before the time specified in the subpoena for compliance if the time is less than 10 days after service, the person to whom the subpoena is directed may serve written objection to inspection or copying of any of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the court from which the subpoena was issued. If objection has been made, the party serving the subpoena may move for an order at any time before or during the taking of the deposition upon notice to the deponent.

(2) A person may be required to attend an examination only in the county wherein the person resides or is employed or transacts business in person or at such other convenient place as may be fixed by an order of court.

(f) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued.

(g) Depositions Before Commissioners Appointed in This State by Courts of Other States; Subpoena Powers; etc. When any person authorized by the laws of Florida to administer oaths is appointed by a court of record of any other state, jurisdiction, or government as commissioner to take the testimony of any named witness within this state, that witness may be compelled to attend and testify before that commissioner by witness subpoena issued by the clerk of any

circuit court at the instance of that commissioner or by other process or proceedings in the same manner as if that commissioner had been appointed by a court of this state; provided that no document or paper writing shall be compulsorily annexed as an exhibit to such deposition or otherwise permanently removed from the possession of the witness producing it, but in lieu thereof a photostatic copy may be annexed to and transmitted with such executed commission to the court of issuance.

(h) Subpoena of Minor. 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.

Committee Notes

1972 Amendment. Subdivisions (a) and (d) are amended to show the intent of the rule that subpoenas for deposition may not be issued in blank by the clerk, but only for trial. The reason for the distinction is valid. A subpoena for appearance before the court is not subject to abuse because the court can correct any attempt to abuse the use of blank subpoenas. Since a judge is not present at a deposition, additional protection for the parties and the deponent is required and subpoenas should not be issued in blank. Subdivision (d) is also modified to conform with the revised federal rule on subpoenas for depositions to permit an objection by the deponent to the production of material required by a subpoena to be produced.

1980 Amendment. Subdivision (c) is revised to conform with section 48.031, Florida Statutes (1979).

1996 Amendment. This rule is amended to allow an attorney (as referred to in Fla. R. Jud. Admin. 2.060(a)-(b)), as an officer of the court, and the clerk to issue subpoenas in the name of the court. This amendment is not intended to change any other requirement or precedent for the issuance or use of subpoenas. For example, a notice of taking the deposition must be filed and served before a subpoena for deposition may be issued.

RULE 1.420. DISMISSAL OF ACTIONS

(a) Voluntary Dismissal.

(1) By Parties. Except in actions in which property has been seized or is in the custody of the court, an action, a claim, or any part of an action or claim may be dismissed by plaintiff without order of court (A) before trial by serving, or during trial by stating on the record, a notice of dismissal at any time before a hearing on motion for summary judgment, or if none is served or if the motion is denied, before retirement of the jury in a case tried before a jury or before submission of a nonjury case to the court for decision, or (B) by filing a stipulation of dismissal signed by all current parties ~~who have appeared in~~to the action. Unless otherwise stated in the notice or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication on the merits when served by a plaintiff who has once dismissed in any court an action based on or including the same claim.

(2) By Order of Court; If Counterclaim. Except as provided in subdivision (a)(1) of this rule, an action shall not be dismissed at a party's instance except on order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been served by a defendant prior to the service upon the defendant of the plaintiff's notice of dismissal, the action shall not be dismissed against defendant's objections unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(b) Involuntary Dismissal. Any party may move for dismissal of an action or of any claim against that party for failure of an adverse party to comply with these rules or any order of court. Notice of hearing on the motion shall be served as required under rule 1.090(d). After a party seeking affirmative relief in an action tried by the court without a jury has completed the presentation of evidence, any other party may move for a dismissal on the ground that on the facts and the law the party seeking affirmative relief has shown no right to relief, without waiving the right to offer evidence if the motion is not granted. The court as trier of the facts may then determine them and render judgment against the party seeking affirmative relief or may decline to render judgment until the close of all the evidence. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue or for lack of

an indispensable party, operates as an adjudication on the merits.

(c) Dismissal of Counterclaim, Crossclaim, or Third-Party Claim. The provisions of this rule apply to the dismissal of any counterclaim, crossclaim, or third-party claim.

(d) Costs. Costs in any action dismissed under this rule shall be assessed and judgment for costs entered in that action, once the action is concluded as to the party seeking taxation of costs. When one or more other claims remain pending following dismissal of any claim under this rule, taxable costs attributable solely to the dismissed claim may be assessed and judgment for costs in that claim entered in the action, but only when all claims are resolved at the trial court level as to the party seeking taxation of costs. If a party who has once dismissed a claim in any court of this state commences an action based upon or including the same claim against the same adverse party, the court shall make such order for the payment of costs of the claim previously dismissed as it may deem proper and shall stay the proceedings in the action until the party seeking affirmative relief has complied with the order.

(e) Failure to Prosecute. In all actions in which it appears on the face of the record that no activity by filing of pleadings, order of court, or otherwise has occurred for a period of 10 months, and no order staying the action has been issued nor stipulation for stay approved by the court, any interested person, whether a party to the action or not, the court, or the clerk of the court may serve notice to all parties that no such activity has occurred. If no such record activity has occurred within the 10 months immediately preceding the service of such notice, and no record activity occurs within the 60 days immediately following the service of such notice, and if no stay was issued or approved prior to the expiration of such 60-day period, the action shall be dismissed by the court on its own motion or on the motion of any interested person, whether a party to the action or not, after reasonable notice to the parties, unless a party shows good cause in writing at least 5 days before the hearing on the motion why the action should remain pending. Mere inaction for a period of less than 1 year shall not be sufficient cause for dismissal for failure to prosecute.

(f) Effect on Lis Pendens. If a notice of lis pendens has been filed in connection with a claim for affirmative relief that is dismissed under this rule, the notice of lis pendens connected with the dismissed claim is automatically dissolved at the same time. The notice, stipulation, or order shall be recorded.

Committee Notes

1976 Amendment. Subdivision (e) has been amended to prevent the dismissal of an action for inactivity alone unless 1 year has elapsed since the occurrence of activity of record. Nonrecord activity will not toll the 1-year time period.

1980 Amendment. Subdivision (e) has been amended to except from the requirement of record activity a stay that is ordered or approved by the court.

1992 Amendment. Subdivision (f) is amended to provide for automatic dissolution of lis pendens on claims that are settled even though the entire action may not have been dismissed.

2005 Amendment. Subdivision (e) has been amended to provide that an action may not be dismissed for lack of prosecution without prior notice to the claimant and adequate opportunity for the claimant to re-commence prosecution of the action to avert dismissal.

Court Commentary

1984 Amendment. A perennial real property title problem occurs because of the failure to properly dispose of notices of lis pendens in the order of dismissal. Accordingly, the reference in subdivision (a)(1) to disposition of notices of lis pendens has been deleted and a separate subdivision created to automatically dissolve notices of lis pendens whenever an action is dismissed under this rule.

RULE 1.442. PROPOSALS FOR SETTLEMENT

(a) Applicability. This rule applies to all proposals for settlement authorized by Florida law, regardless of the terms used to refer to such offers, demands, or proposals, and supersedes all other provisions of the rules and statutes that may be inconsistent with this rule.

(b) Service of Proposal. A proposal to a defendant shall be served no earlier than 90 days after service of process on that defendant; a proposal to a plaintiff shall be served no earlier than 90 days after the action has been commenced. No proposal shall be served later than 45 days before the date set for trial or the first day of the docket on which the case is set for trial, whichever is earlier.

(c) Form and Content of Proposal for Settlement.

(1) A proposal shall be in writing and shall identify the applicable Florida law under which it is being made.

(2) A proposal shall:

(A) name the party or parties making the proposal and the party or parties to whom the proposal is being made;

(B) identify the claim or claims the proposal is attempting to resolve;

(C) state with particularity any relevant conditions;

(D) state the total amount of the proposal and state with particularity all nonmonetary terms of the proposal;

(E) state with particularity the amount proposed to settle a claim for punitive damages, if any;

(F) state whether the proposal includes attorneys' fees and whether attorneys' fees are part of the legal claim; and

(G) include a certificate of service in the form required by

rule 1.080(f).

(3) A proposal may be made by or to any party or parties and by or to any combination of parties properly identified in the proposal. A joint proposal shall state the amount and terms attributable to each party.

(4) Notwithstanding subdivision (c)(3), when a party is alleged to be solely vicariously, constructively, derivatively, or technically liable, whether by operation of law or by contract, a joint proposal made by or served on such a party need not state the apportionment or contribution as to that party. Acceptance by any party shall be without prejudice to rights of contribution or indemnity.

(d) Service and Filing. A proposal shall be served on the party or parties to whom it is made but shall not be filed unless necessary to enforce the provisions of this rule.

(e) Withdrawal. A proposal may be withdrawn in writing provided the written withdrawal is delivered before a written acceptance is delivered. Once withdrawn, a proposal is void.

(f) Acceptance and Rejection.

(1) A proposal shall be deemed rejected unless accepted by delivery of a written notice of acceptance within 30 days after service of the proposal. The provisions of rule 1.090(e) do not apply to this subdivision. No oral communications shall constitute an acceptance, rejection, or counteroffer under the provisions of this rule.

(2) In any case in which the existence of a class is alleged, the time for acceptance of a proposal for settlement is extended to 30 days after the date the order granting or denying certification is filed.

(g) Sanctions. Any party seeking sanctions pursuant to applicable Florida law, based on the failure of the proposal's recipient to accept a proposal, shall do so by serving a motion in accordance with rule 1.525.

(h) Costs and Fees.

(1) If a party is entitled to costs and fees pursuant to applicable

Florida law, the court may, in its discretion, determine that a proposal was not made in good faith. In such case, the court may disallow an award of costs and attorneys' fees.

(2) When determining the reasonableness of the amount of an award of attorneys' fees pursuant to this section, the court shall consider, along with all other relevant criteria, the following factors:

(A) The then-apparent merit or lack of merit in the claim.

(B) The number and nature of proposals made by the parties.

(C) The closeness of questions of fact and law at issue.

(D) Whether the party making the proposal had unreasonably refused to furnish information necessary to evaluate the reasonableness of the proposal.

(E) Whether the suit was in the nature of a test case presenting questions of far-reaching importance affecting nonparties.

(F) The amount of the additional delay cost and expense that the party making the proposal reasonably would be expected to incur if the litigation were to be prolonged.

(i) Evidence of Proposal. Evidence of a proposal or acceptance thereof is admissible only in proceedings to enforce an accepted proposal or to determine the imposition of sanctions.

(j) Effect of Mediation. Mediation shall have no effect on the dates during which parties are permitted to make or accept a proposal for settlement under the terms of the rule.

Committee Notes

1996 Amendment. This rule was amended to reconcile, where possible, sections 44.102(6) (formerly 44.102(5)(b)), 45.061, 73.032, and 768.79, Florida Statutes, and the decisions of the Florida Supreme Court in *Knealing v. Puleo*, 675 So. 2d 593 (Fla. 1996), *TGI Friday's, Inc. v. Dvorak*, 663 So. 2d 606 (Fla. 1995),

and *Timmons v. Combs*, 608 So. 2d 1 (Fla. 1992). This rule replaces former rule 1.442, which was repealed by the *Timmons* decision, and supersedes those sections of the Florida Statutes and the prior decisions of the court, where reconciliation is impossible, in order to provide a workable structure for proposing settlements in civil actions. The provision which requires that a joint proposal state the amount and terms attributable to each party is in order to conform with *Fabre v. Marin*, 623 So. 2d 1182 (Fla. 1993).

2000 Amendment. Subdivision (f)(2) was added to establish the time for acceptance of proposals for settlement in class actions. "Filing" is defined in rule 1.080(e). Subdivision (g) is amended to conform with new rule 1.525.

RULE 1.470. EXCEPTIONS UNNECESSARY; JURY INSTRUCTIONS

(a) Adverse Ruling. For appellate purposes no exception shall be necessary to any adverse ruling, order, instruction, or thing whatsoever said or done at the trial or prior thereto or after verdict, which was said or done after objection made and considered by the trial court and which affected the substantial rights of the party complaining and which is assigned as error.

(b) Instructions to Jury. The Florida Standard Jury Instructions appearing on the court's website at www.floridasupremecourt.org/jury_instructions/instructions.shtml shall be used by the trial judges of this state in instructing the jury in civil actions to the extent that the Standard Jury Instructions are applicable, unless the trial judge determines that an applicable Standard Jury Instruction is erroneous or inadequate. If the trial judge modifies a Standard Jury Instruction or gives such other instruction as the judge determines necessary to accurately and sufficiently instruct the jury, upon timely objection to the instruction, the trial judge shall state on the record or in a separate order the legal basis for varying from the Standard Jury Instruction. Similarly, in all circumstances in which the notes accompanying the Florida Standard Jury Instructions contain a recommendation that a certain type of instruction not be given, the trial judge shall follow the recommendation unless the judge determines that the giving of such an instruction is necessary to accurately and sufficiently instruct the jury, in which event the judge shall give such instruction as the judge deems appropriate and necessary. If the trial judge does not follow such a recommendation of the Florida Standard Jury Instructions, upon timely objection to the instruction, the trial judge shall state on the record or in a separate order the legal basis of the determination that such instruction is necessary. Not later than at the close of the evidence, the parties shall file written requests that the court instruct the jury on the law set forth in such requests. The court shall then require counsel to appear before it to settle the instructions to be given. At such conference, all objections shall be made and ruled upon and the court shall inform counsel of such instructions as it will give. No party may assign as error the giving of any instruction unless that party objects thereto at such time, or the failure to give any instruction unless that party requested the same. The court shall orally instruct the jury before or after the arguments of counsel and may provide appropriate instructions during the trial. If the instructions are given prior to final argument, the presiding judge shall give the jury final procedural instructions after final arguments are concluded and prior to deliberations. The court shall provide each juror with a written set of the instructions for his or her use in deliberations.

The court shall file a copy of such instructions.

(c) **Orders on New Trial, Directed Verdicts, etc.** It shall not be necessary to object or except to any order granting or denying motions for new trials, directed verdicts, or judgments non obstante veredicto or in arrest of judgment to entitle the party against whom such ruling is made to have the same reviewed by an appellate court.

Committee Notes

1988 Amendment. The word "general" in the third sentence of subdivision (b) was deleted to require the court to specifically inform counsel of the charges it intends to give. The last sentence of that subdivision was amended to encourage judges to furnish written copies of their charges to juries.

2010 Amendment. Portions of form 1.985 were modified and moved to subdivision (b) of rule 1.470 to require the court to use published standard instructions where applicable and necessary, to permit the judge to vary from the published standard jury instructions and notes only when necessary to accurately and sufficiently instruct the jury, and to require the parties to object to preserve error in variance from published standard jury instructions and notes.

RULE 1.480. MOTION FOR A DIRECTED VERDICT

(a) Effect. A party who moves for a directed verdict at the close of the evidence offered by the adverse party may offer evidence in the event the motion is denied without having reserved the right to do so and to the same extent as if the motion had not been made. The denial of a motion for a directed verdict shall not operate to discharge the jury. A motion for a directed verdict shall state the specific grounds therefor. The order directing a verdict is effective without any assent of the jury.

