Amendments to the Rules of Civil Procedure that are EFFECTIVE JAN. 1, 2025

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The Florida Supreme Court issued TWO opinions on May 23, 2024

SC2023-0962

– relates to rules:

1.200 (Case Management)
1.201 (Complex Litigation)
1.280 (General Provisions Governing Discovery)
1.440 (Setting Action for Trial)
1.460 (Motions to Continue Trial)

SC2024-0662

– relates to rules:

1.510 (Summary Judgment)
1.202 (Conferral Prior to Filing Motions)

The Supreme Court issued its final order on December 5.

They created 1 rule and amended 12.

We are covering the highlights (some changes were insignificant) in less than 90 minutes. That is a mountain of information

Sooooo…

RULE 1.200
CASE MANAGEMENT

(a) There are 18 categories to which the rules does not apply.

The ones I'm guessing you would encounter most are:

(16) civil actions pending in a special division (like complex)

(18) a claim requiring expedited or priority treatment under a statute or rule (for example, when there is an elderly party)

(b) All cases have to be assigned to a track: complex, streamlined or general

"*Complex*" cases are those that meet the definition in rule 1.201.

"*Streamlined*" cases are actions that reflect some mutual knowledge about the underlying facts, have limited needs for discovery, well-established legal issues related to liability and damages, few anticipated dispositive pretrial motions, minimal documentary evidence, and an anticipated trial length of no more than 3 days. Uncontested cases should generally be presumed to be streamlined cases.

"*General*" cases are all other actions that do not meet the criteria for streamlined or complex.

(c) Changes in case track assignment

Parties can ask to change a case track assignment as long as they do it “PROMPTLY” after the APPEARANCE OF GOOD CAUSE to make the request.

A court can change a case track assignment on its own motion.

(d) Case Management Order


NOT
SCARY!

In complex cases, the case management order is issued pursuant to the timeline in rule 1.201 (10 days after the case management conference).

In streamlined and general cases, the court has to issue a case management order **within 120 days of the case being FILED**.

**The Supreme Court is listening to the practical concerns! They changed this deadline from 120 days of filing/30 days of service.

Subsection (i) expressly authorizes the chief judge of each circuit to create a form case management order for that circuit.

The case management order has to include:

A "projected or actual trial period based on the case track assignment." It has to be consistent with the time standards in Fla. R. Jud. Admin 2.250(a)(1)(B) (18 months for jury cases; 12 months for non-jury)

"No less than the following deadlines:"

(A) service of complaints;
(B) service under extensions;
(C) adding new parties;
(D) completion of fact discovery;
(E) completion of expert discovery;
(F) filing and service of motions for summary judgment;
(G) filing and resolution of all objections to pleadings;
(H) filing and resolution of all pretrial motions; and
(I) completion of alternative dispute resolution.

A CASE MANAGEMENT ORDER CAN INCLUDE MORE. It just can't include less than the items specified above.

(d)(3) says that case management order “must indicate that the deadlines established in the order will be strictly enforced UNLESS CHANGED BY COURT ORDER.”

So what is the process to get a date changed by court order?


NEW AND IMPROVED.

(e) Extensions of Time; Modification of Deadlines.

Deadlines in the case management order are to be strictly enforced unless changed by court order.

Parties can submit an agreed order to extend a deadline if changing a date does not affect downstream dates.

If changing one date affects downstream dates, parties can't just move to extend the one deadline. Parties have to move to amend the case management order.


PAUSE

ACTUAL TRIAL PERIOD vs. PROJECTED TRIAL PERIOD

Some jurisdictions start their case management orders with actual trial periods (Sarasota County, for example)

It seems like most jurisdictions start with a “projected” trial date and then enter a trial order later on, which sets the “actual” trial date.

Once you have an “actual trial date,” if you want to move it, you have to comply with rule 1.460.

If you are still in the “projected trial date” phase, moving the date is easier.

Unlike rule 1.460, changes to a projected trial date are not “disfavored.”

There is no language that they “should rarely be granted.”

There is nothing that says successive changes to projected trial dates are “highly disfavored.”

And the way you change a projected trial date is through the rule we are about to talk about

THIS.
IS.

HUGE!!!!


RESUME

As mentioned, if a party wants to move one date in the case management order and moving that one date will not affect other dates, the rule EXPRESSLY STATES that they can submit an agreed order.

BUT…

If a party is looking to:

- extend a deadline that affects downstream deadlines
- move a projected trial date
- amend a case management order

They **HAVE TO FILE A MOTION**.

The motion MUST CONTAIN THESE FOUR THINGS:

(A) the basis of the need for the extension, including when the basis became known to the movant;

(B) whether the motion is opposed;

(C) the specific date to which the movant is requesting the deadline or projected trial period be extended, **and whether that date is agreed by all parties**; and

(D) the action and specific dates for the action that will enable the movant to meet the proposed new deadline or projected trial period, including, but not limited to, confirming the specific date any required participants such as third-party witnesses or experts are available.

These requirements are designed to make your life easier!!

More information at your fingertips and more work done by the parties in advance of the hearing.


WE INTERRUPT THE
REGULARLY SCHEDULED
PROGRAM TO BRING YOU
THIS IMPORTANT MESSAGE

Someone may have flagged for the court that the rule on how to change a date in a CMO could be read to conflict with rule 1.090, which deals with extensions of time.

Sooooo, the court amended 1.090 to create clarity:

(b) Extending Time.

(1) *In General*. When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) **with or without motion or notice** if the court acts, or if a request is made, **before the original time or its extension expires**; or

(B) **on motion made after the time has expired** if the party failed to act because of excusable neglect.

