THE CIVIL PROCEDURE RULES COMMITTEE OF THE FLORIDA BAR
Virtual Meeting
The Zoom Link is Here
Thursday, June 18, 2020
2:00 p.m.-6:00 p.m.

I. INTRODUCTORY MATTERS

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B. Docket of Pending Proposals.....p. 22

C. Subcommittee List p.27

D. Supreme Court Update
Presenter: Ardith Bronson, Chair

Joint Jurisdiction Amounts- SC19-1354 Civil and others filed comments in regards to the civil cover sheet. On March 30, 2020, the Committee filed a response to comment. Opinion is pending in front of the Court.

Evictions Forms- SC20-261. The Committee filed its report in February 2020. The Court published the proposal for comment. Comments were received. The Committee filed a response to comment on June 1, 2020. Opinion is pending in front of the Court.

Jury Instructions- SC20-145. The Committee filed its comment on May 18, 2020. Opinion is pending in front of the Court.

E. Report of Liaison to Rules of Judicial Administration Committee
Presenter: Sandy Solomon

F. Report of Review of the Federal Rules
Presenter: Jason Stearns

G. Legislation Review Subcommittee

Presenter: Siobhan Grant

II. OLD BUSINESS

A. Changes to Mediation Rules (Due Date July 1, 2020) (20-CIV-3)

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Presenter: Sandy Solomon

B. Translations (20-CIV-2)
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Presenter: Jeffrey Hearne

C. Drafting Subcommittee

Report.....p. 45

Presenter: Ceci Berman

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Presenter: Keith Park

E. Remote Testimony Subcommittee (16-CIV-13)

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Presenter: Judson Cohen/ Keith Park/Marty Alexander

F. Preserving Challenge to Trial's Court Findings (joint committee subcommittee) (20-CIV-4)

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G. Daubert (19-CIV-11)

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H. Final Judgment Voluntary Dismissal Rule 1.525/1.530 (20-CIV-5)

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(Status Reports)

I. RJA Limited Appearance (18-CIV-5)

Presenter: Ceci Berman

J. Reynolds – Rule 1.380 (18-CIV-4)

Presenter: Kathryn Ender

K. 1.442 Revisited (19-CIV-7)

Presenter: Sandy Solomon

L. Amicus Brief (16-CIV-17)

Presenter: Elliot Kula

N. Stand your ground (19-CIV-12)

Presenter: Elliot Kula

O. Read Backs Rule 1.445 (18-CIV-4)

Presenter: Collen Maranges

P. RJA Electronic Documents (18-CIV-13)

Presenter: Keith Park

RJA filed its case in SC19-2163 and comment by Civil was filed.

Q. Acosta (19-CIV-14)
Presenter: Vivian Fazio

R. Non party Subpeona (20-CIV-1)
Presenter: Correta Anthony-Smith

S. Request for Production/Admissions filed with Court (17-CIV-6)
Presenter: Siobhan Grant

III. NEW BUSINESS

Open discussion

IV. ANNOUNCEMENTS

Fall Meeting- October 7-10, 2020 Tampa Airport Marriott

Winter Meeting-January 13-16, 2021 Rosen Shingle Creek Orlando

Congratulations to members terming off and to our new leadership (Ceci Berman (Chair), Elliot Kula (Vice Chair), Jason Stearns (Vice Chair), and Lance Curry (Vice Chair)

V. ADJOURNMENT

CIVIL PROCEDURE RULES COMMITTEE OF THE FLORIDA BAR
MINUTES OF THE FEBRUARY 6, 2020 MEETING
ORLANDO, FLORIDA

Taken by Lance Curry

In Attendance:
Anthony Bello
Ceci Berman
Alexander Billias
Judge Bowman
Ardith Bronson
Cosme Caballero
Judson Cohen
Lance Curry
Scott Dimond
Katie Ender
Vivian Fazio
Siobhan Grant
Merrick Gross
James Haliczer
Jeffrey Hearne
Timothy Kolaya
Elliot Kula
Nicole Kushner
Colleen Maranges
Allison McMillen
Judge Nelson
Keith Park
Hampton Peterson
Paul Regensdorf
Judge Scaglione
Jason Sherry
Stanford Solomon
Jason Stearns
Peter Tragos
Judge Trawick

Absence Excused:

Martin Alexander
Coretta Anthony-Smith
Thomas Bishop
Debbie Crockett
James Ferrera
Don Hayden
Hinda Klein
Codey Leigh
Michael Fox

Absent:
Melissa Coffey
Ariel Cook
Sabrina Gallo
Chris Kolos
Jon Polenberg
Richard Schuler

Guests:
Kurt Alexander
John Wayne Hogan

I. INTRODUCTORY MATTERS.

Chair, Ardith Bronson, welcomed the Committee.

Called to order at 2:12

A. Approval of Minutes of Meeting of October 17, 2019

Presenter: Ardith Bronson, Chair
Motion to Approve: Keith Park
Second: Scaglione
MOTION AND VOTE:
Vote: Unanimous. Motion carried.

B. Docket of Pending Proposal

Presenter: Ardith Bronson, Chair
See page 25 of the agenda materials.
Will add Regensdorf's email to the materials.

C. Subcommittee List

Presenter: Ardith Bronson, Chair

See page 29.

Regensdorf: If new people want to serve on existing subcommittees, do we ask Chair?

Bronson: Yes. Send any requests to Bronson and Mikalla.

D. Supreme Court Update

Presenter: Ardith Bronson, Chair

2019 Cycle Report – SC-19-108: Opinion issues on 12/05/19

Bronson: The Court adopted majority of our proposals with the exception of the Proposal for Settlement change. If we want to push on that, we can reach out to one of the justices to see if there was a reason why. The opinion doesn't say much.

Also, Regensdorf raised an issue about the proposed PFS changes. Might want to reconvene the subcommittee to consider those issues and next steps.

Joint Jurisdiction Amounts- SC19-1354 Civil and others filed comments in regards to the civil cover sheet. See also concern express by Committee Member

Report regarding Evictions Forms- will be filed soon. The matter was presented at the BOG on 1/31/20

Bronson: BOG approved our forms and the Court will consider them. But there's an issue with us previously adding ADA language to other rules. Unfortunately, we added Creole for the ADA portion. The rest of our forms were in French. If eviction forms are approved, we will have to deal with same issues in translating. Not sure why we have French.

Regensdorf: Given that we have creole, not sure why we need French.

Gross: It's because of Haitian community, but that's why we have Creole.

Bronson: If we want to change all forms that are in French, we would need to have them all translated and sent back to the court. We would need to work out the logistics.

Anyone want to take on the analysis of what the prevalent language is? We will need empirical data supporting the change.

Hearne: I can do that.

Trawick: I'll work with you on that.

Bronson: Another issue is civil cover sheet. The Court ratified our changed cover sheet but then opened it up to comment, which drew multiple comments about identifying the jurisdictional amount in controversy.

The evidence committee has also indicated that it will comment.

Our legislative committee will address the comments along with other volunteers.

The Plaintiffs Bar is worried about the language being used against plaintiffs on the issue of damages. They say the nondispositive language is not good enough.

There's also a statutory issue.

Berman: Statute says not to state amount of damages in complaint. But the civil cover sheet now requires it.

Bronson: The subcommittee will address all the comments. We will be submitting a follow up comment and want to make sure this is fully considered by the entire committee.

Cohen: Just tell people to put greater than 30k.

Maranges: Can't do it. I've tried. Have to use numbers only.

Cohen: I would send fax. I'm also concerned that it could also be used in determining good faith in a PFS.

Wayne Hogan (liaison from Code of Rules of Evidence): Clerks in general have no authority over this. Everything goes electronically through the portal. Rule says the clerk must accept the filing even if the civil cover sheet is not provided. Other problems are that the Eportal will not allow you to file 90 day extension in med mal cases without a civil cover sheet even though no case has been filed. All of these complications are unintended consequences of the changes in the jurisdictional amount. On the civil cover sheet, you can only put numbers. So some are putting $999k. That undermines the data. Would be pleased to work with our committee on this.

Bronson: The comments did a nice job laying out all the issues. It's an important issue and we want to consider everything. We previously submitted a comment.

Grant: Our comment dealt with foreclosure actions in circuit courts. Case law said you could have case in county court if within jurisdictional limits. The form ended up removing part for filing foreclosure action.

Bronson: We didn't want boxes that undermined the data sought by Courts. When our new comment comes, we'll need a quick vote. So please read up.

E. Report of Liaison to Rules of Judicial Administration Committee
Presenter: Sandy Solomon

Ninety percent of the October meeting was used to discuss Marcy's law. Will probably be the same tomorrow.

The other issue that was addressed is the limited appearance rule.

But the Florida Supreme Court just modified our entire way of amending the rules, so that will likely be discussed.

There is a pro hac vice issue coming up. There's some discussion about not requiring a fixed fee, but making the fee subject to board approval.

Otherwise, there's not much that impacts the civil rules.

Berman: What about limited appearance rule?

Solomon: RJAC just filed that.

Dimond: I'm concerned about how the pro hac fees will be handled.

Solomon: The board would create categories for different fees.

F. Report of Review of the Federal Rules
Presenter: Jason Stearns

We're discussing adding initial disclosures and there are several ideas/proposals. We've come full circle and are back to saying that we should not include case management requirements in state court rules. We might just add the initial disclosures.

Regensdorf is going to address the expert issues.

There's been some hesitancy about going too fast with these changes, but we should be able to address initial disclosures.

Berman: Why are we doing this?

Stearns: The idea is that it gets the ball rolling, make things more efficient. At least parties would be disclosing the information that everyone agrees will/should be produced.

Berman: Seems that federal court practice is more expensive, so that's a concern.

Stearns: But it helps parties and attorneys understand what the costs of discovery are going to be.

Dimond: In federal court, you typically do initial disclosures and then you end up asking for the stuff again.

Stearns: Yes, but in state court, a party can withhold stuff that isn't specifically requested. In federal court, the withheld stuff would not be admissible at trial.

Berman: But that's why it's expensive.

Stearns: It's about fairness. And if things aren't produced, there are ways to address it. If initial disclosures are done correctly, it eliminates the need for a lot of the follow up discovery.

Ender: In the context of complex cases, it probably makes sense. But in small cases and county court cases, could create problems. Specifically in smaller or volume driven cases.

Stearns: There would be limited exemptions (e.g., habeas), but also the ability for parties to opt out.

Ender: Clients might not want discovery to proceed that fast in smaller cases or cases that are likely to settle early.

Stearns: That's a fair point. The requirement could be more onerous for defendants and large companies.

Ender: I like it in federal court. But for smaller cases in state court, it's an unnecessary expenditure of resources.

Stearns: I'm not sure that cases in federal court are always more complex. But if this is discovery is needed early in the case, let's address it. State court gets bogged down and the parties have difficulties getting discovery. This might speed things up.

Regensdorf: This is material that's going to have to come out sooner or later. Let's get it out there. Make lawyers and parties do what they should do without court involvement. One business court judge from Orlando said I can't case manage every case. She needs to know which ones are complex or problematic. She learns this through discovery disputes. This rule change makes the attorneys/litigants more responsible for the cases without court involvement. Will help problem cases bubble up sooner.

Also, there is a significant proposal in the works dealing with the business courts. I wonder what rules are going to apply to that. Other business courts have made their own rules. We ought to have rules here that any court can use. Lawyers will gripe about the change, but change is needed.

Bronson: Why does the federal rule exempt certain cases, like ERISA?

Regensdorf: Don't know. I haven't looked at that.

Kolaya: Remember that you don't have to turn over every single document in a Rule 26 disclosure. A party can just describe the categories of documents.

Ender: My issue is whether the initial disclosure requirement will increase the settlement value of small cases. Also, how will this impact bad faith claims?

Regensdorf: My big concern is with pro se litigants. The federal courts do exempt some pro se litigants. How will we handle that? It's something we're still evaluating.

Trawick: A large percentage of foreclosure cases are pro se.

Ender: Maybe it should just apply in circuit court cases.

Bronson: There are a number of issues for the subcommittee to discuss.

Gross: Tying it to circuit court makes sense, especially when they increase the jurisdictional amount to 50k. The complex civil rule hardly ever gets used. I wouldn't worry too much about business court issue because it is going to take a long time to vet.

G. Legislation Review Subcommittee

Laws of Florida 2019-13 (Uniform Interstate Deposition and Discovery Act)
Presenter: Siobhan Grant

Grant: This is old business. We will address later.

II. OLD BUSINESS

A. Read Backs Rule 1.445 (18-CIV-4)

Report (p. 38)
Presenter: Collen Maranges

This subcommittee was formed back in 2018. Judge Scola and the subcommittee put together the proposal on page 43 that tracks the criminal rule on this issue. There is currently no civil rule. It was presented to the full committee, which was not inclined to adopt it. The proposal went back to the subcommittee.

I spoke to Judge Scola about why this was important. Our committee previously declined to adopt a rule on read backs because courts have broad discretion on the issue. The Florida Supreme Court said there should be a jury instruction that gives courts guidance. Those instructions now exist.

There was a criminal case (*Hazuri*) where the jury asked for a transcript. The trial court told the jury that it had to rely on its collective recollection. In 2012, the Florida Supreme Court said that the trial court misled the jury into believing that a read back was prohibited. The trial court must tell the jury that it has a right to ask for a read back, even though the trial court ultimately has discretion on whether to give it.

On the criminal side, both the rules and jury instruction tracked the court's instruction from *Hazuri*. But on the civil side, there was no change.

In 2017, the Second District Court of Appeal ordered a new trial in a civil case (Phillip Morris) based on *Hazuri*. The jury requested transcripts and the judge said no. The Second District said the same procedure from *Hazuri* should be followed in civil cases.

So the subcommittee believed that there should be analogous civil rule on point. Judge Scola believes that the caselaw should be synthesized into the rule. The jury instruction does not address a jury's request for a trial transcript. This proposed rule, which is up for a vote in concept, gives judges some guidance.

Parks: Move to accept.

Trawick: Second

Bronson: Subsection (c) language seems a little off to me. Is it referring back to (b)(2)?

Maranges: Yes. It addresses what the court must do when the jury requests transcripts.

Stearns: So the judge can say no transcript, inform them that they can ask for a read back, but then can also deny the request for a read back?

Maranges: Yes. The judge must deny the request for transcript, but also must inform the jury that there is a way to seek more information.

Bronson: I'm concerned about there conceptually being too many things for the court to consider with this language.

Maranges:: There may be a better way to draft it, but the subcommittee was trying to track the existing criminal rule. But we can revisit the drafting.

Bronson: I think we should improve it.

Trawick: We could merge two and three.

Dimond: We could also merge one and two.

Bronson: It's confusing.

Regensdorf: For the trial judges in the room, do you like this?

Trawick: Yes, it is very helpful.

Maranges:: Phillip Morris case is a perfect example of why this is needed. The parties had a full trial that was ultimately reversed on this issue.

Ender: Will this require parties to get testimony?

Regensdorf: This doesn't require testimony.

Trawick: The extent of the read back is why judges need discretion.

Maranges:: The proposed rule dovetails nicely with the existing jury instruction.

Gross: Also, the appellate court reviewing the record cold. This makes it easier for verdicts to be preserved.

Maranges:: It's important because if a read back is requested, the trial judge has discretion. But if they request transcript and the judge says no, it's reversible error.

Park: Anyone against this?

Bronson: Doesn't seem like anyone is opposed.

Stearns: I'm going to read the names and get the votes.

Vote in concept: All here vote yes 29-0.

Bronson: This will go back to the subcommittee for clean up; then to drafting.

B. IOP Subcommitee

Report (p. 44)
Revised IOPs (p. 47)
Presenter: Keith Park

Regensdorf thought we needed a procedure for expedited consideration that doesn't require full committee approval. Going back several years, the Supreme Court wasn't happy with the speed of our responses and mandated the creation of rules to expedite.

We looked at IOPs of other committees, which have fast track committees. But all require ratification by the entire committee. As a policy matter, the subcommittee felt like there should not be approval without the entire committee.

We just had to respond quickly to an RJA proposal and our response/comment took about 20 days. That's pretty remarkable.

The subcommittee thinks the IOPs can be modified to improve the process. For example, we decided that the existing subcommittee would be better for deciding urgent matters rather than having an executive committee that might abuse the process.

We're not aware of any shortcomings in how the committee is handling things. Established tradition is that the entire committee considers the ultimate proposal.

Changes are needed because prior IOPs are focused exclusively on responding to the Florida Supreme Court. Expanded language allows for other circumstances and gives the Chair more discretion.

Although we decided that nothing needed to be done to address Regensdorf's concern about adding executive subcommittee, there only 3 people on the subcommittee. If entire committee wants to revisit that, we're ok with it.

Stearns: Current IOP says you can't shorten discussion period under 2 days. Doesn't it make sense to give Chair discretion to shorten time periods?

Park: Not sure it's critical to add that at this time because there are other IOPs involved about the time for reading changes.

Bronson: I would like the proposal to come before committee with everything.

Park: But if something goes wrong with that part, I wouldn't want it to delay what we've already done. It can be addressed as a new issue.

Regensdorf: The reason I did this was because some of the other committees want answers right away. I'm concerned about getting the best result when 5 people are heavily involved on an urgent matter and all others on the committee are not heavily involved. Would like to have an executive committee, but I'm fine with Park's proposal. I suggest that we approve this and then tweak to address the other issue.

Bronson: We could modify "business days" so that it expedites consideration.

Diamond: But there's a reason for that. There may be some on the committee who seem disinterested but who may know a lot about the issue involved.

Cohen: Motion to approve.

Park: Second.

Motion approved unanimously (29-0)

C. Drafting Subcommittee
Various Forms and Rule 1.280 will be addressed next meeting
Presenter: Ceci Berman

Nothing to report; will be ready in June.

D. Remote Testimony Subcommittee (16-CIV-13)
Presenter: Judson Cohen/ Keith Park
See Joint Commmittee website

Park: Given the statutory changes allowing remote notarization, a lot of work has been done trying to put together common sense ways of looking at remote testimony. We're waiting for RJAC to address certain things so that we can address the implications on civil rules. In the coming weeks, we should get some better language from RJAC that will assist.

Craig Miller (from Florida Court Reporters Association): We're going to be offering some alternative language to what is being proposed by RJAC. We're trying to make sure we address whether notaries are authorized to do this.

Cohen: If written testimony, it's ok. But oral testimony is bad?

Miller: Right now, yeah.

Park: Are you aware of the upcoming meeting?

Miller: I am now.

Park: We've had numerous reps from other interested groups at the meetings.

E. Taxation of Costs Subcommittee (16-CIV-20)
Subcommittee Report from December 2019 (p. 62)
Materials (p. 67)
Presenter: Keith Park

When we last discussed this, there was concern about Daubert type hearings and why those shouldn't be compensated. And under the "may be taxed" part, we wanted to include arbitration. That's where we're at.

By way of background, when guidelines were originally approved, court would not approve change that were not supported by the case law. We had guidelines for the circuit court judges, but that was it.

Now have case law that supports the changes being proposed.

On page 64, in the should be taxed part, we added court proceedings that were not a trial. Below that, in the may be taxed part, we put in three categories for clarity and voting purposes.

These changes don't really change anything. There's already a statute taxing expert testimony. Some judges will tax everything that may be taxed, but that's the position of some judges.

Motion that we take these one at a time starting with the "shall" changes.

Regensdorf: Second

Stearns: Did the language change from last time?

Park: We changed the language in (c). We had used "under oath," but changed so that experts can't get costs for submitting affidavits.

Bronson: Let's discuss both.

Trawick: In the may part, conferring with counsel could include conferring with counsel for preparing for depositions and court testimony. Seems like an area for potential abuse.

Park: Would you want to exclude the "conferring with counsel" language? The 1981 circuit court guidelines specifically excluded it. So we will have to explain.

Berman: Is this necessary?

Park: We put it in there to ensure that it was considered. The case law seems to go both ways on this. Some judges allow it and others don't. Someone will have to argue this to the Court, because it will likely be a concern. It still goes back to what the trial judge finds to be reasonable, which is what the case law says.

The case law does not address nonbinding arbitration, but that flows from the statute.

Regensdorf: Part D1 also could include conferring with counsel for preparing reports. It could be abused, but that's why it's up to Judge's discretion.

Stearns: If D3 specifically says conferring, does that mean it was specifically excluded from D1 so that you can't get conferring? There might be some drafting concerns.

Park: D1 is what the expert does, so doesn't really contemplate conferring with counsel. Maybe it could be plugged in there. We used "including" in D3 so that it does not limit what could be included.

Kolos: That's the language that was used in the *Winter Park* decision.

Stearns: Most experts in drafting reports need a lot of conferring with counsel.

Dimond: If were relying on language of a "reasonable fee," the drafting is critical. Couldn't we just say "including with counsel" in D1.

Regensdorf: Yes, but that will increase taxable costs.

Billias: That doubles Judge Trawick's concern.

Gross: What about fee experts? They are going to be constantly conferring with attorneys to determine the reasonableness of fees. That's why part D1 should include conferral and then judge has discretion.

Regensdorf: I agree with adding it. My time with experts was critical time. Is it subject to abuse? Sure, but lots of things can be abused.

Gross: What about when you're asking expert to rebut other expert's reports and helping you prepare for depositions?

Trawick: So it could include nontestifying experts?

Cohen: No. Those are excluded in III. B.

Park: D should say "testifying" expert witnesses. Not sure why it's not there.

Dimond: Seems like you get it if you're discussing anyone's deposition, not just the expert's deposition. The language doesn't limit it.

Stearns: If conferring language is added, shouldn't it be added for C1 of the Shall? For court ordered reports?

Park: Don't think that was considered.

Regensdorf: Let's just add the language to D1.

Dimond: Why not C1 also?

Regensdorf: The concern is that, in the mandatory section, lawyers will pump up the cost. They can still seek it under "May" category, but the court has discretion there.

Dimond: The implication is that if its excluded from C1, you don't get it.

Cohen: Motion to add friendly amendment to add conferring language to D1.

Regensdorf: Second.

Kolos: I'm Opposed. I'd rather stick with the language in the case law.

Park: Let's vote on the friendly amendment?

Bronson: We need to vote on C1 first.

Vote: 28-1 in favor.

Stearns: We're now voting on whether to amend D1 to add the conferring language.

Curry: I'm voting against it because I don't think the conferring language should be included anywhere because it's superfluous.

Berman: I agree.

Bronson: Let's have a straw vote about taking it out entirely.

Regensdorf: I want it in both sections, but prefer that it remain in D3. The failure to included it will be interpreted as a decision to exclude it.

Bronson: But some decisions say you don't get it.

Tragos: I would keep it in.

Vote on whether to amend to drop D3 conferring language.

17 yes, 12 opposed

So conferring language is out.

Park: Motion to change the title of part D to say "Testifying Expert Witnesses"

Cohen: Second

Stearns: But it's not in C1.

Cohen: Aren't they testifying experts?

Trawick: C1 includes court ordered reports, which might not involve testifying experts.

Park: So there's no need to clarify C1.

Gross: It's unnecessary.

VOTE: 28 in favor of amending title; 1 opposed.

Cohen: Move to approve part D as amended.

Park: Second

VOTE: 27 yes, 2 no

Bronson: The proposal will go to drafting.

F. Request for Production/Admissions filed with Court (17-CIV-6)
Report from October 2019 (p. 100)
Presenter: Siobhan Grant

Nothing right now.

F. RJA Limited Appearance (18-CIV-5)
Report from October 4, 2019 (p. 106)
Presenter: Ceci Berman

We're waiting for RJAC, who just filed a proposal. We'll bring it back in June.

G. Reynolds – Rule 1.380 (18-CIV-4)
Presenter: Kathryn Ender

We're working on it.

H. 1.442 Revisited (19-CIV-7)
Referral (p. 119)
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We're still working on it.

I. Amicus Brief (16-CIV-17)
Report from the Drafting subcommittee (p. 121)
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J. Daubert (19-CIV-11)
Presenter: Thomas Bishop

It's not ready yet.

K. Stand your ground (19-CIV-12)
Presenter: Elliot Kula

It's not ready yet.

L. RJA Electronic Documents (18-CIV-13)
Presenter: Keith Park
RJA filed its case in SC19-2163

Park: When RJAC refiled, they corrected a bunch of the stuff that we raised. But there's still a question of whether we want to comment again. There are a few issues that we're evaluating.

The big concern is about filings that can be rejected and held. They still have 6 categories for the clerk to reject filing.

M. Acosta (19-CIV-14)
Presenter: Vivian Fazio
Materials (p. 123)

Nothing right now. Should have something for the next meeting.

N. Non party Subpoena (20-CIV-1)
Presenter: Coretta Anthony-Smith
Referral (p. 133)

It's not ready yet.

III. NEW BUSINESS

A. Proposal regarding Rule 1.525 (Paul Regensdorf) (p. 134)

Need volunteers for subcommittee.

Regensdorf: There is an issue with the time limit for filing motions for attorney's fees. When a party files a timely authorized motion that defers rendition, that doesn't extend time for filing motion for fees. We should fix that by extending time.

Cohen: Is the judgment final after the timely authorized motion is resolved?

Regensdorf: We need to clarify it.

Curry: I'll volunteer. There are other problems with this rule.

Trawick: I just wrote a dissenting opinion because once entitlement is determine, there is no limit to seek fees. A person came back 20 years later. I'm concerned that after entitlement is determined, there is no time limit.

Regensdorf: There are a bunch of issues that we need a subcommittee to address.

Several individuals volunteered.

B. Proposal regarding Rule 1.190 Amended Complaint (p. 136)

Bronson: Going to loop this into federal rules.

C. Open discussion

IV. ANNOUNCEMENTS

Annual Meeting– June 17-20, 2020 Hilton Orlando Bonnet Creek

Fall Meeting- October 7-10, 2020 Tampa Airport Marriott

V. ADJOURNMENT

MOTION TO ADJOURN: Curry
SECONDED BY: Jason Sherry
Passed unanimously.

CIVIL RULES COMMITTEE
PENDING RULE PROPOSALS (10/2019)

Docket #	Proponent	Rule	Description	Status/History	Status
15-16	RJA Committee Member Paul Regensdorf	New Forms	Review all Civil forms to consider creating new forms to balance "unfairness" between available plaintiff and defendant forms	1-19-16 Assigned to subcommittee (Judge Trawick, Chair) 6-16-16 Subcommittee reported; continuing work 10-2016 Subcommittee reported; continuing work 11-2017- Subcommittee reported; continuing work 06-2017 Subcommittee reported; continuing work 10-2017 Subcommittee reported; continuing work 01-2018- Subcommittee reported; continuing work 06-2018- Subcommittee reported; continuing work 10-2018 Subcommittee reported; continuing work 01-2019-Forms presented for first reading in June 06-2019 Forms approved on first reading. 10-2019 Forms sent to drafting subcommittee 02-2020- Drafting subcommittee will report at Joint meeting	**Drafting**
16-13	1st Referral-Kevin Cook 2nd referral-Diane DeWolf	1.310 (b) (4) 1.310(c)	Amend Rule 1.310 to permit parties to "record" a Skype session (or other recordable technology session)	10-2016- Committee assigned 1-17- Committee Continues its work 03-2017- Committee assigned 2nd Referral 06-17- recommended no action as to 1.310 (b)(4) 10-17 The subcommittee recommended amendments to 1.310 (c); concept vote nearly fails but is sent back to subcommittee. 01-18-18 Approved on 1st reading; made referral for RJA. 03-2018- Approved on 2nd reading by email vote 33-1-0. 12-2018- Amendments published in a joint report 02-2020- Amendments still pending	**Out of Cycle Pending Joint Report**

Docket #	Proponent	Rule	Description	Status/History	Status
16-17	Craig Leen	Rules are silent	Concern regarding amicus Curiae in trial court	10-2016 meet (Chair Judge Ruiz) / 1/2017- heard report from committee4- likely no action but need to meet once again to address additional. Also new matter added See Rule 1.071 (additional email sent by Craig Leen) 06-2017 Committee Continues its work 10-2017 New Chair assigned (Elliot Kula); the committee continues its work. 10-2018- By vote of 20-7-0, on first reading amendments to 1.071 approved. Amendment sent to drafting subcommittee. 01-2019- Drafting subcommittee sent rule back to substantive subcommittee with concerns 10-2019-subcommittee continue its work 02-2020- subcommittee continue its work	
16-20		Taxation of costs		Keith Park, Chair 1-2017- additional members assigned 06-2017- subcommittee continues its work 10-2017- subcommittee continues its work 01-2018- subcommittee continues its work 06-14-2018- subcommittee continues its work 10-18-2018 subcommittee continues its work 01-2019- Passed on first reading. 06-2019- Committee discussed matter but the substantive subcommittee still needs to make changes regarding mediation and arbitration before final vote. 10-2019-Committee sent back to the subcommittee again for additional amendments. 02-2020 Final Amendments passed sent to drafting	
17-6	Lee Haas	1.350, 1.340, 1.370	Request for production/Admission	Referral Received on June 16, 2017 Subcommittee Chair(Grant) 10-2017 subcommittee Continues its work 01-18-2018-subcommittee Continues its work 06-14-2018- subcommittee continues its work 10-18-2018 subcommittee continues its work 01-2019 subcommittee continues its work 10-2019 The Committee discussed and referred the matter back to the subcommittee to address concerns.	

Docket #	Proponent	Rule	Description	Status/History	Status
17-10	3rd DCA	1.260	Northrop V. Britt third District. Archaic language 1.260	09-14-2017 Referral Received Subcommittee Chair (Berman) 10-2017- The subcommittee continues its work 01-18-2018- Approved on 1st reading; sent to drafting committee 06-14-2018-By vote of 25-0-0 approved 06-2020- Published in the Bar News; new comments received. Will send to BOG in July.	**Pending BOG Approval**
18-3	RJA	RJA Electronic Documents Rule		02-18- Subcommittee Formed to monitor the RJA electronic documents rules. 08-30-19 Comment submitted by CPRC 06-2020- Committee filed a comment in response to court's publication	
18-2	Alan Landerman	1.650	Amending Rule 1.650 to comport with the current version of Section 766.106(6) which includes permissible methods of informal pre suit discovery	1-19-2018 Subcommittee Formed Alan Landerman chair 01-2019- Rule passed on first reading. 06-2019-Approved on 2nd reading. 06-2020- Published in the Bar News; new comments received. Will send to BOG in July.	**Pending BOG Approval**
18-4	Reynolds (1D15-5765)	1.380	Concurring opinion ask civil rules to address the award of expenses under 1.380	02-2018- Subcommittee Formed Kathy Ender to Chair 06-14-2018-Subcommittee Continues its work 10-18-2018- Subcommittee Continues its work 01-2019- Subcommittee Continues its work 06-2019 Subcommittee Continues its work 02-2020- Subcommittee continues its work	
18-5	RJA	New Rule	Pursuant to recommendation by Vision 2016, add a rule to the civil rules regarding limited appearance	02-2018 Subcommittee Formed Ceci Berman Chair 06-14-2018-Subccmmittee Continues its work. 10-18-2018-Subccmmittee Continues its work. 01-2019- Subcommittee Continues its work 10-2019 Matter discussed at this meeting. Approved on first reading. 02-2020- Subcommittee looking into the current affairs of RJA rule.	
18-6	Marty Alexander	1.280	Have discovery request in word format	02-2018 Subcommittee Formed Marty Alexander Chair 06-14-2018-Subccmmittee Continues its work. 10-18-2018-Subccmmittee Continues its work.	**Drafting**

Docket #	Proponent	Rule	Description	Status/History	Status
				01-2019- Subcommittee Continues its work 06-2019 Subcommittee Continues its work 10-2019 Approved by the Committee on first reading; sent to drafting 02-2020- Drafting will continue to work on the matter.	
18-8	Judge Hogan Scola	1.445	Should the Committee adopt a Rule in accord with the Jury Instructions (801.2(a), (b), and (c)) regarding jury requests for transcripts or "read-back" testimony?	03-2018 Subcommittee Formed Judge Hogan Scola to chair? 06-14-2018-Subccmmittee Continues its work. Colleen to follow up with Judge Scola 10-18-2018-Subccmmittee Continues its work. 01-2019- Subcommittee Continues its work 06-2019: Subcommittee continue its work 02-2020 Approved on first reading. However, sent back to the subcommittee to address concerns.	
18-18	Goersch Case	1.080	Service of proposals of settlement motions interplay 2.516	08-2018- Subcommittee formed; to be chaired by Jason Stearns 10-18-2018-Subccmmittee Continues its work. 01-2019- Subcommittee Continues its work 06-2019: Subcommittee made a proposal after the court referred the matter after deciding the Wheating case. The Committee approved the matter waiving 2nd reading. 08-2019: Amendment published for comment with joint packet; no comments were received. 12-2019- Pending Opinion from the Court	**Filed in a joint Report in Case SC-2162**
19-2	Michael Orr	1.442	New Plaintiff added to the lawsuit timeframe for proposal for settlements	07-01-19: Email sent by Michael Orr. Existing 1.442 subcommittee assigned. Sandy Solomon is chair. 02-2020- Subcommittee continue its work.	
19-11	Thomas Bishop	New Rule	Whether Procedure needs to be put into place re: Daubert	06-2019: Discussed at June meeting. Subcommittee assigned. Thomas Bishop chair. 02-2020: Subcommittee continues its work.	
19-12	ACRC	New Rule	Does there need to be anything in the civil rules regarding Stand your ground?	8-27-19: Request received from ACRC. Subcommittee assigned. Elliot Kula is the Chair 02-2020: Subcommittee continues its work.	