(b) Reservation of Decision on Motion. When a motion for a directed verdict ~~made at the close of all of the evidence~~ is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Within 10 days after the return of a verdict, a party who has timely moved for a directed verdict may serve a motion to set aside the verdict and any judgment entered thereon and to enter judgment in accordance with the motion for a directed verdict. If a verdict was not returned, a party who has timely moved for a directed verdict may serve a motion for judgment in accordance with the motion for a directed verdict within 10 days after discharge of the jury.

(c) Joined With Motion for New Trial. A motion for a new trial may be joined with this motion or a new trial may be requested in the alternative. If a verdict was returned, the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned, the court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial.

Committee Notes

1996 Amendment. Subdivision (b) is amended to clarify that the time limitations in this rule are based on service.

2010 Amendment. Subdivision (b) is amended to conform to 2006 changes to Federal Rule of Civil Procedure 50(b) eliminating the requirement for renewing at the close of all the evidence a motion for directed verdict already made at the close of an adverse party's evidence.

RULE 1.510. SUMMARY JUDGMENT

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, crossclaim, or third-party claim or to obtain a declaratory judgment may move for a summary judgment in that party's favor upon all or any part thereof with or without supporting affidavits at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party.

(b) For Defending Party. A party against whom a claim, counterclaim, crossclaim, or third-party claim is asserted or a declaratory judgment is sought may move for a summary judgment in that party's favor as to all or any part thereof at any time with or without supporting affidavits.

(c) Motion and Proceedings Thereon. The motion shall state with particularity the grounds upon which it is based and the substantial matters of law to be argued and shall specifically identify any affidavits, answers to interrogatories, admissions, depositions, and other materials as would be admissible in evidence ("summary judgment evidence") on which the movant relies. The movant shall serve the motion at least 20 days before the time fixed for the hearing, and shall also serve at that time ~~copies~~a copy of any summary judgment evidence on which the movant relies that has not already been filed with the court. The adverse party shall identify, by notice mailed to the movant's attorney at least 5 days prior to the day of the hearing, or delivered no later than 5:00 p.m. 2 business days prior to the day of the hearing, any summary judgment evidence on which the adverse party relies. To the extent ~~such~~that summary judgment evidence has not already been filed with the court, the adverse party shall serve ~~copies~~a copy on the movant by ~~mailing them~~mail at least 5 days prior to the day of the hearing, or by ~~delivering them~~delivery to the movant's attorney no later than 5:00 p.m. 2 business days prior to the day of hearing. The judgment sought shall be rendered forthwith if the pleadings~~, depositions, answers to interrogatories, and admissions, affidavits, and other materials as would be admissible in~~ and summary judgment evidence on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case Not Fully Adjudicated on Motion. On motion under this rule if judgment is not rendered upon the whole case or for all the relief asked and a trial

or the taking of testimony and a final hearing is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall ascertain, if practicable, what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. On the trial or final hearing of the action the facts so specified shall be deemed established, and the trial or final hearing shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or by further affidavits.

(f) When Affidavits Are Unavailable. If it appears from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. If it appears to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorneys' fees, and any offending party or attorney may be adjudged guilty of contempt.

Committee Notes

1976 Amendment. Subdivision (c) has been amended to require a movant to state with particularity the grounds and legal authority which the movant will rely upon in seeking summary judgment. This amendment will eliminate surprise and

bring the summary judgment rule into conformity with the identical provision in rule 1.140(b) with respect to motions to dismiss.

1992 Amendment. The amendment to subdivision (c) will require timely service of opposing affidavits, whether by mail or by delivery, prior to the day of the hearing on a motion for summary judgment.

2005 Amendment. Subdivision (c) has been amended to ensure that the moving party and the adverse party are each given advance notice of and, where appropriate, copies of the evidentiary material on which the other party relies in connection with a summary judgment motion.

RULE 1.525. MOTIONS FOR COSTS AND ATTORNEYS' FEES

Any party seeking a judgment taxing costs, attorneys' fees, or both shall serve a motion no later than 30 days after filing of the judgment, including a judgment of dismissal, or the service of a notice of voluntary dismissal, which judgment or notice concludes the action as to that party.

FORM 1.901. CAPTION

(a) General Form.

(name of court)

A. B.,	)	
Plaintiff,	)	
	)	
-vs-	)	No. .....
	)	
C. D.,	)	
Defendant	)	

(designation of pleading)

(b) Petition.

(name of court)

In re the Petition	)	
of A. B. for (type of	)	No. .....
relief)	)	

PETITION FOR (type of relief)

(c) In rem proceedings.

(name of court)

In re (name or general	)	
description of property)	)	No. .....

(designation of pleading)

(d) Forfeiture proceedings.

(name of court)

In re (name or general	)	
description of property)	)	No. .....

(designation of pleading)

Committee Notes

1980 Amendment. Subdivision (b) is added to show the form of caption for a petition.

2010 Amendment. Subdivisions (c) and (d) are added to show the form of caption for in rem proceedings, including in rem forfeiture proceedings.

FORM 1.923. EVICTION SUMMONS/ RESIDENTIAL

EVICTION SUMMONS/RESIDENTIAL

TO: .....
Defendant(s)

.....
.....

PLEASE READ CAREFULLY

You are being sued by ..... to require you to move out of the place where you are living for the reasons given in the attached complaint.

You are entitled to a trial to determine whether you can be required to move, but you MUST do ALL of the things listed below. You must do them within 5 days (not including Saturday, Sunday, or any legal holiday) after the date these papers were given to you or to a person who lives with you or were posted at your home.

THE THINGS YOU MUST DO ARE AS FOLLOWS:

(1) Write down the reason(s) why you think you should not be forced to move. The written reason(s) must be given to the clerk of the court at ..... County Courthouse
.....
....., Florida

(2) Mail or give a copy of your written reason(s) to:
.....
Plaintiff/Plaintiff's Attorney
.....
.....
Address

(3) Pay to the clerk of the court the amount of rent that the attached complaint claims to be due and any rent that becomes due until the lawsuit is over. If you believe that the amount claimed in the complaint is incorrect, you should file with the clerk of the court a motion to have the court determine the amount to be paid. If you file a motion, you must attach to the motion any documents supporting your position and mail or give a copy of the motion to the plaintiff/plaintiff's attorney.

(4) If you file a motion to have the court determine the amount of rent to be paid to the clerk of the court, you must immediately contact the office of the judge to whom the case is assigned to schedule a hearing to decide what amount should be paid to the clerk of the court while the lawsuit is pending.

IF YOU DO NOT DO ALL OF THE THINGS SPECIFIED ABOVE WITHIN 5 WORKING DAYS AFTER THE DATE THAT THESE PAPERS WERE GIVEN TO YOU OR TO A PERSON WHO LIVES WITH YOU OR WERE POSTED AT YOUR HOME, YOU MAY BE EVICTED WITHOUT A HEARING OR FURTHER NOTICE

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(5) If the attached complaint also contains a claim for money damages (such as unpaid rent), you must respond to that claim separately. You must write down the reasons why you believe that you do not owe the money claimed. The written reasons must be given to the clerk of the court at the address specified in paragraph (1) above, and you must mail or give a copy of your written reasons to the plaintiff/plaintiff's attorney at the address specified in paragraph (2) above. This must be done within 20 days after the date these papers were given to you or to a person who lives with you ~~or were posted at your home~~. This obligation is separate from the requirement of answering the claim for eviction within 5 working days after these papers were given to you or to a person who lives with you or were posted at your home.

THE STATE OF FLORIDA:
To Each Sheriff of the State: You are commanded to serve this summons and a copy of the complaint in this lawsuit on the above-named defendant.

DATED on .....

Clerk of the County Court

By _____
As Deputy Clerk

NOTIFICACION DE DESALOJO/RESIDENCIAL

A: .....
Demandado(s)
.....
.....

SIRVASE LEER CON CUIDADO

Usted esta siendo demandado por ..... para exigirle que desaloje el lugar donde reside por los motivos que se expresan en la demanda adjunta.

Usted tiene derecho a ser sometido a juicio para determinar si se le puede exigir que se mude, pero ES NECESARIO que haga TODO lo que se le pide a continuacion en un plazo de 5 dias (no incluidos los sabados, domingos, ni dias feriados) a partir de la fecha en que estos documentos se le entregaron a usted o a una persona que vive con usted, o se colocaron en su

casa.

USTED DEBERA HACER LO SIGUIENTE:

(1) Escribir el (los) motivo(s) por el (los) cual(es) cree que no se le debe obligar a mudarse. El (Los) motivo(s) debera(n) entregarse por escrito al secretario del tribunal en el ..... County Courthouse
.....
....., Florida

(2) Enviar por correo o darle su(s) motivo(s) por escrito a:

.....
Demandante/Abogado del Demandante

.....
.....
Direccion

(3) Pagarle al secretario del tribunal el monto del alquiler que la demanda adjunta reclama como adeudado, asi como cualquier alquiler pagadero hasta que concluya el litigio. Si usted considera que el monto reclamado en la demanda es incorrecto, debera presentarle al secretario del tribunal una mocion para que el tribunal determine el monto que deba pagarse. Si usted presenta una mocion, debera adjuntarle a esta cualesquiera documentos que respalden su posicion, y enviar por correo o entregar una copia de la misma al demandante/abogado del demandante.

(4) Si usted presenta una mocion para que el tribunal determine el monto del alquiler que deba pagarse al secretario del tribunal, debera comunicarse de inmediato con la oficina del juez al que se le haya asignado el caso para que programe una audiencia con el fin de determinar el monto que deba pagarse al secretario del tribunal mientras el litigio este pendiente.

SI USTED NO LLEVA A CABO LAS ACCIONES QUE SE ESPECIFICAN ANTERIORMENTE EN UN PLAZO DE 5 DIAS LABORABLES A PARTIR DE LA FECHA EN QUE ESTOS DOCUMENTOS SE LE ENTREGARON A USTED O A UNA PERSONA QUE VIVE CON USTED, O SE COLOQUEN EN SU CASA, SE LE PODRA DESALOJAR SIN NECESIDAD DE CELEBRAR UNA AUDIENCIA NI CURSARSELE OTRO AVISO

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(5) Si la demanda adjunta tambien incluye una reclamacion por danos y perjuicios pecunarios (tales como el incumplimiento de pago del alquiler), usted debera responder a dicha reclamacion por separado. Debera exponer por escrito los motivos por los cuales considera que usted no debe la suma reclamada, y entregarlos al secretario del tribunal en la direccion que se especifica en el parrafo (1) anterior, asi como enviar por correo o entregar una copia de los

mismos al demandante/abogado del demandante en la direccion que se especifica en el parrafo (2) anterior. Esto debera llevarse a cabo en un plazo de 20 dias a partir de la fecha en que estos documentos se le entregaron a usted o a una persona que vive con usted~~, o se coloquen en su casa~~. Esta obligacion es aparte del requisito de responder a la demanda de desalojo en un plazo de 5 dias a partir de la fecha en que estos documentos se le entregaron a usted o a una persona que vive con usted, o se coloquen en su casa.

CITATION D'EVICTION/RESIDENTIELLE

A: .....
Defendeur(s)
.....
.....

LISEZ ATTENTIVEMENT

Vous etes poursuivi par ..... pour exiger que vous evacuez les lieux de votre residence pour les raisons enumerees dans la plainte ci-dessous.

Vous avez droit a un proces pour determiner si vous devez demenager, mais vous devez, au prealable, suivre les instructions enumerees ci-dessous, pendant les 5 jours (non compris le samedi, le dimanche, ou un jour ferie) a partir de la date ou ces documents ont ete donnes a vous ou a la personne vivant avec vous, ou ont ete affiches a votre residence.

LISTE DES INSTRUCTIONS A SUIVRE:

(1) Enumerer par ecrit les raisons pour lesquelles vous pensez ne pas avoir a demenager. Elles doivent etre remises au clerc du tribunal a ..... County Courthouse
.....
....., Florida

(2) Envoyer ou donner une copie au:

.....
Plaignant/Avocat du Plaignant
.....
.....
Adresse

(3) Payer au clerc du tribunal le montant des loyers dus comme etabli dans la plainte et le montant des loyers dus jusqu'a la fin du proces. Si vous pensez que le montant etabli dans la plainte est incorrect, vous devez presenter au clerc du tribunal une demande en justice pour determiner la somme a payer. Pour cela vous devez attacher a la demande tous les documents soutenant votre position et faire parvenir une copie de la demande au plaignant/avocat du plaignant.

(4) Si vous faites une demande en justice pour determiner la somme a payer au clerc du tribunal, vous devrez immediatement prevenir le bureau de juge qui presidera au proces pour fixer la date de l'audience qui decidera quelle somme doit etre payee au clerc du tribunal pendant que le proces est en cours.

SI VOUS NE SUIVEZ PAS CES INSTRUCTIONS A LA LETTRE DANS LES 5 JOURS QUE SUIVENT LA DATE OU CES DOCUMENTS ONT ETE REMIS A VOUS OU A LA PERSONNE HABITANT AVEC VOUS, OU ONT ETE AFFICHES A VOTRE RESIDENCE, VOUS POUVEZ ETRE EXPULSES SANS AUDIENCE OU SANS AVIS PREALABLE

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(5) Si la plainte ci-dessus contient une demande pour dommages pecuniaires, tels des loyers arrieres, vous devez y repondre separement. Vous devez enumerer par ecrit les raisons pour lesquelles vous estimez ne pas devoir le montant demande. Ces raisons ecrites doivent etre donnees au clerc du tribunal a l'adresse specifiee dans le paragraphe (1) et une copie de ces raisons donnee ou envoyee au plaignant/avocat du plaignant a l'adresse specifiee dans le paragraphe (2). Cela doit etre fait dans les 20 jours suivant la date ou ces documents ont ete presentes a vous ou a la personne habitant avec vous~~, ou affiches a votre residence~~. Cette obligation ne fait pas partie des instructions a suivre en reponse au proces d'eviction dans les 5 jours suivant la date ou ces documents ont ete presentes a vous ou a la personne habitant avec vous, ou affiches a votre residence.

Committee Notes

1988 Adoption. This form was added to inform those sought to be evicted of the procedure they must follow to resist eviction.

1996 Amendment. This is a substantial revision of form 1.923 to comply with the requirements of section 83.60, Florida Statutes, as amended in 1993.

FORM 1.975. NOTICE OF COMPLIANCE WHEN CONSTITUTIONAL CHALLENGE IS BROUGHT

NOTICE OF COMPLIANCE WITH
SECTION 86.091, FLORIDA STATUTES

The undersigned hereby gives notice of compliance with Fla. R. Civ. P. 1.071, with respect to the constitutional challenge brought pursuant to .....(Florida statute, charter, ordinance, or franchise challenged)..... The undersigned complied by serving the .....(Attorney General for the state of Florida or State Attorney for the ..... Judicial Circuit)..... with a copy of the pleading or motion challenging .....(Florida statute, charter, ordinance, or franchise challenged)....., by .....(certified or registered mail)..... on .....(date).....