(2) *Exceptions*. The court may not extend the time for making a motion for new trial, for rehearing, or to alter or amend a judgment; making a motion for relief from a judgment under rule 1.540(b); taking an appeal or filing a petition for certiorari; or making a motion for a directed verdict. **Extensions of deadlines in case management orders are governed by rule 1.200 or rule 1.201, and trial continuances are governed by rule 1.460.**


AND NOW BACK TO
OUR REGULARLY
SCHEDULED
PROGRAMMING

(f) Notices of Unavailability.

THEY MEAN NOTHING.

Folks can file them for funsies, if they want.

But if a party can’t comply with a deadline, they need to file an agreed to order to change one date or file a motion to amend the case management order.

(g) Inability to Meet Case Management Deadlines.

If the parties can't meet deadlines, ***including because there is no court time to hear pending motions***, then parties should ask for a case management conference.

LAWYERS ARE BEING TAUGHT THAT THE CASE MANAGEMENT CONFERENCE IS THEIR FRIEND AND THEY NEED TO ASK FOR THEM!

If they're listening to me, lawyers are being told that case management conferences help them create their record that they are trying to meet the CMO deadlines and touching base with you helps you see the "good cause" they need for continuing a trial date.

(h) If Trial Is Not Reached During Trial Period.

If a case is not reached during the trial period, it should be set for a period “as soon as practicable” and the order “must reflect what further activity will and will not be permitted.”

This is where you decide whether the case is frozen, whether parties can take depositions they couldn’t squeeze in, whether amendments will be allowed, etc.

It is an “a la carte” decision that can be different in every case (or the same, if you have a preferred policy).

(j) Case management conferences.

(1) Scheduling.

The court can set a case management conference, or the parties can notice one.

Regardless of who does it, the notice must be "reasonable."

If noticed by a party, **the notice** "must identify the specific issues to be addressed during the case management conference **and** must also provide a list of **all** pending motions."

The court can set, or the parties can request, case management conferences as-needed or on an ongoing basis.

(2) Issues that may be addressed.

A court can address any issue during the conference that could impact the case.

On reasonable notice and if there is adequate time, the court can also require the parties to argue any pending motion on the list EXCEPT motions for summary judgment and anything needing evidentiary hearings.

You can only do an evidentiary hearing or summary judgment hearing during a case management conference if ALL PARTIES AGREE.

Realistically, the odds are slim you would have time and all parties would agree, but the Court allowed for it if you get a unicorn case…

(3) *Preparation required*.

PARTIES MUST SHOW UP PREPARED to talk about **any motion on your list**, to make decisions about the conduct of the case, and have authority to make binding representations on motions, issues and scheduling.

Whoever attends the conference must have the calendar for **all attorneys in the case** and be prepared to schedule for them. The days of “let me check with my partner and get back to you” are gone.

(4) *Other hearings convertible*.

A judge can sua sponte convert any hearing into a case management conference.

I think this provision is unnecessary.

It's like any hearing where you've got a few minutes at the end, and you ask the judge to talk about getting you hearing time or the need to resolve a motion.

(5) *Proposed orders*.

Unless you are writing your own order, AT THE CONCLUSION OF THE CASE MANAGEMENT CONFERENCE, **you have to give parties a deadline for submitting proposed orders from case management conferences and the orders have to be submitted by that deadline**, unless an extension is requested.

If the parties can't agree on the content of the order, they submit competing orders. The parties have to notify the court of basis for any objections to the other side's proposal at the time the order is submitted.

(6) *Failure to appear*.

"If ***a party*** fails to appear at a case management conference," the court can sanction, including dismissal, striking pleadings, limiting proof or witnesses, or any other appropriate action against the party who failed to attend.

**This one is HORRIBLY worded—and has been for years. "Parties" don't usually attend case management conferences. Lawyers do (or don't). But I worry that, because it is present in a package of change, lawyers and some judges may think they have to change their practice.

I filed a motion for rehearing and asked to fix this. Until that happens, I have told the lawyers to ask you for clarification. I'm telling you that you should tell the lawyers if you are fine with counsel, but not clients, attending—lest you get a party's worth of people in your hearings.

(k) *Pretrial Conference*.

After action has been set for AN ACTUAL TRIAL PERIOD, the court MAY set or, it **MUST SET** if parties file a TIMLEY motion requesting, a pretrial conference to discuss the typical pretrial things:

(1) a statement of the issues to be tried;
(2) the possibility of obtaining evidentiary and other stipulations that will avoid unnecessary proof;
(3) the witnesses who are expected to testify, evidence expected to be proffered, and any associated logistical or scheduling issues;
(4) the use of technology and other means to facilitate the presentation of evidence and demonstrative aids at trial;
(5) the order of proof at trial, time to complete the trial, and reasonable time estimates for voir dire, opening statements, closing arguments, and any other part of the trial;
(6) the numbers of prospective jurors required for a venire, alternate jurors, and peremptory challenges for each party;
(7) finalize jury instructions and verdict forms; and
(8) any other matters the court considers appropriate.

RULE 1.201
COMPLEX LITIGATION

Not a lot of change here.

The noticeable differences are that:

(a)(1) - the parties can no longer just agree that the case is complex and have the court redesignate it as such.

(c) – the court now has to enter a case management order within 10 days of the case management conference

(c)(4) – parties have to confer BEFORE filing a non-dispositive motion AND then again 15 days before the hearing or case management conference. If the parties resolve a motion, they have to notify the court “immediately” if a hearing (or case management conference) is no longer necessary

Shameless plug #1

One judge in a jurisdiction with a complex division was upset that only complex cases require the parties to "immediately" notify the court if a hearing is unnecessary. If you think parties should have to do that for general and streamlined, it is SO EASY to ask for an amendment!!