Docket #	Proponent	Rule	Description	Status/History	Status
19-14	Acosta 2nd DCA Case	1.820	Procedures to request a trial dater after arbitration	10-2019- Subcommittee formed; Vivian Fazio chair. 02-2020: Subcommittee continues its work.	
20-1	Ryan Owen	1.351	Extending time for nonparty subpoena	1-2020 Subcommittee formed; Coretta Anthony-Smith. 02-2020- subcommittee continue its work	
20-2	Chair Ardith Bronson	Various	Should we translate some forms in Creole?	02-2020- Subcommittee formed; Jeffrey Hearne Chair	
20-5	Member Paul Regensdorf		Final Judgment Voluntary Dismissal	02-2020- Subcommittee formed	
20-4	The Court		Do you need to file a motion for a rehearing to preserve trial's court findings?	03-2020- subcommittee formed; Ceci Berman Chair	

Revised 2-21-20

CIVIL PROCEDURE RULES COMMITTEE
SUBCOMMITTEE LIST

Committee Chair: Ardith Bronson
Committee Vice-Chairs: Ceci Berman
Elliot Kula
Jason Stearns
Secretaries: Lance Curry/Jason Stearns
Parliamentarian: Keith Park
RJA Liaison: Sandy Solomon
Liaison to BOG: Michael Orr

I. STANDING COMMITTEES:

Drafting:

Ceci Berman, Chair
Miguel Chamorro
Vivian Fazio
(Ardith Bronson)
Keith Park
Colleen Maranges
Elliot Kula
Kathryn Ender
Dimond Scott
Jason Sherry
Allison McMillen

Internal rules:

Keith Park, Chair
A. Dax Bello
Vivian Fazio

Legislative review (for immediate response to legislative changes).

Siobhan Grant, Chair
Hampton Peterson
Judge Daryl Trawick
Kathryn Ender
Donald J. Hayden
Judge Scaglione
Coretta Anthony-Smith
Paul Regensdorf
Lance Curry
Jeffrey Hearne
Rick Gross

Ardith Bronson
Allison McMillen

Federal rules; following changes and considering whether our committee should propose changes Now working on Rule 26 issues

Jason Stearns, Chair
Judge Daryl Trawick
Debbie Crockett
Vivian Fazio
Lance Curry
Thomas Bishop
Hinda Klien
Dax Bello
Keith Park
Elliot Kula
Kurt Alexander, representative
Melisa Bondar, representative
Paul Regesndorf
Katie Ender
Rick Gross
Jason Sherry

Statewide Uniform Guidelines for Taxation of Costs in Civil Actions

Keith Park, Chair
Debbie Crockett
Vivian Fazio
James Ferrara
Katie Ender
Chris Kolos
Siobhan Grant

II. SUBCOMMITTEES ON PENDING RULES

Federal Scope of Discovery
Rachael Loukonen, Chair
Jason Stearns
Lance Curry

Full Form Review – create balance between plaintiff and defendant forms (File #15-16)
Judge Daryl Trawick, Chair
Hampton Peterson
Siobhan Grant
Jason Stearns
Katie Ender
Scott Dimond
Jeffrey Hearne

Amicus Curiae Subcommittee
Rule 1.071, Constitutional Challenge Subcommittee
Elliot Kula, Chair
(Ardith Bronson)
Colleen Maranges
Jason Stearns
Daryl Trawick

Request for Production/Admissions filed with Court
Siobhan Grant, Chair
Dax Bello
Debbie Crockett
Martin Alexander
Merrick Gross
Coretta Anthony
Melissa Coffey
Judge John Bowman

Sharing of Word Documents
Marty Alexander, Chair
Ceci Berman
(Ardith Bronson)
Judge John Bowman
Hampton Peterson

"Read Backs" Subcommittee
Colleen Maranges, Chair

Merrick Gross
Keith Park
Ceci Berman
Thomas Bishop
Allison McMillen

Reynolds 1.380

Kathryn Ender, Chair
Judge John Bowman
Collen Maranges
Scott Dimond
Elliot Kula
Cliff Curry
Coretta Anthony-Smith
Kurt Alexander

RJA Limited Appearance

Ceci Berman, Chair
Judge Daryl Trawick
Coretta Anthony
Debbie Crockett
Judge John Bowman
Elliot Kula
Jeffrey Hearne

1.442 Revisited

Sandy Solomon, Chair
Katie Ender
Elliott Kula
Julie Nelson
Tim Kolaya
Keith Park
Judge Scaglione
Vivian Fazio
Dax Bello
Kurt Alexander, representative

Daubert

Thomas Bishop, Chair
Elliott Kula
Kurt Alexander, representative
Peter Tragos
Sandy Solomon
Jason Sherry
Cosme Caballero

Stand Your Ground

Elliott Kula, Chair
Siobhan Grant
Paul Regensdorf
Katie Ender
Allison McMillen
Judge Scaglione
Don Hayden
Julie Nelson
Ceci Berman

RJA Electronic Document

Keith Park, Chair
Paul Regensdorf
Daryl Trawick
Alexander Martin
Debbie Crockett
Coretta Anthony-Smith
Cosme Caballero
Elliot Kula
Sandy Solomon
Jason Stearns

Non-Party Subpoena

Coretta Anthony-Smith, Chair
Allison McMillen
Keith Park
Rick Gross
Paul Regensdorf
Don Hayden

Final Judgment Voluntary Dismissal

Paul Regensdorf, Chair
Lance Curry
Elliot Kula
Judge Scaglione
Scott Dimond

PENDING RULES IN DRAFTING

NO ACTION SUBCOMMITTEES- PAST YEAR

5 day Rule Reformed Subcommittee

Keith Park, Chair

Alan Landerman
Debbie Crockett
Ardith Bronson

Loss of 5 days Response Time

Keith Park, chair
Debbie Crockett
Coretta Anthony-Smith
Ardith Bronson
Melissa Coffey
Hinda Klein
James Ferrara
Judge Scaglione

Inherent Authority Subcommittee

~~Rachael Loukonen, Chair~~
Ceci Culpepper Berman
Kathryn Ender
Jason Stearns
Elliott Kula
~~John Guyton~~
Hugh Hayes (Ad hoc)
Janis Kent (Ad hoc)
Jon Polenberg
Scott Dimond

RULES READY FOR SUBMISSION

PENDING CASES

For Fast-Track

Rule 1.310, Recording of Video Depositions (Skype)/ Administration of Oaths Via Video conferencing

Marty Alexander, Chair
Vivian Fazio
James Ferrera
Elliott Kula
Jason Stearns
Don Hayden
~~Alan Landerman~~
~~Miguel Chammorro~~

Goersch Motions for Sanctions Served 1.080

Jason Stearns, Chair
Judge Donald Scaglione

Timothy Kolaya
Rachael Loukonen
Alan Landerman
Elliott Kula
Michael Orr, representative

For 2022 Report

1.260 Subcommittee

Ceci Berman, Chair
Jane Kreusler Walsh
Frances De La Guardia
Alan Landerman
Elliott Kula
Kathryn Ender
Keith Park
Michael Orr

1.650 Presuit Discovery

Alan Landerman, Chair
Miguel Chamorro
Dax Bello
Jason Stearns
Donald Hayden
Elliott Kula
Jon Polenberg
Vivian Fazio
Siobhan Grant

MEMORANDUM

TO: Civil Procedure Rules Committee - -
Ad Hoc Subcommittee on Alternative Dispute Resolution Rules and Policy

FROM: Stanford R. Solomon
Subcommittee Chair

RE: Conference Call Meeting Minutes – May 12, 2020

DATE: May 15, 2020

On Tuesday, May 12, 2020, our *Ad Hoc* Subcommittee on Alternative Dispute Resolution Rules and Policy met by conference call to evaluate the Petition of the Committee on Dispute Resolution Rules and Policy to amend Florida Rules of Civil Procedure, etc., filed on April 15, 2020 (the "**new ADR Petition to Amend**").

The participants in the conference call were:

Judson Lee Cohen
Mikalla Davis
Rick Gross
Nicole Levy Kushner
Codey Lance Leigh
Peter Tragos
Sandy Solomon

The new ADR Petition to Amend seeks to amend rule 1.710 and rule 1.750 to add the following provision:

> Rules for Certified and Court-Appointed Mediators. Any mediator who mediates a civil action that is pending before any state court is, as to that mediation, subject to the Rules for Certified and Court-Appointed Mediators, Parts II and III (Rules 10.200 – 10.900), irrespective of whether the mediator is certified, non-certified, or court-appointed.

In addition, the new ADR Petition to Amend seeks to add the following Committee Note:

> 2019 Amendment. The amendment is intended to protect the public by ensuring that any mediator who mediates a civil action does so subject to the ethical standards the Supreme Court has imposed on all certified and court-appointed mediators irrespective of whether the mediator is certified, non-certified, or court-appointed. All individuals who mediate cases pending before any state court shall be subject to discipline and the procedures therefor set forth in Parts II and III (Rules 10.200 – 10.900).

The ADR committee's efforts to amend the rules of procedure to enhance controls over mediators and mediation has a somewhat-long and fairly-tortured history. In 2017, our Civil Procedure Rules Committee ("**CPRC**") undertook a detailed analysis of a more wide-ranging proposal that ostensibly would have required all mediators to be certified. The CPRC pushed back, concluding as follows:

> [B]ased on a comprehensive review of the information in its possession, CPRC strongly opposes the Proposal [of the ADR Committee]. The CPRC does not perceive a need for the proposed changes, and does not believe that the Proposal will benefit Florida Bar Members and their clients. [See attached July 28, 2017 letter.]

In 2019, the CPRC was asked again to review and comment upon the ADR committee's updated recommendations for revisions to court procedural rules. The updated recommendation were designed to require any individual who mediates cases before any state court to be subject to the ethical standards and disciplinary procedures in Parts II and III of the Florida Rules for Certified and Court-Appointed Mediators. After full discussion and analysis, the CPRC responded in opposition to the proposed amendments because "the proposals are both unnecessary and counterproductive for the majority of litigants that would be affected by it." [See attached July 8, 2019 letter.]

The new ADR Petition to Amend pares back some of the ADR committee's proposals in order to address the staunch opposition voiced to the prior proposals. Specifically, the new ADR Petition to Amend seeks only to ensnare within Parts II and III of the Rules for Certified and Court-Appointed Mediators those mediators who mediate a case that is *pending* before any state court.

After extensive discussion, the *Ad Hoc* Subcommittee recommends unanimously that the CPRC oppose the new ADR Petition to Amend for all of the same reasons that supported the prior opposition and others. The concerns of our *Ad Hoc* Subcommittee included:

- The concerns expressed in the new ADR Petition to Amend relate to a very narrow set of circumstances that have rarely been reported and even more rarely been addressed.

- The examples presented in the new ADR Petition to Amend do not implicate a wide-ranging problem.

- In the absence of a distinctly identifiable reason to believe that there is actually a problem that needs fixing, rule amendments should be avoided.

- There is no indication that the particular remedy selected will actually redress the concerns presented.

- The Parties who seek the assistance of uncertified mediators must be presumed to accept the risk that the mediator will not be subject to the mediation guidelines or subject to sanctions for misconduct.

- Lawyers and litigants often choose uncertified mediators because that they seek the assistance of a facilitator whose ability to evaluate and opine on disputed issues is not constrained by the rules.

- The proposed amendments neglect to address the resulting inconsistencies in the Florida Rules for Certified and Court-Appointed Mediators, rule 10.200 *et. seq*.

For these and other reasons addressed in greater detail at earlier stages, the *Ad Hoc* Subcommittee recommends opposition to the new ADR Petition to Amend.

/S/ Stanford R. Solomon
Stanford R. Solomon, Chair
Ad Hoc Subcommittee

COMMENTS

RE: THE PETITION FILED ON APRIL 15, 2020 BY THE FLORIDA SUPREME COURT COMMITTEE ON ALTERNATIVE DISPUTE RESOLUTION RULES AND POLICY, TO AMEND THE FLORIDA RULES OF CIVIL PROCEDURE, FLORIDA SMALL CLAIMS RULES, FLORIDA RULES OF JUVENILE PROCEDURE, FLORIDA RULES OF APPELLATE PROCEDURE, FLORIDA FAMILY LAW RULES OF PROCEDURE, AND FLORIDA RULES FOR CERTIFIED AND COURT-APPOINTED MEDIATORS

I.THE INTENT OF THE PROPOSED RULES

The intent of the proposed rule changes (the "Petition") is to subject any mediator who mediates an action filed and pending in any Florida (state) court to the Standards of Professional Conduct (Part II) and Disciplinary Process (Part III) of the Rules for Certified and Court-Appointed Mediators (the "Rules"), whether or not a court order of referral has been issued.

II. BACKGROUND

Florida Supreme Court certified mediators and court-appointed mediators are already explicitly governed by the Rules. Rule 10.200 of the Rules clarifies that "Court-appointed mediators are mediators selected by the parties or appointed by the court as the mediator in court-ordered mediations."

"Certified mediators" in the Petition refer to mediators certified by the Florida Supreme Court in any of the following areas: county, circuit (commonly referred to as circuit civil), family, dependency, and appellate mediation. The training for certification, requirements for certification and renewal of certification, and the costs of renewal vary depending upon the areas in which the mediator is certified by the Florida Supreme Court or seeks renewal.

All of the Florida Supreme Court rules of procedure currently in place require a court to initially appoint a certified mediator. Some rules have provisions for party selection of a non-certified mediator after an order of referral to mediation.

There are administrative orders such as AO S-2009-107 in the Thirteenth Judicial Circuit which made mediation in post dissolution family cases. The Petition states that there is confusion about whether a "general order of referral suffices to constitute a court appointment."

III. THE JURISDICTION OF THE SUPREME COURT

The Petition states that it is filed pursuant to AOSC 16-40 (June 28, 2016).

AOSC 16-40 specifically states that the Florida Supreme Court is authorized by Chapter 44, Florida Statutes to establish rules of practice and procedure for court-ordered mediation and arbitration.

Florida Statute 44.102 (1) states that "Court-Ordered mediation shall be conducted according to rules of practice and procedure adopted by the Supreme Court."

The Petition states that the "Florida Supreme Court has jurisdiction to adopt rules for practice and procedure in all courts under article V, section 2 (a) of the Florida Constitution, which includes authority to amend the Rules of Court pertaining to mediation, over which it has specific jurisdiction pursuant to section 44.106, Florida Statutes." Section 44.106 provides that "The Supreme Court shall establish minimum standards and procedures for qualifications, certification, professional conduct, discipline, and training for mediators and arbitrators who are appointed pursuant to this chapter." Florida Statute 44.102 (4), Court-Ordered Mediation, provides for "appointment" of mediators as follows:

"(4) The chief judge of each judicial circuit shall maintain a list of mediators who have been certified by the Supreme Court and who have registered for appointment in that circuit.

(a) Whenever possible, qualified individuals who have volunteered their time to serve as mediators shall be appointed. If a mediation program is funded pursuant to s. 44.108, volunteer mediators shall be entitled to reimbursement pursuant to s. 112.061 for all actual expenses necessitated by service as a mediator.

(b) Non-volunteer mediators shall be compensated according to rules adopted by the Supreme Court. If a mediation program is funded pursuant to s. 44.108, a mediator may be compensated by the county or by the parties.

Accordingly, Florida Statute 44.106 does not permit the Supreme Court to adopt rules of practice and procedure for non-court ordered mediations.

Article V, Section 2 (a) of the Florida Constitution provides authority for the Supreme Court to adopt "rules for the practice and procedure in all courts." Article II, Section 3 of the Florida Constitution prohibits one branch of government from

exercising "any powers appertaining to either of the other branches unless expressly provided herein."

In *Massey v. David,* 979 So.2d 931, 936 (Fla. 2008) the Supreme Court stated: "Generally, the Legislature is empowered to enact substantive law while this Court has the authority to enact procedural law. See *Allen v. Butterworth,* 756 So.2d 52, 59 (Fla. 2000)."

In *Haven Fed. Sav. & Loan Ass'n v. Kirian,* 579 So.2d 730, 732 (Fla. 1991). the Supreme Court stated:

> Substantive law has been defined as part of the law which creates, defines, and regulates rights, or that part of the law which courts are established to administer. *State v. Garcia*, 229 So.2d 236 (Fla. 1969). It includes those rules which fix and declare the primary rights of individuals with respect towards their persons and property. *Adams v. Wright*, 403 So.2d 391 (Fla. 1981). On the other hand, practice and procedure "encompass the course, form, manner, means, method, mode, order, process or steps by which a party enforces substantive rights or obtains redress for their invasion. 'Practice and procedure' may be described as the machinery of the judicial process as opposed to the product thereof.' *In re Florida Rules of Criminal Procedure,* 272 So.2d 65, 66 (Fla. 1972)(Adkins, J., concurring) It is the method of conducting litigation involving rights and corresponding defenses. *Skinner v. City of Eustis,* 147 Fla. 22, 2 So.2d 116 (1941).

Accord, *DeLise v. Crane Co.*, 258 So.3d 1219 (Fla. 2018)

> In *Allen v. Butterworth,* 756 So.2d 52, 60 the Supreme Court reiterated:
>
> As to the term "procedure," I conceive it to include the administration of the remedies available in case of invasion of primary rights of individuals. The term "rules of practice and procedure" includes all rules governing the parties, their counsel and the Court throughout the progress of the case from the time of its initiation until final judgment and its execution."

The intent of the proposed Rules is to mandate mediators who are voluntarily selected by the parties to engage in private, consensual mediation to conform to ethical standards and disciplinary processes imposed by the Florida Supreme Court on certified mediators before there is any order of referral to mediation. That is, the Supreme Court is seeking to impose ethical standards and discipline on non-party providers of alternative dispute resolution services because

they are mediating disputes which are the subject of actions filed in the court. However, the same non-certified mediator who mediated the same disputes pre-suit would not be subject to these ethical standards or discipline by the Supreme Court.

There is currently no enabling legislation for the Florida Supreme Court to impose such standards and discipline. Such standards and discipline impose substantive burdens upon the practice of mediation which non-certified mediators have not voluntarily agreed to be bound by.

It is the providence of the state legislature to regulate a business that has a relation to the general welfare and public interest, subject to judicial review. See *Sullivan v. DeCerb,* 156 Fla. 496, 23 So.2d 571(1945).

STATE OF FLORIDA
SEVENTH JUDICIAL CIRCUIT
Circuit Court, Volusia County
Volusia County Courthouse Annex
125 East Orange Avenue, Suite 304
Daytona Beach, Florida 32114

Michael S. Orfinger
Circuit Judge

Phone: (386) 257-6091

May 1, 2020

Ms. Ardith Bronson, Chair
Civil Procedure Rules Committee
DLA Piper LLP
200 Biscayne Blvd.
Miami, Florida 33132-2219

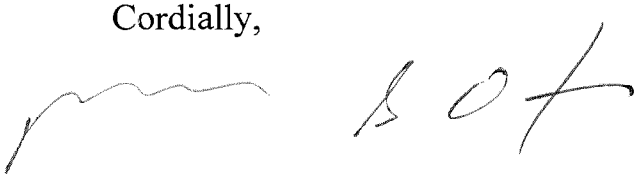
Dear Ms. Bronson:

I am writing to you as Chair of the Florida Supreme Court's Committee on Alternative Dispute Resolution Rules & Policy (Committee) regarding proposed revisions to rule 1.720, Florida Rules of Civil Procedure, and rule 12.741, Florida Family Law Rules of Procedure. The proposed revisions would have added the following language to the rules: "When elder law issues are involved in the dispute or upon the request of all parties, the court may select a certified family or circuit mediator who has completed a Supreme Court of Florida certified elder mediation training."

Last summer, the Committee sought comments on these amendments generally and later in the fall requested assistance from The Florida Bar sections and committees in creating a definition for "elder matters." After receiving valuable feedback from our stakeholders in the field, the Committee has decided not to pursue the amendments at this time.

I want to apprise you of the Committee's decision and thank you for your time and input. Your collaboration is greatly appreciated.

Cordially,



Michael S. Orfinger,
Chair of the Committee on Alternative
Dispute Resolution Rules and Policy

To: Ardith Bronson / Mikala Davis

From: Hon. Daryl Trawick / Jeff Hearne

Re: Creole Translations for Forms

Date: April 24, 2020

You asked us to review whether the Committee should recommend to the Supreme Court that the eviction summons, and possibly other forms, be translated into Haitian Creole. At the last meeting, the Committee noted that the regular summons and eviction summons are translated into French.

In 1988, the Supreme Court approved Form 1.902(b) which created a Form for Personal Service on Natural Persons. *See In re Amendments to Rules of Civil Procedure*, 536 So. 2d 974, 976 (Fla. 1988), *opinion clarified*, 545 So. 2d 866 (Fla. 1989). It added three summons in English, Spanish, and French. The Court's opinion contains no reference to the translations, but the Committee Notes explain, "[T]he form for personal service on natural persons contains Spanish and French versions of the English text to ensure effective notice on all Floridians." We could not locate the Civil Rules Committee's Quadrennial Report submitted to the Court in 1988. However, we located the minutes from the January 1988 committee meeting where it voted to submit the summons in three languages. While the committee discussed the need for additional languages to help avoid defaults, the minutes lack any explanation why it selected French. On April 16, 2020, the Florida Supreme Court amended Form 1.902(b) to include a Haitian-Creole summons without discussion.

In the same 1988 report to the Supreme Court which included the Spanish and French summons under 1.902(b), the Committee proposed creating the eviction summons (Form 1.923). However, the eviction summons was not translated until 1996. In 1996, the Supreme Court approved substantive changes to the form eviction summons and added Spanish and French translations. *In re Amendments to Florida Rules of Civil Procedure*, 682 So. 2d 105, 141 (Fla. 1996). But again, there was no discussion of the language choice.

Although we cannot find any official explanation, it is a reasonable assumption that the committee chose to include French to provide notice to the growing Haitian community in Florida. Haitian Creole is the primary language spoken by Haitian immigrants. *See* JoNel Newman, *Ensuring That Florida's Language Minorities Have Access to the Ballot*, 36 Stetson L. Rev. 329, 335 (2007). According to the 2018 American Community Survey (ACS) conducted by the Census Bureau, there are 484,195 individuals with Haitian ancestry in Florida.[1] The ACS data on language spoken at home is classified by households rather than individuals. In Florida, there are 195,058 households that speak "French, Haitian, or Cajun" at home. Of those households, approximately

[1] This includes people reporting single ancestry and multiple ancestries.

37,957 are limited English-speaking households. This is the second largest group of limited-English speaking households in Florida after Spanish-speaking households.

The 1926 Haitian Constitution designated French as the country's official language and "Creole as the language of the people." Danielle N. Boaz, *Examining Creole Languages in the Context of International Language Rights*, 2 Hum. Rts. & Globalization L. Rev. 45, 49 (2009). Creol became an official language in the 1987 Constitution which pronounced, "[a]ll Haitians are united by a common language: Creole. Creole and French are the official languages of the Republic." *Id.* at 52. But, the written form of Haitian Creole is not standardized and is structured based on how the word is pronounced. *Id.* at 52. In 1988, when the Committee approved the French summons, French had traditionally been the official language of Haiti and Creole had only recently been recognized as the official language of Haiti. This could explain why the Committee selected French instead of Creole. When the Committee translated the eviction summons in 1996, the Committee likely wanted to make it consistent with Form 1.902(b) and translated the eviction summons into French. Since the Supreme Court amended Form 1.902(b) on April 16, 2020, the eviction summons should be translated into Haitian-Creole as well.

There are a few other official forms translated into foreign languages. In the Family Law Rules, the Summons for Personal Service on an Individual, Form 12.910(a), is translated into Spanish and French. *See Amendments to The Florida Family Law Rules of Procedure & Family Law Forms*, 713 So. 2d 1, 168 (Fla. 2000). But, two years later in the Rules of Juvenile Procedure, the Supreme Court approved the use of Haitian-Creole forms. *Amendments to Florida Rules of Juvenile Procedure*, 827 So. 2d 219, 243 (Fla. 2002). Both Form 8.959 (Summons for Dependency Arraignment) and Form 8.979 (Summons for Advisory Hearing for Termination of Parental Rights) are translated into Haitian-Creole and Spanish – but not French. The choice of language is not discussed in of the Court's opinions or committee notes.

Some judicial circuits have recognized the need for language access for Haitian Creole speakers, especially in the context of evictions. For example, the Fifteenth, Seventeenth, and Eleventh Judicial Circuits all require eviction summons to be served in English, Spanish, and Creole.[2]

Based on the significant population in Florida that only speaks Haitian-Creole, we recommend that the eviction summons, Form 1.923, also be translated into Haitian-Creole. While it is unclear whether a French translation is necessary, based upon the Supreme Court's recent change to Form 1.902(b), we do not recommend removing the eviction summons' French translation. The Committee may also want to consider requesting Spanish and Haitian-Creole translations for any forms unrepresented individuals are likely to receive, such as Forms 1.907, 1.908, and 1.915.

[2] 15th Circuit: Administrative Order No. 3.602-01/2020 (Jan. 24, 2020); 17th Circuit: Administrative Order No. 2011-27-Civ (May 23, 2011); 11th Circuit: Summons available online: https://www.miami-dadeclerk.com/library/civil/141-Web.pdf

SUBCOMMITTEE REPORT FORM
(Drafting Subcommittee)

Rules Involved: Forms 1.902, 1.910, 1.911, 1.912, 1.913, 1.977 & new "proof of service of subpoena form; Rules 1.280, 1.340; Uniform Guidelines for Taxation of Costs

Date of Report: June 5, 2020

Chair: Ceci Berman

Members: Ceci Berman, Elliot Kula, Vivian Fazio, Keith Park, Colleen Maranges, Jason Sherry, Katie Ender, Allison McMillen

Other participants: Mikalla Davis

Meeting dates: March 24, 2020; March 31, 2020; April 7, 2020; April 14, 2020; April 21, 2020; April 28, 2020; May 19, 2020; May 26, 2020; various emails during the same time period

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I. Summary of Original Proposal, Report and Action Proposed:

(Below, please provide a one- or two-sentence summary of the original proposal that was referred to the subcommittee, a summary of this report and any action being proposed.)

Summary of Original Proposal: The drafting subcommittee received for review: seven forms, two rules, and uniform guidelines for taxation of costs. The draft forms are: (1) 1.902; (2) 1.910; (3) 1.911; (4) 1.912; (5) 1.913; (6) 1.977; and (7) new form for proof of service of subpoenas. The draft rules are: (1) 1.280; and (2) 1.340. Finally, the subcommittee reviewed the draft uniform guidelines for taxation of costs.

Summary of Report: The subcommittee cleaned up the forms as required, but also raises a few issues detailed below with respect to certain forms.

Action Proposed: Adoption of these forms, rules, and guidelines, but please note the issues raised below.

II. History/Background:

a. Source of proposal:

(Did the original proposal come from a member of the Committee, a member of the Bar, a litigant, etc., or does it result from a law passed by the Legislature? Please attach any correspondence or other materials received with the referral.)

Based on the nature of the drafting subcommittee, all items under consideration were received from other, substantive Rules subcommittees.

b. Relevant Rules Committee history:

(If the proposal relates to an earlier change in the same rule, please explain that relationship. Also, please describe any prior discussion of the issues or feedback received from the full Civil Rules Committee at any previous meetings.)

N/A.

c. Are similar proposals under consideration by other Rules Committees or Bar Sections?

(Please identify whether any other Rules Committees or Bar sections are considering the same topic and what attempts have been made to coordinate with them.)

N/A.

d. Input sought/materials considered by subcommittee:

(Did the subcommittee seek input from interested parties or consider any materials or case law other than those provided with the original proposal? If so, please identify all.)

Regarding some of the forms, the subcommittee spoke with Judge Trawick and members of his forms subcommittee.

III. Issues Identified by the Subcommittee:

a. Concerns About Present Rule: N/A

b. Concerns About Proposed Changes:

(i) Forms: *First*, because the subcommittee was working on so many forms, some big picture concerns regarding language translations were raised by various subcommittee members. These translation concerns were outside of the scope of the drafting subcommittee's role here, but it is an issue that perhaps should give rise to a standalone referral. First, the translations contained various misspellings, although it appears some can be easily fixed. Same for missing or incorrect accent marks. Second, there is a bigger issue about whether more forms should be translated, and if so, which ones. Perhaps a subcommittee should be formed to consider these issues, if one has not already been formed.

Second, another potential new referral. The drafting subcommittee had to review the addition of translations to form 1.977. In doing so, it became clear that the form itself ought to be updated. The drafting subcommittee began that work and can pass it along to a substantive subcommittee formed to address this issue as a standalone, new referral.

Third, form 1.911 addresses subpoenas duces tecum for trial. Subsections (a) and (b) contemplate a distinction between a subpoena duces tecum for a fact witness and a witness who is a records custodian. If the witness is a records custodian, the form has three choices for either the party or the attorney to select for the records the witness is to provide: a.) original records; b.) copies; or c.) do not appear and merely provide the records/copies. However, the drafting subcommittee noted that there does not appear to be a rule that allows for the issuance of a trial subpoena without requiring the witness to attend and provide testimony. In other words, option c.) does not appear to be an option under the rules. *See* Fla. R. Civ. P. 1.410. The drafting subcommittee conferred with the forms subcommittee regarding this issue, and the forms subcommittee acknowledged this fact. However, it is the forms subcommittee's position that, although there is nothing in the rules that provides for this, it happens informally all the time, and there is nothing in the rules to prevent it. The forms are meant to help users, and the forms subcommittee thinks this would be helpful. So, the drafting subcommittee left it as drafted, but both subcommittees agreed that the issue should be in this report to the full committee.

Fourth, form 1.911 contains a distinction, as noted, between fact witnesses and records custodians regarding the production of originals or copies. If the committee changed the form in light of the issue raised in the paragraph above, resulting in the elimination of option c.), the drafting subcommittee and the forms subcommittee agree that the distinction would no longer be needed.

Fifth, the new proof of service of subpoena form had a line asking whether the person served was in a mobile home. The forms subcommittee reported that the language was included because, historically, it is seen on some other forms, such as return of service. But, upon researching it, the forms subcommittee could not find a reason for such inclusion. As a result, with the forms subcommittee's approval, the drafting subcommittee removed this "mobile homes" language. It is being noted here so that the full committee is aware.

(ii) Rules: None.

(iii) Uniform Guidelines: None.

IV. Subcommittee Recommendation

(Is the subcommittee recommending a change or no change to the rules? Please report which and give the specific vote in favor of and opposed to that recommendation, e.g. "The subcommittee voted 5-3 in favor of modifying Rule 1.xxx to [describe change]")

N/A.

V. Majority Position: N/A.

a. Summary.

b. Rationale.

(Please explain why the majority believes that change or no change is necessary or appropriate. Identify the goals that will be served by the change or the concerns that justify preserving the status quo.)

c. Key Points.

(If a new rule is proposed, please identify the key features of the new rule. If a change in an existing rule is proposed, explain how the change would alter the existing rule and explain what the anticipated result of the change will be.)

d. Anticipated Impact of Change:

i. **Does the proposed change necessitate a change in other Rules?** [Note that Family Law Rules are automatically affected by amendments to Civil Rules]

ii. What is the anticipated impact of the change on practitioners?

(If there is no minority position, please be sure to explain here any anticipated problems or consequences caused by the majority position.)

VI. Minority Position(s): N/A.

a. Summary

b. Rationale.

(Please explain why the minority believes that change or no change is necessary or appropriate. Identify the goals that will be served by the change or the concerns that justify preserving the status quo.)

c. Key Points.

(If a new rule is proposed, identify the key features of the proposed new rule. If a change in an existing rule is proposed, explain how the proposed change would alter the existing rule and explain what the anticipated result of the change will be.)

d. Anticipated Impact of Change:

i. Does the proposed change necessitate a change in other Rules? [Note that Family Law Rules are automatically affected by amendments to Civil Rules]

ii. What is the anticipated impact of the change on practitioners?

iii. Does the proposed change secure the just, speedy, and inexpensive determination of every action?

VII. Time Considerations for Adopting Proposal: Not aware of any time considerations.

(Please explain reasons to expedite, if any.)

VIII. Attach Text of the Proposed Amendments as Exhibits to this Report. Remember:

a. Must be in Legislative Format

b. Clearly label proposals as Majority or Minority

c. Votes must be recorded for report to the full Committee, Board of Governors and the Florida Supreme Court

*See attached draft forms, Exhibits A-J.

PLEASE NOTE: The proof of service of subpoena form is a new form and thus needs a number for placement within the forms section of the civil rules. The subcommittee recommends that it become form 1.9135.

EXHIBIT A

FORM 1.902. SUMMONS

(a) General Form.

SUMMONS

THE STATE OF FLORIDA:

To Each Sheriff of the State:

YOU ARE COMMANDED to serve this summons and a copy of the complaint or petition in this action on defendant .....

Each defendant is required to serve written defenses to the complaint or petition on ……. plaintiff's attorney, whose address is ……., within 20 days[1] after service of this summons on that defendant, exclusive of the day of service, and to file the original of the defenses with the clerk of this court either before service on plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or petition.

DATED on …….

(Name of Clerk)
As Clerk of the Court
By_____
As Deputy Clerk

(b) Form for Personal Service on Natural Person.

SUMMONS

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 law-suit on defendant …….

DATED on …….

[1] Except when suit is brought pursuant to section 768.28, Florida Statutes, if the State of Florida, one of its agencies, or one of its officials or employees sued in his or her official capacity is a defendant, the time to be inserted as to it is 40 days. When suit is brought pursuant to section 768.28, Florida Statutes, the time to be inserted is 30 days.

CLERK OF THE CIRCUIT COURT

(SEAL)

(Name of Clerk)
As Clerk of the Court
By_____
As Deputy Clerk

IMPORTANT

A lawsuit has been filed against you. You have 20 calendar days after this summons is served on you to file a written response to the attached complaint with the clerk of this court. A phone call will not protect you. Your written response, including the case number given above and the names of the parties, must be filed if you want the court to hear your side of the case. If you do not file your response on time, you may lose the case, and your wages, money, and property may thereafter be taken without further warning from the court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

If you choose to file a written response yourself, at the same time you file your written response ~~to the court~~with the clerk of court, you must also mail or take a copy of your written response to "~~Plaintiff/Plaintiff's Attorney" named below~~ (Plaintiff/Plaintiff's Attorney) whose address is _____.

IMPORTANTE

Usted ha sido demandado legalmente. Tiene 20 dias, contados a partir del recibo de esta notificacion, para contestar la demanda adjunta, por escrito, y presentarla ante este tribunal. Una llamada telefonica no lo protegera. Si usted desea que el tribunal considere su defensa, debe presentar su respuesta por escrito, incluyendo el numero del caso y los nombres de las partes interesadas. Si usted no contesta la demanda a tiempo, pudiese perder el caso y podria ser despojado de sus ingresos y propiedades, o privado de sus derechos, sin previo aviso del tribunal. Existen otros requisitos legales. Si lo desea, puede usted consultar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a una de las oficinas de asistencia legal que aparecen en la guia telefonica.