_____
Attorney for .....
Florida Bar No. .....
Address .....
Telephone No. .....

Committee Notes

2010 Adoption. This form is to be used to provide notice of a constitutional challenge as required by section 86.091, Florida Statutes. See rule 1.071. This form is to be used when the Attorney General or the State Attorney is not a named party to the action, but must be served solely in order to comply with the notice requirements set forth in section 86.091.

~~FORM 1.985. STANDARD JURY INSTRUCTIONS~~

~~The forms of Florida Standard Jury Instructions published by The Florida Bar pursuant to authority of the supreme court may be used by the trial judges of this state in charging the jury in civil actions to the extent that the forms are applicable, unless the trial judge determines that an applicable form of instruction is erroneous or inadequate. In that event the trial judge shall modify the form or give such other instruction as the judge determines necessary to accurately and sufficiently instruct the jury in the circumstances of the action. In that event the trial judge shall state on the record or in a separate order the manner in which the judge finds the standard form erroneous or inadequate and the legal basis of that finding. Similarly, in all circumstances in which the notes accompanying the Florida Standard Jury Instructions contain a recommendation that a certain type of instruction not be given, the trial judge may follow the recommendation unless the judge determines that the giving of such an instruction is necessary to accurately and sufficiently instruct the jury, in which event the judge shall give such instruction as the judge deems appropriate and necessary. In that event the trial judge shall state on the record or on a separate order the legal basis of the determination that such instruction is necessary.~~

FORM 1.986. VERDICTS

In all civil actions tried to a jury, the parties should refer to the model verdict forms contained in the Florida Standard Jury Instructions in Civil Cases, as applicable.

~~**(a) For Plaintiff: Damages.**~~

~~VERDICT~~

~~WE, the jury, find for plaintiff and assess his/her damages at $.....~~

~~DATED on .....~~

~~as Foreperson~~

~~**(b) For Defendant: General Form.**~~

~~VERDICT~~

~~WE, the jury, find for defendant.~~

~~DATED on .....~~

~~as Foreperson~~

APPENDIX C

Proposed Changes to Rules in Two-Column Format

Proposed changes:	**Reasons for change:**
RULE 1.071. CONSTITUTIONAL CHALLENGE TO STATE STATUTE OR COUNTY OR MUNICIPAL CHARTER, ORDINANCE, OR FRANCHISE; NOTICE BY PARTY A party that files a pleading, written motion, or other paper drawing into question the constitutionality of a state statute or a county or municipal charter, ordinance, or franchise must promptly (a) file a notice of constitutional question stating the question and identifying the paper that raises it; and (b) serve the notice and the pleading, written motion, or other paper drawing into question the constitutionality of a state statute or a county or municipal charter, ordinance, or franchise on the Attorney General or the state attorney of the judicial circuit in which the action is pending, by either certified or registered mail. Service of the notice and pleading, written motion, or other paper does not require joinder of the Attorney General or the state attorney as a party to the action. **Committee Notes** **2010 Adoption.** This rule clarifies that, with respect to challenges to a state statute or municipal charter, ordinance, or franchise, service of the notice does not require joinder of the Attorney General or the state attorney as a party to the action;	Section 86.091, Florida Statutes, requires notice to the state when a constitutional challenge to a statute is being made.

however, consistent with section 86.091, Florida Statutes, the Florida Attorney General or applicable state attorney has the discretion to participate and be heard on matters affecting the constitutionality of a statute. See, *e.g.*, *Mayo v. National Truck Brokers, Inc.*, 220 So. 2d 11 (Fla. 1969); *State ex rel. Shevin v. Kerwin*, 279 So. 2d 836 (Fla. 1973) (Attorney General may choose to participate in appeal even though he was not required to be a party at the trial court). The rule imposes a new requirement that the party challenging the statute, charter, ordinance, or franchise file verification with the court of compliance with section 86.091, Florida Statutes. See form 1.975.	

Proposed changes:	**Reasons for change:**
RULE 1.080. SERVICE OF PLEADINGS AND PAPERS **(a)** [NO CHANGE] **(b) Service; How Made.** When service is required or permitted to be made upon a party represented by an attorney, service shall be made upon the attorney unless service upon the party is ordered by the court. Service on the attorney or party shall be made by delivering a copy or mailing it to the attorney or the party at the last known address or, if no address is known, by leaving it with the clerk of the court. Service by mail shall be complete upon mailing. Delivery of a copy within this rule shall be complete upon: (1) handing it to the attorney or to the party, (2) leaving it at the attorney's or party's office with a clerk or other person in charge thereof, (3) if there is no one in charge, leaving it in a conspicuous place therein, (4) if the office is closed or the person to be served has no office, leaving it at the person's usual place of abode with some person of his or her family above 15 years of age and informing such person of the contents, or (5) transmitting it by facsimile to the attorney's or party's office with a cover sheet containing the sender's name, firm, address, telephone number, and facsimile number, and the number of pages transmitted. When service is made by facsimile, a copy shall also be served by any other method permitted by this rule. Facsimile service occurs when transmission is complete. Service by delivery after 5:00 p.m. shall be deemed ~~to have been made on the next day that is not a Saturday, Sunday, or legal holiday~~as if it had been made by mailing on the date of delivery.	To provide that a delivery made after 5:00 p.m. is deemed as if it had been made by mail (*i.e.*, completed upon mailing).

(c) [NO CHANGE] **(d) Filing.** All original papers shall be filed with the court either before service or immediately thereafter, unless otherwise provided for by general law or other rules. If the original of any bond or other paper is not placed in the court file, a certified copy shall be so placed by the clerk. **(e)** [NO CHANGE] **(f)** [NO CHANGE] **(g)** [NO CHANGE] **(h)** [NO CHANGE] **Committee Notes** **2010 Amendment.** Subdivision (b) is amended to comport with *Castillo v. Vlaminck de Castillo*, 771 So. 2d 609 (Fla. 3d DCA 2000), so that a delivery made after 5:00 p.m. is deemed as if it had been made by mail (*i.e.*, completed upon mailing), but it will also give the additional time after service by mail provided under rule 1.090(e).	To standardize rules of procedure on service of process.

Proposed changes:	Reasons for change:
RULE 1.100. PLEADINGS AND MOTIONS **(a)** [NO CHANGE] **(b)** [NO CHANGE] **(c) Caption.** (1) Every pleading, motion, order, judgment, or other paper shall have a caption containing the name of the court, the file number, and except for in rem proceedings, including forfeiture proceedings, the name of the first party on each side with an appropriate indication of other parties, and a designation identifying the party filing it and its nature or the nature of the order, as the case may be. In any in rem proceeding, every pleading, motion, order, judgment, or other paper shall have a caption containing the name of the court, the file number, the style "In re" (followed by the name or general description of the property), and a designation of the person or entity filing it and its nature or the nature of the order, as the case may be. In an in rem forfeiture proceeding, the style shall be "In re forfeiture of" (followed by the name or general description of the property). All papers filed in the action shall be styled in such a manner as to indicate clearly the subject matter of the paper and the party requesting or obtaining relief.[1] (2) A civil cover sheet (form 1.997) shall be completed and filed with the clerk at the time an initial complaint or petition is filed by the party initiating the action. If the cover sheet is not filed, the clerk shall accept the complaint or petition	The amendments provide a case caption specifically for in rem forfeiture proceedings, which is consistent with that set forth in section 932.704(5)(a), Florida Statutes.

for filing; but all proceedings in the action shall be abated until a properly executed cover sheet is completed and filed. The clerk shall complete the civil cover sheet for a party appearing pro se. (3) A final disposition form (form 1.998) shall be filed with the clerk by the prevailing party at the time of the filing of the order or judgment which disposes of the action. If the action is settled without a court order or judgment being entered, or dismissed by the parties, the plaintiff or petitioner immediately shall file a final disposition form (form 1.998) with the clerk. The clerk shall complete the final disposition form for a party appearing pro se, or when the action is dismissed for lack of prosecution pursuant to rule 1.420(e). **(d)** [NO CHANGE] [1]E.g., "Order Denying Plaintiff's Motion for Summary Judgment," "Defendant's Motion to Compel," "Order Denying Defendant's Motion to Dismiss," "Final Judgment for Plaintiff," etc. **Committee Notes** **2010 Amendment.** Subdivision (c) is amended to address separately the caption for in rem proceedings, including in rem forfeiture proceedings.	

Proposed changes:	Reasons for change:
RULE 1.285. INADVERTENT DISCLOSURE OF PRIVILEGED MATERIALS **(a) Assertion of Privilege as to Inadvertently Disclosed Materials.** Any party, person, or entity, after inadvertent disclosure of any materials pursuant to these rules, may thereafter assert any privilege recognized by law as to those materials. This right exists without regard to whether the disclosure was made pursuant to formal demand or informal request. In order to assert the privilege, the party, person, or entity shall, within 10 days of actually discovering the inadvertent disclosure, serve written notice of the assertion of privilege on the party to whom the materials were disclosed. The notice shall specify with particularity the materials as to which the privilege is asserted, the nature of the privilege asserted, and the date on which the inadvertent disclosure was actually discovered. **(b) Duty of the Party Receiving Notice of an Assertion of Privilege.** A party receiving notice of an assertion of privilege under subdivision (a) shall promptly return, sequester, or destroy the materials specified in the notice, as well as any copies of the material. The party receiving the notice shall also promptly notify any other party, person, or entity to whom it has disclosed the materials of the fact that the notice has been served and of the effect of this rule. That party shall also take reasonable steps to retrieve the materials disclosed. Nothing herein affects any obligation pursuant to R. Regulating Fla. Bar 4-4.4(b). **(c) Right to Challenge Assertion of Privilege.** Any	New rule is proposed to address the problem of inadvertent disclosure of privileged communications

party receiving a notice made under subdivision (a) has the right to challenge the assertion of privilege. The grounds for the challenge may include, but are not limited to, the following: (1) The materials in question are not privileged. (2) The disclosing party, person, or entity lacks standing to assert the privilege. (3) The disclosing party, person, or entity has failed to serve timely notice under this rule. (4) The circumstances surrounding the production or disclosure of the materials warrant a finding that the disclosing party, person, or entity has waived its assertion that the material is protected by a privilege. Any party seeking to challenge the assertion of privilege shall do so by serving notice of its challenge on the party, person, or entity asserting the privilege. Notice of the challenge shall be served within 20 days of service of the original notice given by the disclosing party, person, or entity. The notice of the recipient's challenge shall specify the grounds for the challenge. Failure to serve timely notice of challenge is a waiver of the right to challenge. **(d) Resolution of Disputes as to Asserted Privileges.** If notices contemplated by subdivisions (a) and (c) have been served, any party, person, or entity that has served a notice contemplated by subdivisions (a) and (c) may apply to the court for an order resolving the dispute framed by the notices. In resolving disputes as to the asserted privilege, the court may consider, in addition to the issues framed by the notices, the following:	

(1) The reasonableness of the precautions that the disclosing party, person, or entity had taken to prevent inadvertent disclosure. (2) The scope of discovery. (3) The extent of the disclosure. (4) Whether the interests of justice would be served by relieving the disclosing party, person, or entity of its error. (5) Any other factor necessary to meet the best interests of justice. **(e) Effect of Determination that Privilege Applies.** When an order is entered determining that materials are privileged or that the right to challenge the privilege has been waived, the court shall direct what shall be done with the materials and any copies so as to preserve all rights of appellate review. The recipient of the materials shall also give prompt notice of the court's determination to any other party, person, or entity to whom it had disclosed the materials.	

Proposed changes:	Reasons for change:
Rule 1.310. Depositions Upon Oral Examination **(a)** [NO CHANGE] **(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. Any subpoena served on the person to be examined shall state the method or methods for recording the testimony. **(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	To ensure that a deponent gets notice of the method by which the deposition will be recorded.

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. Rule 1.351 provides the exclusive procedure for obtaining documents or things by subpoena from nonparties without deposing the custodian or other person in possession of the documents. (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	To prevent the use of rules 1.310 and 1.410 to request documents from nonparties pursuant to a subpoena without giving the opposing party the opportunity to object to the subpoena before it is served on the nonparty as required by rule 1.351.

party's own initial expense.

(c) [NO CHANGE]

(d) [NO CHANGE]

(e) [NO CHANGE]

(f) [NO CHANGE]

(g) [NO CHANGE]

(h) [NO CHANGE]

Committee Notes

2010 Amendment. Subdivision (b)(5) is amended to clarify that the procedure set forth in rule 1.351 must be followed when requesting or receiving documents or things without testimony, from nonparties pursuant to a subpoena. The amendment is intended to prevent the use of rules 1.310 and 1.410 to request documents from nonparties pursuant to a subpoena without giving the opposing party the opportunity to object to the subpoena before it is served on the nonparty as required by rule 1.351.

Proposed changes:	**Reasons for change:**
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 on a subject included therein shall be ~~in~~from the form approved by the court. A party may serve fewer than all of the approved interrogatories within a form. 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	To provide that the standard form interrogatories do not need to be propounded exactly as set forth by the Supreme Court, when a particular approved interrogatory is not necessary or appropriate.

interrogatories may move for an order under rule 1.380(a) on any objection to or other failure to answer an interrogatory. **(b)** [NO CHANGE] **(c)** [NO CHANGE] **(d)** [NO CHANGE] **(e)** [NO CHANGE]	

Proposed changes:	Reasons for change:
RULE 1.351. PRODUCTION OF DOCUMENTS AND THINGS WITHOUT DEPOSITION	
(a) Request; Scope. A party may seek inspection and copying of any documents or things within the scope of rule 1.350(a) from a person who is not a party by issuance of a subpoena directing the production of the documents or things when the requesting party does not seek to depose the custodian or other person in possession of the documents or things. <u>This rule provides the exclusive procedure for obtaining documents or things by subpoena from nonparties without deposing the custodian or other person in possession of the documents or things pursuant to rule 1.310.</u>	To prevent the use of rules 1.310 and 1.410 to request documents from nonparties pursuant to a subpoena without giving the opposing party the opportunity to object to the subpoena before it is served on the nonparty as required by rule 1.351.
(b) [NO CHANGE]	
(c) Subpoena. If no objection is made by a party under subdivision (b), an attorney of record in the action may issue a subpoena or the party desiring production shall deliver to the clerk for issuance a subpoena together with a certificate of counsel or pro se party that no timely objection has been received from any party, and the clerk shall issue the subpoena and deliver it to the party desiring production. <u>Service within the state of Florida of a nonparty subpoena shall be deemed sufficient if it complies with rule 1.410(d) or if (1) service is accomplished by mail or hand delivery by a commercial delivery service, and (2) written confirmation of delivery, with the date of service and the name and signature of the person accepting the subpoena, is obtained and filed by the party seeking production.</u> The subpoena	So U.S. mail and other commercial delivery can be used for service of subpoenas on nonparties.

shall be identical to the copy attached to the notice and shall specify that no testimony may be taken and shall require only production of the documents or things specified in it. The subpoena may give the recipient an option to deliver or mail legible copies of the documents or things to the party serving the subpoena. The person upon whom the subpoena is served may condition the preparation of copies on the payment in advance of the reasonable costs of preparing the copies. The subpoena shall require production only in the county of the residence of the custodian or other person in possession of the documents or things or in the county where the documents or things are located or where the custodian or person in possession usually conducts business. If the person upon whom the subpoena is served objects at any time before the production of the documents or things, the documents or things shall not be produced under this rule, and relief may be obtained pursuant to rule 1.310.