Just email the chair of the Civil Rules committee. That's it!!
(I'll save you the google search. This year's chair is Cosme Caballero: ccaballero@deutschblumberg.com)

Shameless Plug #2

The rules are better when we have judicial participation!! The lawyers on the committee don't know what we don't know. That 15-day thing came from the Workgroup—which was a committee of primarily judges! Applications are out NOW. They are at the top of the page when you log on to your Florida Bar account. They are due JANUARY 15.

RULE 1.280

GENERAL PROVISIONS REGARDING DISCOVERY

Brace for impact, ladies and gentlemen…

(a) Initial Discovery Disclosure

(1) *In General*. Except as exempted by subdivision (a)(2) **or as ordered by the court**, a party must, **without awaiting a discovery request**, provide to the other parties the following initial discovery disclosures **unless privileged or protected** from disclosure:

> NOTE: subsection (a)(2) says that cases exempt from rule 1.200 are exempt from initial disclosures unless the court orders otherwise.

(A) the name and, **if known**, the address, telephone number, and e-mail address of each individual likely to have discoverable information—**along with the subjects of that information**—that the disclosing party may use to support its claims or defenses, **unless the use would be solely for impeachment**;

(B) a copy—**or a description by category and location**—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control (or, if not in the disclosing party's possession, custody, or control, a description by category and location of such information) and may use to support its claims or defenses, **unless the use would be solely for impeachment**;

(C) a computation for each category of [**ECONOMIC**] damages claimed by the disclosing party **and a copy of the documents or other evidentiary material**, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; provided that **a party is not required to provide computations as to noneconomic damages**, but **the party must identify categories of damages claimed and provide supporting documents**; and

(D) a copy of any insurance policy or agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(3) Timing for Initial Discovery Disclosures.

UNLESS a different time is set by court order, disclosures have to be made **within 60 days of service of the complaint** or joinder.

I am telling the lawyers NOT TO OVERLOOK THE SAFETY VALVES!!

They are everywhere.

“Unless changed by court order…” (this means parties can file a motion and ask to change the initial disclosure date)

“Unless privileged or protected from disclosure”

“Unless substantially justified”

(4) *Basis for Initial Discovery Disclosure; Unacceptable Excuses; Objections.*

A party must make its initial discovery disclosures based on the information then reasonably available to it.

A party is not excused from making its initial discovery disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party's initial discovery disclosures or because another party has not made its initial discovery disclosures.

A party who formally objects to providing certain information is not excused from making all other initial discovery disclosures required by this rule in a timely manner.

PROPORTIONALITY

(b) Things that are discoverable are any **nonprivileged matter relevant to a claim or defense** "**and proportional to the needs of the case**, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within the scope of discovery need not be admissible in evidence to be discoverable."

Some people freaked out over this change.

Personally, I don’t see the big whoop.

1. PARTIES HAVE BEEN OBJECTING THAT REQUESTS ARE DISPROPOTIONATE FOR DECADES.

2. YOU GET TO USE THE FEDERAL LAW ON PROPORTIONALITY.

3. AS YOU WILL SEE IN A MOMENT, UNJUSTIFIED BOILERPLATE USE OF THE OBJECTION IS NOW GOING TO REQUIRE A SANCTION.

Court Commentary

> **2024 Amendment.** The scope of discovery in subdivision (c)(1) is amended to adopt almost all the text of Federal Rule of Civil Procedure 26(b)(1) ***and is to be construed and applied in accordance with the federal proportionality standard.***
>
> (emphasis is mine)

In the opinion implementing the change, the Court wrote that this "Court Commentary should be sufficient to lead practitioners and judges to look to federal history and precedents when applying proportionality." SC2023-0962, p.3.

FUN FACT: there is no geographical limitation on the federal precedent to which you should look. That's a BIG BODY OF LAW… 

As it relates to timing of discovery and disclosures, the Supreme Court created a new provision sua sponte…

(f) Timing and Sequence of Discovery.

(1) *Timing*. A party may not seek discovery from any source before that party's initial disclosure obligations are satisfied, ***except when authorized by these rules, by stipulation, or by court order***.

(2) *Sequence*. Except as provided in subdivision (c)(5) [expert discovery section], or unless the parties stipulate or the court orders otherwise, methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, must not delay any other party's discovery.

As to that first paragraph....

1.280(f)(1)

Timing. A party may not seek discovery from any source before that party's initial disclosure obligations are satisfied, ***except when authorized by these rules, by stipulation, or by court order***.

1.340(a)(2)

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 on that party.***

Rule 1.340(a)(2) authorizes service of discovery with the complaint. That is straightforward.

But service "after commencement" and "after service of process and initial pleading" is potentially inconsistent with the requirement that one cannot serve discovery until one has served initial disclosures. Rule 1.340(a)(2) could be a whole lot clearer.

Here is but a sampling of the issues you could see:

1. You'll have a ton of people who won't read the rule at all and will serve discovery early (after serving the complaint, but before initial disclosures) and then file motions to compel when they get no response because their opponent DID read the rule (but the rule is silent on what to do when a party serves discovery early…ignore it? Give yourself 30 days after they serve initial disclosures?);

2. You'll get plaintiff's lawyers who serve discovery WITH the complaint—which is absolutely allowed by rule 1.340—and defense lawyers who didn't read the rule will balk;

3. You'll get lawyers sharp enough to read closely and say that "A party may not seek discovery from any source before that party's initial disclosure obligations are satisfied" in rule 1.280(f)(1) is not consistent with "Interrogatories may be served on the plaintiff after commencement of the action and on any other party…***after service of the process and initial pleading on that party***," and it will create motion practice for you.