~~Si desea responder a la demanda por su cuenta, al mismo tiempo en que presenta su respuesta ante el tribunal, debera usted enviar por correo o entregar una copia de su respuesta a la persona denominada abajo como "Plaintiff/Plaintiff's Attorney" (Demandante o Abogado del Demandante).~~

Si usted decide presentar una respuesta por escrito por sí mismo cuando presente su respuesta por escrito al secretario del tribunal, debe también enviarle una copia de su respuesta por escrito por correo, o entregársela al/a la Demandante o al abogado/a del/de la Demandante cuya dirección es _____.

IMPORTANT

Des poursuites judiciares ont ete entreprises contre vous. Vous avez 20 jours consecu-tifs a partir de la date de l'assignation de cette citation pour deposer une reponse ecrite a la plainte ci-

jointe aupres de ce tribunal. Un simple coup de telephone est insuffisant pour vous proteger. Vous etes obliges de deposer votre reponse ecrite, avec mention du numero de dossier ci-dessus et du nom des parties nommees ici, si vous souhaitez que le tribunal entende votre cause. Si vous ne deposez pas votre reponse ecrite dans le relai requis, vous risquez de perdre la cause ainsi que votre salaire, votre argent, et vos biens peuvent etre saisis par la suite, sans aucun preavis ulterieur du tribunal. Il y a d'autres obligations juridiques et vous pouvez requerir les services immediats d'un avocat. Si vous ne connaissez pas d'avocat, vous pourriez telephoner a un service de reference d'avocats ou a un bureau d'assistance juridique (figurant a l'annuaire de telephones).

Si vous choisissez de deposer vous-meme une reponse ecrite, il vous faudra egale-ment, en meme temps que cette formalite, faire parvenir ou expedier une copie de votre reponse ecrite au "Plaintiff/Plaintiff's Attorney" (Plaignant ou a son avocat) nomme ci-dessous.

_____

_____
Plaintiff/Plaintiff's Attorney
…….
…….
Address
Florida Bar No. …….

(c) Forms for Service by Mail.

(1) Notice of Lawsuit and Request for Waiver of Service of Process.

NOTICE OF COMMENCEMENT OF ACTION

TO: (Name of defendant or defendant's representative)

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. The complaint has been filed in the (Circuit or County) Court for the ……. and has been assigned case no. …….

This is not a formal summons or notification from the court, but is rather my request that you sign the enclosed waiver of service of process form in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within 20 days (30 days if you do not reside in the United States) after the date you receive this notice and request for waiver. I have enclosed a stamped self-addressed envelope for your use. An extra copy of the notice and request, including the waiver, is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The lawsuit will then proceed as if you had been served on the date the waiver is filed, except that you will not be obligated to respond to the complaint until 60 days after the date on which you received the notice and request for waiver.

If I do not receive the signed waiver within 20 days from the date you received the notice and the waiver of service of process form, formal service of process may be initiated in a manner authorized by the Florida Rules of Civil Procedure. You (or the party on whose behalf you are addressed) will be required to pay the full cost of such service unless good cause is shown for the failure to return the waiver of service.

I hereby certify that this notice of lawsuit and request for waiver of service of process has been sent to you on behalf of the plaintiff on ……. (date)
…….

_____
Plaintiff's Attorney or
Unrepresented Plaintiff

(2) Waiver of Service of Process.

WAIVER OF SERVICE OF PROCESS

TO: (Name of plaintiff's attorney or unrepresented plaintiff)

I acknowledge receipt of your request that I waive service of process in the lawsuit of …… v. …… in the …… Court in …… I have also received a copy of the complaint, two copies of this waiver, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of process and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Fla. R. Civ. P. 1.070.
If I am not the defendant to whom the notice of lawsuit and waiver of service of process was sent, I declare that my relationship to the entity or person to whom the notice was sent and my authority to accept service on behalf of such person or entity is as follows:

(describe relationship to person or entity and
authority to accept service)

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for any objections based on a defect in the summons or in the service of the summons.
I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if a written response is not served upon you within 60 days from the date I received the notice of lawsuit and request for waiver of service of process.

DATED on .....

_____
Defendant or Defendant's
Representative

Committee Notes

1988 Amendment. Two forms are now provided: 1 for personal service on natural persons and 1 for other service by summons. The new form for personal service on natural persons is included to ensure awareness by defendants or respondents of their obligations to respond.

The summons form for personal service on natural persons is to be used for service on natural persons under the following provisions: sections 48.031 (service of process generally), 48.041 (service on minors), 48.042 (service on incompetents), 48.051 (service on state prisoners), 48.183 (service of process in action for possession of residential premises), and 48.194 (personal service outside the state), Florida Statutes.

The former, general summons form is to be used for all other service by summons, including service under sections 48.061 (service on partnership), 48.071 (service on agents of nonresidents doing business in the state), 48.081 (service on corporation), 48.101 (service on dissolved corporations), 48.111 (service on public agencies or officers), 48.121 (service on the state), 48.131 (service on alien property custodian), 48.141 (service on labor unions), 48.151 (service on statutory agents for certain purposes), Florida Statutes, and all statutes providing for substituted service on the secretary of state.

The form for personal service on natural persons contains Spanish and French versions of the English text to ensure effective notice on all Floridians. In the event of space problems in the summons form, the committee recommends that the non-English portions be placed on the reverse side of the summons.

1992 Amendment. (b): The title is amended to eliminate confusion by the sheriffs in effecting service.

1996 Amendment. Form 1.902(c) was added for use with rule 1.070(i).

2007 Amendment. Subdivision (a) is amended to conform form 1.902 to the statutory requirements of sections 48.111, 48.121, and 768.28, Florida Statutes. The form is similar to Federal Rule of Civil Procedure Form 1.

EXHIBIT B

FORM 1.910. SUBPOENA FOR TRIAL

(a) For Issuance by Clerk.

CIVIL SUBPOENA
(For Personal Appearance at Trial or Hearing)

THE STATE OF FLORIDA:
TO .....:

~~YOU ARE COMMANDED to appear before the Honorable ....., Judge of the Court, at the ..... County Courthouse in ....., Florida, on ....., at ..... (a.m./p.m.), to testify in this action. If you fail to appear, you may be in contempt of court.~~

~~You are subpoenaed to appear by the following attorney, and unless excused from this subpoena by this attorney or the court, you must respond to this subpoena as directed.~~

YOU ARE ORDERED TO APPEAR AS A WITNESS in trial or hearing in the above styled action at the date, time, and place as follows:

Date (include weekday): ..... Time: .....a.m./p.m,
Address (include Courthouse, Courtroom Number, Street, City, State, Zip Code): .....

You **MUST** appear as detailed above **UNLESS** you are excused by the court or make an agreement with the party / attorney who has directed the Clerk for issuance of this subpoena. If you have any questions about the subpoena contact the party / attorney identified below **BEFORE** the date you are required to appear:

Name of Party / Attorney: .....
Address: .....
Telephone No.(s): .....
Fax No.: .....
E-mail Address(es): .....
Florida Bar Number (if applicable): .....

Witness Fee: You are entitled to a witness fee, as provided by Florida law, if you request it before your scheduled appearance from the party / attorney named above.

DISOBEDIENCE OF THIS SUBPOENA / FAILURE TO APPEAR MAY BE PUNISHED AS CONTEMPT BY THIS COURT

DATED on .....

(Name of Clerk)
As Clerk of the Court
By_____
As Deputy Clerk

…..(Name of Attorney)…..
Attorney for …..(Name of Client)…..
…..(Address)…..
…..(Telephone number)…..
…..(E-mail address(es))…..
Florida Bar No. …….

Any minor subpoenaed for testimony has 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 on 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.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact [identify applicable court personnel by name, address, and telephone number] at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

(b) For Issuance by Attorney of Record.

CIVIL SUBPOENA
(For Personal Appearance at Trial or Hearing)

THE STATE OF FLORIDA:
TO …….

~~YOU ARE COMMANDED to appear before the Honorable . ……. Judge of the Court, at the …….County Courthouse in……., Florida, on .....(date)....., at .....(a.m./p.m.), to testify in this action. If you fail to appear, you may be in contempt of court.~~

~~You are subpoenaed to appear by the following attorney, and unless excused from this subpoena by this attorney or the court, you must respond to this subpoena as directed.~~
DATED on .....

YOU ARE ORDERED TO APPEAR AS A WITNESS in trial or hearing in the above styled action at the date, time, and place as follows:

Date (include weekday): ..... Time: .....a.m./p.m,
Address (include Courthouse, Courtroom Number, Street, City, State, Zip Code): .....

You **MUST** appear as detailed above **UNLESS** you are excused by the court or make an agreement with the attorney who issued this subpoena. If you have any questions about the subpoena contact the attorney identified below **BEFORE** the date you are required to appear at the following:

Name of Attorney: .....
Address: .....
Telephone No.(s): .....
Fax No.: .....
E-mail Address(es): .....
Florida Bar Number:.....

Witness Fee: You are entitled to a witness fee, as provided by Florida law, if you request it at the time of service or you may request it before your scheduled appearance from the Attorney

DISOBEDIENCE OF THIS SUBPOENA / FAILURE TO APPEAR MAY BE PUNISHED AS CONTEMPT BY THIS COURT

DATED on .....

(Signature of Attorney) EXECUTED ON BEHALF OF THE
…..(Name of Attorney-)…… CIRCUIT COURT OF THE
~~For the court~~ _____ JUDICIAL CIRCUIT
~~_____~~
Attorney for …..(Name of Client)…..
~~……..~~
…..(Address) .....
…..(Telephone number)…..
…..(E-mail address(es))…..
Florida Bar No. …….

Any minor subpoenaed for testimony has 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 on 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.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact [identify applicable court personnel by name, address, and telephone number] at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

Committee Notes

1996 Amendment. Form (b) was added to comply with amendments to rule 1.410.

2013 Amendment. The notice to persons with disabilities was amended to comply with amendments to Fla. R. Jud. Admin. 2.540.

EXHIBIT C

FORM 1.911. SUBPOENA DUCES TECUM FOR TRIAL

(a) For Issuance by Clerk.

CIVIL SUBPOENA DUCES TECUM
For Personal Appearance and Production of Documents,
Electronically Stored Information, and Things at Trial or Hearing

THE STATE OF FLORIDA:
TO …….

~~YOU ARE COMMANDED to appear before the Honorable ……. Judge of the Court, at the ……. County Courthouse in ……., Florida, on .....(date)....., at .....(a.m./p.m.), to testify in this action and to have with you at that time and place the following: ……. If you fail to appear, you may be in contempt of court.~~

~~You are subpoenaed to appear by the following attorney, and unless excused from this subpoena by this attorney or the court, you must respond to this subpoena as directed.~~

YOU ARE ORDERED TO APPEAR AS A WITNESS AND TO PRODUCE THE RECORDS described in the attachment to this subpoena in trial or hearing in the above styled action at the date, time, and place as follows:

Date (include weekday): ..... Time: .....a.m./p.m,
Address (include Courtroom Number, Courthouse Name, Street Number, Street Name, City, State, Zip Code): .....

If you have been served with this subpoena as a custodian of records, **YOU ARE: (please check one)**

a. ____ORDERED to appear in person and to produce the records described in the attachment to this subpoena.

b. ____ORDERED to appear in person and deliver a true, legible, and durable **COPY** of the business records described in the attachment to this subpoena. You are entitled to payment, by cash or by check, of the reasonable costs of preparing the copies.

c. ____*You will **NOT** be required to appear if you make arrangements prior to the date of your required appearance with the Party / Attorney listed below. This will require you to make the original records described in the attachment available for inspection at a mutually convenient location and time and permit copying under reasonable conditions during normal business hours. You are entitled to payment, by cash or by check, of the reasonable costs of preparing the copies.*

IF you are served with a motion, or you file and serve a motion, that objects to you producing these documents, a court order or written agreement of the parties MUST be obtained before you produce the records requested in the attachment.

If you have any questions about this subpoena contact the Party / Attorney **BEFORE** the date you are required to appear:

Name of Party / Attorney: .....
Address (include City, State, Zip Code): .....
Telephone No.(s): ..... Fax No. .....
E-mail Address(es): .....
Florida Bar Number (if applicable) .....

DISOBEDIENCE OF THIS SUBPOENA / FAILURE TO APPEAR MAY BE PUNISHED AS CONTEMPT BY THIS COURT

(Name of Clerk)
As Clerk of the Court
By_____
As Deputy Clerk

DATED on .....

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

Any minor subpoenaed for testimony has 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 on 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.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact [identify applicable court personnel by name, address, and telephone number] at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

(b) For Issuance by Attorney of Record.

CIVIL SUBPOENA DUCES TECUM
For Personal Appearance and Production of Documents,
Electronically Stored Information, and Things at Trial or Hearing

THE STATE OF FLORIDA:
TO …….

~~YOU ARE COMMANDED to appear before the Honorable ……., Judge of the Court, at the ……. County Courthouse in ……., Florida, on .....(date)....., at ……. (a.m./p.m.), to testify in this action and to have with you at that time and place the following: ..... If you fail to appear, you may be in contempt of court.~~

~~You are subpoenaed to appear by the following attorney, and unless excused from this subpoena by this attorney or the court, you must respond to this subpoena as directed.~~

YOU ARE ORDERED TO APPEAR AS A WITNESS AND TO PRODUCE THE RECORDS described in the attachment to this subpoena in trial or hearing in the above styled action at the date, time, and place as follows:

Date (include weekday): ..... Time: .....a.m./p.m,
Address (include Courtroom Number, Courthouse Name, Street Number, Street Name, City, State, Zip Code): .....

If you have been served with this subpoena as a custodian of records, **YOU ARE: (please check one)**

a. ____ ORDERED to appear in person and to produce the records described in the attachment to this subpoena.

b. ____ ORDERED to appear in person and deliver a true, legible, and durable **COPY** of the business records described in the attachment to this subpoena. You are entitled to payment, by cash or by check, of the reasonable costs of preparing the copies.

c. ____ *You will **NOT** be required to appear if you make arrangements prior to the date of your required appearance with the Party / Attorney listed below. This will require you to make the original records described in the attachment available for inspection at a mutually convenient location and time and permit copying under reasonable conditions during normal business hours. You are entitled to payment, by cash or by check, of the reasonable costs of preparing the copies.*

IF you are served with a motion, or you file and serve a motion, that objects to you producing these documents, a court order or written agreement of the parties MUST be obtained before you produce the records requested in the attachment.

If you have any questions about this subpoena contact the Party / Attorney **BEFORE** the date you are required to appear:

Name of Party / Attorney: .....
Address (include City, State, Zip Code): .....
Telephone No.(s): ..... Fax No. .....
E-mail Address(es): .....
Florida Bar Number (if applicable) .....

DISOBEDIENCE OF THIS SUBPOENA / FAILURE TO APPEAR MAY BE PUNISHED AS CONTEMPT BY THIS COURT

DATED on …….

(Signature of Attorney)
(Name of Attorney)

EXECUTED ON BEHALF OF THE
CIRCUIT COURT OF THE-
_____ JUDICIAL CIRCUIT

_____
Attorney for …….
…….
Address: .....
Florida Bar No. …….
Telephone: .....
Email: .....

Any minor subpoenaed for testimony has 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 on 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.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact [identify applicable court personnel by name, address, and telephone number] at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

Committee Notes

1996 Amendment. Form (b) was added to comply with amendments to rule 1.410.

2013 Amendment. The notice to persons with disabilities was amended to comply with amendments to Fla. R. Jud. Admin. 2.540.

EXHIBIT D

FORM 1.912. SUBPOENA FOR DEPOSITION

(a) For Issuance by Clerk.

SUBPOENA FOR DEPOSITION
(For Personal Appearance)

THE STATE OF FLORIDA:
TO …….

~~YOU ARE COMMANDED to appear before a person authorized by law to take depositions at ……. in ……., Florida, on .....(date)....., at ……. (a.m./p.m.), for the taking of your deposition in this action. If you fail to appear, you may be in contempt of court.~~

~~You are subpoenaed to appear by the following attorney, and unless excused from this subpoena by this attorney or the court, you must respond to this subpoena as directed.~~

YOU .....(Deponent Name)..... ARE ORDERED TO APPEAR IN PERSON to testify as a witness before a person authorized by law to take depositions for the above styled action at the date, time, and place as follows:

Date (include weekday): ..... Time: .....a.m./p.m.

Address (include City, State, Zip Code): .....

(please check one)

a. _____You are to appear in your individual capacity. Unless the court orders or you agree otherwise, the deposition must occur only in: (1) the county where you reside; or (2) the county where you are employed or transact business in person; or (3) at such other convenient place as may be fixed by court order. (Fla. R. Civ. P. 1.410(e)(2)).

b. _____ You must designate one or more officers, directors, managing agents, or other persons who consent to do so, to testify on the business or other entity's behalf and may state the matters on which each person designated will testify. The person(s) you designate must testify about matters known or reasonably available to the organization. The Party / Attorney requesting this deposition must set forth with reasonable particularity the matters for which the designated party shall be questioned. (Fla. R. Civ. P. 1.310(b)(6)).

This deposition is intended for use in a court proceeding pursuant to Florida Rule of Civil Procedure 1.330 and Florida Rule of Judicial Administration 2.535. It will be recorded stenographically or by electronic devises and visual recording.

At the deposition, you will be asked questions under oath. Questions and answers are recorded stenographically and as otherwise indicated in this subpoena at the deposition; later they are transcribed for possible use at trial. You may read the written record and change or modify any answers before you sign the deposition.

You **MUST** appear as detailed above **UNLESS** you make an agreement with the Party / Attorney who has directed issuance of this subpoena. If you have any questions about this subpoena, contact the Party / Attorney **BEFORE** the date you are required to appear at the following:

Name of Party / Attorney: .....
Florida Bar Number (if applicable) .....
Address: .... (include city, state, zip code).....
Telephone No.(s): ..... Fax No. .....
E-mail Address(es): .....

DISOBEDIENCE OF THIS SUBPOENA / FAILURE TO APPEAR MAY BE PUNISHED AS CONTEMPT BY THIS COURT

(Name of Clerk)
As Clerk of the Court
By _____
As Deputy Clerk

Name of Party / Attorney: .....
Address (include City, State, Zip Code): .....
Telephone No.(s): ..... Fax No. .....
E-mail Address(es): .....
Florida Bar Number (if applicable) .....

Any minor subpoenaed for testimony has 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 on 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.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact [identify applicable court personnel by name, address, and telephone number] at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

(b) For Issuance by Attorney of Record.

SUBPOENA FOR DEPOSITION
(For Personal Appearance)

THE STATE OF FLORIDA:
TO …….

~~YOU ARE COMMANDED to appear before a person authorized by law to take depositions at ……. in ……., Florida, on .....(date)....., at ……. (a.m./p.m.), for the taking of your deposition in this action. If you fail to appear, you may be in contempt of court.~~

~~You are subpoenaed to appear by the following attorney, and unless excused from this subpoena by this attorney or the court, you must respond to this subpoena as directed~~.

YOU .....(Deponent Name)..... ARE ORDERED TO APPEAR IN PERSON to testify as a witness before a person authorized by law to take depositions for the above styled action at the date, time, and place as follows:

Date (include weekday): ..... Time: .....a.m./p.m.

Address (include City, State, Zip Code): .....

(please check one)

a. ____ You are to appear in your individual capacity. Unless the court orders or you agree otherwise, the deposition must occur only in: (1) the county where you reside; or (2) the county where you are employed or transact business in person; or (3) at such other convenient place as may be fixed by court order. (Fla. R. Civ. P. 1.410(e)(2)).

b. ____ You must designate one or more officers, directors, managing agents, or other persons who consent to do so, to testify on the business or other entity's behalf and may state the matters on which each person designated will testify. The person(s) you designate must testify about matters known or reasonably available to the organization regarding the above styled case. The Party / Attorney requesting this deposition must set forth with reasonable particularity the matters for which the designated party shall be questioned (Fla. R. Civ. P. 1.310(b)(6)).

This deposition is intended for use in a court proceeding pursuant to Florida Rule of Civil Procedure 1.330 and Florida Rule of Judicial Administration 2.535, and will be recorded stenographically or by electronic devises and visual recording.

At the deposition, you will be asked questions under oath. Questions and answers are recorded stenographically and as otherwise indicated in this subpoena at the deposition; later they are transcribed for possible use at trial. You may read the written record and change or modify any answers before you sign the deposition.

You **MUST** appear as detailed above **UNLESS** you make an agreement with the Party / Attorney who has directed issuance of this subpoena. If you have any questions about this

subpoena, contact the Party / Attorney **BEFORE** the date you are required to appear at the following:

Name of Party / Attorney: .....
Address (include City, State, Zip Code): .....
Telephone No.(s): ..... Fax No. .....
E-mail Address(es): .....
Florida Bar Number (if applicable) .....

DISOBEDIENCE OF THIS SUBPOENA / FAILURE TO APPEAR MAY BE PUNISHED AS CONTEMPT BY THIS COURT

DATED on …….

_____
(Signature of Attorney)

_____
(Name of Attorney)

_____
Attorney for …….
……..
Address: .....
Florida Bar No. …….
Telephone: .....
Email: .....

EXECUTED ON BEHALF OF THE CIRCUIT COURT OF THE _____ _____ JUDICIAL CIRCUIT

Any minor subpoenaed for testimony has 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 on 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.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact [identify applicable court personnel by name, address, and telephone number] at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

Committee Notes

1996 Amendment. Form (b) was added to comply with amendments to rule 1.410.

2013 Amendment. The notice to persons with disabilities was amended to make the procedure for obtaining accommodation consistent with the procedure required in court proceedings.

EXHIBIT E

FORM 1.913. SUBPOENA DUCES TECUM FOR DEPOSITION

(a) For Issuance by Clerk.

SUBPOENA DUCES TECUM FOR DEPOSITION
(For Personal Appearance and Production of Documents,
Electronically Stored Information, and Things at Deposition)

THE STATE OF FLORIDA:
TO …….

~~YOU ARE COMMANDED to appear before a person authorized by law to take depositions at ……. in ……., Florida, on .....(date)....., at ……. (a.m./p.m.), for the taking of your deposition in this action and to have with you at that time and place the following: …….. If you fail to appear, you may be in contempt of court.~~

~~You are subpoenaed to appear by the following attorney, and unless excused from this subpoena by this attorney or the court, you must respond to this subpoena as directed.~~

YOU ARE ORDERED TO APPEAR AS A WITNESS AND TO PRODUCE THE RECORDS described in the attachment to this subpoena for Deposition in the above styled action at the date, time, and place as follows:

Date (include weekday): ..... Time: .....a.m./p.m.
Address (include City, State, Zip Code): .....

(please check one)

a. _____ You are to appear in your individual capacity. Unless the court orders or you agree otherwise, the deposition must occur only in (1) the county where you reside; or (2) the county where you are employed or transact business in person; or (3) at such other convenient place as may be fixed by court order. (Fla. R. Civ. P. 1.410(e)(2)).

b. _____ You must designate one or more officers, directors, managing agents, or other persons who consent to do so, to testify on the business or other entity's behalf and may state the matters on which each person designated will testify. The person(s) you designate must testify about matters known or reasonably available to the organization. The Party/Attorney requesting deposition must set forth with reasonable particularity the matters for which the designated party shall be questioned (Fla. R. Civ. P. 1.310(b)(6)).

This deposition is intended for use in a court proceeding pursuant to Florida Rule of Civil Procedure 1.330 and Florida Rule of Judicial Administration 2.535 and will be recorded stenographically or by electronic devices as well as audio visual recording.

At the deposition, you will be asked questions under oath. Questions and answers are recorded stenographically and as otherwise indicated in this subpoena at the deposition; later they are transcribed for possible use at trial. You may read the written record and change or modify any answers before you sign the deposition.

If you have been served with this subpoena as a custodian of records, **YOU ARE: (please check one)**

a. _____ ORDERED to appear in person and to produce the records described in the attachment to this subpoena. The personal attendance of the custodian or other qualified witness and the production of the **ORIGINAL** records are required by this subpoena.

b. _____ ORDERED to appear in person and deliver a true, legible, and durable **COPY** of the business records described in the attachment to the subpoena. You are entitled to payment, by cash or by check, of the reasonable costs of preparing the copies.

IF a motion that objects to having you produce these documents has also been served on you, a court order or written agreement of the parties MUST be obtained before you produce the records requested in the attached list.

If you have any questions about this subpoena contact the Party / Attorney **BEFORE** the date you are required to appear:

Name of Party / Attorney: .....
Address (include City, State, Zip Code): .....
Telephone No.(s): ..... Fax No. .....
E-mail Address(es): .....
Florida Bar Number (if applicable) .....

DISOBEDIENCE OF THIS SUBPOENA / FAILURE TO APPEAR MAY BE PUNISHED AS CONTEMPT BY THIS COURT

(Name of Clerk)
As Clerk of the Court
By_____
As Deputy Clerk

DATED on …….

_____

Attorney for …….
……..
Address
Florid Bar No. …….

Any minor subpoenaed for testimony has 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 on 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.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact [identify applicable court personnel by name, address, and telephone number] at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

(b) For Issuance by Attorney of Record.

SUBPOENA DUCES TECUM FOR DEPOSITION
(For Personal Appearance and Production of Documents, Electronically Stored Information, and Things at Deposition)

THE STATE OF FLORIDA:
TO …….

~~YOU ARE COMMANDED to appear before a person authorized by law to take depositions at ……. in ……., Florida, on .....(date)....., at ……. (a.m./p.m.), for the taking of your deposition in this action and to have with you at that time and place the following: …….. If you fail to appear, you may be in contempt of court.~~

~~You are subpoenaed to appear by the following attorney, and unless excused from this subpoena by this attorney or the court, you must respond to this subpoena as directed.~~

YOU ARE ORDERED TO APPEAR AS A WITNESS AND TO PRODUCE THE RECORDS described in the attachment to this Subpoena for Deposition in the above styled action at the date, time, and place as follows:

Date (include weekday): ..... Time: .....a.m./p.m.
Address (include City, State, Zip Code): .....

(please check one)

a. _____ You are to appear in your individual capacity. Unless the court orders or you agree otherwise, the deposition must occur only in (1) the county where you reside; or (2) the county where you are employed or transacts business in person; or (3) at such other convenient place as may be fixed by court order. (Fla. R. Civ. P. 1.410(e)(2)).

b. _____ You must designate one or more officers, directors, managing agents, or other persons who consent to do so, to testify on the business or other entity's behalf and may state the matters on which each person designated will testify. The person(s) you designate must testify about matters known or reasonably available to the organization. The Party/Attorney requesting deposition must set forth with reasonable particularity the matters for which the designated party shall be questioned (Fla. R. Civ. P. 1.310(b)(6)).

This deposition is intended for use in a court proceeding pursuant to Florida Rule of Civil Procedure 1.330 and Florida Rule of Judicial Administration 2.535 and will be recorded stenographically or by electronic devices as well as (check all / any that apply): _____audio recorded _____ videotape

At the deposition, you will be asked questions under oath. Questions and answers are recorded stenographically and as otherwise indicated in this subpoena at the deposition; later they are transcribed for possible use at trial. You may read the written record and change or modify any answers before you sign the deposition.

If you have been served with this subpoena as a custodian of records, **YOU ARE: (please check one)**

a. _____ ORDERED to appear in person and to produce the records described in the attachment to this subpoena. The personal attendance of the custodian or other qualified witness and the production of the **ORIGINAL** records are required by this subpoena.

b. _____ ORDERED to appear in person and deliver a true, legible, and durable **COPY** of the business records described in the attachment to the subpoena. You are entitled to payment, by cash or by check, of the reasonable costs of preparing the copies.

IF a motion that objects to having you produce these documents has also been served on you, a court order or written agreement of the parties MUST be obtained before you produce the records requested in the attached list.

If you have any questions about this subpoena contact the Party / Attorney **BEFORE** the date you are required to appear:

Name of Party / Attorney: .....

Address (include City, State, Zip Code): .....
Telephone No.(s): ..... Fax No. .....
E-mail Address(es): .....
Florida Bar Number (if applicable) .....

DISOBEDIENCE OF THIS SUBPOENA / FAILURE TO APPEAR MAY BE PUNISHED AS CONTEMPT BY THIS COURT

(Signature of Attorney)
(Name of Attorney)

EXECUTED ON BEHALF OF THE
CIRCUIT COURT OF THE-
_____ JUDICIAL CIRCUIT

_____
Attorney for …….
……..
Address: .....
Florida Bar No. …….
Telephone: .....
Email: .....
Florid Bar No. …….

Any minor subpoenaed for testimony has 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 on 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.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact [identify applicable court personnel by name, address, and telephone number] at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

Committee Notes

1996 Amendment. Form (b) was added to comply with amendments to rule 1.410.

2013 Amendment. The notice to persons with disabilities was amended to make the procedure for obtaining accommodation consistent with the procedure required in court proceedings.

EXHIBIT F

FORM 1.977. FACT INFORMATION SHEET

(a) For Individuals.

(CAPTION)

FACT INFORMATION SHEET

Full Legal Name: _____

Nicknames or Aliases: _____

Residence Address:_____

Mailing Address (if different): _____

Telephone Numbers: (Home) _____

(Business) _____

Name of Employer: _____

Address of Employer: _____

Position or Job Description: _____

Rate of Pay: $_____per _____Average Paycheck: $_____per _____

Average Commissions or Bonuses: $ _____per _____.

Commissions or bonuses are based on _____

Other Personal Income: $_____from _____

(Explain details on the back of this sheet or an additional sheet if necessary.)

Social Security Number: _____Birthdate: _____

Driver's License Number: _____

Marital Status: _____Spouse's Name: _____

****

Spouse Related Portion

Spouse's Address (if different): _____

Spouse's Social Security Number: _____ Birthdate: _____

Spouse's Employer: _____

Spouse's Average Paycheck or Income: $_____per _____

Other Family Income: $_____per____(Explain details on back of this sheet or an additional sheet if necessary.)

Describe all other accounts or investments you may have, including stocks, mutual funds, savings bonds, or annuities, on the back of this sheet or on an additional sheet if necessary.

****

Names and Ages of All Your Children (and addresses if not living with you): _____

Child Support or Alimony Paid: $ _____per _____

Names of Others You Live With: _____

Who is Head of Your Household?_____You_____Spouse_____Other Person

Checking Account at: _____Account # _____

Savings Account at:_____Account # _____

For Real Estate (land) You Own or Are Buying: _____

Address: _____

All Names on Title: _____

Mortgage Owed to: _____

Balance Owed: _____

Monthly Payment: $ _____

(Attach a copy of the deed or mortgage, or list the legal description of the property on the back of this sheet or an additional sheet if necessary. Also provide the same information on any other property you own or are buying.)

For All Motor Vehicles You Own or Are Buying: _____

Year/Make/Model: _____ Color: _____

Vehicle ID #:_____ Tag No: _____ Mileage: _____

Names on Title: _____ Present Value: $ _____

Loan Owed to: _____

Balance on Loan: $ _____

Monthly Payment: $ _____

(List all other automobiles, as well as other vehicles, such as boats, motorcycles, bicycles, or aircraft, on the back of this sheet or an additional sheet if necessary.)

Have you given, sold, loaned, or transferred any real or personal property worth more than $100 to any person in the last year? If your answer is "yes," describe the property, market value, and sale price, and give the name and address of the person who received the property.

Does anyone owe you money? Amount Owed: $ _____

Name and Address of Person Owing Money: _____

Reason money is owed: _____

Please attach copies of the following:

a. Your last pay stub.

b. Your last 3 statements for each bank, savings, credit union, or other financial account.

c. Your motor vehicle registrations and titles.

d. Any deeds or titles to any real or personal property you own or are buying, or leases to property you are renting.

e. Your financial statements, loan applications, or lists of assets and liabilities submitted to any person or entity within the last 3 years.

f. Your last 2 income tax returns filed.

UNDER PENALTY OF PERJURY, I SWEAR OR AFFIRM THAT THE FOREGOING ANSWERS ARE TRUE AND COMPLETE.

_____

Judgment Debtor

STATE OF FLORIDA
COUNTY OF …….

Sworn to (or affirmed) and subscribed before me this _____ day of _____ (year) by (name of person making statement)

_____

Notary Public of Florida
My Commission expires:
…….

Personally known _____ OR Produced Identification _____
Type of identification produced _____

YOU MUST MAIL OR DELIVER THIS COMPLETED FORM, WITH ALL ATTACHMENTS, TO THE JUDGMENT CREDITOR OR THE JUDGMENT CREDITOR'S ATTORNEY, BUT DO NOT FILE THIS FORM WITH THE CLERK OF COURT.

(a) Para los individuos.

(Título)

HOJA INFORMATIVA

Nombre complete legal: _____

Apodos o Nombres de Pila: _____

La Dirección de la Residencia: _____

La Dirección para recibir correos (si fuera diferente): _____

Teléfonos: (Hogar) _____

(Negocio) _____

Nombre del Patrón: _____

La dirección del patrón: _____

El cargo o deberes y tareas del cargo: _____

Sueldo: $_____ por_____ Promedio de los cheques $_____ por_____

Comisiones o bonos promedios: $_____ por_____

Las comisiones o los pagos adicionales se basan en_____

Otros ingresos personales vienen de_____

(Amplíe estos detalles al anverso de esta hoja y puede usar mas hojas si fuera necesario.)

El número del seguro social y la fecha de nacimiento:_____

La licencia de conducir:_____

El estado civil y el nombre de la esposa o del esposo: _____

****

Los ingresos de su pareja

La dirección de su pareja (si vive en otra parte):_____

El Seguro social de la esposa o del esposo y la fecha de nacimiento: _____

El patrón de la esposa (-o): _____

Promedio de los cheques, o de ingresos, del/de la esposo/a: _____$ por _____

Otros ingresos familiares: $_____ por _____ (Explique en el reverso de esta hoja o en una hoja adicional, si es necesario.)

Escríbanos todas las cuentas y las inversiones que tiene, incluya las acciones, los fondos mutuos, bonos de ahorros o planes de retiros, al dorso de este papel y puede utilizar otras hojas si fuera necesario.