(d) [NO CHANGE]

(e) [NO CHANGE]

(f) [NO CHANGE]

Committee Notes

2010 Amendment. Subdivision (a) is amended to clarify that the procedure set forth in rule 1.351, not rule 1.310, shall be followed when requesting or receiving documents or things, without testimony, from nonparties pursuant to a subpoena.

Proposed changes:	Reasons for change:
RULE 1.360. EXAMINATION OF PERSONS **(a) Request; Scope.** (1) Any party may request any other party to submit to, or to produce a person in that other party's custody or legal control for, examination by a qualified expert when the condition which is the subject of the requested examination is in controversy. (A) When the physical condition of a party or other person under subdivision (a)(1) is in controversy, the request may be served on the plaintiff without leave of court after commencement of the action, and on any other person with or after service of the process and initial pleading on that party. The request shall specify a reasonable time, place, manner, conditions, and scope of the examination and the person or persons by whom the examination is to be made. The party to whom the request is directed shall serve a response within 30 days after service of the request, except that a defendant need not serve a response until 45 days after service of the process and initial pleading on that defendant. The court may allow a shorter or longer time. The response shall state that the examination will be permitted as requested unless the request is objected to, in which event the reasons for the objection shall be stated. <u>If the examination is to be recorded or observed by others, the request or response shall also include the number of people attending, their role, and the method or methods of recording.</u>	To give the physician or other health care practitioner notice of how many people will be at the examination.

(B) In cases where the condition in controversy is not physical, a party may move for an examination by a qualified expert as in subdivision (a)(1). The order for examination shall be made only after notice to the person to be examined and to all parties, and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made. (C) Any minor required to submit to examination pursuant to this rule shall have the right to be accompanied by a parent or guardian at all times during the examination, except upon a showing that the presence of a parent or guardian is likely to have a material, negative impact on the minor's examination. (2) An examination under this rule is authorized only when the party submitting the request has good cause for the examination. At any hearing the party submitting the request shall have the burden of showing good cause. (3) Upon request of either party requesting the examination, or the party or person to be examined, the court may establish protective rules governing such examination. **(b)** [NO CHANGE] **(c)** [NO CHANGE]	

Proposed changes:	Reasons for change:
RULE 1.410. SUBPOENA	
(a) [NO CHANGE]	
(b) [NO CHANGE]	
(c) [NO CHANGE]	
(d) Service. A subpoena may be served by any person authorized by law to serve process or by any other person who is not a party and who is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made as provided by law. Proof of such service shall be made by affidavit of the person making service <u>except as applicable under rule 1.351(c) for the production of documents and things by a nonparty without deposition,</u> if not served by an officer authorized by law to do so.	In conjunction with rule 1.351(c), so U.S. mail and other commercial delivery can be used for service of subpoenas on nonparties.
(e) Subpoena for Taking Depositions.	
(1) Filing a notice to take a deposition as provided in rule 1.310(b) or 1.320(a) with a certificate of service on it showing service on all parties to the action constitutes an authorization for the issuance of subpoenas for the persons named or described in the notice by the clerk of the court in which the action is pending or by an attorney of record in the action. <u>The subpoena shall state the method for recording the testimony.</u> The subpoena may command the person to whom it is directed to produce designated books, papers, documents, or tangible things that constitute or contain evidence relating to any of the matters	To ensure that a deponent gets notice of the method by which the deposition will be recorded.

within the scope of the examination permitted by rule 1.280(b), but in that event the subpoena will be subject to the provisions of rule 1.280(c) and subdivision (c) of this rule. Within 10 days after its service, or on or before the time specified in the subpoena for compliance if the time is less than 10 days after service, the person to whom the subpoena is directed may serve written objection to inspection or copying of any of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the court from which the subpoena was issued. If objection has been made, the party serving the subpoena may move for an order at any time before or during the taking of the deposition upon notice to the deponent. (2) A person may be required to attend an examination only in the county wherein the person resides or is employed or transacts business in person or at such other convenient place as may be fixed by an order of court. **(f)** [NO CHANGE] **(g)** [NO CHANGE] **(h)** [NO CHANGE]	

Proposed changes:	Reasons for change:
RULE 1.420. DISMISSAL OF ACTIONS	
(a) Voluntary Dismissal.	
(1) By Parties. Except in actions in which property has been seized or is in the custody of the court, an action, a claim, or any part of an action or claim may be dismissed by plaintiff without order of court (A) before trial by serving, or during trial by stating on the record, a notice of dismissal at any time before a hearing on motion for summary judgment, or if none is served or if the motion is denied, before retirement of the jury in a case tried before a jury or before submission of a nonjury case to the court for decision, or (B) by filing a stipulation of dismissal signed by all current parties ~~who have appeared in~~to the action. Unless otherwise stated in the notice or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication on the merits when served by a plaintiff who has once dismissed in any court an action based on or including the same claim.	The proposed change to (a)(1) would allow voluntary dismissal of part, not just all, of an action. The change to (a)(1)(B) is proposed so that only parties still in litigation have to sign the stipulation of dismissal.
(2) By Order of Court; If Counterclaim. Except as provided in subdivision (a)(1) of this rule, an action shall not be dismissed at a party's instance except on order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been served by a defendant prior to the service upon the defendant of the plaintiff's notice of dismissal, the action shall not be dismissed against defendant's objections unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified	

in the order, a dismissal under this paragraph is without prejudice. **(b)** [NO CHANGE] **(c)** [NO CHANGE] **(d)** **Costs.** Costs in any action dismissed under this rule shall be assessed and judgment for costs entered in that action, once the action is concluded as to the party seeking taxation of costs. When one or more other claims remain pending following dismissal of any claim under this rule, taxable costs attributable solely to the dismissed claim may be assessed and judgment for costs in that claim entered in the action, but only when all claims are resolved at the trial court level as to the party seeking taxation of costs. If a party who has once dismissed a claim in any court of this state commences an action based upon or including the same claim against the same adverse party, the court shall make such order for the payment of costs of the claim previously dismissed as it may deem proper and shall stay the proceedings in the action until the party seeking affirmative relief has complied with the order. **(e)** [NO CHANGE] **(f)** [NO CHANGE]	This change follows the first change to subdivision (a)(1), allowing for assessment of costs when an action is concluded as to a party seeking taxation of costs but other claims remain pending in the case.

Proposed changes:	**Reasons for change:**
RULE 1.442. PROPOSALS FOR SETTLEMENT **(a)** [NO CHANGE] **(b)** [NO CHANGE] **(c) Form and Content of Proposal for Settlement.** (1) A proposal shall be in writing and shall identify the applicable Florida law under which it is being made. (2) A proposal shall: (A) name the party or parties making the proposal and the party or parties to whom the proposal is being made; (B) identify the claim or claims the proposal is attempting to resolve; (C) state with particularity any relevant conditions; (D) state the total amount of the proposal and state with particularity all nonmonetary terms of the proposal; (E) state with particularity the amount proposed to settle a claim for punitive damages, if any;	

(F) state whether the proposal includes attorneys' fees and whether attorneys' fees are part of the legal claim; and (G) include a certificate of service in the form required by rule 1.080(f). (3) A proposal may be made by or to any party or parties and by or to any combination of parties properly identified in the proposal. A joint proposal shall state the amount and terms attributable to each party. (4) Notwithstanding subdivision (c)(3), when a party is alleged to be solely vicariously, constructively, derivatively, or technically liable, whether by operation of law or by contract, a joint proposal made by or served on such a party need not state the apportionment or contribution as to that party. Acceptance by any party shall be without prejudice to rights of contribution or indemnity. **(d)** [NO CHANGE] **(e)** [NO CHANGE] **(f)** [NO CHANGE] **(g)** [NO CHANGE] **(h)** [NO CHANGE] **(i)** [NO CHANGE]	To address situations when a vicariously liable party is involved.

(j) [NO CHANGE]	

Proposed changes:	Reasons for change:
RULE 1.470. EXCEPTIONS UNNECESSARY; JURY INSTRUCTIONS **(a) Adverse Ruling.** For appellate purposes no exception shall be necessary to any adverse ruling, order, instruction, or thing whatsoever said or done at the trial or prior thereto or after verdict, which was said or done after objection made and considered by the trial court and which affected the substantial rights of the party complaining and which is assigned as error.	
(b) Instructions to Jury. The Florida Standard Jury Instructions appearing on the court's website at www.floridasupremecourt.org/jury_instructions/instructions.shtml shall be used by the trial judges of this state in instructing the jury in civil actions to the extent that the Standard Jury Instructions are applicable, unless the trial judge determines that an applicable Standard Jury Instruction is erroneous or inadequate. If the trial judge modifies a Standard Jury Instruction or gives such other instruction as the judge determines necessary to accurately and sufficiently instruct the jury, upon timely objection to the instruction, the trial judge shall state on the record or in a separate order the legal basis for varying from the Standard Jury Instruction. Similarly, in all circumstances in which the notes accompanying the Florida Standard Jury Instructions contain a recommendation that a certain type of instruction not be given, the trial judge shall follow the recommendation unless the judge determines that the giving of such an instruction is necessary to accurately and sufficiently instruct the jury, in which event the judge shall give such instruction as the judge deems appropriate	This proposed rules change relocates the content of form 1.985 to the more appropriate location in the specific rule on jury instructions, rule 1.470; updates the wording to current civil rule language standards; makes an applicable standard instruction a requirement unless a litigant makes a showing otherwise; and adds the requirement for contemporaneous objection to improper or misleading jury instructions.

and necessary. If the trial judge does not follow such a recommendation of the Florida Standard Jury Instructions, upon timely objection to the instruction, the trial judge shall state on the record or in a separate order the legal basis of the determination that such instruction is necessary. Not later than at the close of the evidence, the parties shall file written requests that the court instruct the jury on the law set forth in such requests. The court shall then require counsel to appear before it to settle the instructions to be given. At such conference, all objections shall be made and ruled upon and the court shall inform counsel of such instructions as it will give. No party may assign as error the giving of any instruction unless that party objects thereto at such time, or the failure to give any instruction unless that party requested the same. The court shall orally instruct the jury before or after the arguments of counsel and may provide appropriate instructions during the trial. If the instructions are given prior to final argument, the presiding judge shall give the jury final procedural instructions after final arguments are concluded and prior to deliberations. The court shall provide each juror with a written set of the instructions for his or her use in deliberations. The court shall file a copy of such instructions.

(c) Orders on New Trial, Directed Verdicts, etc. It shall not be necessary to object or except to any order granting or denying motions for new trials, directed verdicts, or judgments non obstante veredicto or in arrest of judgment to entitle the party against whom such ruling is made to have the same reviewed by an appellate court.

Committee Notes

2010 Amendment. Portions of form 1.985 were modified and moved to subdivision (b) of rule 1.470 to require the court to use published standard instructions where applicable and necessary, to permit the judge to vary from the published standard jury instructions and notes only when necessary to accurately and sufficiently instruct the jury, and to require the parties to object to preserve error in variance from published standard jury instructions and notes.	

Proposed changes:	Reasons for change:
RULE 1.480. MOTION FOR A DIRECTED VERDICT **(a)** [NO CHANGE] **(b) Reservation of Decision on Motion.** When a motion for a directed verdict ~~made at the close of all of the evidence~~ is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Within 10 days after the return of a verdict, a party who has timely moved for a directed verdict may serve a motion to set aside the verdict and any judgment entered thereon and to enter judgment in accordance with the motion for a directed verdict. If a verdict was not returned, a party who has timely moved for a directed verdict may serve a motion for judgment in accordance with the motion for a directed verdict within 10 days after discharge of the jury. **(c)** [NO CHANGE] **Committee Notes** **2010 Amendment.** Subdivision (b) is amended to conform to 2006 changes to Federal Rule of Civil Procedure 50(b) eliminating the requirement for renewing at the close of all the evidence a motion for directed verdict already made at the close of an adverse party's evidence.	To eliminate the requirement for renewing at the close of all the evidence a motion for directed verdict already made at the close of an adverse party's evidence.

Proposed changes:	**Reasons for change:**
RULE 1.510. SUMMARY JUDGMENT **(a)** [NO CHANGE] **(b)** [NO CHANGE] **(c) Motion and Proceedings Thereon.** The motion shall state with particularity the grounds upon which it is based and the substantial matters of law to be argued and shall specifically identify any affidavits, answers to interrogatories, admissions, depositions, and other materials as would be admissible in evidence ("summary judgment evidence") on which the movant relies. The movant shall serve the motion at least 20 days before the time fixed for the hearing, and shall also serve at that time ~~copies~~a copy of any summary judgment evidence on which the movant relies that has not already been filed with the court. The adverse party shall identify, by notice mailed to the movant's attorney at least 5 days prior to the day of the hearing, or delivered no later than 5:00 p.m. 2 business days prior to the day of the hearing, any summary judgment evidence on which the adverse party relies. To the extent ~~such~~that summary judgment evidence has not already been filed with the court, the adverse party shall serve ~~copies~~a copy on the movant by ~~mailing them~~mail at least 5 days prior to the day of the hearing, or by ~~delivering them~~delivery to the movant's attorney no later than 5:00 p.m. 2 business days prior to the day of hearing. The judgment sought shall be rendered forthwith if the pleadings~~, depositions, answers to interrogatories, and admissions, affidavits, and other materials as would be admissible in~~ and summary judgment evidence on file show that there is no genuine issue as to any material fact and	The proposed changes are to improve the rule grammatically and for clarity.

that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages. **(d)** [NO CHANGE] **(e)** [NO CHANGE] **(f)** [NO CHANGE] **(g)** [NO CHANGE]	

Proposed changes:	**Reasons for change:**
RULE 1.525. MOTIONS FOR COSTS AND ATTORNEYS' FEES Any party seeking a judgment taxing costs, attorneys' fees, or both shall serve a motion no later than 30 days after filing of the judgment, including a judgment of dismissal, or the service of a notice of voluntary dismissal<u>, which judgment or notice concludes the action as to that party</u>.	This language as added because of proposed amendments to rule 1.420, allowing for voluntary dismissal of part, not just all, of an action.