4. You'll get people who say the initial disclosures are incomplete, so the requirement was not "satisfied" under rule 1.280(f)---therefore there is no duty to respond to discovery.

(g) Supplementing Responses.

Parties now have a duty to supplement any disclosure, rog response, request for production or request for admission "**in a timely manner**" if it is "**incomplete or incorrect**" and "the additional or corrective information has **not otherwise been made known during the discovery process or in writing**" or "as ordered by the court."

(k) Signing Disclosures and Discovery Requests; Responses; and Objections.

Every disclosure and every discovery request, response, and objection has to be signed by at least 1 attorney of record or by the self-represented litigant.

They have to include the attorney's address, email address and a phone number. (Self-represented litigants have to include the same information).)

By signing the person verified that, “to the best of the person’s knowledge, information and belief **formed after a reasonable inquiry**”:

Disclosures are complete and correct when made

The discovery request, response or objection is:

(A) consistent with these rules and warranted by existing or a good faith argument for the extension, modification or reversal of existing law (basic ethical duties NOW ENSHRINED IN THE RULES)

(B) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(C) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

The rule expressly states at the end:

"No party has a duty to act on an unsigned disclosure, request, response, or objection until it is signed. If a certification violates this rule **without substantial justification**, the court, on motion or on its own, **MUST** impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The sanction **may** include an order to pay the reasonable expenses, including attorney's fees, caused by the violation."

So, you MUST sanction if there was no "substantial justification" for the violation, but HOW you sanction is up to you.

NEW TO RULE 1.340 – Interrogatories

Beautiful new change!!!

(8) The grounds for objecting to an interrogatory must be stated with specificity, including the reasons. **Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure.**

In the order implementing the new rules, the Court wrote that this provision was included "to avoid discovery objections that just generally cite proportionality without any further explanation…." SC2023-0962, p.3.

But the Court did not limit the requirement to only proportionality objections.

So, **if you enforce it**, this should create a SEA CHANGE in how parties make discovery objections.

Rule 1.340 also has new commentary:

Court Commentary

2024 Amendment. Any use of standard interrogatories must be adjusted for proportional discovery.

In a tiny slip and fall, 10 years of records might not be proportionate.

Rule 1.350 – PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY ON LAND FOR INSPECTION AND OTHER PURPOSES

(b) Procedure

…

(4) For each item or category the response must state that inspection and related activities will be permitted as requested ***or state with specificity the grounds for objecting to the request, including the reasons.*** ***[but why doesn't it say the objection is waived like in the interrogatory rule? I suspect it is unintentional…I filed a motion for rehearing…]***

(5) If an objection is made to part of an item or category, the objection must ***state with specificity the grounds for objecting, including the reasons***. [same]

(6) An objection must state whether any responsive materials are being withheld on the basis of that objection. ***An objection to part of a request must specify the part and permit inspection of the rest.*** [same]

****The Court specifically said that last sentence was designed to "help discovery progress when there is only an objection to a part of a request." SC2023-0962, p.4.**

Rule 1.380 – FAILURE TO MAKE DISCOVERY; SANCTIONS.

This was NOT part of the rules package that was submitted to the Civil Rules Committee.

Some of these are things commenters suggested.

Some are the Court's own creation to make the rules clearer (not different).

ALL are going to require the lawyers to pay close attention…

(2) *Motion [to compel].*

(A) If a party fails to make a disclosure required by rule 1.280(a)[initial disclosures], any other party may move to compel disclosure and for appropriate sanctions.

(B) The discovering party may move for an order compelling an answer if:

(i) a deponent fails to answer a question propounded or submitted under rule 1.310 or 1.320; or

(ii) a party fails to answer an interrogatory submitted under rule 1.340.

(C) The discovering party may move for an order compelling a designation if a corporation or other entity fails to make a designation under rule 1.310(b)(6) or 1.320(a).

(D) The discovering party may move for an order compelling an inspection if a party in response to a request for inspection submitted under rule 1.350 fails to respond that inspection will be permitted as requested or fails to permit inspection as requested.

(E) The discovering party may move for an order compelling an examination if a party:

> (i) in response to a request for examination of a person submitted under rule 1.360(a) objects to the examination;
> (ii) fails to respond that the examination will be permitted as requested;
> (iii) fails to submit to examination; or
> (iv) fails to produce a person in that party's custody or legal control for examination.

(F) A discovering party may move for an order compelling a response if a party fails to produce documents and things under rule 1.350(b).

I chose a swear word on purpose. What you are about to see next (subsection (d)) is a BIG DEAL.

I am telling the trial lawyers that they DO NOT want to find themselves crosswise with this next subsection. I'm telling them to adopt the motto:

"When in doubt, send it out!"

The Supreme Court added this subsection at the request of commenters to give teeth to the requirement to supplement.

1.380(d) – Failure to Disclose or to Supplement an Earlier Response.

If a party fails to provide information or identify a witness as required by rule 1.280(a) or (g), **the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial,** unless the failure was substantially justified or harmless. **In addition to** or **instead of this sanction**, the court, on motion and after giving opportunity to be heard:

(1) may order payment of the reasonable expenses, including attorneys' fees, caused by the failure;

(2) may inform the jury of the party's failure;

(3) may impose other appropriate sanctions, including any of the orders listed in rule 1.380(b)(2)(A)-(b)(2)(D).

The Supreme Court’s order says the duty to supplement begins IN ALL CASES, no matter when filed, on January 1, 2025. SC2023-962, p.6.