****

Los nombres y las edades de todos sus hijos (y las direcciones si no conviven con Ud.):_____

Manutención o pensión alimenticia: $ _____por (semana, mes, etc.) _____

Los nombres de todas las personas con las cuáles Ud. vive:_____

Quién es la cabeza de su familia: Usted?___Su esposo/a?_____Otra persona?_____

La cuenta corriente bancaria y el número de la cuenta _____

La cuenta de ahorros y el número de la cuenta bancaria _____

Los inmuebles (terrenos) que Ud. es el dueño o que está comprando: _____

La dirección:_____

Todos los nombres que aparecen en el título: _____

Se le debe la hipoteca a: _____

El saldo que se debe:_____

El pago mensual: $: _____

(Anexe una copia de las escrituras o de la hipoteca o ponga una descripción legal de esa propiedad al dorso de esta hoja o puede añadir otras hojas si fuera necesario. También proporciónenos la misma información de cualquier inmueble que Ud. es el propietario o que esté comprando.)

Para todos los vehículos suyos o que esté comprando:_____

El año/marca/modelo: _____Color:_____

El número de identificación del coche:_____La placa:_____ El millaje:_____

Los nombres que están en el título: _____¿Cuánto vale el coche ahora?: $: _____

El préstamo del coche se le debe a:_____

El saldo: $:_____

La cuota mensual: $:_____

(Haga una lista de todos los coches e igual que todos los otros vehículos, como los botes, las motocicletas, las bicicletas, o las aeronaves, al dorso de esta hoja o puede usar otras hojas si fuera necesario.)

¿Ud. ha vendido, prestado o trasladado alguna propiedad o unas bienes raíces que valiera más de cien dólares ($100.00) a cualquier durante este último año? Si la respuesta es "Sí" describa la propiedad, la tasación {lo que vale} en el mercado y el precio de la venta, y nos da el nombre y la dirección de la persona que recibió la propiedad.

¿Alguién le debe plata? ¿Cuánto se debe?:_____

El nombre y la dirección de los que le deben dinero:_____

La razón por la cuál es deudor:_____

Por favor suminístranos copias de lo siguiente:

a. El ultimo talonario de su paga.

b. Los últimos tres (3) estados de cuenta para cada banco, cuenta de ahorros, entidad de ahorros y préstamos o cualquier otra cuenta financiera.

c. Sus matrículas a los coches y los títulos.

d. Todas las escrituras o títulos a toda propiedad de bienes raíces o personales que Ud. es el dueño o está comprando o los alquileres a la propiedad que renta.

e. Su estado financiero actualizado, solicitudes de préstamos, o la lista de sus bienes y deudas presentadas a cualquier persona durante los últimos tres (3) años.

f. Los últimos dos reportes de los impuestos al fisco que se presentaron.

UNDER PENALTY OF PERJURY, I SWEAR OR AFFIRM THAT THE FOREGOING ANSWERS ARE TRUE AND COMPLETE.

_____

Judgment Debtor

STATE OF FLORIDA
COUNTY OF …….

Sworn to (or affirmed) and subscribed before me this _____ day of _____ (year) by (name of person making statement)

_____
Notary Public of Florida
My Commission expires:
…….

Personally known _____ OR Produced Identification _____
Type of identification produced _____

TIENE QUE ENVIAR POR CORREO O ENTREGAR ESTA PLANILLA COMPLETADA CON TODOS LOS PAPELES ANEXADOS AL ACREEDOR DEL JUICIO O AL ABOGADO DEL ACREEDOR DEL JUICIO, PERO NO PRESENTE ESTOS DOCUMENTOS NI LA PLANILLA CON EL SECRETARIO DE LA CORTE.

(a) Pou Moun.

(CAPTION)

FÈY ENFÒMASYON

Non Konplè Legal Ou:_____

Tinon oswa lòt non ou itilize:_____

Adrès rezidans kote ou rete:_____

Adrès postal ou (si li diferan):_____

Nimewo telefòn: (Lakay) _____

(Travay) _____

Non anplwayè ou:_____

Adrès anplwayè ou: _____

Pozisyon ou oswa deskripsyon travay:_____

Konbye lajan yo peye ou: $ pou chak _____Mwayèn Chèk: $_____pou chak ____

Mwayèn Komisyon oswa Bonis: $_____pou chak _____.

Komisyon oswa bonis yo baze sou _____

Lòt revni pèsonèl: $_____soti nan _____

(Si sa nesesè eksplike detay sou do nan fèy sa oswa yon fèy adisyonèl.)
Nimewo sekirite sosyal ou: _____Dat nesans ou: _____

Nimewo lisans chofè ou: _____

Estati Maryaj Ou: ___Non mari oswa madanm ou:_____

****

Pòsyon pou mari oswa madanm ou

Adres mari oswa madanm ou (si li deferan):_____

Nimero sekirite sosyal mari oswa madanm ou: _____ Dat nesans:_____

Anplwayè mari/madanm lan:_____

Salè mwayèn oswa revni nan mari oswa madanm ou: $_____pou chak_____

Lòt revni fanmi ou: $_____pou chak_____(Si sa nesesè eksplike detay sou do nan fèy sa oswa yon fèy adisyonèl.)

Dekri tout lòt kont oswa envèstisman ou ka genyen, ki gen ladan aksyon, fon mityèl, obligasyon ekonomi, oswa anwite, sou do a nan fèy sa a oswa sou yon fèy adisyonèl si sa nesesè.

****

Non ak laj de tout pitit ou (ak adrès yo si yo pap viv avèk ou):_____

Sipò pou timoun oswa alimantè ou peye: $ _____pou chak_____

Non lòt moun ki rete avèk ou:_____

Ki moun ki se tèt la nan kay ou?_____Ou menm_____Mari oswa madanm ou _____Yon lòt moun

Kont pou chèking nan:_____ Nimewo kont # _____

Kont depay nan:_____ Nimewo kont # _____

Pou Terr Ou Posede Oswa Ap Achte:_____

Adrès:_____

Tout Nom Ki Sou Tit La: _____

Ki Moun Ou Dwe Mògej La A:_____

Balans lan dwe: _____

Peye Chak Mwa: $_____

(Atache yon kopi papye kay la oswa ipotèk, oswa lis deskripsyon legal pwopriyete a sou do paj sa a oswa yon fèy adisyonèl si sa nesesè. Epitou bay menm enfòmasyon sou nenpòt lòt pwopriyete ou posede oswa ou ap achte.)

Pou Tout Machin Ou Posede Oswa Ap Achte: _____

Ane/Make/Modèl: _____ Koulè: _____

Nimewo idantifikayson machin: _____ NimewoTag: _____ Kilometraj: _____

Non Sou Tit La: _____ Valè Jodi A: $_____

Ou Dwe Prè A: _____

Balans Sou Prè A: $_____

Peman Chak Mwat: $ _____

(Fè lis tout lòt machin, osi byen ke lòt machin, tankou bato, motosiklèt, bisiklèt, oswa avyon, sou do a nan fèy sa a oswa yon fèy adisyonèl si sa nesesè.)

Èske ou te bay, te vann, prete, oswa transfere nenpòt pwopriyete reyèl oswa pwopriyete pèsonel vo plis pase $100 nan nenpòt moun nan dènye ane a? Si repons ou se "wi," dekri pwoprieyete a, valè sou mache, ak pri vant, epi bay non an ak adrès moun ki te resevwa pwopriyete a.

Èske gen nenpòt moun ki dwe ou lajan? Konbyen?: $ _____

Non ak Adrès Moun Ki Dwe Ou Lajan: _____

Pou ki rezon moun nan dwe ou lajan: _____

Tanpri tache kopi bagay sa yo:

a. Dènye chay peye ou.

b. Dènye 3 deklarasyon pou chak bank, ekonomi, sendika kredi, oswa lòt kont finansye.

c. Enskripsyon pou machin ou ak tit.

d. Nenpòt zèv oswa tit nan nenpòt pwopriyete reyèl oswa pèsonèl ou posede oswa achte, oswa lwe nan pwopriyete ou lwe.

e. Deklarasyon finansye ou, aplikasyon pou prè, oswa lis byen ak responsablite soumèt nan nenpòt moun oswa antite nan dènye 3 ane yo.

f. Dènye 2 fwa ou renpli taks sou revni.

UNDER PENALTY OF PERJURY, I SWEAR OR AFFIRM THAT THE FOREGOING ANSWERS ARE TRUE AND COMPLETE.

_____

Judgment Debtor

STATE OF FLORIDA
COUNTY OF …….

Sworn to (or affirmed) and subscribed before me this _____ day of _____ (year) by (name of person making statement)

_____

_____ Notary Public of Florida
_____ My Commission expires:
_____ …….

Personally known _____ OR Produced Identification _____
Type of identification produced _____

OU DWE POSTE VOYE LAPÒS OSWA DELIVRE FÒM SA A, AK TOUT ATTACHMENTS, POU KREDITOR JIJMAN LA OSWA AVOKA KREDITOR JIJMAN A, MEN PA FÈ FÒM SA A AK CLERK LA NAN TRIBINAL LA.

(b) For Corporations and Other Business Entities.

(CAPTION)

FACT INFORMATION SHEET

Name of entity: _____

Name and title of person filling out this form: _____

Telephone number: _____

Place of business: _____

Mailing address (if different): _____

Gross/taxable income reported for federal income tax purposes last three years:

$_____/$_____$_____/$_____$_____/$_____

Taxpayer identification number: _____

Is this entity an S corporation for federal income tax purposes? _____Yes_____No

Average number of employees per month_____

Name of each shareholder, member, or partner owning 5% or more of the entity's common stock, preferred stock, or other equity interest:

_____

_____

_____

Names of officers, directors, members, or partners: _____

_____

Checking account at: _____ Account # _____

Savings account at: _____ Account # _____

Does the entity own any vehicles?_____Yes_____ No

For each vehicle please state: _____

Year/Make/Model: _____Color: _____

Vehicle ID No: _____ Tag No: _____ Mileage: _____

Names on Title: _____ Present Value: $ _____

Loan Owed to: _____

Balance on Loan: $ _____

Monthly Payment: $ _____

Does the entity own any real property? _____Yes _____No

If yes, please state the address(es):_____

Please check if the entity owns the following
_____ Boat
_____ Camper
_____ Stocks/bonds
_____ Other real property
_____ Other personal property

Please attach copies of the following:
1. Copies of state and federal income tax returns for the past 3 years.

2. All bank, savings and loan, and other account books and statements for accounts in institutions in which the entity had any legal or equitable interest for the past 3 years.

3. All canceled checks for the 12 months immediately preceding the service date of this Fact Information Sheet for accounts in which the entity held any legal or equitable interest.

4. All deeds, leases, mortgages, or other written instruments evidencing any interest in or ownership of real property at any time within the 12 months immediately preceding the date this lawsuit was filed.

5. Bills of sale or other written evidence of the gift, sale, purchase, or other transfer of any personal or real property to or from the entity within the 12 months immediately preceding the date this lawsuit was filed.

6. Motor vehicle or vessel documents, including titles and registrations relating to any motor vehicles or vessels owned by the entity alone or with others.

7. Financial statements as to the entity's assets, liabilities, and owner's equity prepared within the 12 months immediately preceding the service date of this Fact Information Sheet.

8. Minutes of all meetings of the entity's members, partners, shareholders, or board of directors held within 2 years of the service date of this Fact Information Sheet.

9. Resolutions of the entity's members, partners, shareholders, or board of directors passed within 2 years of the service date of this Fact Information Sheet.

UNDER PENALTY OF PERJURY, I SWEAR OR AFFIRM THAT THE FOREGOING ANSWERS ARE TRUE AND COMPLETE.

_____
Judgment Debtor's Designated Representative/Title

STATE OF FLORIDA
COUNTY OF …….

Sworn to (or affirmed) and subscribed before me this _____ day of _____ (year) by (name of person making statement).

Personally known ____ OR Produced identification _____
Type of identification produced _____

YOU MUST MAIL OR DELIVER THIS COMPLETED FORM, WITH ALL ATTACHMENTS, TO THE PLAINTIFF'S JUDGMENT CREDITOR OR THE PLAINTIFF'S JUDGMENT CREDITOR'S ATTORNEY, BUT DO NOT FILE THIS FORM WITH THE CLERK OF THE COURT.

(b) Para las corporaciones y otras entidades comerciales.

(Título)

HOJA INFORMATIVA

Nombre de la entidad: _____

Nombre y título de la persona que completa este formulario: _____

Número del teléfono: _____

Dirección del negocio: _____

Dirección postal (si es distinta): _____

Ingresos brutos/gravables que se reportaron en la declaración de renta de los últimos tres años:

$_____/$_____$_____/$_____$_____/$_____

Número de identificación del Contribuyente:_____

Es esta entidad una corporación tipo S para propósitos de impuestos federales? Sí_____ No___

Promedio de empleados por mes:_____

Nombre de cada accionista, miembro o socio que sea dueño del 5% o más de las acciones comunes de la compañía, acciones preferidas u otro interés patrimonial:

_____

_____

_____

Nombre de los ejecutivos, directores, miembros o socios:_____

_____

Cuenta corriente en (Banco):_____Cuenta No.:_____

Cuenta de ahorros en (Banco):_____Cuenta No._____

Es la entidad dueña de vehículos?_____Sí_____No

Provea la siguiente información para cada vehículo:_____

Año/Marca/Modelo:_____Color:_____

Número de Identificación del Vehículo:_____Placa/Chapa:_____Millage:_____

Nombre/s en el título:_____Valor actual: $_____

El préstamo se le debe a:_____

Saldo que se debe en el préstamo $_____

Pago mensual $_____

Es la entidad dueña de propiedad raíz?_____Sí_____No.

Si lo es, provea la dirección:_____

Por favor indique si la entidad es dueña de:

___ bote/s

___ autocaravana(s) / vehículo(s) recreacional(es)

___ Acciones/bonos

___ Otra propiedad raíz

___ Otra propiedad personal

Por favor anexe copias de lo siguiente:

1. Copias de las declaraciones de renta del estado y del gobierno federal de los últimos tres años.
2. Libros de contabilidad y extractos de cuentas de todos los bancos, entidades de ahorros y financieras en instituciones en que la entidad tenia interés legal o patrimonial en los últimos tres años.
3. Todos los cheques cancelados de los meses que precedieron inmediatamente a la fecha de este Formulario de Datos para cuentas en que la entidad tenía algún interés legal o patrimonial.
4. Todas las escrituras, contratos de alquiler, hipotecas u otros documentos escritos que demuestren interés o pertenencia de propiedad raíz en cualquier momento durante los 12 meses inmediatamente precedentes a la fecha de radicación de esta demanda.
5. Contratos de venta u otras pruebas escritas de regalos, ventas, compras u otras transferencias de propiedad raíz o personal a, o de la entidad dentro de los 12 meses inmediatamente precedentes a la fecha de radicación de esta demanda.
6. Documentos de vehículos automotores o embarcaciones, incluyendo títulos y registros relacionados con vehículos automotores o embarcaciones de los que es dueña la entidad sola, o junto con otro/s.
7. Extractos financieros de los bienes, deudas y equidad del dueño que se hayan preparado dentro de los 12 meses inmediatamente precedentes a la fecha de entrega de este Formulario de Datos.
8. Actas de todas las reuniones de los miembros, socios, accionistas o junta directiva de la entidad que hayan tenido lugar dentro de dos años de la fecha de entrega de este Formulario de Datos.
9. Resoluciones de los miembros, socios, accionistas or miembros de la junta directiva de la entidad que se hayan aprobado dentro de dos años de entrega de esta Formulario de Datos.

UNDER PENALTY OF PERJURY, I SWEAR OR AFFIRM THAT THE FOREGOING ANSWERS ARE TRUE AND COMPLETE.

_____

Judgment Debtor's Designated Representative/Title

STATE OF FLORIDA
COUNTY OF …….

Sworn to (or affirmed) and subscribed before me this _____ day of _____ (year) by (name of person making statement)

Personally known _____ OR Produced Identification _____
Type of identification produced _____

TIENE QUE ENVIAR POR CORREO O ENTREGAR ESTA PLANILLA COMPLETADA CON TODOS LOS PAPELES ANEXADOS AL ACREEDOR DEL JUICIO O AL ABOGADO DEL ACREEDOR DEL JUICIO, PERO NO PRESENTE ESTOS DOCUMENTOS NI LA PLANILLA CON EL SECRETARIO DE LA CORTE

(b) Pou Kòporasyon Ak Lòt Antite Bizniz.

(CAPTION)

FÈY ENFOMASYON

Non antite a:_____

Non ak tit moun ki ranpli fòm sa a:_____

Nimewo telefòn:_____

Adrès biznis:_____

Adrès postal (si li diferan):_____

Brit / taksab revni rapòte pou rezon taks sou revni federal dènye twa zan:

$_____/$_____$_____/$_____$_____/$_____

Nimewo idantifikasyon kontribyab:_____

Èske se antite sa a yon sosyete S pou rezon taks sou revni federal? _____Wi_____Non

Mwayèn kantite anplwaye pou chak mwa_____

Non chak moun ki gen pataje, manm, oswa paten ki posede 5% oswa plis nan stock komen antite a, pi pito stock, oswa lòt entere ekite:

_____

_____

_____

Non ofisye, direktè, manm, oswa patnè:_____

_____

Kont pou chèking nan:_____ Nimewo Kont #_____

Kont depay nan: _____ Nimewo Kont #_____

Èske antite sa a posede nenpòt machin?_____Wi_____Non_____

Pou chak machin tanpri endike:_____

Ane/Fè/Modèl: _____ Koulè: _____

Nimewo idantifikasyon machin la: _____ Nimewo tag: _____ Kilometraj: _____

Non yo sou tit: _____ Prezan Valè: $ _____

Moun Ou Dwe Prè A: _____

Balans Sou Prè: $ _____

Peman Chak Mwa: $ _____

Èske antite a posede pwòp nenpòt propriyete reyèl? _____ Wi _____ Non

Si wi, tanpri endike adrès la (yo): _____

Tanpri make si antite a posede bagay sa yo

_____ Bato
_____ Kanpay
_____ Stòk/bonds
_____ Lòt pwopriyete reyèl
_____ Lòt pwopreiyete pèsonèl

Tanpri tache kopi bagay so yo:

1. Kopi taks deklarasyon taks leta ak federal pou twa (3) dènye ane yo.

2. Tout bank, ekonomi ak prè, ak lòt liv kont ak deklarasyon pou kont nan enstitisyon nan ki antite a te gen nenpòt enterè legal oswa ekitab pou twa (3) denye ane yo.

3. Tout chèk anile pou douz (12) mwa imedyatman anvan dat sèvis sa de Fèy Enfòmasyon sa pou kont kote antite a te kenbe nenpòt enterè legal oswa ekitab.

4. Tout zèv, lwe, ipotèk, oswa lòt enstriman alekri evidans nenpòt enterè nan oswa pwopriyetè nan pwopriyete reyèl nan nenpòt ki lè nan 12 mwa yo imedyatman anvan dat yo te pwosè sa a te depoze.

5. Bòd vale oswa lòt prèv ekri nan kado, vann, achte, oswa lòt transfè nenpòt pwopriyete pèsonèl oswa reyèl pou oswa nan antite a nan 12 mwa yo imedyatman anvan dat yo te pwosè sa a te depoze.

6. Machin veyikil oswa dokiman veso, ki gen ladan tit ak anrejistreman ki gen rapò ak nenpòt ki veyikil motè oswa veso ki posede pa antite a poukont ou oswa ak lòt moun

7. Deklarasyon finansye antite a sou byen li yo, rèskonsablitè , ak ekite pwopriyetè a ki tè prepare nan lespas de 12 mwa yo anvan dat sèvis de Fèy Enfòmasyon sa a.

8. Minit nan tout reyinyon manm antite yo, paten yo, moun ki gen pataje, osway konsèy direktè you ki te fèt nan de (2) zan nan dat sèvis de Fèy Enfomasyon sa a.

9. Rezolisyon manm antite yo, paten, moun ki gin pataje, oswa konsèy direkte yo to pase nan lespas de (2) zan nan dat sèvis de Fèy Enformasyon sa a.

UNDER PENALTY OF PERJURY, I SWEAR OR AFFIRM THAT THE FOREGOING ANSWERS ARE TRUE AND COMPLETE.
UNDER PENALTY OF PERJURY, I SWEAR OR AFFIRM THAT THE FOREGOING ANSWERS ARE TRUE AND COMPLETE.

_____
Judgment Debtor's Designated Representative/Title

STATE OF FLORIDA
COUNTY OF …….

Sworn to (or affirmed) and subscribed before me this _____ day of _____ (year) by (name of person making statement)

Personally known _____ OR Produced Identification _____
Type of identification produced _____

OU DWE POSTE VOYE LAPÒS OSWA DELIVRE FÒM SA A, AK TOUT ATTACHMENTS, POU KREDITOR JIJMAN LA OSWA AVOKA KREDITOR JIJMAN A, MEN PA FÈ FÒM SA A AK CLERK LA NAN TRIBINAL LA.

Committee Notes

2000 Adoption. This form is added to comply with amendments to rule 1.560.

2013 Amendment. This amendment clarifies that the judgment debtor should mail or deliver the Fact Information Sheet only to the judgment creditor or the judgment creditor's attorney, and should not file the Fact Information Sheet with the clerk of the court.

EXHIBIT G

FORM----. PROOF OF SERVICE OF SUBPOENA

PROOF OF SERVICE OF CIVIL SUBPOENA

1. Person Serving: (Name)_____
   a. _____Sheriff in the County of _____, Florida
   b. _____Certified Process Server in the County of _____, Florida
      (Server ID # _____)

2. I received this subpoena for service on (date): _____

3. Court, case style, and case number: _____

4. Manner service was executed:
   a. _____PERSONAL
   b. _____SUBSTITUTE

5. I served this subpoena by delivering a copy to (name of person served):

   _____

   a. Describe the person who was served: _____
   b. If service of this subpoena was executed through SUBSTITUTE service, identify the relation of the person served to the witness on the subpoena:

      _____

   c. Address of Service: _____
   d. Date of Service: _____Time of Service: _____
   e. Other Details of Person Served (check all that apply):

      Married:____ Yes____ No Military Service Member: ____Yes ____No

      Resident over 15 years of age:_____ Yes _____ No Minor's Parent/Guardian: ____Yes ____No
   f. Witness Fees (check one):
      1) ____Were offered or demanded and paid in the amount of: $_____
      2) ____Were not demanded or paid.

(For Sheriff Use ONLY)

Under penalties of perjury, I declare that I have read the foregoing Proof of Service of Subpoena and that the facts stated in it are true.

Date: _____

_____
(Signature)

(For Process Server Use ONLY)

Under penalties of perjury, I declare that I have read the foregoing Proof of Service of Subpoena and that the facts stated in it are true. I am a certified process server in good standing in the judicial circuit in which the process was served and am disinterested in the process being served.

Date: _____

_____
(Signature)

EXHIBIT H

RULE 1.280. GENERAL PROVISIONS GOVERNING DISCOVERY

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

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

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

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

(3) Electronically Stored Information. A party may obtain discovery of electronically stored information in accordance with these rules.

(4) Trial Preparation: Materials. Subject to the provisions of subdivision (b)(5) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and

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

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

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

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

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

1. The scope of employment in the pending case and the compensation for such service.

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

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

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

An expert may be required to produce financial and business records only under the most un-usual or compelling circumstances and may not be compelled to compile or produce nonexistent documents. Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and other provisions pursuant to subdivision (b)(5)(C) of this rule concerning fees and expenses as the court may deem appropriate.

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

(C) Unless manifest injustice would result, the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions (b)(5)(A) and (b)(5)(B) of this rule; and concerning discovery from an expert obtained under subdivision (b)(5)(A) of this rule the court may require, and concerning discovery obtained under subdivision (b)(5)(B) of this rule shall require, the party seeking discovery to pay the other party a fair part of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

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

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

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

(d) Limitations on Discovery of Electronically Stored Information.

(1) A person may object to discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of burden or cost. On motion to compel discovery or for a protective order, the person from whom discovery is sought must show that the information sought or the format requested is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order the discovery from such sources or in such formats if the requesting party shows good cause. The court may specify conditions of the discovery, including ordering that some or all of the expenses incurred by the person from whom discovery is sought be paid by the party seeking the discovery.

(2) In determining any motion involving discovery of electronically stored information, the court must limit the frequency or extent of discovery otherwise allowed by these rules if it determines that (i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from another source or in another manner that is more convenient, less burdensome, or less expensive; or (ii) the burden or expense of the discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

(e) Sequence and Timing of Discovery. Except as provided in subdivision (b)(5) or unless the court upon motion for the convenience of parties and witnesses and in the interest of justice orders otherwise, methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not delay any other party's discovery.

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

(g) Court Filing of Documents and Discovery. Information obtained during discovery shall not be filed with the court until such time as it is filed for good cause. The requirement of good cause is satisfied only where the filing of the information is allowed or required by another applicable rule of procedure or by court order. All filings of discovery documents shall comply with Florida Rule of Judicial Administration 2.425. The court shall have authority to impose sanctions for violation of this rule.

(h) Form of Responses to Written Discovery Requests. When responding to requests for production served pursuant to rule 1.310(b)(5), written deposition questions served pursuant to rule 1.320, interrogatories served pursuant to rule 1.340, requests for production or inspection served pursuant to rule 1.350, requests for production of documents or things without deposition served pursuant to rule 1.351, requests for admissions served pursuant to rule 1.370, or requests for the production of documentary evidence served pursuant to rule 1.410(c), the responding party shall state each deposition question, interrogatory, or discovery request in full as numbered, followed by the answer, objection, or other response.

Committee Notes

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

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

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

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

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

2011 Amendment. Subdivision (f) is added to ensure that information obtained during discovery is not filed with the court unless there is good cause for the documents to be filed, and that information obtained during discovery that includes certain private information shall not be filed with the court unless the private information is redacted as required by Florida Rule of Judicial Administration 2.425.

2012 Amendment. Subdivisions (b)(3) and (d) are added to address discovery of electronically stored information.

The parties should consider conferring with one another at the earliest practical opportunity to discuss the reasonable scope of preservation and

production of electronically stored information. These issues may also be addressed by means of a rule 1.200 or rule 1.201 case management conference.

Under the good cause test in subdivision (d)(1), the court should balance the costs and burden of the requested discovery, including the potential for disruption of operations or corruption of the electronic devices or systems from which discovery is sought, against the relevance of the information and the requesting party's need for that information. Under the proportionality and reasonableness factors set out in subdivision (d)(2), the court must limit the frequency or extent of discovery if it determines that the discovery sought is excessive in relation to the factors listed.

In evaluating the good cause or proportionality tests, the court may find its task complicated if the parties know little about what information the sources at issue contain, whether the information sought is relevant, or how valuable it may be to the litigation. If appropriate, the court may direct the parties to develop the record further by engaging in focused discovery, including sampling of the sources, to learn more about what electronically stored information may be contained in those sources, what costs and burdens are involved in retrieving, reviewing, and producing the information, and how valuable the information sought may be to the litigation in light of the availability of information from other sources or methods of discovery, and in light of the parties' resources and the issues at stake in the litigation.

Court Commentary

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

EXHIBIT I

RULE 1.340. INTERROGATORIES TO PARTIES

(a) Procedure for Use. Without leave of court, any party may serve on 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 must 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 on that party. The interrogatories must 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 within must be 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 must be answered separately and fully in writing under oath unless it is objected to, in which event the grounds for objection must be stated and signed by the attorney making it. The party to whom the interrogatories are directed must 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 on 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 must 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 (including electronically stored information) 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 must 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 must 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. If the records to be produced consist of electronically stored information, the records must be produced in a form or forms in which they are ordinarily maintained or in a reasonably usable form or forms.

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

(e) Service and Filing. ~~Interrogatories must be arranged so that a blank space is provided after each separately numbered interrogatory. The space must 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 documents with answers and refer to them in the space provided in the interrogatories. The i~~Interrogatories must be served on the party to whom the interrogatories are directed and copies must be served on all other parties. A certificate of service of the interrogatories must be filed, giving the date of service and the name of the party to whom they were directed. The answers to the interrogatories must be served on the party originally propounding the interrogatories and a copy must be served on all other parties by the answering party. The original or any copy of the answers to interrogatories may be filed in compliance with Florida Rule of Judicial Administration 2.425 and rule 1.280(g)

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.

2011 Amendment. A reference to Florida Rule of Judicial Administration 2.425 and rule 1.280(f) is added to require persons filing discovery materials with

the court to make sure that good cause exists prior to filing discovery materials and that certain specific personal information is redacted.

2012 Amendments. Subdivision (c) is amended to provide for the production of electronically stored information in answer to interrogatories and to set out a procedure for determining the form in which to produce electronically stored information.

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.

EXHIBIT J

APPENDIX II. STATEWIDE UNIFORM GUIDELINES FOR TAXATION OF COSTS IN CIVIL ACTIONS

Purpose and Application. These guidelines are advisory only. The taxation of costs in any particular proceeding is within the broad discretion of the trial court. The trial court should exercise that discretion in a manner that is consistent with the policy of reducing the overall costs of litigation and of keeping such costs as low a justice will permit. With this goal in mind, the trial court should consider and reward utilization of the innovative technologies by a party which subsequently minimizes costs and reduce the award when use of the innovative technologies that were not used would have resulted in lowering costs. In addition, these guidelines are not intended to (1) limit the amount of costs recoverable under a contract or statute, or (2) prejudice the rights of any litigant objecting to an assessment of costs on the basis that the assessment is contrary to applicable substantive law.

Burden of Proof. Under these guidelines, it is the burden of the moving party to show that all requested costs were reasonably necessary either to defend or prosecute the case at the time the ~~action~~ activity precipitating the cost was undertaken.

I. Litigation Costs That Should Be Taxed.

A. Depositions

1. The original and one copy of the deposition and court reporter's per diem for all depositions.

2. The original and/or one copy of the electronic deposition, including audiovisually recorded depositions, and the cost of the services of a technician for electronic depositions used at trial.

3. Telephone toll and electronic conferencing charges for the conduct of telephone and electronic depositions.

B. Documents and Exhibits

1. The costs of copies of documents filed (in lieu of "actually cited") with the court, which are reasonably necessary to assist the court in reaching a conclusion.

2. The costs of copies obtained in discovery, even if the copies were not used at trial.

C. Expert Witnesses

1. A reasonable fee for deposition and/or ~~trial~~ court testimony, and costs of preparation of any court ordered report.

D. Witnesses

1. Costs of subpoena, witness fee, and service of witnesses for deposition and/or trial.

E. Court Reporting Costs Other than for Depositions

1. Reasonable court reporter's per diem for the reporting of evidentiary hearings, trial and post-trial hearings.

F. Reasonable Charges Incurred for Requiring Special Magistrates, Guardians Ad Litem, and Attorneys Ad Litem

G. Filing Fees and Service of Process Fees

II. Litigation Costs That May Be Taxed as Costs.

A. Mediation/Nonbinding Arbitration Fees and Expenses

1. Costs of mediation, including ~~and~~ mediator fees.

2. Costs of court-ordered nonbinding arbitration, including arbitrator fees.

B. Reasonable Travel Expenses

1. Reasonable travel expenses of expert when traveling in excess of 100 miles from the expert's principal place of business (not to include the expert's time).

2. Reasonable travel expenses of witnesses.

C. Electronic Discovery Expenses

1. The cost of producing copies of relevant electronic media in response to a discovery request.

2. The cost of converting electronically stored information to a reasonably usable format in response to a discovery request that seeks production in such format.

D. Testifying Expert Witnesses

1. A reasonable fee for conducting examinations, investigations, tests, and research and preparing reports.

2. A reasonable fee for testimony at court-ordered nonbinding arbitration.

3. A reasonable fee for preparing for deposition, court-ordered nonbinding arbitration, and/or court testimony.

III. Litigation Costs That Should Not Be Taxed as Costs

A. The Cost of Long Distance Telephone Calls with Witnesses, both Expert and Non-Expert (including conferences concerning scheduling of depositions or requesting witnesses to attend trial)

B. Any Expenses Relating to Consulting But Non-Testifying Experts

C. Costs Incurred in Connection with Any Matter Which Was Not Reasonably Calculated to Lead to the Discovery of Admissible Evidence

D. Travel Time

1. Travel time of attorney(s).
2. Travel time of expert(s).

E. Travel Expenses of Attorney(s)

F. The Cost of Privilege Review of Documents, including Electronically Stored Information

FLORIDA RULES OF CIVIL PROCEDURE COMMITTEE

INTERNAL OPERATING PROCEDURES (IOP) SUBCOMMITTEE

MAY 29, 2020 REPORT

MEMBERS: Keith Park, Chair; A. Dax Bello; Vivian Fazio; Paul Regensdorf; Sandy Solomon; and Jason Stearns

MISSION: Review the Internal Operating Procedures (IOP) to determine if amendments are necessary to address particular situations that may affect the operation of the Committee and to consider proposed amendments to the IOP.

ATTENDANCE: All communications and voting occurred by e-mail.

HISTORY/BACKGROUND:

Jason Stearns brought to the attention of the subcommittee his concern that the IOP in its current form may not include sufficient procedures to handle expected and unexpected problems arising from COVID-19. A copy of the IOP showing revisions approved at the October 2019 meeting is attached hereto.

ACTIONS BY THE SUBCOMMITTEE:

The first concern of the subcommittee was to determine whether the IOP would need to be amended to allow the Committee to meet remotely in June, 2020. The operative procedural limitations addressing the issue are in subdivision IV.b.:

> **b. Meetings**. The Committee shall conduct at least two in-person meetings during the Bar year. The Chair in his or her discretion may schedule additional in-person meetings as necessary to conduct the business of the Committee. The Chair also may schedule meetings of the Committee and Subcommittees to conduct business as necessary by any other commonly available method, including e-mail exchanges or electronic meetings (*e.g.*, teleconferences, videoconferences, web conferences, etc.) via electronic platforms provided by The Florida Bar.

Given that the Committee has already had two in-person meetings this Bar year, the above subdivision allows the Committee to hold other meetings, including the June meeting, "via electronic platforms provided by The Florida Bar." Accordingly, the subcommittee concluded that the current IOP allows the Committee to meet electronically in June as scheduled.