APPENDIX D

Background Documents
(referral letters, administrative orders, relevant legislation)

RE: RULE 1.071

Fed. R. Civ. P. 5.1. Constitutional Challenge to a Statute--Notice, Certification, and Intervention

(a) Notice by a Party. A party that files a pleading, written motion, or other paper drawing into question the constitutionality of a federal or state statute must promptly:

(1) file a notice of constitutional question stating the question and identifying the paper that raises it, if:

(A) a federal statute is questioned and the parties do not include the United States, one of its agencies, or one of its officers or employees in an official capacity; or

(B) a state statute is questioned and the parties do not include the state, one of its agencies, or one of its officers or employees in an official capacity; and

(2) serve the notice and paper on the Attorney General of the United States if a federal statute is questioned--or on the state attorney general if a state statute is questioned--either by certified or registered mail or by sending it to an electronic address designated by the attorney general for this purpose.

(b) Certification by the Court. The court must, under 28 U.S.C. § 2403, certify to the appropriate attorney general that a statute has been questioned.

(c) Intervention; Final Decision on the Merits. Unless the court sets a later time, the attorney general may intervene within 60 days after the notice is filed or after the court certifies the challenge, whichever is earlier. Before the time to intervene expires, the court may reject the constitutional challenge, but may not enter a final judgment holding the statute unconstitutional.

(d) No Forfeiture. A party's failure to file and serve the notice, or the court's failure to certify, does not forfeit a constitutional claim or defense that is otherwise timely asserted.

Fla. Stat. 86.091. Parties

When declaratory relief is sought, all persons may be made parties who have or claim any interest which would be affected by the declaration. No declaration shall prejudice the rights of persons not parties to the proceedings. In any proceeding concerning the validity of a county or municipal charter, ordinance, or franchise, such county or municipality shall be made a party and shall be entitled to be heard. If the statute, charter, ordinance, or franchise is alleged to be unconstitutional, the Attorney General or the state attorney of the judicial circuit in which the action is pending shall be served with a copy of the complaint and be entitled to be heard.

RE: RULE 1.080(b)

[by e-mail 3/8/06]

Dear Adrienne:

I would like to propose two changes to the rules that, based on decided cases, have already held that the literal language of the rule leads to an absurd or illogical results.

The first one involves Florida Rule of Civil Procedure 1.080(b). As our opinion states in *Castillo v. Vlamick de Castillo*, 771 So. 2d 609 (Fla. 3d DCA 2000), states, "a literal interpretation of the wording of rule 1.080(b) leads to an absurd result which could not possibly have been contemplated by its drafters." The court explained:

> Under the pertinent provisions of the rule, had Vlaminck **mailed** the motion [for rehearing] at 11:59 p.m. on the day in question, service would have been complete and timely even though Castillo's lawyers would not have actually received it for two to three days thereafter. On the other hand, the same motion, **hand-delivered** to Castillo's attorneys at 5:01 p.m. on the same day, is untimely. This scenario makes absolutely no sense, and we refuse to elevate mere form to such an unthinkable level above substance.

The date of service was crucial because it determined whether the motion for new trial was timely, which in turn affected the timeliness of the appeal. I have quoted the pertinent parts of the case for your convenience.

I thus propose we amend the rule so that delivery is treated the same as mailing or facsimile transmission, that is, complete upon delivery as follows:

> **Rule 1.080. Service of Pleadings and Papers**
>
> (b) **Service; How Made**. When service is required or permitted to be made upon a party represented by an attorney, service shall be made upon the attorney unless service upon the party is ordered by the court. Service on the attorney or party shall be made by delivering a copy or mailing it to the attorney or the party at the last known address or, if no address is known, by leaving it with the clerk of the court. Service by mail shall be complete upon mailing. Delivery of a copy within this rule shall be complete upon: (1) handing it to the attorney or to the party, (2) leaving it at the attorney's or party's office with a clerk or other person in charge thereof, (3) if there is no one in charge, leaving it in a conspicuous place therein, (4) if the office is closed or the person to be served has no office, leaving it at the person's usual place of abode with some person of his or her family above 15 years of age and informing such person of the contents, or (5) transmitting it by facsimile to the attorney's or party's office with a cover sheet containing the sender's name, firm, address, telephone number, and facsimile number, and the number of pages transmitted. When service is made by facsimile, a copy shall also be served by any other method permitted by this rule. Facsimile service occurs when transmission is complete. Service by delivery after 5:00 p.m. shall be deemed to have been made on the ~~next~~ day that ~~is not a Saturday, Sunday, or legal holiday~~ <u>the delivery was made</u>.

Another option would be:

> …Facsimile service <u>or delivery</u> occurs when transmission <u>or delivery</u> is complete. ~~Service by delivery after 5:00 p.m. shall be deemed to have been made on the day that is not a Saturday, Sunday, or legal holiday~~.

Castillo v. Vlaminck de Castillo
771 So. 2d 609 (Fla. 3d DCA 2000)

PER CURIAM.

Rafael Castillo appeals the lower court's entry of a final judgment in favor of Martha Vlaminck de Castillo (Vlaminck), and the lower court's order granting Vlaminck's motion for new trial.

We affirm on all issues, and choose to discuss only one, the timeliness of Vlaminck's motion for new trial.

Under Florida Rule of Civil Procedure 1.530(b), a motion for new trial "shall be served not later than 10 days after the return of the verdict." The methods of service are set forth in rule 1.080(b), Florida Rules of Civil Procedure, which states in pertinent part:

> Service on the attorney or party shall be made by delivering a copy or mailing it to the attorney or the party at the last known address or, if no address is known, by leaving it with the clerk of the court. Service by mail shall be complete upon mailing. Delivery of a copy within this rule shall be complete upon: (1) handing it to the attorney or to the party, (2) leaving it at the attorney's or party's office with a clerk or other person in charge thereof, (3) if there is no one in charge, leaving it in a conspicuous place therein, (4) if the office is closed or the person to be served has no office, leaving it at the person's place of abode with some person of his or her family above 15 years of age and informing such person of the contents, or (5) transmitting it by facsimile to the attorney's or party's office with a cover sheet containing the sender's name, firm, address, telephone number, and facsimile number, and the number of pages transmitted. When service is made by facsimile, a copy shall also be served by any other method permitted by this rule. Facsimile service occurs when transmission is complete. Service by delivery after 5:00 p.m. shall be deemed to have been made on the next day that is not a Saturday, Sunday, or legal holiday.

Castillo argues that the language of rule 1.080 is clear and unambiguous when it states that service by delivery after 5:00 p.m. shall be deemed to have been made on the next day. Castillo points out that since Vlaminck hand-delivered her motion for new trial after 5:00 p.m. on August 16, 1999, service must be deemed to have been made on the eleventh day after the jury returned its verdict, and as such, untimely under rule 1.530. Vlaminck counters that the time requirement in rule 1.080 was added in 1992 to address facsimile transmissions only. Furthermore, she argues that it would be absurd to read rule 1.080 as requiring her motion for new trial to be deemed untimely because it was delivered after 5:00 p.m. We agree with Vlaminck that a literal interpretation of rule 1.080(b)'s time restriction leads to an unreasonable and absurd result.

Court rules are construed under the same principles of construction that apply to statutes. One of the fundamental rules of construction dictates that when the language under review is unambiguous and conveys a clear meaning, it must be given its plain and ordinary meaning. However, that principle is tempered by another cardinal tenet of statutory construction that cautions against giving a literal interpretation if doing so would lead to an unreasonable or absurd conclusion, plainly at variance with the purpose of the legislation as a whole.

We conclude that a literal interpretation of the wording of rule 1.080(b) leads to an absurd result which could not possibly have been contemplated by its drafters. Under the pertinent

provisions of the rule, had Vlaminck mailed the motion at 11:59 p.m. on the day in question, service would have been complete and timely even though Castillo's lawyers would not have actually received it for two to three days thereafter. On the other hand, the same motion, hand-delivered to Castillo's attorneys at 5:01 p.m. on the same day, is untimely. This scenario makes absolutely no sense, and we refuse to elevate mere form to such an unthinkable level above substance.

The essential requirement of rule 1.530 is that motions for new trial be served by the tenth day after the jury returns its verdict; that was done in this case. Vlaminck's counsel entrusted the motion for new trial to a courier at around 4:00 p.m. on August 16, 1999, the tenth day following the jury's verdict. Despite the short distance between opposing counsels' offices, however, Vlaminck's courier did not arrive at the office of Castillo's counsel until shortly after 5:00 p.m. Based on the facts of this case, we conclude that Vlaminck's motion was timely served on the tenth day following the jury's verdict.[1]

Affirmed.

* * *

Thank you for your attention to this matter.
Judge Juan Ramirez, Jr.
Third District Court of Appeal
2001 S.W. 117th Avenue
Miami, Florida 33175
(305) 229-3200 ext. 3216

[1] Our conclusion is supported by the Committee Notes to Florida Rule of Civil Procedure 1.080 (1992), which indicate that subsection (b) was amended to allow service by facsimile; and the Report of the Florida Bar Civil Procedure Rules Committee, submitted to the Florida Supreme Court in 1992, which reflects that the 5:00 p.m. deadline was added specifically to address concerns related to the facsimile-transmission amendment.

RE: RULE 1.080(d)

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~~August 20, 2007~~

The Honorable Robert T. Benton

DRAFT

301 South Martin Luther King, Jr. Boulevard
Tallahassee, Florida 32399-1850

Re: Recommended Changes to Florida Rule of Civil Procedure 1.080

Dear Judge Benton:

Florida Rule of Civil Procedure 1.080(d) requires service of a pleading or other paper before or immediately after the filing thereof. However, Rule 1.080 does not address the situation where a Florida Statute or another rule of procedure provides for the passage of a specific amount of time between the service of a pleading or other paper and its filing with the court.

For example, Florida Statutes Section 57.105(4) provides for a 21-day safe harbor between the *service* of a motion for sanctions and the *filing* of that motion with the court. The statute prohibits the *filing* of the motion for sanctions until after the expiration of 21 days from the time of *service* of the motion on the non-moving party. Similarly, Florida Rule of Civil Procedure 1.442 (addressing proposals for settlement) requires *service* but prohibits the *filing* of the proposal unless there is a need for court enforcement of the sanctions.

The Appellate Court Rules Committee (the "**ACRC**") has noted that there is a conflict between Section 57.105(4) and Florida Rule of Appellate Procedure 9.300. Although Section 57.105(4) provides a 21-day safe harbor between the *service* of a motion for sanctions and the *filing* thereof, Rule 9.300 provides that a non-movant must (if at all) *file* a response to the motion within 10 days after the *service* of the motion. Thus, under the Florida Rules of Appellate Procedure, the non-movant would be required to *file* a response to a motion served pursuant to Section 57.105(4) before the motion is ever *filed* with the court. In an effort to address this conflict, the ACRC is currently in the process of amending Rule 9.300 so that Rule 9.300 will allow for situations where a motion for sanctions is *served* pursuant to Section 57.105(4).

C1

In light of the conflict created by Section 57.105(4) and other similar statutes and rules that separate the filing and service requirements (that is to say, require or allow service and filing to happen *other than contemporaneously*), I recommend that Rule 1.080(d) [and (e)] be removed from the Rules of Civil Procedure and relocated in the Rules of Judicial Administration as new Rule 2.522 and be amended to read as follows:

(a) **Filing**. All original papers shall be filed with the court either before service or immediately thereafter. If the original of any bond or other paper is not placed in the court file, a certified copy shall be so placed by the clerk.

(a) **Filing and Service**. Unless otherwise required by general law or by a rule of procedure, all original papers shall be filed with the court and served contemporaneously on all other parties. If a statute or another rule of procedure provides for fling and service to occur other than contemporaneously, then the pleading or other paper shall be filed or served as provided by such statute or rule with due regarding for fair notice to all affected parties.

(b) **Filing Defined**. [No change from Rule 1.080(e)].

By moving the rule addressing filing to the Rules of Judicial Administration, all practice areas will be subject to the same rules and procedures. In addition, it will allow the separate practice areas to address unique problems without the clutter associated with addressing the basic filing and service requirements.

I believe that this relocation and revision of Rule 1.080(d) will remedy the procedural inconsistencies created by Section 57.105(4) and Rule 1.442, and similar procedures that require filing and service to be other than contemporaneous.

Sincerely yours,

THE SOLOMON TROPP LAW GROUP, P.A.

By:
Stanford R. Solomon

SRS/amf

C2

SOLOMON TROPP
1881 WEST KENNEDY BOULEVARD · TAMPA, FLORIDA 33606-1606 · (813) 225-1818 · (813) 225-1050

RE: RULE 1.110

F.S. 932.704. Forfeiture proceedings

* * *

(5)(a) The complaint shall be styled, “In RE: FORFEITURE OF” (followed by the name or description of the property). The complaint shall contain a brief jurisdictional statement, a description of the subject matter of the proceeding, and a statement of the facts sufficient to state a cause of action that would support a final judgment of forfeiture. The complaint must be accompanied by a verified supporting affidavit.

* * *

RE: RULE 1.285

June 13, 2007

The Florida Bar

Henry M. Coxe, III
President

John F. Harkness, Jr.
Executive Director

Francisco R. Angones
President-elect

Mr. Keith H. Park
Chair
Civil Procedure Rules Committee
Post Office Box 3563
West Palm Beach, Florida 33402-3563

Re: Attorney-Client Privilege Task Force

Dear Mr. Park:

On June 1, 2007, Marcos D. Jimenez, the chair of The Florida Bar's Attorney-Client Privilege Task Force gave its Interim Report to the Board of Governors. The Interim Report was accepted by the Board of Governors. The task force was appointed by me in response to the adoption of policies by a number of governmental agencies that may weaken the attorney-client privilege and the work product doctrine. Both the American Bar Association's Task Force on Attorney-Client Privilege and the National Conference of Chief Justices urged states to create a committee devoted to the preservation of the privilege and work product doctrine. Other state and local bars have also established committees to educate themselves on the issue and to assure that the privilege is protected.

The task force made ten recommendations in its Interim Report. Two of those recommendations directly affect the work and the purview of the Civil Procedure Rules Committee. By this letter, I refer both issues to the committee for review, comment and recommendation.

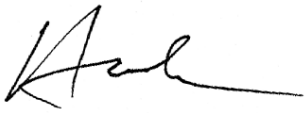
First, the task force has recommended that the concepts on inadvertent waiver of the attorney-client privilege and the work product protection contained in the American Bar Association's Recommendation 120D be adopted and referred to the Florida Bar Civil Procedure Rules Committee and the Florida Bar Code and Rules of Evidence Committee for the drafting of appropriate rules consistent with the concepts. The reasoning behind the task force's recommendation on inadvertent waiver is set forth in detail in the attached report.

Second, the task force has recommended that the issue of whether state rules and statutes governing civil procedure should be amended or adopted to protect from discovery draft expert reports and communications between an attorney and a testifying expert be referred to the Florida Bar Civil Procedure Rules Committee and the Florida Bar Code and Rules of Evidence Committee for review and consideration. Again, further information concerning the task force's recommendation is available in the Interim Report and background materials.

Please review and consider the recommendations of the Attorney-Client Privilege Task Force and make recommendations back to the Florida Bar's Board of Governors at your earliest convenience. For further information on these issues, feel free to contact Chair Jimenez at mjimenez@kennynachwalter.com or Mary Ellen Bateman at (850)561-5777 or at mbateman@flabar.org.