RULE 1.440
SETTING ACTION FOR TRIAL

There is no longer an “at issue” rule. Amended complaints and answers right before trial will not stop the trial! Motion to dismiss never set for hearing? NO LONGER A PROBLEM!

(a) The failure of the pleadings to be closed will not preclude the court from setting a case for trial.

(b) If a party wants a trial date earlier than what is in the case management order and they file a motion, the court can make the trial date earlier.

Let's be real. The odds of you ever seeing this rule invoked are infinitesimally small…

The motion "must include an estimate of the time required, whether there is a basis for expedited trial, indicate whether the trial is to be by a jury or non-jury trial, and whether the trial is on the original action or a subsequent proceeding, and, if applicable, indicate that the court has authorized the participation of prospective jurors or empaneled jurors through audio-video communication technology under rule 1.430(d). **The moving party must serve a copy of the motion on the presiding judge at the time the motion is filed**."

(c) Setting the Trial Period.

(1) The court can set the trial period for something earlier than the case management order says on its own motion or the motion of a party.

(2) If you have a "projected trial period," the trial court has to set the actual trial period at least 45 days before the trial period set forth in the case management order.

(3) [For cases where rule 1.200 doesn't apply]

(4) Any order setting the trial period must set the trial to begin at least 30 days AFTER service of the order **unless all parties agree otherwise**.

(d) Service on Defaulted Parties.
If damages are not liquidated, the order setting the action for trial must be served on defaulted parties

(e) Applicability.
The rule does not apply to actions under Chapter 51

RULE 1.460
MOTIONS TO CONTINUE TRIAL

This amendment DOES NOT MEAN you can’t grant continuances!!!

You don’t have to take my word for it.

You can watch Justice Canady’s reaction when Judge Moe (trying to persuade the court to delay implementation of the new rule to get past the HB 837 cases all maturing at the same time) told him that there are judges who perceive that they shouldn’t be granting continuances anymore:


HON. ANNE-LEIGH GAYLORD MOE
Appearance for Self


So, let’s read the rule.

(a) Generally. Motions to continue trial are disfavored and should rarely be granted and then **only upon good cause shown**. Successive continuances are highly disfavored. **Lack of due diligence in preparing for trial is not grounds to continue the case.** Motions for continuance based on parental leave are governed by Florida Rule of General Practice and Judicial Administration 2.570.

REMEMBER: This is disfavor applies if you have an actual trial period. If you are still in a "projected" trial period, this rule does not apply!

(b) Motion; Requirements. A motion to continue trial must be in writing unless made at a trial and, except for good cause shown, must be signed by the named party requesting the continuance.

(c) Motion; Timing of Filing. A motion to continue trial must be filed **promptly after the appearance of good cause** to support such motion. **Failure to promptly request a continuance may be a basis for denying the motion to continue.**

A motion to continue must have several things in it. The homework must be done, and ducks must be ordered before attorneys file.

(d) Motion; Contents. All motions for continuance, even if agreed, must state with specificity:

(1) the basis of the need for the continuance, including when the basis became known to the movant;

(2) whether the motion is opposed;

(3) the action and specific dates for the action that will enable the movant to be ready for trial by the proposed date, including, but not limited to, confirming the specific date any required participants such as third-party witnesses or experts are available; and

(4) the proposed date by which the case will be ready for trial and whether that date is agreed by all parties.

If that looks familiar, it's because these are the same requirements for a motion to change the CMO in rule 1.200.

(e) Efforts to Avoid Continuances. To avoid continuances, trial courts should use all appropriate methods to address the issues causing delay, including requiring depositions to preserve testimony, allowing remote appearances, and resolving conflicts with other judges as provided in the Florida Rules of General Practice and Judicial Administration.

(f) Setting Trial Date. When possible, continued trial dates must be set in collaboration with attorneys and self-represented litigants as opposed to the issuance of unilateral dates by the court.

(g) Dilatory Conduct. If a continuance is granted based on the dilatory conduct of an attorney or named party, the court may impose sanctions on the attorney, the party, or both.

(h) Order on Motion for Continuance. When ruling on a motion to continue, the court must state, either on the record or in a written order, the factual basis for the ruling.

***This is THE SAME WAY you rule on summary judgment motions now.

An order granting a motion to continue must either set a new trial period or set a case management conference.

If the trial is continued, the new trial must be set for the earliest date practicable, given the needs of the case and resources of the court.

The order must reflect what further activity will or will not be permitted.

RULE 1.202

CONFERRAL PRIOR TO FILING MOTIONS

RULE 1.202. CONFERRAL PRIOR TO FILING MOTIONS

(a) Duty. Before filing a non-dispositive motion, the movant must confer with the opposing party in a **good-faith effort** to resolve the issues raised in the motion.

(b) Certificate of Conferral. At the end of the motion and above the signature block, the movant must include a certificate of conferral in substantially in the following form:

> "I certify that prior to filing this motion, I discussed the relief requested in this motion by [method of communication and date] with the opposing party and [the opposing party (agrees or disagrees) on the resolution of all or part of the motion]
>
> OR
>
> [the opposing party did not respond (describing with particularity all of the efforts undertaken to accomplish dialogue with the opposing party prior to filing the motion)]."
>
> OR
>
> "I certify that conferral prior to filing is not required under rule 1.202."