Secondly, the issue remains whether the IOP should be amended to handle the possible need for electronic Committee meetings in the future that might violate the subdivision. Because of the uncertainty involved, and with the understanding that such future meetings will be controlled by The Florida Bar, the following amendment to subdivision IV.b. was considered by the subcommittee:

b. Meetings. Except as otherwise determined by The Florida Bar, ~~T~~the Committee shall conduct at least two in-person meetings during the Bar year. The Chair in his or her discretion may schedule additional in-person meetings as necessary to conduct the business of the Committee. The Chair also may schedule meetings of the Committee and Subcommittees to conduct business as necessary by any other commonly available method, including e-mail exchanges or electronic meetings (*e.g.*, teleconferences, videoconferences, web conferences, etc.) via electronic platforms provided by The Florida Bar.

Thirdly, given the current concerns about personal contact in large gatherings, a suggestion has been made that the IOP should be amended to allow electronic/phone attendance by members at in-person Committee meetings. The subcommittee recognizes that tradition and strong policy reasons have long mandated personal attendance at Committee meetings. The subcommittee cautions that any change to this policy should not be taken lightly. The subcommittee feels that there is no substitute for in-person meetings, which allow for a freer exchange of ideas and information than is possible with phone or other electronic attendance.

The experience of at least 3 subcommittee members is that when other rules committees allow phone attendance, that such attendees often do not hear the in-person attendees' comments, the phone attendees do not fully participate in needed debate of rule proposals, and there is doubt about whether some of the phone attendees' votes are thoughtfully cast. The subcommittee legitimately fears that if phone attendance is made possible, some members may consider the provision to be an "option" for attending by phone. It cannot be overemphasized that in-person attendance is considered to be crucial to the deliberations of the Committee. It is noted that as a less crucial issue, the allowance of phone attendance at Committee meeting would require that the meeting room be set up in advance to allow such attendance.

Nonetheless, based on COVID-19, potential member health issues or other problems that might restrict or prevent a member's in-person attendance, the following amendment has been proposed to subdivision IV.i.:

i. Attendance. All members are expected to attend in-person meetings and actively participate, and to participate by the appropriate means in all meetings conducted electronically. The Chair has the authority, for good cause shown, to grant members excused absences ~~for good cause~~ or allow members to attend in-person meetings electronically.

SUBCOMMITTEE RECOMMENDATIONS:

1. Given that the Committee has already held two in-person meetings this Bar year in compliance with subdivision IV.b. of the IOP, the subcommittee unanimously concluded that

holding an electronic or Zoom meeting in June complied with the existing language of the subdivision.

2. Despite the above conclusion, the subcommittee recognizes that COVID-19 or other exigent circumstances in the future may otherwise inhibit the attendance of all members of the Committee as may be determined by The Bar. Despite the desires of the Chair and/or the Committee and despite the requirement to hold two in-person meetings in a Bar year, The Florida Bar ultimately controls whether a meeting can be held and the IOP should allow for that contingency. The subcommittee voted 6 – 0 in favor of the following amendment to subdivision IV.b.:

b. Meetings. Except as otherwise determined by The Florida Bar, ~~T~~the Committee shall conduct at least two in-person meetings during the Bar year. The Chair in his or her discretion may schedule additional in-person meetings as necessary to conduct the business of the Committee. The Chair also may schedule meetings of the Committee and Subcommittees to conduct business as necessary by any other commonly available method, including e-mail exchanges or electronic meetings (*e.g.*, teleconferences, videoconferences, web conferences, etc.) via electronic platforms provided by The Florida Bar.

3. Based on the strong policy reasons addressed above that mandate personal attendance at in-person meetings, the subcommittee voted 4 – 2 against allowing electronic attendance at Committee meetings. The minority position was that under appropriate circumstances, the Chair should have the discretion to allow electronic attendance at in-person Committee meetings. The minority of the subcommittee supported the following conceptual change to subdivision IV.i. of the IOP:

i. Attendance. All members are expected to attend in-person meetings and actively participate, and to participate by the appropriate means in all meetings conducted electronically. The Chair has the authority, for good cause shown, to grant members excused absences ~~for good cause~~ or allow members to attend in-person meetings electronically.

Respectfully submitted,

Keith H. Park, Subcommittee Chair

October 2019

INTERNAL OPERATING PROCEDURES OF THE CIVIL PROCEDURE RULES COMMITTEE OF THE FLORIDA BAR

I. INTRODUCTION

Pursuant to Florida Rule of Judicial Administration 2.140, The Florida Bar has established the Civil Procedure Rules Committee (the "Committee") to consider proposals for changes to the Florida Rules of Civil Procedure. Fla. R. Jud. Admin. Rule 2.140(a)(4) requires the Committee to be composed of attorneys and judges with extensive experience and training in an area of practice that calls for regular, frequent use of the rules, who serve for 3-year staggered terms.

II. OFFICERS

Subject to the discretion of The Florida Bar President-Elect, the Officers of the Committee shall consist of a Chair, one or more Vice-Chairs, and a Secretary.

a. **Chair.** The President-Elect of The Florida Bar shall appoint the Chair of the Committee to serve for a one-year term to coincide with the President-Elect's term of office as President. The Chair shall govern the Committee during that term and have the powers set forth herein. Once appointed by the President-Elect, the Chair-Elect immediately shall have the power to make any appointment authorized herein, with the appointment taking effect upon commencement of the Chair-Elect's term of office as Chair.

b. **Vice-Chairs.** The President-Elect of The Florida Bar shall appoint one or more Vice-Chairs of the Committee to serve for a one-year term to coincide with the term of the Chair appointed by the President-Elect. The longest-serving Vice-Chair shall serve in the Chair's absence and otherwise assist the Chair as needed.

c. **Secretary**. The Chair shall appoint a Secretary to serve during the Chair's term of office. The Secretary shall keep minutes and records of the Committee's activities as required by rule 2.140(a)(6) which are considered Judicial Branch public records pursuant to rule 2.420(b)(2). The Secretary shall transmit the minutes and records to The Florida Bar's staff liaison to the Committee within 30 days of the date of any Committee meeting or sooner if directed by the Chair to expedite for good cause. The Bar's staff liaison shall ensure copies of all Committee minutes and records are maintained in compliance with rule 2.430 and The Florida Bar's Record Retention Policy.

d. **Rules of Judicial Administration Liaison**. Pursuant to rule 2.140(a)(5), at least one Committee member shall serve as liaison to the Rules of Judicial

Administration Committee. The Chair shall appoint the liaison to serve during the Chair's term of office.

III. SUBCOMMITTEES

Subcommittees of the Committee shall consist of Standing Subcommittees and Special Subcommittees. Appointment, removal or replacement of members of subcommittees shall be at the sole discretion of the Chair.

a. Standing Subcommittees.

1. The following standing subcommittees shall be established on an ongoing basis: Drafting, Internal Operating Procedures, Legislative, Federal Rules, Electronic Discovery, Orientation, and Statewide Guidelines for Uniform Taxation of Costs in Civil Actions. By a majority vote, the Committee may establish other Standing Subcommittees.

2. The Chair shall appoint both a Chair and one or more Vice-Chairs for each Standing Subcommittee to serve during the Committee Chair's term.

b. Special Subcommittees.

1. The Chair shall have the discretion to create and appoint Special Subcommittees when needed to review particular proposed changes to the Rules of Civil Procedure as set forth in Section V below, or to consider other appropriate action by the Committee.

2. The Chair shall appoint a Subcommittee Chair, and may appoint a Vice-Chair for each Special Subcommittee.

c. Subcommittee Reports. The Chair of each Subcommittee (or the Chair's designee) shall report the action taken by the subcommittee on each proposal in the format provided in the Subcommittee Report Form attached to these Internal Operating Procedures.

IV. CONDUCTING BUSINESS

a. Governing Rules. The rules contained in the current edition of ***Robert's Rules of Order Newly Revised*** shall govern in all matters to the extent that they are not inconsistent with these Internal Operating Procedures**.**

b. Meetings. The Committee shall conduct at least two in-person meetings during the Bar year. The Chair in his or her discretion may schedule additional in-person meetings as necessary to conduct the business of the Committee. The Chair also may schedule meetings of the Committee and Subcommittees to conduct business as necessary by any other commonly available method, including e-mail exchanges or electronic meetings (*e.g.*, teleconferences, videoconferences, web conferences, etc.) via electronic platforms provided by The Florida Bar.

1. When a meeting is held by email exchange, any Committee vote on a Proposal or other action shall proceed as follows:

   a.) The Proposal (or other proposed Committee action) must be submitted to the full Committee by email.

   b.) The members of the Committee shall be permitted a period of not less than two business days to make and respond to comments.

   c.) The Chair may then call for a vote on the Proposal or other matter, and members shall be allowed at least 48 hours to cast their votes.

   d.) If the Chair determines that a shorter voting period must be established to meet a request by the Florida Supreme Court for expedited or emergency consideration of the matter or for any other issue the Chair deems appropriate, the Chair shall announce the need for expedited consideration and the shortened voting deadline at the earliest practical opportunity. In no event shall the Chair establish a voting deadline that falls less than 24 hours after the announcement of the shortened voting period or that allows for less than a 24-hour period to vote.

2. When a meeting is held via an electronic platform provided by the Florida Bar, the Chair shall ensure that the platform provides members of the Committee with substantially the same opportunity to make or oppose motions; to review Proposals or other proposed Committee actions; to make, receive, and respond to comments thereon; and to vote on the issues under consideration as the members would enjoy at an in-person meeting.

c. Quorum. No business shall be conducted unless a quorum is present at any meeting. A quorum is defined as one-third of the full Committee membership. However, for the purpose of amending the Committee's Internal Operating Procedures, a quorum is defined as two-thirds of the full Committee membership.

d. Voting. A majority vote of the members present at a meeting, or participating in an email vote, shall be sufficient to pass any action taken by the Committee or a Subcommittee except as otherwise required by these Internal Operating Procedures. All voting shall be by open ballot, either orally or by show of hands in an in-person meeting, or orally or in writing if in an electronic meeting. If a vote in an in-person meeting is not unanimous, a show of hands vote and count shall be taken and appropriately recorded by the Secretary. For electronic meetings, all vote counts shall be recorded and included in the meeting minutes.

While meeting and voting by email exchange is not favored, it is recognized that voting by email exchange may be necessary due to an order of the Florida

Supreme Court that necessitates the Committee act on an expedited or emergency basis. Conducting meetings and voting on Proposals by email exchange presents some unique challenges. Therefore, to accommodate the opportunity for Committee members to participate in the full and fair exchange of ideas, to facilitate a full and frank discussion of the issues, and in the spirit of the requirement that all voting be by open ballot, when meetings are conducted by email exchange members should comment by **"reply all"** so that all members receive the benefit of the member's comment. Members shall vote by email exchange when instructed to do so by the Chair but shall vote only by **"reply to sender."** Members should not "reply all" to record any email exchange vote. Proxy and absentee voting are prohibited.

e. **Agenda.** The Chair (or designee) will prepare and circulate to all members, prior to each meeting, an agenda of matters to be considered at such meeting. The agenda shall specifically identify those Proposals to be voted upon (a) for approval of the concept, and (b) for final approval.

f. **Suspension of the Rules.** These rules may be suspended by a two-thirds vote of those members present at a meeting.

g. **Interpretation.** Interpretation of the application of these rules shall be made by the Chair in his or her sole discretion.

h. **Copy of Rules.** A copy of these Internal Operating Procedures of the Civil Procedure Rules Committee shall be sent to each new Committee member with the agenda for the first meeting of the Bar year.

i. **Attendance.** All members are expected to attend in-person meetings and actively participate, and to participate by the appropriate means in all meetings conducted electronically. The Chair has the authority to grant members excused absences for good cause.

V. PROCEDURE FOR CONSIDERATION OF CHANGES TO RULES

a. Initiation of Proposed Rule Changes.

1. **Assignment; Solicitation of Comments**: At the time a proposed rule or amendment or a proposed form or amendment (hereinafter collectively referred to as a "Proposal") is first made, the Committee or the Chair shall make an initial determination whether it is a Proposal which should be taken up by the Committee. Any time a Proposal is to be considered by the Committee, and the proponent is a non-member, the non-member proponent shall be notified of the consideration so as to have an opportunity to be heard. If a Proposal is approved in concept, the Chair or designee shall refer the Proposal to a standing subcommittee, if

appropriate, or shall designate one or more members as a special subcommittee to consider it further. If the proponent is a non-member, the non-member shall be notified of this assignment, invited to provide input, and shall be notified of the option of seeking a Committee member to act as a sponsor of the Proposal. The member or subcommittee shall also determine whether to solicit comments from the general Bar membership by notice in the Florida Bar News.

2. **Consideration by Subcommittee**: The subcommittee responsible for evaluating the Proposal shall, after consideration, submit its report on the Proposal to the full Committee in writing. If the subcommittee's decision is to not take action after evaluating the Proposal it shall report on the Subcommittee Report Form "No Action Recommended." Any changes to the rules proposed or recommended by the subcommittee as a result of evaluating the Proposal shall be submitted in the same format as legislative proposals, accompanied by a statement of rationale and/or supporting authorities using the Subcommittee Report Form in the Appendix. The Subcommittee Report Form containing the Proposal and accompanying statement shall be submitted to the Chair for circulation to all members of the Committee. The efficient functioning of the Committee depends on the subcommittees making timely submissions and adhering to this rule.

b. Full Committee Consideration of Proposed Changes.

1. **Approval Process.** Each Proposal must appear on the agenda and be voted upon by the Committee at least two times, in the following order:

   A. Approval of the concept;

   B. Final approval.

2. **Two Meetings Required**; **Exception.** A Proposal may not be voted upon for both approval of the concept and for final approval at a single meeting. However, in the event the Florida Supreme Court orders the Committee to consider a matter on an expedited or emergency basis, the matter may be considered at one or more in-person or electronic meetings as needed to conclude the Committee's work and to report back to the Court.

c. Conceptual Approval of a Proposed Rule Change.

1. **Submission of Proposals to Full Committee**. Only Proposals submitted in writing and circulated to all members of the Committee prior to a meeting may be voted upon by the Committee. A Proposal shall not be voted upon by the Committee unless a proponent (designated member or subcommittee

member or outside proponent designated by them) is present or available to explain the Proposal and answer questions regarding the Proposal. If the subcommittee chair is not able to attend or participate, he or she must ensure that another subcommittee member will attend the meeting to present the Proposal.

2. **Actions Permitted on Approval of Concept Vote.** When a Proposal is voted upon for approval of the concept, it may only be:

    A. Approved in concept and sent to the Drafting Subcommittee.

    B. Tabled for consideration at the next meeting without reference to subcommittee.

    C. Tabled for consideration at the next meeting and referred to subcommittee.

    D. Disapproved as to concept.

    E. Amended.

3. **No Further Discussion of Concept.** Once a Proposal has been approved "in concept," discussion on the "concept" of the Proposal will not be considered by the Committee during discussions on amendments or changes in the wording; except that such discussion may be held at the meeting at which the Proposal is presented for final approval.

d. Final Approval of a Proposed Rule Change.

1. **Submission of Proposals to Full Committee**. Unless otherwise required by these Internal Operating Procedures when a Proposal has been expedited to timely respond to the Florida Supreme Court, only Proposals that have been accompanied by the required Report and circulated to all members of the Committee prior to a meeting may be voted upon by the Committee for final approval. A Proposal shall not be voted upon for final approval by the Committee unless a proponent (designated member or subcommittee member or outside proponent designated by them) is present to explain the Proposal and answer questions regarding the Proposal. If the subcommittee chair is not able to attend or participate, he or she must ensure that another subcommittee member will attend the meeting to present the Proposal.

2. **Drafting Subcommittee.** The Drafting Subcommittee shall review and comment on non-substantive aspects of each Proposal prior to the Committee's vote on final approval. Its purpose is to ensure that each Proposal is presented in language, style, format, and content that is consistent

with and complementary to existing rules and forms. The Drafting Subcommittee should confine its attention to drafting considerations, such as word choice, grammar, punctuation, parallel structure, and writing style. Language, style and formatting amendments proposed by the Drafting Subcommittee shall not require any delay in final approval of a Proposal if such amendments are adopted.

3. **Actions Permitted on Final Approval Vote.** When a Proposal is voted upon for final approval, upon motion duly made and seconded, it only may be:

    A. Approved in final form.

    B. Tabled and sent back to the Drafting Subcommittee or Subcommittee.

    C. Tabled for consideration at the next meeting.

    D. Rejected in final form.

    E. Amended.

4. **Amended Proposals to be Re-circulated.** A Proposal which has been amended in substance cannot be voted upon for approval in final form unless it has been re-circulated to all Committee members prior to the meeting at which such vote is to be taken and it appears on the agenda for that meeting.

5. **Post-Vote Report Form**. Within fourteen (14) days after the meeting at which a Proposal is disapproved as to concept pursuant to section V(C)(2)(d), approved in final form pursuant to section V(d)(3)(A), or rejected in final form pursuant to section V(d)(3)(D), the chair of the subcommittee for the Proposal (or the chair's designee) shall report the Committee's action by completing a Post-Vote Report Form attached to these Internal Operating Procedures.

6. **Determination of Emergency.** After a Proposal has been approved in final form, the Committee may further vote at the same meeting to determine whether such Proposal should be considered an emergency matter to be immediately submitted to the Supreme Court.

7. **Committee Notes.** Proposals for committee notes, or other matters not involving new Rules of Civil Procedure, forms, or amendments to existing rules or forms, are not subject to the dual approval provisions of these Internal Operating Procedures.

8. **Reconsideration of Rejected or Defeated Proposal.** When a Proposal is

rejected as to concept or defeated in its final form, it shall not again be reconsidered by the Committee as to concept for a period of one (1) year from the date of its rejection or defeat.

8. **Reconsideration of Approved Proposal.** If an approved Proposal has been approved in final form, but has not yet been submitted to the Florida Supreme Court for consideration, the Committee retains the power to consider the Proposal. Upon a request for reconsideration, the Chair, at his or her discretion, may take any of the following actions:

   a. Refer the Proposal back to the subcommittee that originally reviewed it;
   b. Create a new subcommittee to review the proposal;
   c. Propose improvements for consideration by the Committee without first referring the matter to a subcommittee;
   d. Take any other action consistent with these IOPs that is reasonably designed to address the suggestion for reconsideration.

   Any changes to the Proposal shall require an affirmative vote of the majority of members voting at a meeting or participating in an email vote.

9. **Amicus Curiae.** The Committee will not consider any requests for filing of an amicus curiae brief in any appellate proceeding unless expressly requested to do so by the Florida Supreme Court.

e. Expedited Procedures: This subsection sets forth the procedures for the Committee to respond, on an expedited basis, to a time-sensitive issue, for consideration and submission of a Proposal for expedited consideration by the Florida Supreme Court, or for any other issue the Chair deems expedited procedures are appropriate.

1. **When Invoked:** The Chair may invoke expedited procedures when:

   (a) the Florida Supreme Court requests a response from the Committee on an expedited basis or in circumstances in which the Committee would be unable otherwise to respond in adequate time; or

   (b) the Chair otherwise deems it appropriate to invoke the same.

2. **Subcommittee Appointment:** Upon invoking this procedure, the Chair shall immediately:

   (a) appoint an Expedited Procedure Subcommittee to consider the issue and prepare a Proposal or otherwise respond to an issue in the manner required by these rules, for circulation no less than three business days prior to the next meeting of the full Committee at

which such proposal or issue would be considered; and

(b) inform the members of the full Committee, by email or other appropriate means, of the appointment of the Expedited Procedure Subcommittee, its purpose, and the identity of its members, to enable any other Committee member(s) to join or provide their views or suggestions to the Expedited Procedure Subcommittee.

3. **Expedited Procedure Meeting:** The Chair may schedule an expedited meeting upon prior notice pursuant to section IV. b. of these operating procedures. Voting shall be conducted in accordance with section IV. b. 1. d). All members are expected to actively participate.

4. **Reporting of Committee's Action on Expedited Proposal:** A proposal receiving final approval shall be promptly reported to the Florida Supreme Court outside of the three-year reporting cycle.

VI. AMENDMENTS TO INTERNAL OPERATING PROCEDURES

These Internal Operating Procedures may be amended at any meeting of the Committee provided a quorum as required by section IV c. (Quorum) of these procedures is present; and, provided further that any proposed amendment shall first have been provided in writing to all members of the Committee at least 30 days before such meeting.

VII. ORIENTATION

All new members must attend orientation prior to the first Committee meeting of the Bar year unless the Chair excuses a member from participating or allows the member to postpone attendance at orientation for good cause (e.g., recent prior service on the Committee, illness, etc.).

a. **Meeting.** The orientation session shall be conducted on the day of and immediately preceding the first in-person meeting of the Committee for the Bar year. The session shall last no more than one hour.

b. **Content.** Subject to the discretion of the Committee Chair and the Chair of the Orientation Subcommittee, orientation may include the following:

1. Outgoing and incoming Committee Chairs and Bar staff who can provide new members with an overview of the rule-making procedures, overview of standing and special subcommittees, and the operation of the Committee;

2. One or more Subcommittee Chairs may provide new members with a brief overview of their subcommittee and the status of issues pending before their subcommittee;

3. Committee members who may assist in orientation as determined by the Committee Chair or the Chair of the Orientation Subcommittee;

c. **Subcommittee Service.** Committee members are encouraged to actively participate in the Committee's work as much as their law practice will permit. Members are strongly encouraged to volunteer for assignment to at least one subcommittee created to execute the Committee's work as the Bar year progresses.

d. **Mentors.** The Committee Chair may solicit current Committee members as volunteer mentors and assign a mentor for each new member. The Chair may solicit volunteer mentors at the meeting held during the Annual Meeting of The Florida Bar and shall assign a mentor for each new member within 30 days thereafter. The Bar's staff liaison is responsible for providing contact information to each mentor and new member mentee after the Chair makes the mentor appointments.

Approved 6-24-10
Amended 9-19-12
Amended June 2017

APPENDIX

SUBCOMMITTEE REPORT FORM
(Subcommittee Name/Subject)

Rules Involved:

Date of Report:

Chair:

Members (include areas of practice for each):

Other participants:

Meeting dates:

I. Summary of Original Proposal, Report and Action Proposed:

(Below, please provide a one- or two-sentence summary of the original proposal that was referred to the subcommittee, a summary of this report and any action being proposed.)

Summary of Original Proposal:

Summary of Report:

Action Proposed:

II. History/Background:

a. Source of proposal:

(Did the original proposal come from a member of the Committee, a member of the Bar, a litigant, etc., or does it result from a law passed by the Legislature? Please attach any correspondence or other materials received with the referral.)

b. Relevant Rules Committee history:

(If the proposal relates to an earlier change in the same rule, please explain that relationship. Also, please describe any prior discussion of the issues or feedback received from the full Civil Rules Committee at any previous meetings.)

c. Are similar proposals under consideration by other Rules Committees or Bar Sections?

(Please identify whether any other Rules Committees or Bar sections are considering the same topic and what attempts have been made to coordinate with them.)

d. Input sought/materials considered by subcommittee:

(Did the subcommittee seek input from interested parties or consider any materials or case law other than those provided with the original proposal? If so, please identify all.)

III. Issues Identified by the Subcommittee:

a. Concerns About Present Rule:

b. Concerns About Proposed Changes:

IV. Subcommittee Recommendation

(Is the subcommittee recommending a change or no change to the rules? Please report which and give the specific vote in favor of and opposed to that recommendation, e.g. "The subcommittee voted 5-3 in favor of modifying Rule 1.xxx to [describe change]")

V. Majority Position:

a. Summary.

b. Rationale.

(Please explain why the majority believes that change or no change is necessary or appropriate. Identify the goals that will be served by the change or the concerns that justify preserving the status quo.)

c. Key Points.

(If a new rule is proposed, please identify the key features of the new rule. If a change in an existing rule is proposed, explain how the change would alter the existing rule and explain what the anticipated result of the change will be.)

d. Anticipated Impact of Change:

i. **Does the proposed change necessitate a change in other Rules?** [Note that Family Law Rules are automatically affected by amendments to Civil Rules]

ii. What is the anticipated impact of the change on practitioners?

(If there is no minority position, please be sure to explain here any anticipated problems or consequences caused by the majority position.)

VI. Minority Position(s):

a. Summary

b. Rationale.

(Please explain why the minority believes that change or no change is necessary or appropriate. Identify the goals that will be served by the change or the concerns that justify preserving the status quo.)

c. Key Points.

(If a new rule is proposed, identify the key features of the proposed new rule. If a change in an existing rule is proposed, explain how the proposed change would alter the existing rule and explain what the anticipated result of the change will be.)

d. Anticipated Impact of Change:

i. Does the proposed change necessitate a change in other Rules? [Note that Family Law Rules are automatically affected by amendments to Civil Rules]

ii. What is the anticipated impact of the change on practitioners?

iii. Does the proposed change secure the just, speedy, and inexpensive determination of every action?

VII. Time Considerations for Adopting Proposal:

(Please explain reasons to expedite, if any.)

VIII. Attach Text of the Proposed Amendments as Exhibits to this Report. Remember:

a. Must be in Legislative Format

b. Clearly label proposals as Majority or Minority

c. Votes must be recorded for report to the full Committee, Board of Governors and the Florida Supreme Court

CIVIL PROCEDURE RULES COMMITTEE

POST-VOTE REPORT FORM

Date: [insert date]
Subcommittee Chair: [identify chair]
Subcommittee Members: [identify members]

A. Describe the proposed amendment or proposed new rule/form – [insert the amendment or new rule/form below].

B. Describe what the subcommittee did including the date or dates of any meetings, the substance of the discussions/analyses, substantive law, rules, or case law considered, the subcommittee's recommendation to the Committee. Attach a copy of any subcommittee reports.

C. Did the proposed amendment or proposed new rule/form change during or as a result of the Committee meeting? If yes, please indicate the final amendments using strike through and underline.

D. What was the final Committee vote?

[List the result of the final Committee vote after Drafting Subcommittee]

E. Majority Position's Rationale.

F. Minority Position's Rationale.

G. Other comments. Include any other matters that could help explain the Committee's action

SUBCOMMITTEE REPORT FORM
(Remote Testimony Ad-Hoc Subcommittee)

Rules Involved: **RJA Rule 2.530**
Civ Pro Rules 1.310 and 1.451
Crim Pro Rule 3.116
Small Claims Rule 7.140
Juvenile Rules 8.100, 8.255 and 8.257
Family Rules 12.310 and 12.451

Date of Report: **May 14, 2020**

Chair: **Judson Cohen, Civil Procedure Rules**

Members (include areas of practice for each):

Rebecca Hunt, Family Law Rules
John Roman, RJA
Kevin Stone, Small Claims Rules
Keith Park, Civil Procedure Rules
Alexander Martin
Roseanne Eckert, Criminal Procedure Rules
Matt Wilson, Juvenile Court Rules
Linda Berman, Juvenile Court Rules
Diane DeWolf, Appellate Rules

Other participants:

Krys Godwin, Florida Bar Liaison
Mikalla Davis, Florida Bar Liaison
Various Members of the Florida Court Reporters Association
Various Representative from Esquire Deposition Solutions, LLC
Various Committee members that assisted on each

Meeting dates: **August 13, 2019, October 3, 2019, March 23, 2020**

I. Summary of Original Proposal, Report and Action Proposed:

(Below, please provide a one- or two-sentence summary of the original proposal that was referred to the subcommittee, a summary of this report and any action being proposed.)

Summary of Original Proposal: In May 2019 the Rules Committees sent a packet of proposed rule changes to the Florida Board of Bar Governors. The rule changes largely dealt with remote testimony via communication equipment. After the foregoing rules were drafted, the Florida

Legislature passed House Bill 409 which made changes to Florida Notary Public statutes and added provisions for remote online notarization. Governor Laird Lile suggested essentially that the proposed rule changes may need to be modified considering the recent House Bill 409 passage and made suggestions regarding language consistency. The comments largely addressed the RJA proposed rule change, though the concerns arguably affected the other Rule sets' proposed remote testimony rule changes. Accordingly, the Florida Bar Board of Governors decided to table the proposed rule changes to send them back and see if the respective committees wanted to revise the proposed rule changes taking into consideration Governor Lile's comments and the passage of House Bill 409. Since that time, the proposed rule change by the RJA changed and accordingly, amendments to proposed rule changes were made in response.

Summary of Report: The Ad-Hoc Subcommittee unanimously felt that the remote notarization procedures recently permitted in Florida Statute 117, when read in combination with existing Florida Statute 92.50 permitted the remote swearing of a witness for deposition of trial testimony under certain circumstances. Moreover, the Ad-Hoc Subcommittee felt there should be consistency of defined terms throughout the rule sets, even if the methods for remote testimony differed between rule sets because of the differing needs of the various practice areas. The Ad-Hoc Subcommittee felt that the best place for the defined terms was in the RJA rules (likely RJA Rule 2.530). The subcommittee has reviewed all proposed rules to try to use common terms throughout the rule sets and to try to provide uniformity on key terms.

Action Proposed: The representatives of each rule set provided either new proposed rule changes or an indication that their committee was not changing the prior proposed rule change, and the goal is to have these rule changes considered by their respective committee at the June 2020 meeting to allow for a joint report to the Court. The rules are RJA Rule 2.530; Civ Pro Rules 1.310 and 1.451; Crim Pro Rule 3.116; Small Claims Rule 7.140; Juvenile Rules 8.100, 8.255 and 8.257; Family Rules 12.310 and 12.451. This is a summary of proposed amendments:

Rules of Civil Procedure

1.310
Subdivision (b)

Amends (b)(4) to update the terminology and delete "videotape" to allow for audiovisually recorded deposition or deposition taken by audio-video communication technology.

Amends (b)(4)(A) to clarify the notice for audiovisually recorded deposition or deposition taken by audio-video communication technology.

Amends (b)(4)(B) to update the terminology and delete "videotape" and replace it with audiovisually recorded deposition or deposition taken by audio-video communication technology.

Amends (b)(4)(D) to delete update the terminology and delete "videotape" and replace it with "recording."

Amends (b)(7) to allow the party to motion for a deposition by telephone or comparable audio communication technology.

Subdivision (c)

Amends subdivision substantially regarding the oath. Allows the witness to be sworn remotely if person administering the oath confirms witness's identity.

1.451

Subdivision (b)

Amends subdivision to update terminology from "equipment" to "technology."

Subdivision (c)

Amends subdivision substantially and cites to Florida Rule of Judicial Administration to provide guidance of what equipment is required to take testimony via audio-video communication technology.

Subdivision (d)

Amends subdivision substantially regarding the oath. Allows the witness to be sworn remotely if person administering the oath confirms witness's identity.

Subdivision (e)

Amends subdivision to update terminology from "equipment" to "technology" and specifies that the expense may be as agreed by the parties.

Rules of Judicial Administration

2.530

Subdivision (a)

Amends subdivision to provide definitions of audio-video communication technology and audio-video communication technology.

Subdivision (b)

Amends subdivision to update technology from "communication equipment" to audio or audio-video communication technology.

Subdivision (c)

Amends subdivision to update technology from "communication equipment" to audio or audio-video communication technology.

Subdivision (d)

Subdivision amended substantially including: update technology from "communication equipment" to audio or audio-video communication technology: allow the witness to be sworn remotely if person administering the oath confirms witness's identity; delete confrontation rights as it is addressed in juvenile and criminal rule sets; and deletes subdivision (d)(5) as it is unnecessary.

Subdivision (e)

Amends subdivision to update technology from "communication equipment" to audio or audio-video communication technology.

Subdivision (f)
Delete reference to family law indicator as it will be placed in the Family Law rules.

Rules of Criminal Procedure

New rule created 3.116
Subdivision (a)
Cites to Florida Rule of Judicial Administration 2.530 to define audio and audio-video communications technology.

Subdivision (b)
Procedure should be in conformity of Florida Rule of Judicial Administration 2.530

Subdivision (c)
At hearing, allows audio communication technology only by stipulation of parties. At hearing, allows for audio-video communication technology by stipulation of parties or good cause shown.

Subdivision (d)
At trial, allows for audio-video communication technology by stipulation of parties or good cause shown.

Subdivision (e)
Specifies the requirements/safeguards of the technology.

Subdivision (f)
Addresses confrontation rights.

Small Claims Rules

Subdivision (f)
Terminology updated to match Rule of Judicial Administration 2.530 (a)**.** Previously only allowed telephone testimony but further clarified that testimony can be audio or audio-video communication technology.

Subdivision (g)
Specifies the requirements/safeguards of the technology.

Juvenile Court Rules

8.100
Subdivision (e)(2)
For juvenile delinquency, allows testimony by audio-video communication technology by stipulation of the parties or good cause shown.

Subdivision (e)(3)
For juvenile delinquency, specifies the requirements/safeguards of the technology.

Subdivision (e)(4)
For juvenile delinquency, notary is required to be physically present with the witness. No remote administration of the oath allowed.

Committee Note provides information regarding confrontation clause.

8.255

Subdivision (e)(2)
For juvenile dependency, allows audio or audio-video testimony by agreement or by good cause shown. Specifies the requirements in the rule.

Subdivision (e)(3)
For juvenile dependency, specifies the requirements/safeguards of the technology.

Subdivision (e)(3)
For juvenile dependency, allows remote administer of the oath if by audio-video communication technology only.

Family Rules of Procedure

12.310
Subdivision (b)

Amends (b)(4) to update the terminology and delete "videotape" to allow for audiovisually recorded deposition or deposition taken by audio-video communication technology.

Amends (b)(4)(A) to clarify the notice for audiovisually recorded deposition or deposition taken by audio-video communication technology.

Amends (b)(4)(B) to update the terminology and delete "videotape" and replace it with audiovisually recorded deposition or deposition taken by audio-video communication technology.

Amends (b)(4)(D) to delete update the terminology and delete "videotape" and replace it with "recording."

Amends (b)(7) to allow the party to motion for a deposition by telephone or comparable audio communication technology.

Subdivision (c)

Amends subdivision substantially regarding the oath. Allows the witness to be sworn remotely if person administering the oath confirms witness's identity.

1.451
Subdivision (b)
Amends subdivision to update terminology from "equipment" to "technology."

Subdivision (c)
Amends subdivision substantially and cites to Florida Rule of Judicial Administration to provide guidance of what equipment is required to take testimony via audio-video communication technology.