The board looks forward to receiving your input on these very important issues. Please let me know if you have any questions or concerns.

Sincerely,



Henry M. Coxe, III

cc:

Francisco R. Angones
John G. White, III
Corinne C. Hodak
Marcos D. Jimenez
Adele I. Stone
Ervin A. Gonzalez
Madelon Horwich

RE: RULE 1.310(b)(4)(A)

Fed. R. Civ. P. 45. Subpoena

(a) In General.

(1) ***Form and Contents.***

(A) *Requirements--In General.* Every subpoena must:

(i) state the court from which it issued;

(ii) state the title of the action, the court in which it is pending, and its civil-action number;

(iii) command each person to whom it is directed to do the following at a specified time and place: attend and testify; produce designated documents, electronically stored information, or tangible things in that person's possession, custody, or control; or permit the inspection of premises; and

(iv) set out the text of Rule 45(c) and (d).

(B) *Command to Attend a Deposition--Notice of the Recording Method.* A subpoena commanding attendance at a deposition must state the method for recording the testimony.

(C) *Combining or Separating a Command to Produce or to Permit Inspection; Specifying the Form for Electronically Stored Information.* A command to produce documents, electronically stored information, or tangible things or to permit the inspection of premises may be included in a subpoena commanding attendance at a deposition, hearing, or trial, or may be set out in a separate subpoena. A subpoena may specify the form or forms in which electronically stored information is to be produced.

(D) *Command to Produce; Included Obligations.* A command in a subpoena to produce documents, electronically stored information, or tangible things requires the responding party to permit inspection, copying, testing, or sampling of the materials.

(2) ***Issued from Which Court.*** **A subpoena must issue as follows:**

(A) for attendance at a hearing or trial, from the court for the district where the hearing or trial is to be held;

(B) for attendance at a deposition, from the court for the district where the deposition is to be taken; and

(C) for production or inspection, if separate from a subpoena commanding a person's attendance, from the court for the district where the production or inspection is to be made.

(3) ***Issued by Whom.*** The clerk must issue a subpoena, signed but otherwise in blank, to a party who requests it. That party must complete it before service. An attorney also may issue and sign a subpoena as an officer of:

(A) a court in which the attorney is authorized to practice; or

(B) a court for a district where a deposition is to be taken or production is to be made, if the attorney is authorized to practice in the court where the action is pending.

* * *

RE: RULE 1.340

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ROGER VAUGHAN
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KEVIN McLAUGHLIN
MICHAEL McLAUGHLIN

March 21, 2005

Robert Clarke, Esquire
Ausley & McMullen
327 South Calhoun Street
Tallahassee, FL 32301

Re: ***Florida Bar Civil Procedure Rules Committee***
***Request for Amendment of* Rule 1.340(a)**

Dear Mr. Clarke:

I write to you in your capacity as the Chair of the Florida Bar Civil Procedure Rules Committee. I request that the Committee consider an amendment of the following sentence contained in rule 1.340(a) regarding procedures for use of interrogatories to parties.

> If a party intends to propound an interrogatory on a matter covered by a form of interrogatory approved by the supreme court for the type of action, the initial interrogatory on such subject ~~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.

As amended, the new sentence would read:

> If a party intends to propound an interrogatory on a matter covered by a form of interrogatory approved by the supreme court for the type of action, the initial interrogatory on such subject shall be in the form approved by the court.

The reason for proposal is as follows. Currently it often occurs that some of the interrogatories included among those approved by the supreme court are interrogatories which a party does not

intend to propound, either because of prior knowledge regarding the matters covered by the interrogatory or a desire to reserve the limited number of interrogatories allowed for more important discovery. Under current procedures, on occasion, an opposing party will object to answering any interrogatories unless and until the standard form interrogatories are propounded exactly as set forth by the supreme court and then will insist that no more than 30 interrogatories will be answered without court order. This is wasteful of the time and money of the parties and wasteful of the time and money of the court.

By way of example, with regard to Form 1, the following interrogatories are quite frequently unnecessary or useless under the circumstances of the case involved. 1, 2, 3, 5, 6, 7, 9, 11, 12, 13 (so early in a case), 14, & 15. With regard to form 6, it is frequently unnecessary to inquire regarding the issues mentioned in interrogatory 16, 18, 19, 20, & 21. If all such automobile negligence interrogatories were asked, even though unneeded under the circumstances, a plaintiff would be left with only 7 additional interrogatories. In addition, interrogatories regarding experts and witness asked early in the case might conceivable be a limitation on the plaintiff's ability to ask additional interrogatories on the subject at a later date.

you for your consideration of this matter and I would appreciate being notified when the is to be considered by the Committee.

Very truly

Bill Wagner

BW/vak

cc: Madelon Horwich

RE: RULE 1.351(c)

"DAVID MCNABB" <MCNABBD@HillsboroughCounty.ORG>
05/24/2006 11:36 AM

To <mhorwich@flabar.org>, <apromoff@mindspring.com>
cc "SHARON CARTER" <CARTERS@HillsboroughCounty.ORG>, "DAVID MCNABB"
bcc
Subject Change to Rule 1.351 (c) & Rule 1.410 (d) Fla.R.Civ.P.

Adrienne F. Promoff, Esquire
Chairman, Civil Procedures Rules Committee

The following is a proposed change to the Fla.R.Civ.P. that would allow serving subpoenas for documents and things without deposition on non-parties by U. S. Mail. For such a procedure to be effective changes should be made to both **Rule 1.351. Production of documents and things without deposition (c) Subpoena.** (See attachment 1) and **Rule 1.410. Subpoena (d) Service.** (See attachment 2). Serving this type of subpoena to non-parties by U. S. Mail is effective, efficient and will assist in controlling costs. My rationale in proposing these changes is provided below.

As you know, **Subpoenas Duces Tecum Without Deposition** are sent to non-party record holders or custodians. These subpoenas request documents and things to assist all concerned parties in understanding the nature, facts and circumstances of a claim brought in a civil action. The non-party is a custodian and is not expected to appear in any proceeding as a result of the subpoena. Such subpoenas are sent after a **Notice of Production from Non-Parties** has been sent to all named parties. As there may be numerous non-parties, sending them **Subpoenas Duces Tecum Without Deposition** by U.S. Mail or other means will be a significant cost savings over service by a registered Process Server. In general, there are two categories of non-parties that would receive such subpoenas.

The first group of non-party record holders or custodians maintain files dealing with the person or persons bringing or defending a claim in a civil action. These subpoenaed records, documents and things are used to supplement, verify and evaluate information provided as part of the claim and request information on the person or persons bringing forth or defending a claim. The information sought concerns backup documents necessary to verify claims. It would include (1) medical records including billing records and statements, (2) employment records, (3) Social Security claims records, (4) telephone or cell phone records, as well as (5) other records providing information as to a party's work performance, conduct or behavior. The named plaintiff or defendant may request copies of all information collected as a result of these subpoenas served on non-parties.

The second category of non-party record holders or custodians typically maintain files dealing with general information, data and other records concerning the stated cause of action. Such information might include data on the design, status or conditions of a particular location, facility, transportation means, as well as environmental conditions when and where an incident occurred. Study of such records provides all named parties with a clearer understanding of the factors that have a bearing on or contributed to the incident.

Using U. S. Mail to serve subpoenas on non-parties for documents and things is a common practice. Many non-parties accept these subpoenas without question and some on advice of their legal counsel supply the requested records and data after an initial challenge. These proposed changes to mail subpoenas to non-parties would make the process more efficient and cost effective.

Thank you for your consideration of these proposed changes.

Robert E. Brazel, Esquire
Managing Attorney
Office of the County Attorney
County Center, 27th Floor
Post Office Box 1110
Tampa, Florida
Telephone (813) 272-5670
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e-mail BrazelR@HillsboroughCounty.Org


Rule 135c change leg fmt.doc


Rule 1410d leg fmt.doc

Recommendation for change to RULES OF CIVIL PROCEURE Rule 1.351 (c) Production of documents and things without deposition (c) Subpoena.

Rule 1.351. Production of documents and things without deposition (c) Subpoena. If no objection is made by a party under subdivision (b), an attorney of record in the action may issue a subpoena or the party desiring production shall deliver to the clerk for issuance a subpoena together with a certificate of counsel or pro se party that no timely objection has been received from any party, and the clerk shall issue the subpoena and deliver it to the party desiring production. Service of a non-party subpoena for records under this Rule within the State of Florida shall be deemed sufficient to compel the non-party's compliance with the subpoena if service of the subpoena is made by U.S. Mail, facsimile, e-mail or express mail service. The subpoena shall be identical to the copy attached to the notice and shall specify that no testimony may be taken and shall require only production of the documents or things specified in it. The subpoena may give the recipient an option to deliver or mail legible copies of the documents or things to the party serving the subpoena. The person upon whom the subpoena is served may condition the preparation of copies on the payment in advance of the reasonable costs of preparing the copies. The subpoena shall require production only in the county of the residence of the custodian or other person in possession of the documents or things or in the county where the documents or things are located or where the custodian or person in possession usually conducts business. If the person upon whom the subpoena is served objects at any time before the production of the documents or things, the documents or things shall not be produced under this rule, and relief may be obtained pursuant to rule 1.310.

Recommendation for change to RULES OF CIVIL PROCEURE Rule 1.410 Subpoena (d) Service.

Rule 1.410. Subpoena (d) Service. A subpoena may be served by any person authorized by law to serve process or by any other person who is not a party and who is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made as provide by law or as prescribed in rule 1.351 (c). Proof of such service shall be made by affidavit of the person making service or as prescribed in rule 1.351(c) if not served by an officer authorized by law to do so.

RE: RULE 1.360

1301 Riverplace Blvd., Suite 620
Jacksonville, FL 32207

January 3, 2005

Robert C. Clarke, Jr., Esquire
Committee Chair Civil Procedural Rules Committee
P.O. Box 391
Tallahassee, FL 32302-0391

Re: Amendments to Civil Procedural Rules

Dear Mr. Clarke:

I read your proposed amendments. You all are missing the most crucial and necessary amendment which would be to Rule 1.360(a). The appellate courts have continued to expand the ability of the plaintiff's bar to obstruct defense medical examinations. At the present, plaintiff's lawyer does not need to notify the examining doctor or the defendant before the examination of the intention to appear with the lawyer, a videographer, or a court reporter, or any combination of all three. The appellate courts feel they are protecting the rights of the plaintiff by permitting attendance at defense medical examinations so that harmful questions may not be asked of the plaintiff by examining doctors. In actuality what has happened, is that the number of reputable doctors in each community available to conduct defense medical examinations has been limited by the ability of the plaintiff to inconvenience the examining doctor. Doctors would rather not do medical examinations that put up with their offices being flooded with videographers, lawyers and court reporters. Plaintiffs are free to go to any doctors they want whereas defendants are limited to examinations under Rule 1.360. For example, see U.S. Security Insurance Company, 754 So.2d 697, Florida Supreme Court.

The appropriate solution which would protect both parties in the litigation would be to amend Rule 1.360(a) by adding subsection (4) which would read "If the party to be examined desires to have the examination recorded, the party may upon giving 10 days written notice before the date of the examination to the physician and the opposing party, have a court reporter attend the examination and transcribe the communications that take place."

Sincerely,

Peter Kellogg

PK:kmo

L-1

RE: RULE 1.410(d)

[See rule 1.351(c)]

RE: RULE 1.470

I. Initial inquiry from Civil Procedure Rules Committee member Judge Ralph Artigliere:

"Artigliere, Ralph" <RArtigliere@Jud10.FLCourts.org>
07/26/2006 04:39 PM

To: <mhorwich@flabar.org>
cc: <kparkpa@bellsouth.net>, "Scott Makar \(E-mail\)" <smakar@coj.net>, "Tracy Gunn \(E-mail\)" <tgunn@fowlerwhite.com>
Subject: Three Rules issues-- FINAL VERSION

Madelon--

An incomplete version of this message was inadvertently sent before it was completed. Please disregard the prior email.

As I had mentioned to you, there are some issues of interest to me and other judges and lawyers regarding current Civil Rules that I would like to identify to the Committee and perhaps presented to them at the appropriate time. Because I include reference herein to discussions with my Florida Standard Jury Instruction (Civil) Committee, I am copying the chair and vice-chair of the FSJI committee.

1. **Rule ("Form") 1.985**: As you know, this Rule/Form requires the judge to give standard jury instructions to the extent that they are applicable, and if the judge varies from the standard, it is necessary for the judge to (i) to find that the standard instruction is "erroneous" or "inadequate" and to "state on the record or in a separate order the manner in which the judge finds the standard form erroneous or inadequate and the legal basis of that finding." I have been on the Civil Jury Instruction Committee for several years. We have had a number of discussions about Form 1.985, the most recent being at our July meeting in Palm Beach. The reason for our discussion is the fact that we are developing and getting approval for many new instructions that used to be handled by the judges themselves, such as the new 1.1 (a) preliminary instruction (before voir dire) and the new 1.1(b) preliminary instruction (after jury is sworn), note taking, juror questions, and the like. (1.1(a) and (b) have been proposed to the Supreme Court, but not yet published as standard instructions). Before these instructions were created, there was quite a bit of leeway in the way judges handle these matters and some local variance. For example, the introductory discussion before voir dire was largely based on individual technique and local custom. Now everything, including introduction of staff, is set out in a scripted standard plain English instruction, which is quite good but may not meet all judge's needs and tastes in every civil case. For example, there may be some need for variance on how the judge tells the jury the meaning of the juror's oath. The new standard instruction tells jurors they may be jailed if they give inaccurate answers or withhold information on voir dire. Some judges are not comfortable with the new language. Some judges have different procedures for questions than others, and they like to explain everything at once during the instruction. Yet many of the standard instructions are neither "erroneous" nor "inadequate" so as to allow for variance. Under Form 1.985, the judge would have to make a record on any variance from standard instructions, regardless of whether it is a substantive or procedural change. There is a Note on Use on the current FSJI 1.1 that says "The publication of this instruction is not intended to intrude upon the trial judge's own style and manner of delivery. It may be useful in cataloguing the subjects to be covered in an introductory instruction." This FSJI Note is not entirely consistent with Form 1.985.

The Standard Jury Instruction Committee recognizes the need for leeway on background or procedural

instructions or those that may be subject to local variance or differences between one judge and another when both judges are within the law. However, they feel it is a Rules issue and not a jury instruction issue.

The FSJI Committee has undertaken a significant improvement of current standard instructions, and there is more work to be done. We are trying to use plain, understandable, non-legal, and non-technical terms to the extent possible, and it has been the SJI Committee's goal to provide judges with as many standard instructions as possible for use in trial. This expansion of effort is laudable, as judges need and want the guidance of pattern or standard instructions. However, it appears that the good intentions of expanding our coverage will create a trap for judges who vary from the standard but are within the law when the standard is not erroneous or inadequate but just not effective for that judge under the circumstances at hand. (Complicating the issue, not all lawyers will submit a proposed jury instructions package that includes standard background and preliminary instructions, and some will.) The language in Form 1.985 is as relevant now as it ever was when instructing jurors on the law, but when handling procedural or background matters, more leeway and freedom is appropriate and necessary.