(c) Applicability; Exemptions. The requirements of this rule **do not apply** when the movant or the nonmovant is unrepresented by counsel (pro se). Conferral is not required prior to filing the following motions:

(1) for time to extend service of initial process;
(2) for default;
(3) for injunctive relief;
(4) for judgment on the pleadings;
(5) for summary judgment;
(6) to dismiss for failure to state a claim on which relief can be granted;
(7) to permit maintenance of a class action;
(8) to involuntarily dismiss an action;
(9) to dismiss for failure to prosecute;
(10) for directed verdict and motions filed under rule1.530;
(11) for garnishment, attachment, or other motions for enforcement of a judgment under rule 1.570;
(12) for writ of possession under rule 1.580;
(13) filed in actions proceeding under section 51.011, Florida Statutes; and
(14) that do not require notice to the other party under statute or rule.

(d) Sanctions. Failure to comply with the requirements of this rule **may** result in an appropriate sanction, **including denial of a motion without prejudice**. **The purposeful evasion of communication under this rule may result in an appropriate sanction.**

TWO POINTS:

1. The first thing I imagine judges will do is flip to the end of all motions and look for that certificate of conferral. No conferral means that motion gets denied (without prejudice) without a hearing.

2. Even if there is a certificate of conferral, you're still going to need to decide if there was a "purposeful evasion of communication" that warrants a sanction.

To reduce time spent acting as playground monitors, I propose that the CMO contain a definition of what it means to "confer with the opposing party in a good-faith effort to resolve the issues raised in the motion."

- Does it mean more than one attempt?

- Does it mean a phone call or zoom? Or will email suffice?

- Does a written communication or message requesting to confer have to set a reasonable deadline to respond? Is a deadline of less than 1 business day presumptively unreasonable so that it does not constitute an attempt to confer?

- Do you want to expressly require prompt responses to conferral requests?

There is a recent FJA article I am happy to share that collects samples of how many jurisdictions define the term…

Heads up on a housekeeping issue:

Despite implementing the conferral rule, the Supreme Court has inconsistencies in rule 1.380 about when conferral is required.

This is likely going to confuse parties.

I don’t have a solution for you other than to flag it as something you’ll likely see if you have good lawyers who know the rules appearing before you.

1.380(a)(2)(E)(iv)

(iv) fails to produce a person in that party's custody or legal control for examination~~, the discovering party may move for an order compelling an answer, or a designation or an order compelling inspection, or an order compelling an examination in accordance with the request. The motion must include a certification that the movant, in good faith, has conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action.~~

1.380(a)(4)

(4) *Award of Expenses of Motion.*

(A) If the motion is granted and after opportunity for hearing, the court ~~shall~~must require the party or deponent whose conduct necessitated the motion, or the party or counsel advising the conduct, to pay to the moving party the reasonable expenses incurred in obtaining the order that may include attorneys' fees, unless the court finds that the movant failed to certify in the motion that a good faith effort was made to obtain the discovery without court action, that the opposition to the motion was substantially justified, or that other circumstances make an award of expenses unjust.

1.380(e)(2)

(2) Any motion specifying a failure under ~~clause (2) or (3) of this~~ subdivisions (e)(1)(B) or (e)(1)(C) ~~shall~~must include a certification that the movant, in good faith, has conferred or attempted to confer with the party failing to answer or respond in an effort to obtain ~~such~~the answer or response without court action.

I don't see how the certification required under new rule 1.202 is any different than the certification still required in these two provisions in rule 1.280. So, as long as they have a rule 1.202 certification, a moving party should be fine.

But who can predict how enterprising lawyers will try to argue the difference…

Rule 1.510 – Summary Judgment

But this time it is a smaller change.

Parties can still file a motion for summary judgment 20 days after the complaint is filed.

The deadline for filing the motion for summary judgment **is no longer 40 days before the hearing.**

Now, it must be filed “consistent with any court-ordered deadlines.”

Remember that rule 1.200 requires the CMO to list the deadline for filing summary judgment motions…

This is what the rule now says:

> **(b) Time to File a Motion.** A party may move for summary judgment 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. The movant must file and serve the motion for summary judgment consistent with the any court-ordered deadlines.

No more deadline of filing a response 20 days before the hearing.

The response has to be filed within 40 days after service of the motion.

If a party files a SJ motion, under rule 1.090, you can extend the response deadline (rule 1.200 only requires the case management order to state the deadline for filing a MSJ, not for resolving them; which means moving the deadline to respond is not controlled by rule 1.200's requirements for moving a deadline.)


ATTENTION!
IMPORTANT NOTICE

Rule 1.510(d) is impacted by the change in the deadline.

This rule allows a party to tell the trial court that they need to take more discovery in order to respond to the SJ motion.

The rule allows the court to “defer considering the motion,” deny the motion, give time to take more discovery, or any other remedy the court sees fit.

But what happens if a party files an early SJ motion, the opposing party files a motion under 1.510(d) to be able to take discovery, and the deadline for the SJ response runs before you can rule on the 1.510(d) motion?

I told the Supreme Court that 1.510(d) needs a tolling mechanism—so the deadline to respond to a SJ motion is frozen while the court contemplates the 1.510(d) motion.

It was a very frustrating oral argument because the Court seemed to think it was just a delay tactic.

If a party knows 1.510(d) well enough to know they need to file an affidavit and what the affidavit contains, odds are, you are going to grant the motion.

But it is going to create issues if you can't resolve that motion before the 40 days expires, the party who filed the 1.510(d) motion doesn't file a response because they are waiting on your ruling, and now you've got the moving party (correctly) saying you have to adopt everything in the motion as true, caselaw saying you can't rule on SJ while discovery is incomplete, and a rule that says a party can't get more time for discovery unless they ask you for it and you grant it.