Subdivision (d)
Amends subdivision substantially regarding the oath. Allows the witness to be sworn remotely if person administering the oath confirms witness's identity.

Subdivision (e)
Amends subdivision to update terminology from "equipment" to "technology" and specifies that the expense may be as agreed by the parties.

Subdivision (f)
Adds subdivision regarding override of family violence indicator.

II. History/Background:

a. Source of proposal:

See Summary of Original Proposal

b. Relevant Rules Committee history:

See Summary of Original Proposal

c. Are similar proposals under consideration by other Rules Committees or Bar Sections?

Yes, see Action Proposed.

d. Input sought/materials considered by subcommittee:

Representatives from RJA, Civ Pro, Small Claims, Family, Juvenile and Criminal Procedure participated.

Attached is the following:

Rule Set	Existing Rule	Prior Proposed Change	Current Proposed Change
RJA	**2.530**	**2.530**	**2.530**
Civ Pro	**1.310**	**1.310**	**1.310**
Civ Pro	**1.451**	**1.451**	**1.451**
Crim Pro	**3.116**	**3.116**	**3.116**
Small Claims	**7.140**	**7.140**	**7.140**
Juvenile	**8.100**	**8.100**	**8.100**
Juvenile	**8.255**	**8.255**	**8.255**
Juvenile	**8.257**	**8.257**	**8.257**
Family	**12.310**	**12.310**	**12.310**
Family	**12.451**	**12.451**	**12.451**

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 on 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 on oral examination must give reasonable notice in writing to every other party to the action. The notice must 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 must 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 audiovisually recorded or taken by ~~videotape~~audio-video communication technology, as defined by Florida Rule of Judicial Administration 2.530(a)(2), without leave of the court or stipulation of the parties, provided the deposition is taken in accordance with this subdivision.

(A) Notice. In addition to the requirements of subdivision (b)(1), a party intending to audiovisually record or ~~videotape~~take a deposition using audio-video communication technology must state:

(i) in the title of the notice that the deposition is to be ~~videotaped~~ audiovisually recorded or taken using audio-video communication technology;

(ii) the audio-video communication technology to be used, including any platform, application or process involved, and any instructions for remote attendance; and

(iii) ~~give~~ the name and address of the operator, if applicable.

Any subpoena served on the person to be examined must state the method or methods for recording the testimony and the information set forth in subdivisions (i) through (iii).

(B) Stenographer/Court Reporter. ~~Videotaped~~ dDepositions audiovisually recorded or taken by audio-video communication technology must ~~also~~ be recorded stenographically, unless all parties agree otherwise.

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

(D) ~~Custody~~Responsibility for ~~of~~ ~~Tape~~Recordings and Copies. The attorney for the party requesting the ~~videotaping~~audiovisual recording of the deposition ~~must take custody of and be~~ is responsible for ~~the~~ safeguarding ~~of~~ the ~~videotape~~recording, must permit the viewing of it by the opposing party, and, if requested, must provide access to a copy of the ~~videotape~~recording at the expense of the party requesting the copy.

(E) Cost of ~~Videotaped~~Audio-Video Communication Technology Depositions. The party requesting audiovisual recording or the ~~videotaping~~use of audio-video communication technology must 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 applies 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 must 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 must 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) If not otherwise agreed by the parties, ~~O~~on motion the court may order that the testimony at a deposition be taken by telephone or comparable audio communication technology, as defined by Florida Rule of Judicial Administration 2.530(a)(1). The order may prescribe the manner in which the deposition will be taken. The cost for the use of such communication technology is the responsibility of the requesting party unless otherwise agreed by the parties or ordered by the court. A party may also arrange for a stenographic transcription at that party's own initial expense.

(8) Any minor subpoenaed for testimony has 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 on a showing that the presence of a parent or guardian is likely to have a material, negative impact on the credibility or accuracy of the minor's testimony, or that the interests of the parent or guardian are in actual or potential conflict with the interests of the minor.

(c) Examination and Cross-Examination; Record of Examination; Oath; Objections. Examination and cross-examination of witnesses may proceed as permitted at the trial. ~~The officer before whom the deposition is to be taken must put the witness on oath and must 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 must be sworn by a person present with the witness who is qualified to administer an oath in that location.~~ The testimony must 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 must be transcribed at the initial cost of the requesting party and prompt notice of the request must be given to all other parties. All objections made at the 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 must be noted by the officer on the deposition. Any objection during a deposition must 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 must 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 must transmit them to the officer, who must propound them to the witness and record the answers verbatim.

(1) The officer before whom the deposition is to be taken must put the witness on oath and must 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 or comparable audio equipment communication technology, the witness must be sworn by a person physically present with the witness who is qualified to administer an oath in that location.

(2) Deposition testimony may be taken by audio-video communication technology if a person authorized to administer oaths in the witness's jurisdiction is physically present with the witness and administers the oath consistent with the laws of the jurisdiction.

(3) A witness may be sworn remotely by audio-video communication technology from a location in the State of Florida if the person authorized to administer oaths confirms the witness's identity. Additionally, if the witness is not in the State of Florida, the witness must consent to being put on oath:

(A) by a person authorized to administer oaths in the State of Florida; and

(B) under the general law of the State of Florida.

(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 on 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 immediately 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 on the order of the court in which the action is pending. Upon demand of any party or the deponent, the taking of the deposition must 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 must be furnished to the witness for examination and must 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 must be listed in writing by the officer with a statement of the reasons given by the witness for making the changes. The changes must be attached to the transcript. It must 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 must 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 must 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 must be marked for identification and annexed to and returned with the deposition on 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 must mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them and the

materials may then be used in the same manner as if annexed to and returned with the deposition.

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

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

(A) It may be filed in compliance with Florida Rule of Judicial Administration 2.425 and rule 1.280(g) 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 must be given to all parties unless notice is waived. A party filing the deposition must furnish a copy of the deposition or the part being filed to other parties unless the party already has a copy.

(B) If the court determines that a deposition previously taken is necessary for the decision of a matter pending before the court, the court may order that a copy be filed by any party at the initial cost of the party, and the filing party must comply with rules 2.425 and 1.280(g).

(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 must 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 on 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.

2011 Amendment. A reference to Florida Rule of Judicial Administration 2.425 and rule 1.280(f) is added to require persons filing discovery materials with the court to make sure that good cause exists prior to filing discovery materials and that certain specific personal information is redacted.

Court Commentary

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

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

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

Subdivision (f) is the committee's action in response to the petition seeking amendment to rule 1.310(f) filed in the Supreme Court Case No. 62,699.

Subdivision (f) is changed to clarify the need for furnishing copies when a deposition, or part of it, is properly filed, to authorize the court to require a deposition to be both transcribed and filed, and to specify that a party who does not obtain a copy of the deposition may get it from the court reporter unless ordered otherwise by the court. This eliminates the present requirement of furnishing a copy of the deposition, or material part of it, to a person who already has a copy in subdivision (f)(3)(A).

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

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

RULE 1.451. TAKING TESTIMONY

(a) Testimony at Hearing or Trial. When testifying at a hearing or trial, a witness must be physically present unless otherwise provided by law or rule of procedure.

(b) Communication ~~Equipment~~Technology. The court may permit a witness to testify at a hearing or trial by contemporaneous audio or audio-video communication ~~equipment~~technology:

(1) by agreement of the parties; or

(2) for good cause shown upon written request of a party upon reasonable notice to all other parties.

The request and notice must contain the substance of the proposed testimony and an estimate of the length of the proposed testimony. In considering sufficient good cause, the court shall weigh and address in its order the reasons stated for testimony by communication ~~equipment~~technology against the potential for prejudice to the objecting party.

(c) Required ~~Equipment~~Technology. Communication ~~equipment~~technology as used in this rule ~~means~~includes audio-video communication technology, as defined by Florida Rule of Judicial Administration 2.530(a)(2), and a conference telephone or other ~~electronic device~~audio communication technology, as defined by Florida Rule of Judicial Administration 2.530(a)(1). ~~that permits all those appearing or participating to hear and speak to each other simultaneously and permits all conversations of all parties to be audible to all persons present. Contemporaneous video communications must make the witness visible to all participants during the testimony.~~ For testimony by any of the foregoing means, there must be appropriate safeguards for the court to maintain sufficient control over the ~~equipment~~technology and the transmission of the testimony, so the court may stop the communication to accommodate objection or prevent prejudice.

(d) Oath. Testimony may be taken through audio communication ~~equipment~~technology only if a notary public or other person authorized to administer oaths in the witness's jurisdiction is physically present with the witness and administers the oath consistent with the laws of the jurisdiction. Testimony may be taken through audio-video communication technology if a person authorized to administer oaths in the witness's jurisdiction is physically present

with the witness and administers the oath consistent with the laws of the jurisdiction, or the witness may be sworn remotely if:

(1) the person authorized to administer oaths confirms the witness's identity; and

(2) if the witness is not in the State of Florida, the witness consents to being put on oath by a person authorized to administer oaths in Florida and under the general law of the State of Florida.

(e) Burden of Expense. The cost for the use of the communication ~~equipment~~technology is the responsibility of the requesting party unless otherwise agreed by the parties or ordered by the court.

Committee Note

2013 Adoption. This rule allows the parties to agree, or one or more parties to request, that the court authorize presentation of witness testimony by contemporaneous video or audio communications equipment. A party seeking to present such testimony over the objection of another party must still satisfy the good-cause standard. In determining whether good cause exists, the trial court may consider such factors as the type and stage of proceeding, the presence or absence of constitutionally protected rights, the importance of the testimony to the resolution of the case, the amount in controversy in the case, the relative cost or inconvenience of requiring the presence of the witness in court, the ability of counsel to use necessary exhibits or demonstrative aids, the limitations (if any) placed on the opportunity for opposing counsel and the finder of fact to observe the witness's demeanor, the potential for unfair surprise, the witness's affiliation with one or more parties, and any other factors the court reasonably deems material to weighing the justification the requesting party has offered in support of the request to allow a witness to testify by communications equipment against the potential for prejudice to the objecting party. With the advance of technology, the cost and availability of contemporaneous video testimony may be considered by the court in determining whether good cause is established for audio testimony.

RULE 2.530. COMMUNICATION ~~EQUIPMENT~~TECHNOLOGY

(a) Definitions.

(1) ~~Communication equipment~~Audio communication technology means a conference telephone or other electronic device that permits all those appearing or participating to hear and speak to each other, provided that all conversation of all parties is audible to all persons present.

(2) Audio-video communication technology means devices that enable real-time, two-way communication and permits all those appearing or participating to hear, see, and speak to each other.

(b) Use by All Parties. A county or circuit court judge may, upon the court's own motion or upon the written request of a party, direct that ~~communication equipment~~audio or audio-video communication technology be used for a motion hearing, pretrial conference, or a status conference. A judge must give notice to the parties and consider any objections they may have to the use of ~~communication equipment~~audio or audio-video communication technology before directing that ~~communication equipment~~audio or audio-video communication technology be used. The decision to use audio or audio-video communication technology ~~communication equipment~~ over the objection of parties will be in the sound discretion of the trial court, except as noted below.

(c) Use Only by Requesting Party. A county or circuit court judge may**,** upon the written request of a party upon reasonable notice to all other parties, permit a requesting party to participate through ~~communication equipment~~audio or audio-video communication technology in a scheduled motion hearing; however, any such request (except in criminal, juvenile, and appellate proceedings) must be granted, absent a showing of good cause to deny the same, where the hearing is set for not longer than 15 minutes.

(d) Testimony.

(1) Generally. A county or circuit court judge, general magistrate, special magistrate, or hearing officer may allow testimony to be taken through ~~communication equipment~~audio or audio-video communication technology if all parties consent or if permitted by another applicable rule of procedure.

(2) Procedure. Any party desiring to present testimony through ~~communication equipment shall~~audio or audio-video communication technology must, prior to the hearing or trial at which the testimony is to be presented, contact all parties to determine whether each party consents to this form of testimony. The party seeking to present the testimony ~~shall~~must move for permission to present testimony through ~~communication equipment~~audio or audio-video communication technology, which motion ~~shall~~must set forth good cause as to why the testimony should be allowed in this form.

(3) Oath. ~~Testimony may be taken through communication equipment only if a notary public or other person authorized to administer oaths in the witness's jurisdiction is present with the witness and administers the oath consistent with the laws of the jurisdiction.~~

(A) Generally. Testimony may be taken by audio or audio-video communication technology if a notary public or other person authorized to administer oaths in the witness's jurisdiction is physically present with the witness and administers the oath consistent with the laws of the jurisdiction.

(B) Remotely by Audio-Video Communication Technology. A witness may be sworn remotely by audio-video communication technology from a location in the State of Florida if the person who is qualified to administer oaths in the State of Florida confirms the witness's identity. Additionally, if the witness is not located in the State of Florida, a witness must consent to being put on oath:

(i) by a person who is qualified to administer oaths in the State of Florida; and

(ii) under the general law of the State of Florida.

~~(4) Confrontation Rights.~~ ~~In juvenile and criminal proceedings the defendant must make an informed waiver of any confrontation rights that may be abridged by the use of communication equipment.~~

(~~5~~4) **~~Video Testimony~~ by Audio-video Communication Technology.** ~~If the testimony to be presented utilizes video conferencing or comparable two-way visual capabilities~~audio-video communication technology~~, the court in its discretion may modify the procedures set forth in this rule to accommodate the technology utilized.~~

(e) Burden of Expense. The cost for the use of the ~~communication equipment~~audio or audio-video communication technology is the responsibility of the requesting party unless otherwise directed by the court.

~~**(f) Override of Family Violence Indicator.** Communication equipment may be used for a hearing on a petition to override a family violence indicator under Florida Family Law Rule of Procedure 12.650.~~

RULE 3.116. TAKING TESTIMONY WITH COMMUNICATION TECHNOLOGY

(a) Definitions. The definitions of "audio communication technology" and "audio-video communications technology" are set out in Rule of Judicial Administration 2.530.

(b) Procedure. The procedure for taking testimony with audio or audio-video communication technology shall be in conformity with Rule of Judicial Administration 2.530, except as otherwise set forth in this rule.

(c) Testimony at Hearing. Upon stipulation of the parties, a county or circuit court judge may permit testimony via audio communication technology. Upon stipulation by the parties, or for good cause shown, a county or circuit court judge may permit testimony via audio-video communication technology.

(d) Testimony at Trial. Upon stipulation of the parties, or for good cause shown, a county or circuit court judge may permit testimony via audio-video communication technology.

(e) Communication Testimony. Any audio or audio-video communication technology used to take testimony must include appropriate safeguards for the court to maintain sufficient control over the transmission of the testimony so the court may stop the communication to accommodate objections or prevent prejudice.

(f) Confrontation Rights. The defendant may make an informed waiver of any confrontation rights that may be abridged by the use of communication technology. In determining good cause shown, a county or circuit court judge must consider the confrontation rights of the defendant.

RULE 7.140. TRIAL

(a) Time. The trial date shall be set by the court at the pretrial conference.

(b) Determination. Issues shall be settled and motions determined summarily.

(c) Pretrial. The pretrial conference should narrow contested factual issues. The case may proceed to trial with the consent of both parties.

(d) Settlement. At any time before judgment, the judge shall make an effort to assist the parties in settling the controversy by conciliation or compromise.

(e) ~~Unrepresented~~Any Parties Not Represented by an Attorney. In an effort to further the proceedings and in the interest of securing substantial justice, the court shall assist any party not represented by an attorney on:

(1) courtroom decorum;

(2) order of presentation of material evidence; and

(3) handling private information.

The court may not instruct any party not represented by an attorney on accepted rules of law. The court shall not act as an advocate for a party.

(f) How Conducted. The trial may be conducted informally but with decorum befitting a court of justice. The rules of evidence applicable to trial of civil actions apply but are to be liberally construed. At the discretion of the court, testimony of any party or witness may be presented ~~over the telephone~~by audio communication technology or audio-video communication technology as defined in Rule of Judicial Administration 2.530(a). Additionally, at the discretion of the court, an attorney may represent a party or witness ~~over the telephone~~through the use of audio or audio-video communication technology as described in Rule of Judicial Administration 2.530(a) without being physically present before the court. Any witness utilizing the privilege of testimony ~~by telephone~~through the use of audio or audio-video communication technology as permitted in this rule shall be treated for all purposes as a live witness, ~~and shall not receive any relaxation of evidentiary rules or other special allowance~~whose testimony shall conform to the rules of evidence applicable to trial of civil action. A witness may not testify ~~over~~

~~the telephone in order~~through the use of audio or audio-video technology as provided in this rule to avoid either the application of Florida's perjury laws or the rules of evidence.

(g) Audio or Video Communication Technology. For testimony using audio or audio-visual communication technology, there must be appropriate safeguards to allow the court to maintain sufficient control over the equipment and the transmission of the testimony to stop the communication to accommodate objection or prevent prejudice.

Committee Notes

[omitted]

RULE 8.100. GENERAL PROVISIONS FOR HEARINGS

Unless otherwise provided, the following provisions apply to all hearings:

(a) Presence of the Child. [NO CHANGE]

(b) Use of Restraints on the Child. [NO CHANGE]

(c) Absence of the Child. [NO CHANGE]

(d) Invoking the Rule. [NO CHANGE]

(e) Taking Testimony.

(1) Testimony at a Hearing or Trial. When testifying at a hearing or trial, a witness must be physically present unless provided by law or these rules.

(2) Remote Testimony. Upon stipulation of the parties, or upon motion of a party for good cause shown, the court may permit a witness to testify at delinquency proceedings by contemporaneous audio-video communication technology that makes the witness visible during the testimony to all parties, the judge, and any other necessary persons.

(3) Communication Technology. Any technology used must allow for the taking of contemporaneous audio-video and there must be appropriate safeguards for the court to maintain sufficient control over the technology and the transmission of the testimony so the court may stop the communication to accommodate objections or prevent prejudice.

(4) Oath. If testimony is taken through audio-video communication technology, there must be a notary public or other person authorized to administer an oath that subjects the witness to prosecution for perjury upon making a knowingly false statement. The notary or other authorized person must be in the same location as the witness appearing remotely.

(5) Burden of Expense. The cost for the use of audio-video communication technology is the responsibility of the requesting party.

(f) Continuances. [NO CHANGE]

~~(f~~g) **Record of Testimony.** [NO CHANGE]

~~(g~~h) **Notice.** [NO CHANGE]

Committee Note

20__ Amendment. This rule allows the parties to agree, or one or more parties to request, that the court authorizes presentation of witness testimony by contemporaneous audio-video communications technology. A party seeking to present such testimony over the objection of another party must still satisfy the good-cause standard. Determination of good cause is governed by the confrontation clause principles as established in *Harrell v. State*, 709 So. 2d 1364 (Fla. 1998), and its progeny.

RULE 8.255. GENERAL PROVISIONS FOR HEARINGS

(a) Presence of Counsel. [NO CHANGE]

(b) Presence of Child. [NO CHANGE]

(c) Separate Examinations. [NO CHANGE]

(d) Examination of Child; Special Protections.

(1) Testimony by Child. [NO CHANGE

(2) In-Camera Examination. [NO CHANGE]

(e) Taking Testimony.

(1) Testimony at Hearing or Trial. When testifying at a hearing or trial, a witness must be physically present unless otherwise provided by law or these rules. This rule shall not apply to statutory requirements for parents to personally appear at arraignment hearings, advisory hearings, and adjudicatory hearings.

(2) Communication Technology. The court may permit a witness to testify at a hearing or trial by ~~contemporaneous audio, or by video conference or comparable~~ audio or audio-video communication technology:

(A) by agreement of the parties; or

(B) for good cause shown upon written or ore tenus request of a party upon reasonable oral, written, or actual notice to all other parties. The request and notice must contain an estimate of the length of the proposed testimony. In considering sufficient good cause, the court must weigh and address in its order or its ruling on the record the reasons stated for testimony by audio or audio-video communication technology against the potential for prejudice to the objecting party.

(3) Required Technology. ~~Communication~~ Audio communication technology as used in this rule means a conference telephone or other electronic device that permits all those appearing or participating to hear and speak to each other simultaneously and permits all conversations of all parties to be audible to all persons present. ~~Contemporaneous video conference or comparable audio-video~~ Audio-video communication technology must ~~make the witness both audible and visible to all parties and participants present~~ enable real-time, two-way communication and permits all those appearing or participating to hear, see, and speak to each other. For testimony by any of the foregoing means, there must be appropriate safeguards for the court to maintain sufficient control over the technology and the transmission of the testimony so the court may stop the communication to accommodate objections or prevent prejudice. A parent who participates by ~~contemporaneous audio or video~~ audio or audio-video communication technology must be given the opportunity to privately and confidentially communicate with counsel during the proceedings.

(4) Oath. Testimony may be taken through audio communication technology only if a notary public or other person authorized to administer oaths in the witness's jurisdiction is physically present with the witness and administers the oath consistent with the laws of the jurisdiction. If testimony is provided at the hearing via ~~video conference or comparable~~ audio-video communication technology, the witness may also be sworn remotely using such ~~video conference or comparable~~ audio-video communication technology by a person who is qualified and administers the oath consistent with the laws of the witness's jurisdiction or Florida. The oath procedures of this subdivision are not required for hearings where, by law, the court may consider any evidence to the extent of its probative value even though not competent in an adjudicatory hearing and where the parties and the court agree to waive these oath procedures.

(5) Burden of Expense. The cost for the use of the audio or audio-video communication technology is the responsibility of the requesting party unless otherwise ordered by the court.

(f) Invoking the Rule. [NO CHANGE]

(~~f~~g) Continuances. [NO CHANGE]

(g~~h~~) Record. [NO CHANGE]

(~~h~~i) Notice. [NO CHANGE]

(j) Written Notice. [NO CHANGE]

Committee Notes

1991 Amendment. (b) This change allows a child to be present instead of mandating the child's presence when the child's presence would not be in his or her best interest. The court is given the discretion to determine the need for the child to be present.

1992 Amendment. This change was made to reflect a moderated standard for in-camera examination of a child less rigid than the criminal law standard adopted by the committee in the 1991 rule revisions.

2005 Amendment. Subdivision (i) was deleted because provisions for general masters were transferred to rule 8.257.

20__ Amendment. This rule allows the parties to agree, or one or more parties to request, that the court authorizes presentation of witness testimony by ~~contemporaneous video or audio~~ audio or audio-video communication technology. A party seeking to present such testimony over the objection of another party must still satisfy the good-cause standard. In determining whether good cause exists, the trial court may consider such factors as the type and stage of proceeding, the presence or absence of constitutionally protected rights, the general substance of the testimony, the importance of the testimony to the resolution of the case, the relative cost or inconvenience of requiring the presence of the witness in court, the ability of counsel to use necessary exhibits or demonstrative aids, the limitations (if

any) placed on the opportunity for opposing counsel and the finder of fact to observe the witness's demeanor, the potential for unfair surprise, the witness's affiliation with one or more parties, and any other factors the court reasonably deems material to weighing the justification the requesting party has offered in support of the request to allow a witness to testify by audio or audio-video communications technology against the potential for prejudice to the objecting party. With the advance of technology, the cost and availability of ~~contemporaneous video~~ audio or audio-video communication testimony may be considered by the court in determining whether good cause is established ~~for audio testimony~~.

~~Florida law favors the timely resolution of dependency proceedings for the benefit of children and their families. It relaxes evidentiary standards at certain hearings to promote efficient resolution of issues and prevent lengthy litigation and delays from having to arrange for witnesses to appear and provide testimony to the court. Florida law allows the court at different types of dependency hearings, including shelter hearings, disposition hearings, and judicial review hearings, to consider any evidence to the extent of its probative value including unsworn statements, hearsay, and unauthenticated documents. *See e.g.*, Rule 8.305(b)(5); Sections 39.0139(4)(b), 39.504(3), 39.521(2), and 39.701(2)(c), Florida Statutes (2018). The oath procedures, which may require the presence of a notary with a witness who was appearing remotely, would thus not be necessary prior to the court considering statements from the witness at these types of hearings. Further, since the parties may stipulate to any matter in the litigation, the rule creates an exception to the oath procedures if the court and parties stipulate to waive the procedures.~~

RULE 12.310. 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 on 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 on oral examination must give reasonable notice in writing to every other party to the action. The notice must 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 must 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 audiovisually recorded or taken by ~~videotape~~audio-video communication technology, as defined by Florida Rule of Judicial Administration 2.530(a)(2), without leave of the court or stipulation of the parties, provided the deposition is taken in accordance with this subdivision.

(A) Notice. In addition to the requirements of subdivision (b)(1), a party intending to audiovisually record or ~~videotape~~take a deposition using audio-video communication technology must state:

(i) in the title of the notice that the deposition is to be ~~videotaped~~ audiovisually recorded or taken using audio-video communication technology;

(ii) the audio-video communication technology to be used, including any platform, application or process involved, and any instructions for remote attendance; and

(iii) ~~give~~ the name and address of the operator, if applicable.

Any subpoena served on the person to be examined must state the method or methods for recording the testimony and the information set forth in subdivisions (i) through (iii).

(B) Stenographer/Court Reporter. ~~Videotaped~~ dDepositions audiovisually recorded or taken by audio-video communication technology must ~~also~~ be recorded stenographically, unless all parties agree otherwise.

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

(D) ~~Custody~~Responsibility for ~~of~~ ~~Tape~~Recordings and Copies. The attorney for the party requesting the ~~videotaping~~audiovisual recording of the deposition ~~must take custody of and be~~ is responsible for ~~the~~ safeguarding ~~of~~ the ~~videotape~~recording, must permit the viewing of it by the opposing party, and, if requested, must provide access to a copy of the ~~videotape~~recording at the expense of the party requesting the copy.

(E) Cost of ~~Videotaped~~Audio-Video Communication Technology Depositions. The party requesting audiovisual recording or the ~~videotaping~~use of audio-video communication technology must 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 applies 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 must 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 must 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) If not otherwise agreed by the parties, ~~O~~on motion the court may order that the testimony at a deposition be taken by telephone or comparable audio communication technology, as defined by Florida Rule of Judicial Administration 2.530(a)(1). The order may prescribe the manner in which the deposition will be taken. The cost for the use of such communication technology is the responsibility of the requesting party unless otherwise agreed by the parties or ordered by the court. A party may also arrange for a stenographic transcription at that party's own initial expense.

(8) Any minor subpoenaed for testimony has 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 on a showing that the presence of a parent or guardian is likely to have a material, negative impact on the credibility or accuracy of the minor's testimony, or that the interests of the parent or guardian are in actual or potential conflict with the interests of the minor.

(c) Examination and Cross-Examination; Record of Examination; Oath; Objections. Examination and cross-examination of witnesses may proceed as permitted at the trial. ~~The officer before whom the deposition is to be taken must put the witness on oath and must 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 must be sworn by a person present with the witness who is qualified to administer an oath in that location.~~ The testimony must 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 must be transcribed at the initial cost of the requesting party and prompt notice of the request must be given to all other parties. All objections made at the 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 must be noted by the officer on the deposition. Any objection during a deposition must 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 must 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 must transmit them to the officer, who must propound them to the witness and record the answers verbatim.

(1) The officer before whom the deposition is to be taken must put the witness on oath and must 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 or comparable audio equipment communication technology, the witness must be sworn by a person physically present with the witness who is qualified to administer an oath in that location.

(2) Deposition testimony may be taken by audio-video communication technology if a person authorized to administer oaths in the witness's jurisdiction is physically present with the witness and administers the oath consistent with the laws of the jurisdiction.

(3) A witness may be sworn remotely by audio-video communication technology from a location in the State of Florida if the person authorized to administer oaths confirms the witness's identity. Additionally, if the witness is not in the State of Florida, the witness must consent to being put on oath:

(A) by a person authorized to administer oaths in the State of Florida; and

(B) under the general law of the State of Florida.

(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 on 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 immediately 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 on the order of the court in which the action is pending. Upon demand of any party or the deponent, the taking of the deposition must 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 must be furnished to the witness for examination and must 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 must be listed in writing by the officer with a statement of the reasons given by the witness for making the changes. The changes must be attached to the transcript. It must 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 must 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 must 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 must be marked for identification and annexed to and returned with the deposition on 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 must mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them and the

materials may then be used in the same manner as if annexed to and returned with the deposition.

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

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

(A) It may be filed in compliance with Florida Rule of Judicial Administration 2.425 and rule 1.280(g) 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 must be given to all parties unless notice is waived. A party filing the deposition must furnish a copy of the deposition or the part being filed to other parties unless the party already has a copy.

(B) If the court determines that a deposition previously taken is necessary for the decision of a matter pending before the court, the court may order that a copy be filed by any party at the initial cost of the party, and the filing party must comply with rules 2.425 and 1.280(g).

(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 must 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 on 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 Note

2008 Amendment. The provisions of *Fla. R. Civ. P.* 1.310(b)(8) do not alter the requirements of Rule 12.407 that a court order must be obtained before deposing a minor child.

RULE 12.451. TAKING TESTIMONY

(a) Testimony at Hearing or Trial. When testifying at a hearing or trial, a witness must be physically present unless otherwise provided by law or rule of procedure.

(b) Communication ~~Equipment~~Technology. The court may permit a witness to testify at a hearing or trial by contemporaneous audio or audio-video communication ~~equipment~~technology:

(1) by agreement of the parties; or

(2) for good cause shown upon written request of a party upon reasonable notice to all other parties.

The request and notice must contain the substance of the proposed testimony and an estimate of the length of the proposed testimony. In considering sufficient good cause, the court shall weigh and address in its order the reasons stated for testimony by communication equipment against the potential for prejudice to the objecting party.

(c) Required ~~Equipment~~Technology. Communication ~~equipment~~technology as used in this rule ~~means~~includes audio-video communication technology, as defined by Florida Rule of Judicial Administration 2.530(a)(2), and a conference telephone or other ~~electronic device~~audio communication technology, as defined by Florida Rule of Judicial Administration 2.530(a)(1)~~that permits all those appearing or participating to hear and speak to each other simultaneously and permits all conversations of all parties to be audible to all persons present. Contemporaneous video communication must make the witness visible to all participants during the testimony.~~ For testimony by any of the foregoing means, there must be appropriate safeguards for the court to maintain sufficient control over the ~~equipment~~technology and the transmission of the testimony, so that the court may stop the communication to accommodate objection or prevent prejudice.

(d) Oath. Testimony may be taken through audio communication ~~equipment~~technology only if a notary public or other person authorized to administer oaths in the witness's jurisdiction is physically present with the witness and administers the oath consistent with the laws of the jurisdiction. Testimony may be taken through audio-video communication technology if a person authorized to administer oaths in the witness's jurisdiction is physically present

with the witness and administers the oath consistent with the laws of the jurisdiction, or the witness may be sworn remotely if:

(1) the person authorized to administer oaths confirms the witness's identity; and

(2) if the witness is not in the State of Florida, the witness consents to being put on oath by a person authorized to administer oaths in Florida and under the general law of the State of Florida.

(e) Burden of Expense. The cost for the use of the communication ~~equipment~~technology is the responsibility of the requesting party unless otherwise ordered by the court.

(f) Override of Family Violence Indicator. Communication technology may be used for a hearing on a petition to override a family violence indicator under Florida Family Law Rule of Procedure 12.650.

JOINT SUBCOMMITTEE REPORT

(Formed at the request of the Florida Supreme Court, with members from: Civil Procedure Rules Committee, Family Law Rules Committee, Probate Rules Committee, Small Claims Rules Committee, Juvenile Rules Committee, and Judicial Administration Rules Committee)

Date: May 1, 2020
Chair: Ceci Berman (Civil Rules)
Members: Mary Cuellar-Stilo (Family), Hon. Josephine Gagliardi (RJA), Jeffrey Goethe (Probate), Robert Lee McElroy, IV (Probate), J. Grier Pressly, III (Probate), Frank Shepherd (RJA), Jason Stearns (Civil Rules), Ashley Taylor (Family), Hon. Kristine Van Vorst (Small Claims), Maureen Walsh (Small Claims), Roberta Walton (Family), Matthew Wilson (Juvenile), and Chantel Wonder (Small Claims)
Meeting dates: 2/18/20, 3/26/20

I. History/Background:

On December 19, 2019, the Florida Supreme Court asked Judge Gagliardi, as chair of the Rules of Judicial Administration Committee, to coordinate submission of a joint out-of-cycle rules report, as provided for in Florida Rule of Judicial Administration 2.140(a)(7). The Court asked the rules committees to jointly consider whether the rules of procedure should be amended "to require that the sufficiency of a trial court's findings be raised in a motion for rehearing in order for such a challenge to preserved for review." *See* Ex. A.

II. Summary of the Issues:

This issue came to the Court's attention in a *Florida Bar Journal* article titled, "*When is a Motion for Rehearing Necessary to Preserve for Review a Trial Court's Error in Failing to Make Factual Findings?*" The article describes how the steps needed to preserve an appellate challenge to the sufficiency of the evidence underlying fact findings depends on the identity of the factfinder, e.g., whether the factfinder is a judge or a jury. The article also discusses the rules of preservation relative to a sufficiency-of-the-evidence challenge when the challenge is based on a factfinder's failure to make any findings at all, even when those findings are required by statute or case law. In that same vein, in family law, there is a split of authority among Florida's district courts of appeal on this issue, i.e., whether the failure to move for rehearing in the trial court precludes an appellate sufficiency-of-the-evidence challenge based on the trial court's failure to make any of the statutorily mandated findings. *See* Ex. B.

III. Factors Considered by the Subcommittee:

Subcommittee members prepared memos (*see* Ex. C) addressing what their respective rule sets said about the following:

1. Is a rehearing motion necessary to preserve error to challenge the sufficiency of the evidence underlying the trial court's findings? And, depending on the answer, are any rule amendments needed?

2. Is a rehearing motion necessary to preserve error due to the trial court's failure to make statutory findings? And, depending on the answer, are any rule amendments necessary?
3. Instances where a rehearing motion is necessary to preserve error.
4. Instances where a rehearing motion is unnecessary, but beneficial, and in such instances, whether "the rule" covers an optional filing of a rehearing motion.
5. Whether any amendments are needed with respect to the rules on motions to amend judgment and/or new trial.
6. What is the impact on pro se litigants? Are court reporters necessary to preserve error?

The subcommittee then reconvened to discuss their research and memoranda.