* * *

Let me know if there is anything further you need.
Ralph Artigliere
Circuit Judge

Florida's Tenth Judicial Circuit: ***Where Professionalism is a Priority***
Judicial Assistant: Pat Williams
863-534-5860
rartigliere@jud10.flcourts.org

II. SJI (Civil) Committee input:

1-10-07

TO: **BOB MANSBACH, Civil Rules 1.985 Committee**

FROM: **RALPH ARTIGLIERE, SJI 1.985 Subcommittee**

RE: **Input from SJI Committee (Civil)**

By consensus, the Standard Jury Instructions Committee feels that "Form 1.985" is archaic and inconsistent with current practice and with Rule 1.470(b), and proposed preliminary and pre-*voir dire* instructions will further complicate the issue of judicial justification of benign variance from the "standard" forms of instruction. The Committee unanimously agrees that, *upon objection to* a modification of a standard instruction, the judge should be required to justify the variance as currently stated in Form 1.985, but that requirement should be incorporated in Rule 1.470(b), not in a Form 1.985. (We are aware that there are pending modifications to Rule 1.470(b).) We would request that Rule 1.470 require a contemporaneous objection to instructions given at any time during the case, not just instructions considered at the charge conference and given before or after closing. We would contemplate a rule that provides, if an objection is made, the judge would need to state on the record or by separate order the legal basis for the modified instruction or

different instruction.

Ralph Artigliere
Circuit Judge
Florida's Tenth Judicial Circuit: **Where Professionalism is a Priority**
863-534-5860
Judicial Assistant: Pat Williams

RE: RULE 1.480

Fed. R. Civ. P. 50. Judgment as a Matter of Law in a Jury Trial; Related Motion for a New Trial; Conditional Ruling

(a) Judgment as a Matter of Law.

(1) ***In General.*** If a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue, the court may:

(A) resolve the issue against the party; and

(B) grant a motion for judgment as a matter of law against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue.

(2) ***Motion.*** A motion for judgment as a matter of law may be made at any time before the case is submitted to the jury. The motion must specify the judgment sought and the law and facts that entitle the movant to the judgment.

(b) Renewing the Motion After Trial; Alternative Motion for a New Trial. If the court does not grant a motion for judgment as a matter of law made under Rule 50(a), the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. No later than 10 days after the entry of judgment--or if the motion addresses a jury issue not decided by a verdict, no later than 10 days after the jury was discharged--the movant may file a renewed motion for judgment as a matter of law and may include an alternative or joint request for a new trial under Rule 59. In ruling on the renewed motion, the court may:

(1) allow judgment on the verdict, if the jury returned a verdict;

(2) order a new trial; or

(3) direct the entry of judgment as a matter of law.

(c) Granting the Renewed Motion; Conditional Ruling on a Motion for a New Trial.

(1) ***In General.*** If the court grants a renewed motion for judgment as a matter of law, it must also conditionally rule on any motion for a new trial by determining whether a new trial should be granted if the judgment is later vacated or reversed. The court must state the grounds for conditionally granting or denying the motion for a new trial.

(2) ***Effect of a Conditional Ruling.*** Conditionally granting the motion for a new trial does not affect the judgment's finality; if the judgment is reversed, the new trial must proceed unless the appellate court orders otherwise. If the motion for a new trial is conditionally denied, the appellee may assert error in that denial; if the judgment is reversed, the case must proceed as the appellate court orders.

(d) Time for a Losing Party's New-Trial Motion. Any motion for a new trial under Rule 59 by a party against whom judgment as a matter of law is rendered must be filed no later than 10 days after the entry of the judgment.

(e) Denying the Motion for Judgment as a Matter of Law; Reversal on Appeal. If the court denies the motion for judgment as a matter of law, the prevailing party may, as appellee, assert grounds entitling it to a new trial should the appellate court conclude that the trial court erred in denying the motion. If the appellate court reverses the judgment, it may order a new trial, direct the trial court to determine whether a new trial should be granted, or direct the entry of judgment.

RE: RULE 1.510

Holland+Knight

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Fax 954 463 2030

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Fort Lauderdale, FL 33301
www.hklaw.com

Rohan Kelley
954 468 7852
rohan.kelley@hklaw.com

December 16, 2005

Honorable Tom Hall,
Clerk of the Supreme Court of Florida
500 S. Duval Street
Tallahassee, Florida 32399-1927

Re: SC05-179 in re: Amendments to the Florida Rules of Civil Procedure (2 year cycle)

Dear Mr. Hall:

The last paragraph of the court's opinion suggests that comments may be filed within 60 days of the opinion. Although I suspect that refers only to the additional changes to Rule 1.525, I wanted to provide some comments to the grammar found in Rule 1.510(c).

I have enclosed a sheet reproducing that rule subdivision as it is proposed to be changed and then showing editing changes that I would suggest.

Included among these are corrections to plural references where the references should be singular. The proposed rule refers to "copies of any summary judgment evidence". "Summary judgment evidence" is a singular reference not a plural reference. Only one copy would be required to be served, unless there were multiple parties. "Summary judgment evidence" is a defined term referring to a collection of individual items of evidence. When the "collection" is referred to, the reference should be singular. In any case the first sentence is inconsistent between the singular and the plural. If plural was intended, the sentence should end "that <u>have</u> not already been filed with the court."

The word "such" is replaced with "this"

Since "summary judgment evidence" is a defined term, the elements of that term should not be separately described toward the end of rule.

Sincerely,

Holland & Knight LLP

Rohan Kelley

RK:csb

Enclosure: Comments on Rule 1.510(c)

P1

RE: FORM 1.901

[See rule 1.100]

RE: FORM 1.923

"George S. Savage" gss@savagelaw.net

08/22/2006 02:29 PM

To <mhorwich@flabar.org>
cc
Subject Form 1.923 of the Florida Rules of Civil Procedure

Dear Madelon Horwich:

I would like to ask how we can have this form changed since it is incorrect. Under Form 1.923(5), a 5 day summons can be used for monetary damages. The problem is that a 5 day summons can be served through posting to the property (in rem); whereas a summons on monetary damages cannot and must be served personally on the defendant.

Sincerely,

George S. Savage

George S. Savage, P.A.
777 Brickell Avenue, Suite 1114
Miami, Florida 33131
Telephone 305.577.0000
Facsimile 305.577.0282
Email gss@savagelaw.net

RE: RULE 1.975

[See rule 1.071]

RE: FORM 1.985

[See rule 1.470]

RE: RULE 1.986

"Geralyn Passaro"
<PassaroG@stephenslynn.com>
09/12/2007 10:53 AM

To: mhorwich@flabar.org
cc:
Subject: New rule amendment

Madelon:

In reviewing the rules and forms after the discussion at the last meeting regarding the Jury Instruction rule in the forms section, it appears to be that the Verdict form in the forms section is also antiquated in light of the Model Jury Instruction Rules, which includes verdict forms.

I would be interested in chairing such a subcommittee if there is an interest in reviewing the issue.

Geralyn M. Passaro, Esq.
Stephens Lynn Klein
LaCava Hoffman & Puya, P.A.
Las Olas Place, Suite 800
301 East Las Olas Boulevard
Fort Lauderdale, FL 33301
Tel: 954-462-4602
Fax: 954-462-4633
800-329-4602
e-mail: passarog@stephenslynn.com

For more information about Stephens, Lynn, Klein, LaCava, Hoffman & Puya, P.A. please visit the firm's web page at: http://www.StephensLynn.com.

APPENDIX E

Comments Received after Publication of Proposed Changes

RE: 1.080(b)

GALLOWAY, JOHNSON, TOMPKINS, BURR & SMITH

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BUSINESS LITIGATION LAWYER
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Please reply to the Florida Office

July 15, 2009
via email only (mromance@richmangreer.com)

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7730 CARONDELET AVENUE
SUITE 110
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(314) 725-0525

1213 1st AVENUE
GULFPORT, MISSISSIPPI 39501
(228) 214-4250

Mark Romance, Chair
Civil Procedure Rules Committee

Re: Proposed Amendments to Florida Rules of Civil Procedure

Dear Mr. Romance:

I write in response to the proposed amendments to the Florida Rules of Civil Procedure which were advertised in the July 15, 2009, The Florida Bar News.

The proposed amendment to Rule 1.080(b) goes beyond the holding of Castillo v. Vlaminck de Castillo, 771 So. 2d 609 (Fla. 3d DCA 2000), and creates an unnecessary delay in proceedings. Castillo only appears to suggest that Rule 1.080(b) be changed to recognize that service by delivery is effective on the date of service even if such delivery occurs after 5:00 P.M. While the currently proposed Rule change would codify the Castillo holding, it would have the unintended consequence of adding five days to the time period associated with a response to the "late" delivery pursuant to Rule 1.090(e).

The addition of five days to time periods when papers are served by facsimile or hand delivery after 5:00 P.M. is unwarranted. The purpose of adding five days to the time for making responses to items served by mail is to accommodate the time it takes for the mailed items to

move from the sender's offices to those of the recipient. In the case of deliveries, the served papers and materials have a definite time of arrival and, thus, there is no need to "build in" five days of transportation time.

In light of the foregoing, I would suggest that the last sentence of Rule 1.080(b) be amended as follows:

> Service by delivery after 5:00 p.m. shall be deemed effective on the date of service but shall also be deemed to have been made on the next day that is not a Saturday, Sunday, or legal holiday for purposes of computing any period of time under rule 1.090.

The proposed change to Rule 1.360 is also problematic. The mandatory language in the proposed change appears to invite motion practice if someone not listed is present for an examination, someone fails to appear for an examination, or if someone is not adequately described. I do not believe that the inconvenience this proposed Rule change seeks to alleviate is worth the aggravation the change will cause practitioners and the courts. Professional attorneys already take steps in advance of examinations to avoid any inconvenience created by attendees and adding something else for our less professional colleagues to haggle over seems ill-advised.

I appreciate your consideration of the foregoing.

Very truly yours,

Kurt E. Lee

LAW OFFICES
HENRY P. TRAWICK, P.A.
2033 WOOD STREET
SUITE 218
SARASOTA, FLORIDA 34237

PLEASE REPLY TO:
P. O. BOX 4009
SARASOTA, FLORIDA 34230

TELEPHONE (941) 366-0660
FAX (941) 366-8941

July 23, 2009

Date 7/27/09
Scanned
TW
Client
Cal.
Ct. Rpt

Mr. Mark A. Romance
Richmond Greer, P.A.
201 South Biscayne Boulevard
Suite 1000
Miami, Florida 33131

Dear Mr. Romance:

I have the following comments concerning the proposed amendments to the Civil Procedure Rules:

Rule 1.080(b) - This change now makes two time periods for actual delivery. It seems to me this is a retrograde step. The Castillo case does not require it. If the Committee wants to give five days after actual delivery, say so.

Rule 1.285 - This rule is very poorly phrased. I enclose a xerox copy of the changes that would make it more concise and leave most of the meaning as it is. Subdivision (c) would eliminate the specified grounds since they are not limited to those grounds. The subdivision should say that the grounds for challenge may be made on any proper basis. By the same token the court should make its order on any proper basis. The only two items need be considered in addition are the scope of discovery and the extent of the claimed privilege. The drafters of the rule were verbose.

Rule 1.351(c) - This change is a mistake. Service should be made by a sheriff or process server. Otherwise, there is no proper return that can be relied on. This would also eliminate the change to Rule 1.410(d).

Rule 1.420(a)(1) - The first change is not necessary. A party can either amend his pleadings or withdraw a claim or any part of an action or claim.

Rule 1.510(c) - This is not a proposed change. It would be to correct what is already erroneously in the subdivision. There is no such thing as summary judgment evidence. It is a summary judgment record. The use of "evidence" gives rise to all sorts of problems in lawyers' and judges' thinking. I hope you will consider making that change.

Form 1.996 - The commencement of this form omits the required finding on attorney fees of the reasonable number of hours and the reasonable hourly rate for the lawyer. This should be added before the adjudicatory parts.

If I can be of any further assistance, please let me know.

Yours very truly,

Henry P. Trawick, Jr.

HPT/wjd
enc.

RE: 1.285

From: Berger, Arthur [mailto:Arthur.Berger@dot.state.fl.us]
Sent: Tuesday, August 04, 2009 12:51 PM
To: Mark A. Romance
Subject: Proposed Rule 1.285 Inadvertent Disclosure of Privileged Materials

BACKGROUND: The proposed Rule 1.285 provides, under paragraph e: "[u]pon the entry of any final court order determining that a privilege may be asserted under this rule, . . . the recipient of the materials shall promptly dispose of the materials."

QUESTION: Does this mean or imply that the decision of the trial court is not appealable? If the decision of the court is appealable, the prompt disposal of the material will deny the appellate court reference to the material, or the use (reference) of the material in preparing the brief.

NOTE: I currently have a situation where the opposing party claims they mistakenly produced hundreds of privileged documents on a CD mixed with thousands of non-privileged documents. The opposing party is claiming that after they received notice of a potential claim (which was years prior to the lawsuit being filed), all documents prepared after the receipt of the notice were in preparation of pending litigation under the direction of legal counsel. This blanket assertion of a work product privilege has the effect of making every document relevant to the claim privileged. This, in my opinion, is an abuse of the right to claim a privilege, and such an abuse should be open to challenge. The fact that I have the records in my possession that are claimed by the opposing party to be privileged is significant is seeing that the privilege is being abused by the opposing party.

Thank you,

Arthur L. Berger
Assistant General Counsel
Florida Department of Transportation
Office of the General Counsel
605 Suwannee Street, MS-58
Tallahassee, FL 32399-0458
Phone: 850-414-5368
Fax: 850-414-5264
Arthur.Berger@dot.state.fl.us

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Richmond Greer, P.A.
201 South Biscayne Boulevard
Suite 1000
Miami, Florida 33131

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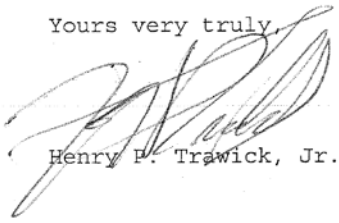
Yours very truly,



Henry P. Trawick, Jr.

HPT/wjd
enc.

RULE 1.285. INADVERTENT DISCLOSURE OF PRIVILEGED MATERIALS

(a) Assertion of Privilege as to Inadvertently Disclosed Materials. Any party, person, or entity after inadvertent disclosure of any materials pursuant to these rules, may thereafter assert any privilege recognized by law as to those materials. This right exists without regard to whether the disclosure was made pursuant to formal demand or informal request. In order to assert the privilege, the party, person, or entity shall, within 10 days of actually discovering the inadvertent disclosure, serve written notice of the assertion of privilege on the party to whom the materials were disclosed. The notice shall specify with particularity the materials as to which the privilege is asserted, the nature of the privilege asserted, and the date on which the inadvertent disclosure was actually discovered.