MY PROPOSED WORKAROUND

PARTIES CAN FILE A 1.510(d) motion at the same time they file a 1.090(b)(1) motion asking you to extend the time for responding to the summary judgment motion until after you have ruled upon the 1.510(d) motion.

Rule 1.090(b) gives the court discretion to extend a deadline.

If a party moves under this rule BEFORE the deadline passes, the judge should almost always grant the motion. That's rule 1.090(b)(1)(A).

This way, you can grant the extension at the time you grant (or deny) the 1.510(d) motion.

Even with a denial, you could still give a party additional time to file a response to the summary judgment motion. This way, you don't have to deal with the situation where the moving party asks you to treat everything in the motion as admitted simply because it took more than 40 days to rule on the motion.

When it comes to summary judgment hearings...

Several commenters told the Supreme Court that the deadline cannot be totally untethered to a hearing.

Otherwise, you'll get SJ responses filed the day before the SJ hearing. That messes up the party seeking summary judgment. But it messes up the judge even worse—because they have no time to prepare!

The Court added this provision:

> (6) *Timing for Hearing*. Any hearing on a motion for summary judgment must be set for a date at least 10 days after the deadline for serving a response, **unless the parties stipulate or the court orders otherwise**.

NO ONE ASKED THE COURT TO DO AWAY WITH HEARINGS ON SUMMARY JUDGMENT MOTIONS.

This rule was not drafted to do away with hearings.

I know that without question because I am one of multiple people who proposed the language of that provision. It was meant to contemplate that if there were multiple summary judgment hearings, then “any hearing” had to be at least 10 days after the response was filed unless the judge and all parties agreed otherwise.


WHEN DO WE
START?

The Supreme Court said at pages 6 to 7 of the SC2023-962 order:

The initial disclosure requirement does not apply to any case filed before January 1, 2025.

All other amendments, including the duty to supplement, take effect in all cases on January 1.

“Case management orders already in effect on January 1, 2025, continue to govern pending actions; **however**, any extensions of deadlines specified in those existing case management orders are governed by amended rule 1.200 or amended rule 1.201.”

For actions commenced before January 1, 2025, and in which the court has not issued a case management order by that date, a case management order must be issued by April 4, 2025.

The new timing rules in 1.510 govern motions “filed on or after” January 1 but DO NOT APPLY to “motions filed before that date.” SC2024-662, p.3.

Same goes for the conferral requirement. If the motion was filed BEFORE JANUARY 1, then there was no need to confer before filing the motion (although there was a need to confer before setting it for hearing).


HEY, I KNOW
THIS IS A CRAZY IDEA,
BUT HEAR ME OUT.

The Supreme Court issued an opinion just two weeks ago recognizing the need for more circuit court judges.

But I think we need more than just judges.

Is there space to have judicial interns? We have law schools near many of our courts. You could start by offering it without pay for credit.

If it proved useful, the pilot program could form a basis for asking the legislature for funding for paid clerks (law school graduates).

We have to think outside the box about how to keep judges from drowning inside the box…

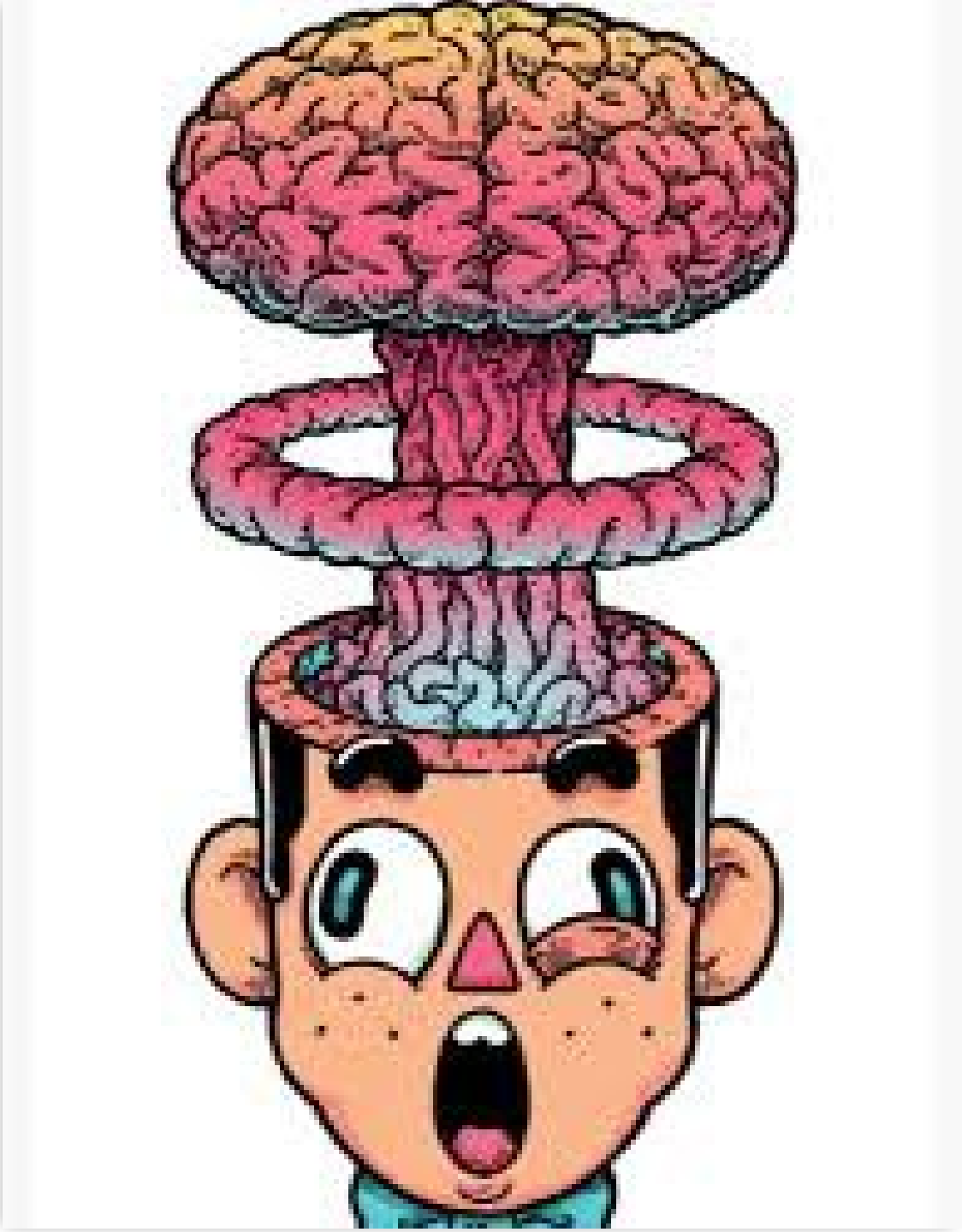
Just in case you didn’t memorize the last 90 or so minutes…