IV. Majority Position:

A. Rationale.

The joint subcommittee agreed that no new rules, or amendments to rules, are needed with respect to rehearing except as noted below in subsection C.

B. Cite applicable case law.

See rules and case law cited in the attached memoranda. *See* Ex. C.

C. Summarize conclusion of any submitted memoranda, and attach as a referenced lettered or numbered exhibit.

Per the memoranda attached as exhibit C, the joint subcommittee agreed that no new rules, or amendments to rules, are needed with respect to rehearing except:

(1) The Family Law Rules Committee is already working on a rule that will expressly state that rehearing is not required to preserve a challenge to a trial court's failure to make statutorily mandated fact findings.

(2) The Juvenile Rules Committee may be interested in considering whether to add a rule requiring rehearing to preserve a challenge to a trial court's failure to make mandated fact findings. Further discussion within that committee is needed.

D. Consideration of the effect of the proposed change on other rules.

Should the Family Law Rules Committee or Juvenile Rules Committee make any changes in their respective rules, given the narrow tailoring of such a rule to these specific areas of law, it should not impact other rules. If Juvenile Rules decides to adopt a rule that requires rehearing to preserve a challenge to a trial court's failure to make mandated fact findings, which is the opposite of the current Civil Rules and proposed Family Law Rules

(also, rehearing is already discussed somewhat in the Juvenile Rules), all agreed that care must be taken. But, if done carefully and narrowly, such a rule can be drafted without negatively impacting other rules.

VI. Minority Position(s): N/A

VII. Time Considerations: The Florida Supreme Court has put a deadline in place for responding to its request. That deadline was April 1, 2020, although the joint subcommittee asked for an extension. Nonetheless, the different rules committees should consider this issue at their next full committee meeting if at all possible.

VIII. Attach minutes of Subcommittee meeting(s) as a lettered or numbered exhibit. See attached exhibits D and E.

Supreme Court of Florida

500 South Duval Street
Tallahassee, Florida 32399-1925

CHARLES T. CANADY
CHIEF JUSTICE
RICKY POLSTON
JORGE LABARGA
C. ALAN LAWSON
CARLOS G. MUÑIZ
JUSTICES

JOHN A. TOMASINO
CLERK OF COURT

SILVESTER DAWSON
MARSHAL

December 10, 2019

The Honorable Josephine Gagliardi, Chair
Rules of Judicial Administration Committee
Lee County Justice Center
1700 Monroe Street
Fort Myers, Florida 33901-3071

Re: Preserving Challenge to Trial Court's Findings

Dear Judge Gagliardi:

At the direction of the Court, I am writing you in your capacity as Chair of the Rules of Judicial Administration Committee to ask your committee to coordinate the submission of a joint out-of-cycle rules report, as provided for in Florida Rule of Judicial Administration 2.140(a)(7). The Court would like The Florida Bar's Rules of Civil Procedure Committee, Family Law Rules Committee, Probate Rules Committee, and Small Claims Rules Committee to consider whether the rules of procedure should be amended to require that the sufficiency of a trial court's findings be raised in a motion for rehearing in order for such a challenge to be preserved for review.

The issue came to the Court's attention in the enclosed *Florida Bar Journal* article titled "*When is a Motion for Rehearing Necessary to Preserve for Review a Trial court's Error in Failing to Make Factual Findings?*" The Court would like the rules committees to jointly consider the issue and advise the Court whether rule amendments are warranted. As indicated above, the committees should follow the rule 2.140(a)(7) procedures for joint rules submissions.

Exhibit A

Please file the joint report with my office by April 1, 2020. If the committees determine that rule amendments are in order, the committees should publish their rule proposals for comment and consider any comments before filing the proposals with the Court. Committees that determine no amendments to their bodies of rules are warranted should file a joint no action report, as provided in rule 2.140(f)(2). If the committees should need more time to consider this issue, please submit a request for extension of time to my office indicating when the joint report can be filed. The Court thanks you and the committees, in advance, for your attention to this matter. Please do not hesitate to contact me, if you have any questions.

Sincerely,

John A. Tomasino

Enclosure

JAT/dm/sb

cc: The Honorable Charles T. Canady, Chief Justice
The Honorable Ricky Polston, Liaison, Rules of Jud. Admin. Committee
The Honorable C. Alan Lawson, Liaison Probate Rules Committee
The Honorable Carlos G. Muñiz, Liaison, Civ. Pro & Small Claims Rules Committees
Ms. Ardith Michelle Bronson, Chair Civ. Pro. Rules Committee
Mr. Jeffrey Scott Goethe, Chair Probate Rules Committee
Ms. Maureen B. Walsh, Chair Small Claims Rules Committee
Ms. Krys Godwin, Bar Staff Liaison, Rules of Jud. Admin. Committee
Ms. Deborah J. Meyer, Supreme Court Director of Central Staff

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Florida Bar Journal
May/June, 2019

Column

Appellate Practice
Daniel A. Bushell [a1]

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WHEN IS A MOTION FOR REHEARING NECESSARY TO PRESERVE FOR REVIEW A TRIAL COURT'S ERROR IN FAILING TO MAKE FACTUAL FINDINGS?

A core principle of appellate adjudication is that a party must preserve issues to raise them on appeal. That means, as the Florida Supreme Court reaffirmed in *Sunset Harbour Condominium Association v. Robbins*, 914 So. 2d 925 (Fla. 2005), "an issue must be presented to the lower court and the specific legal argument or ground to be argued on appeal or review must be part of that presentation if it is to be considered preserved." [1] The preservation requirement derives from the idea that appellate courts should not fault a trial judge for failing to account for an issue if the parties did not tell him or her it needed to be considered. [2] Lack of preservation will not prevent review only in very limited circumstances in which the trial court committed a "fundamental error" that "goes to the very heart of the judicial process," such as where the court lacked subject-matter jurisdiction or a party was denied due process. [3]

For any issue that arises before or during trial, it is a safe bet that if the issue was not raised to the trial judge, it will not be considered on appeal. In that regard, motions for rehearing authorized under Florida Rule of Civil Procedure 1.530 can be a lifeline to preserve for appeal issues that counsel failed to argue prior to the entry of judgment. [4]

But a more difficult issue arises when the issue to be raised on appeal is one that first appears in the trial court's order or judgment. Is it necessary to file a motion for rehearing to preserve arguments as to the contents of the order or judgment, such as whether it contains sufficient findings or whether its findings are based on sufficient evidence (*i.e.*, competent and substantial)? The answer varies with context and, in some situations, by district.

Unsupported Findings

Whether challenges to findings based on the sufficiency of the evidence must be preserved depends on the identity of the factfinder. For findings made by a judge without a jury, Rule 1.530(e) makes clear that neither a motion for rehearing nor any other action is necessary to preserve any challenge to the findings in an order (or judgment) as unsupported by competent, substantial evidence: "When an action has been tried by the court without a jury, the sufficiency of the evidence to support the judgment may be raised on appeal whether or not the party raising the question has made any objection thereto in the trial court or made a motion for rehearing, for new trial, or to alter or amend the judgment." [5] Similarly, every district court of appeal has confirmed that a party may argue for the first time on appeal that the trial court judge's findings were not supported by sufficient evidence. [6] On the other hand, when a case is tried to a jury, any challenge to the sufficiency of the evidence must be preserved through a motion for directed verdict and/or a motion for new trial. [7]

Exhibit B

Findings Required for Meaningful Review

Then there is the issue of whether the order or judgment contains sufficient findings. Challenges to the sufficiency of findings can arise in any case involving multiple bases on which the trial court might have premised its decision, and the trial judge does not indicate either in the order or during the hearing the basis for its conclusion. For example, in *Featured Properties, LLC v. BLKY, LLC*, 65 So. 3d 135 (Fla. 1st DCA 2011), the seller claimed damages resulting from a buyer's breach of a sales contract, and the buyer alleged as a defense that the contract was voidable or subject to rescission because the broker of the transaction had not disclosed that he was an owner of the seller. The seller responded that if the alleged broker-seller relationship existed, the buyer waived any ability to void the contract based on it by failing to immediately take action when the seller first learned of the alleged broker-seller relationship.[8] After a bench trial, the trial court awarded damages to the seller, without articulating whether it had rejected the allegation regarding the broker-seller relationship or had found the buyer had waived any right to void the contract.

In such circumstances, as the Fourth District Court of Appeal explained in *Exotic Motorcars & Jewelry, Inc. v. Essex Ins. Co.*, 111 So. 3d 208 (Fla. 4th DCA 2013), without sufficient findings, the appellate court may be unable to determine whether the trial court erred, such that "effective review may be deemed impossible and the cause remanded for findings, notwithstanding *47 that such findings may not be mandated by rule or statute."[9] For a party to argue on appeal that additional findings are necessary to enable meaningful review, the party need not necessarily preserve the issue by raising it in a motion for rehearing; the issue is often raised by the court itself.[10]

Mandatory Findings

Challenges to the sufficiency of findings can also arise regarding particular types of orders in which caselaw requires the trial court to make specific findings. For example, under *Florida Patient's Compensation Fund v. Rowe*, 472 So. 2d 1145, 1150 (Fla. 1985), when a court determines the amount of attorneys' fees to award, it is required to make specific findings as to the reasonable hourly rate and reasonable number of hours expended.[11]

Similarly, under *Kozel v. Ostendorf*, 629 So. 2d 817, 818 (Fla. 1993), before dismissing a case with prejudice based on attorney error, the court must make findings as to six considerations.[12] For such caselaw-mandated findings, appellate courts have held that the appellant must preserve the trial court's error in failing to make the required findings by raising the issue in a motion for rehearing.[13]

Some statutes expressly require trial courts to make specific findings before awarding certain types of relief. For example, when a court awards attorneys' fees under F.S. §57.105, the statute "requires an explicit finding by the trial court that there was a complete absence of a justiciable issue of law or fact raised by the plaintiff in the action."[14] Given the presence of a statutory mandate, one might think that a trial court's failure to comply with the terms of the statute under which it is proceeding would be challengeable on appeal even if the appellant did not bring the error to the trial court's attention through a motion for rehearing. The caselaw indicates otherwise.[15]

A Split of Authority in Family Law Cases

The sufficiency of the trial court's findings is most frequently an issue in family law cases. Statutorily mandated findings are a significant feature of F.S. Ch. 61 as specific findings are statutorily required when determining equitable distribution, alimony, child support, attorneys' fees, relocation, and so on. It is, therefore, unsurprising that much of the jurisprudence regarding the need to file a motion for rehearing to preserve challenges to the sufficiency of the trial court's statutory findings has developed in the family law context.

The Third District Court of Appeal issued the seminal opinion in this line of cases, *Broadfoot v. Broadfoot*, 791 So. 2d 584 (Fla. 3d DCA 2001). In that case, the husband challenged the trial court's alimony award based on the trial court's failure to make the findings required by F.S. §61.08 and its equitable distribution determination, which skewed in favor of the wife without findings required by F.S. §61.07. [16] The Third District concluded that the husband had failed to preserve his challenges to the sufficiency of the trial court's findings by failing to raise them in a motion for rehearing:

The time to request findings is when the case is pending in the trial court .... Presumably the need for findings will be brought out at the final hearing and also in connection with the submission of any proposed judgment. If the judgment is entered without required findings, then a motion for rehearing should be filed, requesting findings. [17]

In *Mathieu v. Mathieu*, 877 So. 2d 740, 741 (Fla. 5th DCA 2004), the Fifth District Court of Appeal embraced the preservation requirement articulated in *Broadfoot*, finding "sensible" the Third District's "approach that a party cannot complain on appeal about inadequate findings in a dissolution case unless the alleged defect was brought to the trial court's attention in a motion for rehearing." Going forward, the court explained, it would "adopt this approach" and "treat the lack of adequate findings as an unpreserved ***48** error unless previously brought to the trial court's attention." [18] The First District Court of Appeal followed suit in *Owens v. Owens*, 973 So. 2d 1169, 1170 (Fla. 1st DCA 2007), relying on *Broadfoot* and *Mathieu* in finding the appellant failed to preserve her argument that the trial court's findings were insufficient because she "never challenged the adequacy of the findings in a motion for rehearing or by any other means available in the trial court."

However, the Second and Fourth districts have been more circumspect. In *Esaw v. Esaw*, 965 So. 2d 1261, 1265 (Fla. 2d DCA 2007), in an opinion authored by then-Judge (now Chief Justice) Canady, the Second District mentioned the holdings of *Broadfoot, Mathieu*, and *Owens* in a footnote, but declined to decide whether to embrace those holdings due its "determination that the absence of findings is not a basis for reversal under the circumstances presented" whether the issue was preserved. Judge Silberman noted in a concurring opinion that there would be continuing uncertainty until the Second District decided whether to adopt the preservation doctrine of *Broadfoot* and that until the issue was resolved "litigants should bring the lack of adequate findings to the trial court's attention at the first available opportunity to try and avoid an appellate determination that the issue has not been properly preserved." [19]

In the years since *Esaw*, the Second District has neither embraced nor expressly rejected *Broadfoot*. The court cited *Broadfoot* with approval in *McCann v. Crumblish-McCann*, 21 So. 3d 170, 171 (Fla. 2d DCA 2009), in holding that a lack of written findings in awarding temporary alimony does not require reversal when the award is supported by competent, substantial evidence. However, the Second District appears to have concluded that preservation is not required to challenge insufficient findings concerning child support, explaining in *M.M. v. J.H.*, 251 So. 3d 970, 972 (Fla. 2d DCA 2018), that "[a] trial court's failure to include factual findings regarding the parties' incomes for purposes of child support calculations renders a final judgment facially erroneous." [20]

The Fourth District initially rejected the premise of *Broadfoot*. In *Dorsett v. Dorsett*, 902 So. 2d 947, 950 (Fla. 4th DCA 2005), the court held that a trial court's failure to make the findings required for equitable distribution was an "error[] of law appear[ing] on the face of the [f]inal [j]udgment" and, thus, reviewable regardless of preservation. In a footnote, the court acknowledged that its holding was in tension with *Mathieu* and *Broadfoot*. [21]

But 15 years after *Broadfoot*, the Fourth District adopted its rule (though the court cited *Simmons v. Simmons*, 979 So. 2d 1063, 1064 (Fla. 1st DCA 2008), one of the progeny of *Broadfoot*), holding in *Farghali v. Farghali*, 187 So. 3d 338, 339 (Fla. 4th DCA 2016), that the appellant husband failed to preserve his challenge to the sufficiency of the trial court's findings in determining equitable distribution because he "did not provide a trial transcript for appellate review, nor did he alert the trial court to this alleged shortcoming in a motion for rehearing."

Farghali, however, was not to be the Fourth District's last word on the issue. In *Fox v. Fox*, 44 Fla. L. Weekly D27 (Fla. 4th DCA Dec. 19, 2018), the Fourth District took up the issue of preservation of challenges to the sufficiency of the trial court's findings en banc. The court fractured 7-5 in favor of overruling *Farghali*. Judge May, writing for the majority, explained that the holding was based on the fact that "the rules do not require the filing of a motion, many dissolution appeals are pro se, and a family court judge should be aware of the statutory requirements in rendering a decision on alimony, equitable distribution, and child support." According to the majority, preservation rules should give way to the special circumstances of dissolution of marriage cases:

This case involves two competing values--judicial economy vs. a rule that is in the best interest of the children and their families. It makes perfect sense from a judicial economy standpoint to bring "the claim of inadequate findings" to the "attention of the trial court by way of a motion for rehearing." *Mathieu*, 877 So. 2d 740 (Fla. 5th DCA 2004). Surely, the filing of a motion could easily eliminate an issue for appeal. But, because these cases involve children and families, it is equally, if not more, important that the final judgment comport with Chapter 61.

Rather than refusing to reach an appellate issue for want of a motion for rehearing, it is far better to require a trial court to make the statutorily-required findings. To evade review of a trial court's failure to make required findings because someone either forgot or failed to move for rehearing frustrates the very purpose for those findings. Requiring a motion for rehearing is a rule that is too restrictive and imprecise to operate fairly where children and families are the focus. This is especially true where many family court cases are handled pro se. [22]

The dissent, however, felt the jurisprudential principles of the Florida Supreme Court required preservation. It cited Supreme Court precedents holding that fundamental error is the only exception to the requirement of preservation and that the failure to make required findings does not amount to fundamental error. [23] Given their rationales, it appears that both the majority and dissent would agree that preservation through a motion for rehearing is required outside of the family law context.

A Need for Consistency

The conflict between the Fourth District, on the one hand, and the First, Third, and Fifth districts on the other, calls out for Supreme Court intervention. Many family law and appellate attorneys practicing within the boundaries of the Fourth District also practice in other districts. Principles applied consistently across Florida would help attorneys throughout the state protect all their clients' appellate rights, regardless of district.

Consistency between family law and other cases is also desirable. The holding in *Fox* appears to create an exception for dissolution cases that does not exist with any other preservation rule. It also breaks new ground in basing its rationale in part on the presence of pro se litigants in family law cases, as Florida law generally holds that pro se litigants must be held to the same ***49** procedural requirements. And while no doubt dissolution cases involving children can be highly sensitive matters in which preservation rules may seem unduly onerous, not all dissolution cases involve children, and other types of cases can also involve highly sensitive matters in which preservation rules may seem unduly onerous. In this author's view, all litigants are best served by uniform preservation rules applied consistently across districts and types of cases.

This column is submitted on behalf of the Appellate Practice Section, Sarah Lahlou-Amine, chair, and Thomas Seider, editor.

Footnotes

a1 **DANIEL A. BUSHELL,** *B.A. (economics), University of Michigan 1996; J.D., University of Pennsylvania Law School 2002, is a Florida Bar Board certified specialist in appellate practice and shareholder of Bushell Law, P.A., in Ft. Lauderdale, where his practice is focused on appeals and litigation support.*

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1 *Sunset Harbour*, 914 So. 2d at 928 (quoting *Tillman v. State*, 471 So. 2d 32, 35 (Fla. 1985)).

2 *See Margolis v. Klein*, 184 So. 2d 205, 206 (Fla. 3d DCA 1966) ("It is elementary that before a trial judge will be held in error, he must be presented with an opportunity to rule on the matter before him.").

3 *See Yau v. IWDWarriors, Corp.*, 144 So. 3d 557, 560 (Fla. 1st DCA 2014); *Fleischer v. Fleischer*, 586 So. 2d 1253, 1254 (Fla. 4th DCA 1991).

4 Due to the importance of motions for rehearing in preserving issues for appeal, it is highly advisable for trial lawyers to bring in appellate counsel before the deadline for serving motions for rehearing, if not sooner.

5 FLA. R. CIV. P. 1.530(e).

6 *E.g., Levy v. Ben-Shmuel*, 255 So. 3d 493, 495 (Fla. 3d DCA 2018) ("Regardless of whether Levy preserved this issue during the bench trial, the issue is properly raised on appeal."); *Delia v. GMAC Mortg. Corp.*, 161 So. 3d 554, 555 n.1 (Fla. 5th DCA 2014) ("Although this argument is being raised for the first time on appeal ... [R]ule 1.530(e) of the Florida Rules of Civil Procedure authorizes appellate review of the sufficiency of the evidence to support a judgment entered in a bench trial matter regardless of whether the issue was raised below."); *Wolkoff v. Am. Home Mortg. Servicing, Inc.*, 153 So. 3d 280, 282 (Fla. 2d DCA 2014) ("The Wolkoffs were not required to make a contemporaneous objection to the sufficiency of the evidence in order to preserve the issue for appeal."); *Burdeshaw v. Bank of New York Mellon*, 148 So. 3d 819, 822 (Fla. 1st DCA 2014); *Diwakar v. Montecito Palm Beach Condo. Ass'n, Inc.*, 143 So. 3d 958, 961 (Fla. 4th DCA 2014) ("Diwakar's argument that there was simply no competent, substantial evidence to support the award may be raised for the first time on appeal.").

7 *See J.T.A. Factors, Inc. v. Philcon Services, Inc.*, 820 So. 2d 367, 371 (Fla. 3d DCA 2002) (listing cases).

8 *Featured Properties*, 65 So. 3d at 136.

9 *Exotic Motorcars*, 111 So. 3d at 209; *accord Trump Endeavor 12, LLC v. Florida Pritikin Ctr., LLC*, 208 So. 3d 311, 312 (Fla. 3d DCA 2016); *Featured Properties*, 65 So. 3d at 137; *In re Doe*, 932 So. 2d 278, 283 (Fla. 2d DCA 2005); *Wolford v. Boone*, 874 So. 2d 1207, 1210 (Fla. 5th DCA 2004).

10 *See Broadfoot*, 791 So. 2d at 585 ("We do, of course, reserve the right to reverse on account of an absence of findings (whether the point was raised in the trial court or not) if the absence of the statutory findings frustrates this court's appellate review."). Note that the First District Court of Appeal has stated more broadly that a party is required to file a motion for rehearing to preserve any issue that "appear[s] for the first time on the face of the" judgment or order. *Pensacola Beach Pier, Inc. v. King*, 66 So. 3d 321, 324 (Fla. 1st DCA 2011). The court extrapolated that conclusion from the fact that Rule 1.530(e) states that a motion for rehearing is not necessary to challenge findings as unsupported by substantial, competent evidence: "Implicit in this rule is that, in all other instances in which there is a concern about a judgment, it is necessary to file one of the enumerated motions to preserve the issue for appeal." *Id.* Thus, the prudent course for counsel representing a potential appellant is to file a motion for rehearing whenever the findings might be insufficient.

11 The opinion in *Rowe* speaks of factors that the court must *consider* without stating expressly that courts must *make findings* as to each factor, but the district courts of appeal have uniformly interpreted *Rowe* as requiring findings. *See, e.g., T.G.G. v. P.M.L.*, 661 So. 2d 351, 351 (Fla. 1st DCA 1995); *Guardianship of Halpert v. Rosenbloom*, 698 So. 2d 938, 939 (Fla. 4th DCA 1997); *Key W. Polo Club Developers, Inc. v. Towers Const. Co. of Panama City, Inc.*, 589 So. 2d 917, 918 (Fla. 3d DCA 1991); *Devex, Inc. v. Liberty Fed. Sav. & Loan Ass'n*, 551 So. 2d 606, 607 (Fla. 5th DCA 1989); *Lara v. Fortune Ins. Co.*, 545 So. 2d 909, 910 (Fla. 2d DCA 1989). For some types of fee awards, the court must also make specific findings as to entitlement, such as when awarding fees under the inequitable conduct doctrine. *Moakley v. Smallwood*, 826 So. 2d 221, 227 (Fla. 2002) ("[T]he trial court's exercise of the inherent authority to assess attorneys' fees against an attorney must be based upon an express finding of bad faith conduct and must be supported by detailed factual findings describing the specific acts of bad faith conduct ....").

12 Similar to *Rowe*, the opinion in *Kozel* identifies factors that courts must consider, without stating that courts must make written findings on those factors; but appellate courts have interpreted Kozel to require written findings on each factor. *See, e.g., Alvarado v. Snow White & Seven Dwarfs, Inc.*, 8 So. 3d 388, 389 (Fla. 3d DCA 2009); *Smith v. City of Panama City*, 951 So. 2d 959, 962 (Fla. 1st DCA 2007); *Tianvan v. AVCO Corp.*, 898 So. 2d 1208, 1209 (Fla. 4th DCA 2005).

13 *See Bank of Am., N.A. v. Ribaudo*, 199 So. 3d 407, 409 (Fla. 4th DCA 2016) (affirming dismissal with prejudice despite lack of findings even though "[o]rdinarily, a trial court's failure to address the *Kozel* factors would constitute reversible error," because such an error must be preserved); *Bank of New York Mellon v. Sandhill*, 202 So. 3d 944, 945 (Fla. 5th DCA 2016) ("[T]o preserve as error the failure of the trial court to set forth its *Kozel* analysis in the order of dismissal, the [a]ppellant was obligated to bring the matter to the trial court's attention by filing a timely motion for rehearing or clarification with a specific request for inclusion of the *Kozel* factor analysis in an amended order.").

14 *Vasquez v. Provincial S., Inc.*, 795 So. 2d 216, 218 (Fla. 4th DCA 2001).

15 *See, e.g., Neustein v. Miami Shores Vill.*, 837 So. 2d 1054, 1055 (Fla. 3d DCA 2002) (finding challenge to sufficiency of findings in order awarding fees under §57.105 waived) (citing *Broadfoot*, 791 So. 2d at 585).

16 *Broadfoot*, 791 So. 2d at 585.

17 *Id.* (citations omitted).

18 *Id.*

19 *Esaw*, 965 So. 2d at 1268 (Silberman, J., concurring).

20 Facial error is a doctrine that developed as an exception to the rule stated in *Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150 (Fla. 1979), that an appellant cannot demonstrate a trial court erred in making an evidence-based determination if the appellant does not present the appellate court with the transcript of the evidentiary hearing. Despite the rule of *Applegate*, courts will reverse "where an error of law is apparent on the face of the judgment." *Chirino v. Chirino*, 710 So. 2d 696, 697 (Fla. 2d DCA 1998); *accord Ferguson v. Ferguson*, 54 So. 3d 553, 556 (Fla. 3d DCA 2011); *Fugina v. Fugina*, 874 So. 2d 1268, 1269 (Fla. 5th DCA 2004); *Casella v. Casella*, 569 So. 2d 848, 849 (Fla. 4th DCA 1990). There is an apparent tension between that doctrine and the rule that an error in failing to make required findings must be preserved to be considered on appeal.

21 *Dorsett*, 902 So. 2d at 950 n.3.

22 *Fox v. Fox*, 44 Fla. L. Weekly D27 (Fla. 4th DCA Dec. 19, 2018).

23 *Id.* (Kuntz, J., concurring in part and dissenting in part).

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MEMORANDUM

TO: Joint Subcommittee on Joint Assignment from Court: Preserving Challenge to Sufficiency of Trial Court's Findings

FROM: Ceci Berman & Jason Stearns, Civil Procedure Rules Committee

DATE: March 25, 2020

RE: Memo from Civil Rules of Procedure perspective that addresses the six points set out in Mikalla Davis's February 18, 2020, email

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Civil Rules of Procedure Background

Florida's Civil Rules of Procedure do not currently address *any* instances where rehearing is required for preservation purposes. Instead, the rules address only one instance of the opposite—when rehearing is *not* required for preservation purposes. *See* Fla. R. Civ. P. 1.530(e) ("When an action has been tried by the court without a jury, the sufficiency of the evidence to support the judgment may be raised on appeal whether or not the party raising the question has made any objection thereto in the trial court or made a motion for rehearing, for new trial, or to alter or amend the judgment.").

Rule 1.530(e) has been amended only once, in 1992, to eliminate a reference to "assignments of error" to make the rule consistent with the appellate rules. Otherwise, this has been the rule since the rules were renumbered in the 1967 revision. Before that, it was rule 2.8(e), and again, it was the same rule. In short, this rule has been around, in almost the same form, for over 60 years. Our research shows that it was a declaration of case law on this point (i.e., that following a non-jury trial, no rehearing is necessary to be able to challenge the sufficiency of evidence on appeal).

The points we have been asked to address in our respective memos:

1. Is a rehearing motion necessary to preserve error "to challenge the sufficiency of the evidence of the trial court's findings?" And, depending on the answer, are any rule amendments needed?

The short answer:

No, a rehearing motion is not required to challenge the sufficiency of the evidence underlying a trial court's ruling.[1] No rule amendment is needed.

[1] We are assuming for this memo that we are limited to non-jury matters because the referral is about challenges to a *trial court's findings* and whether a motion for rehearing is required. Thus, we are necessarily talking about non-jury situations where the trial court sits as the trier of fact.

Discussion:

To start, we suggest a slightly different framing of the phrase in quotation marks. Instead, we would change the question to: Is a rehearing motion necessary to preserve error "to challenge the sufficiency of the evidence underlying the trial court's findings."

We suggest this change because, on appeal, an appellant does not challenge the "sufficiency of the evidence of the trial court's findings." Rather, an appellant challenges the sufficiency of the evidence supporting/underlying the trial court's findings *or* the appellant challenges the sufficiency of the findings themselves (often, this insufficiency is a lack of findings altogether). Our referral from the Court is directed to the latter. *See* Dec. 10, 2019, FSC letter ("The Court would like . . . to consider whether the rules . . . should be amended to require that the sufficiency of a trial court's findings be raised in a motion for rehearing in order for such a challenge to be preserved for review.").

This distinction is important. Take for example, the section of Mr. Bushell's Florida Bar Journal article where he references a split among Florida's appellate courts about when a motion for rehearing is required. He seeks resolution of that split, which seems to be what led to the referral to our joint subcommittee. That section of his article, and the cases cited within it, involves only the issue of whether rehearing is needed to preserve a challenge to the sufficiency of a trial court's findings. Specifically, Mr. Bushell is talking about when a trial court fails to make any mandatory findings at all. *See Kozel v. Ostendorf*, 629 So. 2d 817 (Fla. 1993); *Fla. Patient's Compensation Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985); *M.M. v. J.H.*, 251 So. 3d 970 (Fla. 2d DCA 2018); *Fox v. Fox*, 262 So. 3d 789 (Fla. 4th DCA 2018); *Farghali v. Farghali*, 187 So. 3d 338 (Fla. 4th DCA 2016); *McCann v. Crumblish-McCann*, 21 So. 3d 170 (Fla. 2d DCA 2009); *Owens v. Owens*, 973 So. 2d 1160 (Fla. 1st DCA 2007); *Esaw v. Esaw*, 965 So. 2d 1261 (Fla. 2d DCA 2007); *Dorsett v. Dorsett*, 902 So. 2d 947 (Fla. 4th DCA 2005); *Mathieu v. Mathieu*, 877 So. 2d 740 (Fla. 5th DCA 2004); *Broadfoot v. Broadfoot*, 791 So. 2d 584 (Fla. 3d DCA 2001). That is entirely different from the issue of, when a trial court has made findings, whether a rehearing motion is needed to preserve a challenge to the sufficiency of the evidence underlying those findings.

Turning then to the question of whether it is necessary for a party to file a motion for rehearing to challenge the sufficiency of the evidence underlying the trial court's findings, when it comes to non-jury matters, the answer is no:

> When an action has been tried by the court without a jury, the sufficiency of the evidence to support the judgment may be raised on appeal whether or not the party raising the question has made any objection to it in the trial court or made a motion for rehearing, for new trial, or to alter or amend the judgment.

Fla. R. Civ. P. 1.530(e). Implicit in this rule is that, in any other instance where there is a concern about the judgment, preservation of error requires the filing of one of the motions enumerated in the rule. *Pensacola Beach Pier, Inc. v. King*, 66 So. 3d 321, 324 (Fla. 1st DCA 2011).

Thus, no rule amendment is necessary on this point; the rule already addresses when a post-judgment motion is necessary to challenge on appeal the sufficiency of the evidence.

2. <u>Is a rehearing motion necessary to preserve error "due to the trial court's failure to make statutory findings?" And, depending on the answer, are any rule amendments necessary</u>?

The short answer:

Yes, a rehearing motion is generally required, or at the very least, is prudent. There is at least one exception to this, in the family law arena. No rule amendment is necessary; rather, the case law conflict needs to be resolved. However, civil rules feels that if there were to be a rule change, it would be in only the family law rules, and it would be a short rule to explain when a rehearing motion is *not* necessary.

Discussion:

For this memo, we have changed "statutory findings" to "mandatory findings" as there are instances where trial courts are required by case law, rather than statutes, to make findings.

To answer the question, generally, yes, a rehearing motion is necessary.

The rule of thumb frequently followed is that when an error appears for the first time on the face of a judgment, a motion for rehearing is required to preserve that error for appeal. *See, e.g., Eaton v. Eaton*, Case No. 1D19-0192, 2020 WL 1329673, at *1 (Fla. 1st DCA Mar. 23, 2020) (finding, in case where trial court's written ruling was inconsistent with oral ruling, and thus issue arose for first time on the face of the final judgment, "the alleged inconsistencies were never brought to the trial court's attention via a motion for rehearing, [and so] the matter was not preserved for appellate review"); *Cone v. U.S. Bank Trust, N.A.*, 265 So. 3d 698, 699 (Fla. 4th DCA 2019) (finding appellants preserved error because they filed rehearing motion and citing cases noting that, when error appears for first time on face of judgment, rehearing motion is necessary to preserve that error for appeal); *N.H. Indem. Co. v. Gray*, 177 So. 3d 56, 59 (Fla. 1st DCA 2015) (finding lack of preservation where, upon error appearing for first time on face of judgment, here, an improper joinder, appellant failed to move for rehearing, which would have alerted trial court to defect); *Pensacola Beach*, 66 So. 3d at 324 (collecting a string citation of cases for this proposition and stating, "[t]he trial court's error appeared for the first time on the face of the summary judgment. Appellants, however, did not file a motion for rehearing, motion to vacate, or motion for relief from judgment in an attempt to correct this error; consequently, Appellants failed to preserve their otherwise meritorious argument.").

This rule requiring rehearing includes situations where a trial court has failed to make certain case law-mandated or statute-mandated findings in its final order, because a failure to make such findings would necessarily appear for the first time in the final judgment. *See, e.g., Shelswell v. Bourdeau*, 239 So. 3d 707, 708-09 (Fla. 4th DCA 2018) (determining that trial court must make certain findings under *Kozel* before dismissing case with prejudice, but here, appellant failed to preserve that error when she did not seek rehearing in the trial court on the issue); *Bank of N.Y. Mellon v. Sandhill*, 202 So. 3d 944, 945-46 (Fla. 5th DCA 2016) (same); *Spreng v. Spreng*, 162 So. 3d 168, 169 (Fla. 5th DCA 2015) (acknowledging that trial court erred when it failed in fee order to make written fact findings required under *Rowe* regarding reasonable hourly rate and

reasonableness of hours expended, but nonetheless affirming because appellant did not preserve the error for appeal by filing rehearing motion); *Owens*, 973 So. 2d at 1170 (finding appellant did not preserve challenge to sufficiency of fact findings where adequacy of such findings was not challenged in trial court by rehearing motion or any other means); *Broadfoot*, 791 So. 2d at 585 (noting that, in challenge to trial court's failure to make findings required under Chapter 61, as general rule, appellate court declines to hear claims not presented to trial court and here, appellant did not seek rehearing requesting findings).