(b) Duty of the Party Receiving Notice of an Assertion of Privilege. A party receiving notice of an assertion of privilege under subdivision (a) shall promptly return, sequester, or destroy the materials specified in the notice, as well as any copies of the material. The party receiving the notice shall also promptly notify any other party, person, or entity to whom it has disclosed the materials of the fact that the notice has been served and of the effect of this rule. That party shall also take reasonable steps to retrieve the materials disclosed. Nothing herein affects any obligation pursuant to R. Regulating Fla. Bar 4-4.4(b).

(c) Right to Challenge Assertion of Privilege. Any party receiving a notice made under subdivision (a) has the right to challenge the assertion of privilege. The grounds for the challenge may include, but are not limited to, the following:

(1) The materials in question are not privileged.

(2) The disclosing party, person, or entity lacks standing to assert the privilege.

(3) The disclosing party, person, or entity has failed to serve timely notice under this rule.

(4) The circumstances surrounding the production or disclosure of the materials warrant a finding that the disclosing party, person, or entity has waived its assertion that the material is protected by a privilege.

Any party seeking to challenge the assertion of privilege shall do so by serving notice of its challenge on the party, person, or entity asserting the privilege. Notice of the challenge shall be served within 20 days of service of the original notice

given by the disclosing party, person, or entity. The notice of the recipient's challenge hereunder shall specify the grounds for the challenge. Failure of any party to timely serve notice of its challenge to an asserted privilege hereunder constitutes a waiver of the right to challenge the same.

(d) Resolution of Disputes as to Asserted Privileges. If notices contemplated by subdivisions (a) and (c) have been served, any party, person, or entity that has served a notice contemplated by subdivisions (a) and (c) may apply to the court for an order resolving the dispute framed by the notices. In resolving disputes as to the asserted privilege, the court may consider, in addition to the issues framed by the notices, the following:

(1) The reasonableness of the precautions that the disclosing party, person, or entity had taken to prevent inadvertent disclosure.

(2) The scope of discovery.

(3) The extent of the disclosure.

(4) Whether the interests of justice would be served by relieving the disclosing party, person, or entity of its error.

(5) Any other factor necessary to meet the best interests of justice.

(e) Effect of Determination that Privilege Applies. Upon the entry of any final court order determining that a privilege may be asserted under this rule, or waiver of the right to challenge the privilege, the recipient of the materials shall promptly dispose of the materials and any copies of them in accordance with the court's direction. Thereafter, no recipient shall make use of the materials. The recipient shall also give prompt notice of the court's determination to any other party, person, or entity to whom it had disclosed the materials.

RE: 1.351 [our proposal was corrected based on Mr. O'Sheehan pointing out that it had not incorporated 2007 amendments. But see highlighted text for his other comment.]

From: Edward J. O'Sheehan [mailto:EOSheehan@shutts.com]
Sent: Wednesday, July 15, 2009 5:16 PM
To: Mark A. Romance
Subject: Proposed amendments to Fla.R.Civ.P. - 1.351

Mark,

The proposed Rule 1.351 that is available via the Florida Bar's website appears to be making a proposed amendment to the "wrong" rule. It does not contain the 2007 amendment that allowed hearings on objections. This may confuse anyone who looks at the proposed changes as one might think that we are going back to no hearings on 1.351 objections is the proposed amendment is passed. A copy of the rule with proposed amendment from the Florida Bar's website is attached as "1.351 - proposed.pdf" and a copy of the current rule from the 2009 version of the Rules is attached as "1.351.-current.pdf".

With regard to service of subpoenas, I just want to confirm that the only subpoenas that can be served by mail (according to the proposed amendments to Rules 1.351 and Rule 1.410) are subpoenas for records without testimony. Any other subpoena, i.e., trial subpoena or subpoena for deposition, would still have to be served by a process server.

I have no objection if this is the intention, but think it might be addressed in the comment to be sure it is clear.

Thanks for your service on the Committee - I know your firm has a strong history of service. I was a 2nd year law clerk there in Miami the year before you started working there (still known as Floyd, Pearson at the time), I remember them making the announcement that you had accepted their offer.

Edward J. O'Sheehan
Partner
Shutts & Bowen LLP
200 East Broward Boulevard, Suite 2100 | Fort Lauderdale, FL 33301
Direct: (954) 847-3841 | Fax: (954) 888-3071
E-Mail | Biography | V-Card | Website

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Miami, Florida 33131

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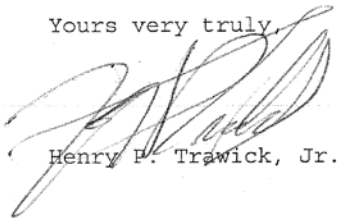
If I can be of any further assistance, please let me know.

Yours very truly,



Henry P. Trawick, Jr.

HPT/wjd
enc.

RE: RULE 1.360

GALLOWAY, JOHNSON, TOMPKINS, BURR & SMITH

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July 15, 2009
via email only (mromance@richmangreer.com)

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Mark Romance, Chair
Civil Procedure Rules Committee

Re: Proposed Amendments to Florida Rules of Civil Procedure

Dear Mr. Romance:

I write in response to the proposed amendments to the Florida Rules of Civil Procedure which were advertised in the July 15, 2009, The Florida Bar News.

The proposed amendment to Rule 1.080(b) goes beyond the holding of Castillo v. Vlaminck de Castillo, 771 So. 2d 609 (Fla. 3d DCA 2000), and creates an unnecessary delay in proceedings. Castillo only appears to suggest that Rule 1.080(b) be changed to recognize that service by delivery is effective on the date of service even if such delivery occurs after 5:00 P.M. While the currently proposed Rule change would codify the Castillo holding, it would have the unintended consequence of adding five days to the time period associated with a response to the "late" delivery pursuant to Rule 1.090(e).

The addition of five days to time periods when papers are served by facsimile or hand delivery after 5:00 P.M. is unwarranted. The purpose of adding five days to the time for making responses to items served by mail is to accommodate the time it takes for the mailed items to move from the sender's offices to those of the recipient. In the case of deliveries, the served papers and materials have a definite time of arrival and, thus, there is no need to "build in" five days of transportation time.

In light of the foregoing, I would suggest that the last sentence of Rule 1.080(b) be amended as follows:

> Service by delivery after 5:00 p.m. shall be deemed effective on the date of service but shall also be deemed to have been made on the next day that is not a Saturday, Sunday, or legal holiday for purposes of computing any period of time under rule 1.090.

The proposed change to Rule 1.360 is also problematic. The mandatory language in the proposed change appears to invite motion practice if someone not listed is present for an examination, someone fails to appear for an examination, or if someone is not adequately described. I do not believe that the inconvenience this proposed Rule change seeks to alleviate is worth the aggravation the change will cause practitioners and the courts. Professional attorneys already take steps in advance of examinations to avoid any inconvenience created by attendees and adding something else for our less professional colleagues to haggle over seems ill-advised.

I appreciate your consideration of the foregoing.

Very truly yours,

Kurt Lee

RE: RULES 1.420 and 1.510

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PLEASE REPLY TO:
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FAX (941) 366-8941

July 23, 2009

Date 7/27/09
Scanned
TW
Client
Cal.
Ct. Rpt

Mr. Mark A. Romance
Richmond Greer, P.A.
201 South Biscayne Boulevard
Suite 1000
Miami, Florida 33131

Dear Mr. Romance:

I have the following comments concerning the proposed amendments to the Civil Procedure Rules:

Rule 1.080(b) - This change now makes two time periods for actual delivery. It seems to me this is a retrograde step. The Castillo case does not require it. If the Committee wants to give five days after actual delivery, say so.

Rule 1.285 - This rule is very poorly phrased. I enclose a xerox copy of the changes that would make it more concise and leave most of the meaning as it is. Subdivision (c) would eliminate the specified grounds since they are not limited to those grounds. The subdivision should say that the grounds for challenge may be made on any proper basis. By the same token the court should make its order on any proper basis. The only two items need be considered in addition are the scope of discovery and the extent of the claimed privilege. The drafters of the rule were verbose.

Rule 1.351(c) - This change is a mistake. Service should be made by a sheriff or process server. Otherwise, there is no proper return that can be relied on. This would also eliminate the change to Rule 1.410(d).

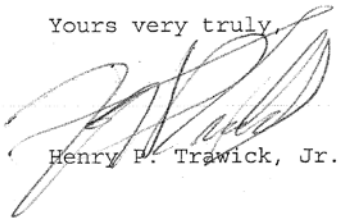
Rule 1.420(a)(1) - The first change is not necessary. A party can either amend his pleadings or withdraw a claim or any part of an action or claim.

Rule 1.510(c) - This is not a proposed change. It would be to correct what is already erroneously in the subdivision. There is no such thing as summary judgment evidence. It is a summary judgment record. The use of "evidence" gives rise to all sorts of problems in lawyers' and judges' thinking. I hope you will consider making that change.

Form 1.996 - The commencement of this form omits the required finding on attorney fees of the reasonable number of hours and the reasonable hourly rate for the lawyer. This should be added before the adjudicatory parts.

If I can be of any further assistance, please let me know.

Yours very truly,



Henry P. Trawick, Jr.

HPT/wjd
enc.

APPENDIX F

Copies of the Published Florida Bar *News* Notices

July 15, 2009

Amendments to the Florida Rules Of Civil Procedure

The Civil Procedure Rules Committee invites comment on the proposed three-year-cycle amendments to the Florida Rules of Civil Procedure. The full text of the proposals can be found at the Bar's web site at www.floridabar.org. The proposed amendments will be filed with the court by February 1, 2010. Interested persons have until August 15, 2009, to submit comments electronically to Mark Romance, Chair, Civil Procedure Rules Committee, mromance@richmangreer.com.

RULE	COMMITTEE VOTE	REASONS FOR CHANGE
1.071	36-0	To conform to section 86.091, Florida Statutes, which requires notice to the state when a constitutional challenge to a statute is being made.
1.080	(b): 40-2 (d): 45-0	(b) – so service by delivery is treated the same as by mail. (d) – to permit filing at a time other than service, if required by a statute or rule of procedure. The proposal reconciles rule 1.080(d) with statutes or rules that either direct that papers not be filed, or that the papers be filed after certain time periods elapse or events occur.
1.100	35-0	To authorize a case style for forfeiture proceedings consistent with that described in F.S. 932.704(5)(a).
1.285	43-3	At the request of The Florida Bar Attorney-Client Privilege Task Force, to address inadvertent disclosure of privileged communications.
1.310	(b)(4)(A): 46-1 (b)(5): 43-1	(b)(4)(A) – to require that any subpoena served on the person to be examined state the method for recording the testimony. (b)(5) – to clarify that the procedure in rule 1.351 must be used when requesting or receiving documents or things without testimony from nonparties pursuant to subpoena; to prevent the use of rules 1.310 and 1.410 to request documents from nonparties pursuant to subpoena without giving the opposing party the opportunity to object to the subpoena before it is served.

1.340	49-0	To provide that standard form interrogatories do not need to be propounded exactly as set forth by the Supreme Court, when a particular approved interrogatory is not necessary or appropriate.
1.351	(a): 43-1 (c): 31-8	(a) – to clarify that the procedure rule 1.351, not rule 1.310, is to be followed when requesting or receiving documents or things, without testimony, from nonparties pursuant to subpoena. See rule 1.310(b)(5) above. (c) – to allow U.S. mail and other commercial delivery for service of subpoenas on nonparties.
1.360	48-1	To provide notice to opposing party regarding who will attend an examination, so the physician or health care practitioner will know how many people attend. This will decrease inconvenience for examiners of having several lawyers, videographers, and court reporters present in their offices.
1.410	(d): 22-13 (e): 50-0	(d) – to conform to the proposed changes to rule 1.351(c), discussed above; provides for alternative service of subpoena on nonparties. (e) – in conjunction with rule 1.310(b)(4)(A) (see above), to require that any subpoena served on the person to be examined state the method for recording testimony.
1.420	(a)(1): 27-9 (a)(1)(B): 28-4 (d): 39-0	(a)(1) – to allow voluntary dismissal of part, not just all, of a suit. (a)(1)(B) – so that only parties still in litigation have to sign the stipulation of dismissal (d) – in conjunction with change to (a)(1), allowing for assessment of costs when an action is concluded as to a party seeking taxation of costs but other claims remain pending in the case.
1.442	32-0	To provide a proposal-for-settlement procedure when one party is liable only vicariously, constructively, derivatively, or technically.

1.470	42-1	The language in form 1.985 regarding judges' use of standard form jury instructions is difficult to find among the forms. The amendments relocate the language to rule 1.470, update the wording, make an applicable standard instruction required unless a litigant makes a showing otherwise, and add the requirement for contemporaneous objection to improper or misleading jury instructions.
1.480	49-0	To track Fed.R.Civ.P. 50(b), eliminating the requirement for renewing, at the close of all the evidence, a motion for directed verdict already made at the close of an adverse party's evidence.
1.510	42-6	To improve the rule grammatically and for clarity.
1.525	39-0	Necessitated by the proposed amendments to rule 1.420 allowing voluntary dismissal of part, not just all, of a suit.
1.901	38-0	See rule 1.100.
1.923	38-0	Amends eviction form to properly reflect Florida case law and remove any misleading language that might imply that "posting" the summons is sufficient in a claim for money damages.
1.975	30-0	New form to provide for notice to the state when a constitutional challenge to a statute is being made.
1.985	42-1	See rule 1.470.
1.986	38-0	This form is antiquated and unnecessary in light of itemized verdicts and model verdicts in the Florida Civil Standard Jury Instructions (Civil). Those instructions are incorporated by reference in form 1.985 (which, in proposed changes in this cycle report, would be moved to rule 1.470(b)).

November 15, 2009

Amendments to the Florida Rules Of Civil Procedure

In the July 15, 2009, issue of the Bar *News*, The Civil Procedure Rules Committee invited comment on the proposed three-year-cycle amendments to the Florida Rules of Civil Procedure. After consideration of comments received, the proposals to the rules listed below have been amended or withdrawn. The full text of the proposals can be found at the Bar's web site at www.floridabar.org. The proposed amendments will be filed with the court by February 1, 2010. Any person wishing to comment should submit written comments to the Supreme Court pursuant to Fla.R.Jud.Admin. 2.140(b)(6). Mark Romance, Chair, Civil Procedure Rules Committee, mromance@richmangreer.com.

RULE	**COMMITTEE VOTE**	**REASONS FOR CHANGE**
1.285	(e) 34-5 (c) 32-0	The proposed changes to this new rule are amended to re-word subdivision (e) for clarification. The original use of the terms "any final order" and "dispose of" were ambiguous, and the new language clarifies what is to be done with privileged material. The last 2 sentences of subdivision (c) are re-worded to improve the language.

APPENDIX G

Certification that Proposed Rules Have Been Read Against
West's FLORIDA RULES OF COURT

I certify that these rules and forms were read against West's FLORIDA RULES OF COURT – STATE (2009).

_____

Madelon Horwich, Legal Editor
Bar Staff Liaison, Civil Procedure Rules Committee
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