

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE FLORIDA )  
RULES OF CIVIL PROCEDURE-ELECTRONIC ) CASE SC 11-1542  
DISCOVERY )

COMMENTS ON PROPOSED RULES OF HENRY P. TRAWICK, JR.

HENRY P. TRAWICK, JR. comments on the proposed electronic discovery rules as follows:

1. Rule 1.280(d)(2). The court should not consider the resources of the parties in determining whether it will order discovery. Ordinarily, the cost of producing unreasonably accessible electronic information should be borne by the party requesting it. If the information is current and readily available, it is not a problem for the holder of the information to make it available. Otherwise, it is an undue burden and expense to be imposed on the party making discovery unless that party must use it at trial.

2. Rule 1.410(c). The reference to the limitations in Rule 1.280(d)(2) should be modified. In the case of a subpoena directed to a non party, the person requesting the information should always pay the costs of producing the information. The witness is not a party and presumably has little or no interest of the outcome of the litigation and should not be compelled to produce electronic or other information unless the reasonable

cost of producing it is given to him. That is what the rule as it now stands requires and this should not be changed.

The undersigned certifies that a copy of these comments has been served on John F. Harkness, Jr., as Executive Director of The Florida Bar, and on Kevin David Johnson, as Chairman of the Civil Procedure Rules Committee, by mail on September 22, 2011.

HENRY P. TRAWICK, P.A.

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