This Powerpoint

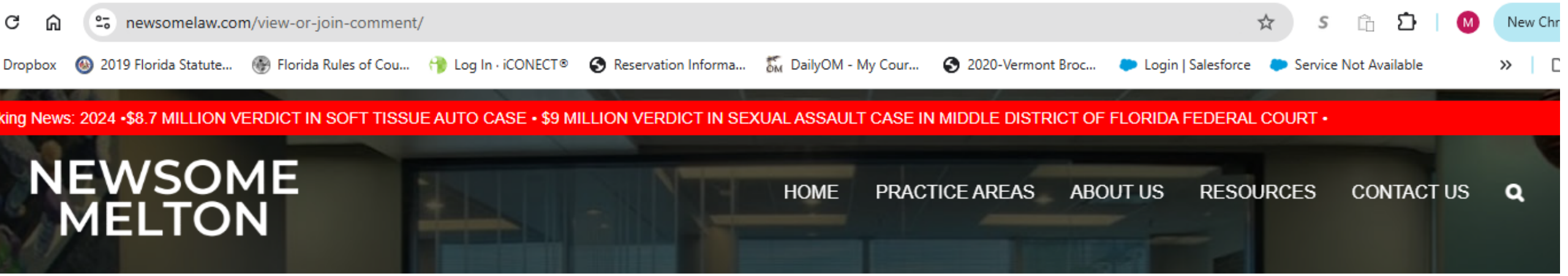
The Judicial Cheatsheet

This recording

Are all available online.



1. www.newsomelaw.com



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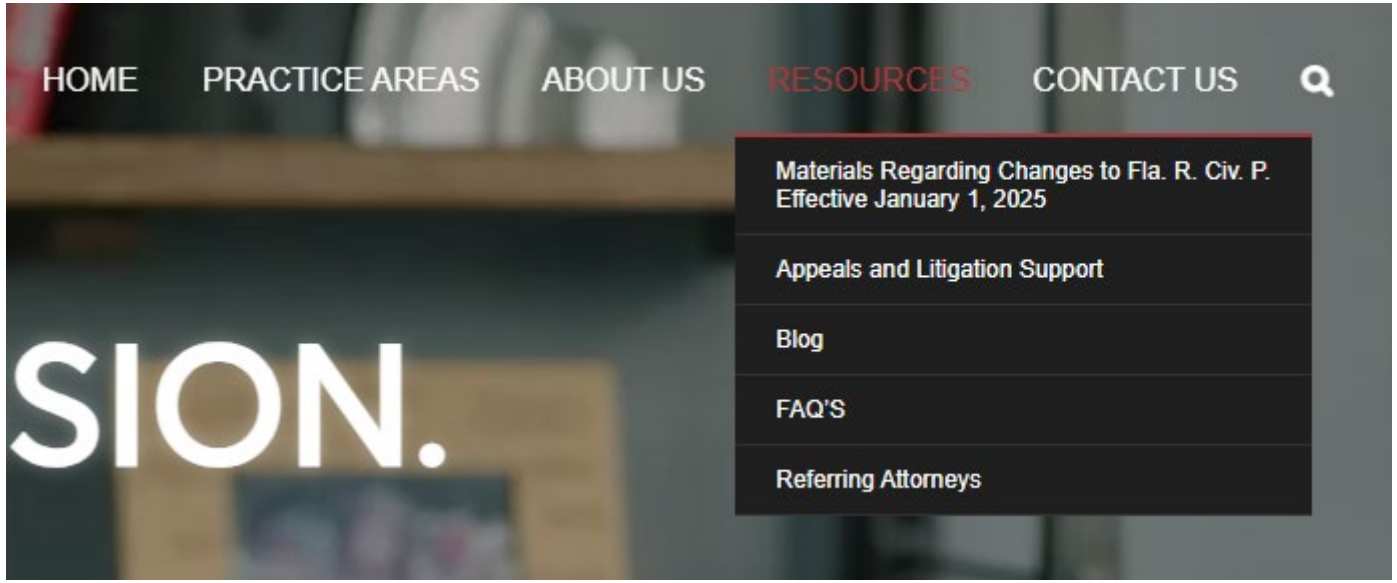

PowerPoint Presentation

Judicial Cheat Sheet Summarizing Changes

Link to Video of CJE Presentation Given on 12/23/24

OR https://www.newsomelaw.com/fla-r-civ-p-materials/


GODSPEED