The most well-known exception to this general rule (and perhaps the only exception, but we are not yet certain that we have completed a thorough run-down on all of the law on this topic) is an exception followed by two district courts of appeal in family law cases. This is the conflict between the intermediate appellate courts noted by Mr. Bushell. Specifically, when a trial court fails to include certain fact findings required by Chapter 61 in its judgment, then in two Florida appellate jurisdictions, an appellant can raise that failure as error on appeal, even if the appellant did not move for rehearing on that issue. *See Allen v. Juul*, 278 So. 3d 783, 785 (Fla. 2d DCA 2019) (noting that legislature mandated certain findings in Chapter 61, but did not mandate rehearing motions to preserve a challenge to a lack of such findings, and that furthermore, preservation rules not designed to allow trial courts to ignore statutory requirements of which it should be aware) (citing *Engle v. Engle*, 277 So. 3d 697, 698-99 (Fla. 2d DCA 2019) and *Fox*, 262 So. 3d at 794)[2]; *Fox*, 262 So. 3d at 793-94 (determining same as *Allen* and further noting that family law dissolution cases have unique needs, including the involvement of children and families, making trial court compliance with Chapter 61 important and failure to comply challengeable on appeal, regardless of whether rehearing motion filed).

Based on this law, no rule amendments are necessary. The general rule of thumb is well-settled and applicable across all areas of the law, except for this one unique family law instance. Thus, rather than a new rule, it would be more helpful if the Florida Supreme Court resolved this split among Florida's district courts of appeal on this narrow issue.

Notwithstanding that, given the unique family law aspect of this exception, should the Family Law Rules Committee feel comfortable wading into the inter-district conflict, then perhaps a rule is advisable should that committee side with the Second and Fourth Districts and determine that *no* rehearing motion is necessary to preserve a challenge to a trial court's failure to make the required Chapter 61 findings. That would be in line with the only current civil rule of procedure addressing rehearing, which talks about when a rehearing motion is *not* required.

If the Family Law Rules Committee sides with the First, Third, and Fifth Districts, it seems that no rule change should be necessary, as those appellate courts are simply following the general rule as to when rehearing is necessary, in any case where a trial court has not made mandated fact findings, not just family law cases. Additionally, with respect to the civil rules of procedure, there are no other instances of codification of the requirement of a motion for rehearing; therefore, there seems to be no reason to do so in this instance.

[2] Under its rationale in *Allen*, perhaps the Second District would extend this thinking to a non-family law case, should one present itself, if the case involved statutorily mandated fact findings. As far as we know, though, this issue has not come up in the months since the court decided *Allen*.

For any of the rules sets, it could get risky trying to think of every scenario where a motion for rehearing is required to preserve an issue for appeal. And, when a rules committee forgets to include a particular scenario, there will almost certainly be an argument made that the failure to include it must mean that no rehearing motion is required for preservation of that particular error. This seems to violate the general preservation principles laid down repeatedly by every Florida appellate court.

3. Instances where a rehearing motion is necessary to preserve error:

See the discussion above. It would be virtually impossible to name every scenario where a rehearing motion is required to preserve an issue for appeal. Put most broadly, in any situation where the trial court has not been made aware of, and thus given an opportunity to correct, an error, a rehearing motion is almost certainly the prudent way to ensure preservation of an error for appeal. *Cf., e.g., Turnberry Village N. Tower Condo. Ass'n, Inc. v. Turnberry Village S. Tower Condo. Ass'n, Inc.*, 224 So. 3d 266, 268 (Fla. 3d DCA 2017) (involving challenge on appeal to trial court's dismissal of amended complaint without leave to amend; appellate court noted that issues cannot be raised for first time on appeal, because error has to be brought to trial court's attention first, and here appellant did nothing in that regard, neither asking for leave to amend at the time of dismissal nor seeking rehearing on the issue); *Stander v. Dispoz-O-Prods., Inc.*, 973 So. 2d 603, 605 (Fla. 4th DCA 2008) (same); *Waksman Enters., Inc. v. Or. Props., Inc.*, 862 So. 2d 35, 42 (Fla. 2d DCA 2003) (noting that issue not raised in response to summary judgment motion was nonetheless preserved for appeal where it was raised in motion for rehearing); *see also Pensacola Beach*, 66 So. 3d at 324 (suggesting that need for rehearing is implied under rule 1.530(e)).

4. Instances where a rehearing motion is unnecessary, but beneficial, and in such instances, whether "the rule" covers an optional filing of a rehearing motion:

See the discussion above. A rehearing motion is unnecessary when, in a non-jury matter, a party wishes to challenge on appeal the sufficiency of the evidence underlying the trial court's judgment. Fla. R. Civ. P. 1.530(e). It may be beneficial in certain cases; only the lawyer in any particular case can make that determination. Of course, lawyers should be mindful of the disfavor of using rehearing as re-argument of points already argued and lost. *Cf. Amador v. Walker*, 862 So. 2d 729, 733 (Fla. 5th DCA 2003) (discussing impropriety in appellate courts under rule 9.330 of frivolous rehearing motions that are merely re-argument).

The rule does not cover filing a rehearing motion in such a situation. There appears to be nothing in the law that suggests it should.

5. Whether any amendments are needed with respect to the rules on motions to amend judgment and/or new trial:

No amendments are needed.

6. What is the impact on pro se litigants? Are court reporters necessary to preserve error?

The only pro se litigant impact we saw that seemed worth noting is the one in the family law context, as explained by the Fourth District in *Fox*. We do not know if there are other areas of the law that require mandatory fact findings that might have the same concerns (dependency? criminal?), *i.e.*, why, in those instances, a litigant should be able to challenge on appeal as insufficient a trial court's failure to make mandatory fact findings, despite not moving for rehearing on that issue in the trial court. We would look to other rules committees in that regard.

As for court reporters, they are not required to preserve error. But, an appellant's failure to provide a transcript can result in an affirmance because the appellate court cannot determine whether the appellate issues were preserved or whether there was evidence presented at the trial court hearing on issues that require resolution of fact. *See Above Par Loss Prevention, Inc. v. Albano*, 983 So. 2d 775, 776 (Fla. 4th DCA 2008). There is a method for trying to create a record when a hearing was not transcribed. *See* Fla. R. App. P. 9.200(b)(5).

TO: Joint Subcommittee

FROM: Small Claims Rules Committee Representatives Kristine Van Vorst, Alachua County Judge, and Chantel Wonder, Esq.

RE: Joint Assignment from Court: Preserving Challenge to Trial Court's Findings

DATE: March 25, 2020

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1. To preserve the error, is it necessary for a party to file a motion for rehearing to challenge the sufficiency of the evidence of the trial court's findings (i.e. was there substantial, competent evidence for the trial court's findings)? If yes, then what rule amendment should be made? If not, what amendment, if any, to rules should be made?

   Because the Florida Small Claims Rules do not contain a rule allowing for a Motion for Rehearing, the answer is no. The Small Claims Rules Committee would have to review the issue regarding any amendment to allow rehearing. It does not appear that an amendment would be necessary, and the drafters of this memorandum are not making a recommendation for amendment at this time.

2. To preserve the error, is it necessary for a party to file a motion for rehearing due to the trial court's failure to make statutory findings? If yes, then what rule amendment should be made? If not, what amendment, if any, to rules should be made?

   It is not necessary to file a Motion for Rehearing to preserve error in Small Claims cases because there is no rule for rehearing under the Small Claims Rules.

   A litigant could file a Motion for New Trial pursuant to Fla. Sm. Cl. R. 7.180, but such filing is not necessary to preserve error. The motion may either be set for hearing or summarily denied by the trial court under Fla. Sm. Cl. R. 7.180(b). All orders granting a new trial must specify the specific grounds for the new trial. If the order granting new trial omits the specific grounds and is appealed, the appellate court shall relinquish jurisdiction to the trial court for entry of an order specifying the specific grounds for new trial. See Fla. Sm. Cl. R. 7.180 (c).

   Pursuant to Fla. Sm. Cl. R. 7.190, a litigant could file for Relief from Judgment or Order asking the Court to correct clerical mistakes in judgments, orders, or parts of the record. Additionally, errors from oversight or omission may also be corrected by the court on the court's initiative or by a party's motion. See Fla. Sm. Cl. R. 7.190 (a). Such filing is not necessary to preserve error.

   Either of motions mentioned above would likely not delay the need to timely file a Notice of Appeal. Deciding what is needed to preserve error is a case by case analysis, and it would be difficult to create a rule to apply to every case given the volume of

cases in Small Claims. Generally, in Small Claims, if the Court fails to follow the law in its findings or fails to include required findings, that error is preserved for appeal.

3. What are the instances where you must file a motion for rehearing to preserve the error?

   None; please see responses above.

4. What are the instances where it is not necessary but beneficial to file a motion for rehearing? If any, does the rule cover an optional filing of the motion for rehearing in those instances?

   The Small Claims Rules do not allow for a rehearing in any instances since the rules do not provide a mechanism for a litigant to move for rehearing. A Motion for New Trial (Fla. Sm. Cl. R. 7.180) and for Relief from Judgment (Fla. Sm. Cl. R. 7.190), as noted above, could be beneficial to correcting a record but are not necessary to preserve error. There are two instances in Small Claims that could benefit from a Motion for Rehearing to preserve error, which include Orders Awarding Attorney's Fees and cases where a party seeks to have a question certified to a higher court. Both of those instances, however, could address a lack of findings through the appellate process and form a party's basis to appeal or through the two rules already in place mentioned above.

5. Are there any amendments needed to the rules regarding motion to amend judgment and motion for a new trial?

   A Motion for New Trial under Fla. Sm. Cl. R. 7.180 (a) tracks Fla. R. Civ. Pro. 1.530 (b), except that the time frame to file the motion is shorter in Small Claims (ten days rather than fifteen days) and the Fla. Sm. Cl. R. 7.180 specifically omits reference to a Motion for Rehearing, whereas as Fla. R. Civ. Pro. 1.530 (b) specifically includes rehearing.

   The Court could treat any Motion for Rehearing as a Motion for New Trial (Fla. Sm. Cl. R. 7.180) or Motion for Relief from Judgment (Fla. Sm. Cl. R. 7.190).[i] An amendment adding this requirement to the Small Claims Rules does not appear to be necessary. The Small Claims Rules Committee would have to review the issue as a group pursuant to Committee guidelines for a proposed amendment.

6. What is the impact for pro se litigants? Do you need a court reporter to preserve the trial court's errors/for motion for rehearing?

   Most cases in Small Claims Court involve one or more pro se litigants. Having a court reporter is a significant cost to the parties and is rarely used in Small Claims because the amount in controversy is less than $8,000. In some jurisdictions, Courts have the technology to digitally record proceedings if the parties request same and the Court is willing.

Where no report of the proceeding exists or the transcript is unavailable, the parties may use Florida Rule of Appellate Procedure 9.200(b)(5).[ii] This Rule allows a party to prepare a statement of evidence or proceedings subject to the objection of an opposing party and the settlement and approval by the Court.

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[i] Because small claims rules do not provide for motions for rehearing, trial court acted properly in denying motion for rehearing, but should have considered matter as a motion for relief from judgment. *Debt Settlement Law Group, P.A. v. Malki*, 22 Fla. L. Weekly Supp. 304 (6th Cir. Ct. 2014) (appellate capacity). The small claims rules do not authorize a motion for rehearing. However, if the motion for rehearing actually seeks a new trial, it may be treated as a motion for new trial so long as it is filed within 10 days after filing of the judgment. Under the small claims rules, an untimely motion for rehearing does not toll the filing of an appeal. *St. Mary's Hospital, Inc. v. Johnson*, 19 Fla. L. Weekly Supp. 762 (15th Cir. Ct. 2012) (appellate capacity). Even though Small Claims Rules do not specifically provide for motions seeking relief from judgment, they should be treated as a motion for new trial. Motions for new trial are addressed to the sound judicial discretion of the trial court. *Law Offices of James M. Thomas, Esquire v. Robert L. Jones, Inc.*, 18 Fla. L. Weekly Supp. 963 (6th Cir. Ct. 2011) (appellate capacity). A motion for reconsideration filed timely constitutes a motion for new trial under this rule, even though the rule does not specifically refer to motions for reconsideration. *Kranitz v. Zion*, 17 Fla. L. Weekly Supp. 90 (15th Cir. Ct. 2009) (appellate capacity). Request to "rehear" matter should be liberally construed as constituting a motion for new trial under this rule, regardless of title of request. *Perez-Roura v. O. Benitez & Associates, Inc.*, 13 Fla. L. Weekly Supp. 855 (11th Cir. Ct. 2006) (appellate capacity).

[ii] Florida Rules of Appellate Procedure, Rule 9.200(b)(5): If no report of the proceedings was made, or if the transcript is unavailable, a party may prepare a statement of the evidence or proceedings from the best available means, including the party's recollection. The statement shall be served on all other parties, who may serve objections or proposed amendments to it within 10 days of service. Thereafter, the statement and any objections or proposed amendments shall be filed with the lower tribunal for settlement and approval. As settled and approved, the statement shall be included by the clerk of the lower tribunal in the record.

RESPONSE TO QUESTIONS IN FEBRUARY 18, 2020 EMAIL AND ACCOMPANYING PHONE CONFERENCE

1. To the best of our knowledge, there is no requirement for any party in a probate or guardianship matter to file a motion for rehearing regarding the trial court's findings. As almost all probate and guardianship matters are bench trials, we do not believe an amendment should be made as we would simply be asking the same judge to make different factual findings based on what the judge has already considered.

2. It is generally not necessary for a party to file a motion for rehearing due to the trial court's failure to make a statutory finding. As far as we can tell, there are no required statutory findings under probate law. However, there are some statutory findings under guardianship law:

    a. F.S. § 744.1075(1)(a)(imminent danger requirements for appointment of an emergency court monitor);
    b. F.S. § 744.2005 (order appointing a limited guardian must specify the powers and duties of the guardian);
    c. F.S. § 744.3031(1) (imminent danger requirements for appointment of an emergency temporary guardian);
    d. F.S. § 744.309 (appointment of a healthcare provider as guardian);
    e. F.S. § 744.3115 (powers of a guardian over that of a healthcare surrogate under chapter 765);
    f. F.S. § 744.312(1) (Court must appoint preneed guardian unless it determines appointment is contrary to the best interests of the ward)
    g. F.S. § 744.312(4) (appointment of a professional guardian requires findings as to statutorily listed factors);
    h. F.S. § 744.331(6) (Order determining incapacity requires statutorily listed findings of fact supporting incapacity); and
    i. F.S. § 744.451(1) (Order authorizing sale of ward's property).

    However, pursuant to Florida case law in guardianship matters, appellate courts are more than willing to overturn a trial court's findings when they do not meet the necessary statutory requirements. See, *Martinez v. Guardianship of Smith*, 159 So.3d 394 (Fla. 4th DCA 2015) (Professional guardian's appointment reversed where trial court failed to make § 744.312(4) findings in order of appointment); *Koshenina v. Buvens*, 130 So.3d 276, 282-83

(Fla.1st DCA 2014) (Reversing for failure to make specific findings that preneed guardian's appointment was "contrary to the best interests" under § 744.312(1)). Therefore, it does not appear that appellate courts will consider the issue "waived" if a motion for rehearing is not filed.

3. **There are no known instances when you must file a motion for rehearing under probate or guardianship law.**

4. **We cannot think of any instances where it is necessary or beneficial to file a motion for rehearing unless the error is due to the judge's own mistake on something clearly obvious.**

5. **None.**

6. **There are some pro se litigants in probate cases. There are significantly more in guardianship cases. There would be another level of complexity contrary to the instructions we have received from the Supreme Court on dealing with guardianships if a motion for rehearing was required to be filed to address any issues.**

Submitted on behalf of the Probate Rules Committee by R. Lee McElroy IV and J. Grier Pressly, III.

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To: ***Joint Subcommittee***

From: ***Juvenile Rules Committee Representative Matthew Wilson, Esq.***

Re: ***Joint Assignment from Court: Preserving Challenge to Trial Court's Findings***

Date: ***March 26, 2020***

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1. To preserve the error, is it necessary for a party to file a motion for rehearing to challenge the sufficiency of the evidence of the trial court's findings (i.e. was there substantial, competent evidence for the trial court's findings)? If yes, then what rule amendment should be made? If not, what amendment, if any, to rules should be made?

No juvenile proceeding currently requires a motion for rehearing to be filed to challenge the sufficiency of the evidence of the trial court's findings on appeal. And while the rules governing juvenile delinquency, dependency, and termination of parental rights proceedings, do provide for motions for rehearing that could implicate the sufficiency of the evidence, see, e.g., Florida Rules of Juvenile Procedure 8.130(a)(6) and 8.265(a)(6), case law and the rules governing those proceedings generally focus on other considerations as relates to the preservation requirements for sufficiency of the evidence of the trial court's findings on appeal.

In some juvenile proceedings, the issue of preservation of sufficiency of the evidence claims is implicated not based on whether a motion for rehearing was filed, but whether a motion for judgment of dismissal was made. In termination proceedings, there is a conflict across the District Courts of Appeal as to whether such a motion is necessary given the appellate courts' interpretation of Rule 8.525(h). See, e.g, J.D. v. Dep't of Children & Families, 825 So. 2d 447 (Fla. 1st DCA 2002) (affirming termination where appellant failed to preserve issue of whether appellee failed to establish by clear and convincing evidence all of the required elements where appellant failed to make motion for judgment of dismissal at the conclusion of appellee's case or otherwise); but see H.D. v. Dep't of Children & Families, 964 So. 2d 818, 819 (Fla. 4th DCA 2007) (reasoning that Rule 8.525(h) does not appear to require a motion for judgment of dismissal to preserve sufficiency of the evidence issue for appellate review and certifying conflict with First District); R.P. v. Dep't of Children & Families, 49 So. 3d 339 (Fla. 5th DCA 2010) (aligning with Fourth District's view). The Supreme Court even initially accepted review of the matter based on the conflict, but decided jurisdiction was improvidently granted and dismissed the review proceeding, Florida Department of Children & Families v. H.D., 985 So. 2d 1059 (Fla. 2008), and so the conflict remains. See, e.g., O.T. v. Fla. Dep't of Children & Families, 116 So. 3d 1290 (Fla. 1st DCA 2013).

In dependency proceedings, although Rule 8.330(e) contains similar language to Rule 8.525(h), there is a dearth of case law on whether a motion for judgment of dismissal is necessary to preserve the issue of sufficiency of the evidence for appeal. A unique feature of Rule 8.330(e) though is even where the court is of the opinion that the evidence is insufficient to warrant a finding of dependency, the court has the option to dismiss the petition for insufficiency of the evidence or

find that allegations in the petition have not been sustained, which does not necessarily require the petition to be dismissed. See Fla. R. Juv. P. 8.330(e).

In delinquency cases, the Supreme Court noted "that, with two exceptions, a defendant must preserve a claim of insufficiency of the evidence through timely challenge in the trial court." F.B. v. State, 852 So. 2d 226, 231 (Fla. 2003). The Court, however, did not specifically indicate that a motion for rehearing was the only mechanism to preserve a claim. See F.B., 852 So. 2d at 230 n.2 ("We note that a motion or objection must be specific to preserve a claim of insufficiency of the evidence for appellate review. A boilerplate objection or motion is inadequate.") (citation omitted). The two exceptions to this requirement are the Court's obligation to review the sufficiency of the evidence supporting conviction in death penalty cases and where the evidence is insufficient to show that a crime was committed at all. F.B., 852 So. 2d at 230.

As for the other four types of proceedings covered by the juvenile rules (CINS/FINS, truancy, guardian advocates for drug-dependent newborns, and judicial waiver), none of them contain a rule permitting a motion for rehearing.

Given this existing body of law and the varying ways that juvenile proceedings handle these types of claims, further study and research would be needed prior to considering changing those rules in favor of a process based on motions for rehearing in making these claims and is not recommended absent more input from the Juvenile Rules Committee as a whole on this matter.

2. To preserve the error, is it necessary for a party to file a motion for rehearing due to the trial court's failure to make statutory findings? If yes, then what rule amendment should be made? If not, what amendment, if any, to rules should be made?

Rule 8.260(a), which governs dependency and termination of parental rights proceedings, requires all court orders to be "reduced to writing" and to "contain specific findings of fact and conclusions of law[.]" See also § 39.809(5), Fla. Stat. (2019) (similar with regard to termination orders); § 39.507(6), Fla. Stat. (2019) (order adjudicating child dependent shall "briefly stating the facts upon which the finding is made").

Despite this, whether a motion for rehearing is required to preserve the error of a trial court's failure to make required findings varies in that some appellate decisions require such a motion to be made while others are silent on the matter. See, e.g., D.T. v. Fla. Dep't of Children & Families, 54 So. 3d 632 (Fla. 1st DCA 2011) (affirming denial of motion for reunification where appellant failed to preserve error by motion for rehearing or otherwise bring the deficiency to the trial court's attention and citing First District family cases for the principle of law); R.B. v. Dep't of Children & Families, 997 So. 2d 1216, 1218 (Fla. 5th DCA 2008) (affirming termination of parental rights order where appellant failed to bring to the trial court's attention regarding the failure to make factual findings as to the act(s) causing termination and citing Fifth District family case for the principle of law); but see W.L. v. Dep't of Children & Families, 172 So. 3d 562, 564 (Fla. 4th DCA 2015) (reversing and remanding termination of parental rights order for the trial court to make statutorily required findings without reference to any motion for rehearing being filed by the appellant); In re C.Z., 106 So. 3d 976, 979 (Fla. 2d DCA 2013) (reversing and remanding for order adjudicating children dependent stating only facts that were supported by the

evidence at the hearing and were relied upon by the court in adjudication despite appellate court concluding evidence was sufficient to support adjudication without reference to any motion for rehearing being filed by the appellant)

In delinquency proceedings, a motion for rehearing may not be necessary nor sufficient to preserve the error of a trial court's failure to make required findings depending on the specific error alleged. See, e.g., S.S. v. State, 122 So. 3d 499, 503 (Fla. 4th DCA 2013) (filing a post-disposition motion to correct a disposition error under Rule 8.135(b)(2) preserved for appeal the issue of the court's failure to make findings regarding the statutory requirement as to the ability to pay when ordering restitution without reference to any need for a motion for rehearing); C.C. v. State, 150 So. 3d 216, 217 (Fla. 4th DCA 2014) (in Anders appeal, affirming order withholding adjudication and sentencing juvenile to probation after plea to marijuana possession where trial court made no findings as to plea's voluntariness as required by rule where no petition for writ of habeas corpus filed to preserve issue for appeal)

As for the other four types of proceedings covered by the juvenile rules (CINS/FINS, truancy, guardian advocates for drug-dependent newborns, and judicial waiver), none of them contain a rule permitting a motion for rehearing and so it cannot be said such proceedings require such a motion to preserve the error in question.

As for whether any rule amendments should be made, as above, given this existing body of law and the varying ways that juvenile proceedings handle these types of claims, further study and research would be needed prior to considering changing those rules in favor of a process based on motions for rehearing in making these claims. However, if any proceeding is amenable to such a change, it would be dependency and termination of parental rights proceedings given a dependent child's right to timely permanency. The Legislature, through Chapter 39, has stated time is of the essence for children in the dependency system, and that they should be placed with their biological or adoptive family within one year. §§ 39.621(1), .001(1)(h), Fla. Stat. (2019); see S.M. v. Fla. Dep't of Children & Families, 202 So. 3d 769, 781-83 (Fla. 2016) (noting how the United States Supreme Court and the Florida Supreme Court have also recognized a child's need for timely permanency). To expedite a child's permanency, there are multiple provisions in Chapter 39 proceedings designed to limit delays. See, e.g., § 39.0136(3)-(4), Fla. Stat. (2019) and Fla. R. Juv. P. 8.240(d) (limiting continuances); J.B. v. Fla. Dep't of Children & Families, 170 So. 3d 780, 793 (Fla. 2015) (rejecting Strickland standard for ineffective assistance of counsel claims in favor of process to ensure timely disposition of IAC claims given child's need for permanency). And unlike many of the concerns outlined with regard to pro se litigants in family law cases, such litigants in dependency and termination proceedings are generally entitled to counsel to assist them in preserving their rights. See § 39.013(9), Fla. Stat. (2019). Thus, without rehashing the arguments previously made in favor of requiring preservation of such errors via a motion for rehearing or otherwise, see, e.g., Fox v. Fox, 262 So. 3d 789, 797-9 (Fla. 4th DCA 2018) (Kuntz, J., concurring in part and dissenting in part), the undersigned is in favor of amending at least certain juvenile rules to require a motion for rehearing to preserve such errors for appeal given the effect such a requirement can have on resolving matters without protracted appellate review. The specific text of such an amendment should be developed with input from the Juvenile Rules Committee either as a whole or via the Committee's juvenile dependency subcommittee to ensure a diversity of perspectives are included in the rule formulation.

3. What are the instances where you must file a motion for rehearing to preserve the error?

Varies, see above.

4. What are the instances where it is not necessary but beneficial to file a motion for rehearing? If any, does the rule cover an optional filing of the motion for rehearing in those instances?

Although the juvenile proceedings that do have rules regarding motions for rehearing are generally worded as permissive, see Rules 8.130 and 8.265, due to the lack of uniformity in whether a motion for rehearing is required to preserve these issues as noted above, it is likely beneficial to file such a motion whenever appellate review is contemplated.

5. Are there any amendments needed to the rules regarding motion to amend judgment and motion for a new trial?

The Juvenile Rules do not contain rules of these type as in other areas of law, but instead include such relief in other rules more specific to the issue being litigated. See, e.g., Fla. R. Juv. P. 8.130, 8.135, 8.140, 8.265, 8.270, and 8.530. No amendments are recommended to such rules at this time given such rules' varying focus and applicability.

6. What is the impact for pro se litigants? Do you need a court reporter to preserve the trial court's errors/for motion for rehearing?

Because most litigants in juvenile proceedings have a statutory and/or constitutional right to counsel, and to appointed counsel if indigent, the impact on pro se litigants is minimal. For proceedings where the right to counsel is not guaranteed, such as truancy proceedings, the existing rules do not have rules requiring motions for rehearing to preserve errors.

Likewise, in most juvenile proceedings, the hearings are recorded, see Rules 8.100(f), 8.255(g), and 8.625(f), and along with the right to counsel if indigent, such litigants also can get access to funding to have the proceedings transcribed. See § 27.5305(2), Fla. Stat. (2019). However, as in other areas of law, a transcript can be necessary to demonstrate error, see, e.g., S.P. v. Fla. Dep't of Children & Family Servs., 17 So. 3d 878, 881 (Fla. 1st DCA 2009); G.L. v. State, 917 So. 2d 342, 343 (Fla. 5th DCA 2005), but in such proceedings where no transcript is available, Florida Rule of Appellate Procedure 9.200(b)(5) appears to be a possibility to provide a remedy. See, e.g., R.T. v. Dep't of Health & Rehab. Servs., 667 So. 2d 920 (Fla. 1st DCA 1996).

MEMORANDUM AND RECOMMENDATION

TO: JOINT COMMITTEE

FROM: ASHLEY E. TAYLOR AND ROBERTA WALTON

DATE: March 26, 2020

Re: Rehearing Issue/ Questions from 2/18/20 correspondence

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1. **To preserve the error, is it necessary for a party to file a motion for rehearing to challenge the sufficiency of the evidence of the trial court's findings (i.e. was there substantial, competent evidence for the trial court's findings)? If yes, then what rule amendment should be made? If not, what amendment, if any, to rules should be made?**

Probably not. There is a conflict among districts as to whether the failure to file a motion for rehearing as to the failure to make factual findings waives same. While such failure is "different" than challenging the sufficiency of the evidence, the two seem to be intertwined in recent caselaw. **It would help to clarify that a rehearing is not necessary.**

As for failure to make factual findings: The 2nd and the 4th DCAs both say, the failure to make factual findings is reversible error regardless of whether a motion for rehearing is filed. With that said, this issue would seemingly apply also to the failure to challenge the sufficiency of the findings, but that is not as clear. See caselaw below.

> " We hold that the failure to comply with the statute's requirement of factual findings is reversible error **regardless of whether a motion for rehearing is filed**. In doing so, we recede from *Fargahli v. Farghali*¸187 So.3d 338 *(*Fla. 4th DCA 2016). which departed from our precedent that the failure to make the statutory findings constitutes reversible error.1 We further certify conflict with the First, Second, Third, and Fifth Districts on whether a motion for rehearing is required to preserve this issue. Fox v. Fox, 262 So. 3d 789, 791 (Fla. 4th 2018)

> The trial court's failure to make specific factual findings that are required by statute as set forth in chapter 61 is reversible error regardless of whether the error was first raised in the trial court by means of a motion for rehearing. In doing so, we certify conflict with the First District's opinion in Owens, 973 So. 2d 1169, the Fifth District's opinion in Mathieu, 877 So. 2d 740, the Third District's opinion in Broadfoot, 791 So. 2d 584, and the cases of those districts that rely on those opinions for the proposition that the trial court's error of failing to make statutorily required factual findings in chapter 61 proceedings must first be raised in the trial court by way of motion for rehearing in order to be preserved for appellate review. Engle v. Engle, 277 So. 3d 697, 704 (Fla. 2nd DCA. 2019).

The rule should be amended. There is conflict and also ambiguity as it now stands as it applies to family law.

2. To preserve the error, is it necessary for a party to file a motion for rehearing due to the trial court's failure to make statutory findings? If yes, then what rule amendment should be made? If not, what amendment, if any, to rules should be made?

See answer to number 1. The appellate courts have not been clear in differentiating between the sufficiency of the evidence and the failure to make findings. **A rule change is absolutely necessary to resolve the conflict among districts.**

3. What are the instances where you must file a motion for rehearing to preserve the error?

Again, with the conflicting districts, it would be safe to always file a motion for rehearing to preserve error as to failure to make factual findings.

4. What are the instances where it is not necessary but beneficial to file a motion for rehearing ? If any, does the rule cover an optional filing of the motion for rehearing in those instances?

See above. With the current conflict, it would be beneficial to file a motion for rehearing as a safeguard in all instances.

5. Are there any amendments needed to the rules regarding motion to amend judgment and motion for a new trial?

No.

6. What is the impact for pro se litigants? Do you need a court reporter to preserve the trial court's errors/for motion for rehearing?

Technically, you don't "need" a court reporter to preserve error. But in practice, yes, a court reporter is necessary as it is very difficult to recreate the record otherwise.

From: Davis, Mikalla <midavis@floridabar.org>
Sent: Tuesday, February 18, 2020 4:58 PM
To: Van Vorst, Kristine; Walton, Roberta F; Taylor, Ashley; Ceci Culpepper Berman; Stearns, Jason P; Pressly, James; McElroy, Robert L; Shepherd, Frank; Wilson, Matthew C; Judge Kristine Van Vorst
Cc: Godwin, Krys; Bronson, Ardith; Cuellar-Stilo, Mary L; Goethe, Jeffrey S; Gagliardi, Josephine; Walsh, Maureen B
Subject: Joint Assignment from Court: Preserving Challenge to Trial Court's Findings

Present for the meeting today:

Lee McElroy (Probate)
James Pressly (Probate)
Ceci Berman (Civil)
Jason Stearns (Civil)
Roberta Walton (Family)
Ashley Taylor (Family)
Judge Van Vorst (Small Claims)
Matthew Wilson (Juvenile & RJA)
Frank Sheppard (RJA)
Judge Gagliardi (Chair RJA)

This is my interpretation of what I heard as the Discussion Points/Questions for the memo:

1. To preserve the error, is it necessary for a party to file a motion for rehearing to challenge the sufficiency of the evidence of the trial court's findings (i.e. was there substantial, competent evidence for the trial court's findings)? If yes, then what rule amendment should be made? If not, what amendment, if any, to rules should be made?

2. To preserve the error, is it necessary for a party to file a motion for rehearing due to the trial court's failure to make statutory findings? If yes, then what rule amendment should be made? If not, what amendment, if any, to rules should be made?

3. What are the instances where you must file a motion for rehearing to preserve the error?

4. What are the instances where it is not necessary but beneficial to file a motion for rehearing ? If any, does the rule cover an optional filing of the motion for rehearing in those instances?

5. Are there any amendments needed to the rules regarding motion to amend judgment and motion for a new trial?

6. What is the impact for pro se litigants? Do you need a court reporter to preserve the trial court's errors/for motion for rehearing?

Next Steps:

- Between **now and Friday, February 21 at noon**, please review these questions and let me know of any modifications or additional questions.
- There are going to be five memos to address the questions from each perspective (small claims, civil, probate, family, and juvenile). Frank: if you want, you can work with small claims or juvenile since there's only one representative from those committees and there's no RJA memo needed. **Those memos are due by Monday, March 23 at noon.** Work with your committee partner, if you have one, (or other Committee members or anyone that may no the subject area) to complete the memo.
- Next meeting is **March 26 @ noon.**
- Thank you Ceci for agreeing to be the chair of this joint subcommittee!

Thank you,

Mikalla Davis
Attorney Liaison—Rules
The Florida Bar
850-561-5663
midavis@floridabar.org

Please note: Florida has very broad public records laws. Many written communications to or from The Florida Bar regarding Bar business may be considered public records, which must be made available to anyone upon request. Your e-mail communications may therefore be subject to public disclosure.

Joint Subcommittee Meeting, 3/26/20
Potential Rehearing Rule

Subcommittee members on the call:
Ceci Berman
Hon. Josephine Gagliardi
Lee McElroy
Grier Pressly
Jason Stearns
Ashley Taylor
Hon. Kristine Van Vorst
Matt Wilson
Chantel Wonder

Subcommittee members absent:
Mary Cuellar-Stilo
Jeffrey Goethe
Frank Shepherd
Maureen Walsh
Roberta Walton

Other attendees:
Mikalla Davis
Krys Godwin

Before the meeting, via email, memoranda were circulated by subcommittee members from each rules committee so that all could be reviewed before the meeting.

There was a discussion that most of the general case law discussed in the Civil Rules memo applies to most of the other rules sets, with some differences, including in Small Claims.

Juvenile had some concerns specific to its rules. It noted that there are two DCAs that haven't required a motion for rehearing to preserve a challenge to a trial court's failure to make mandatory fact findings, splitting along the same lines as the family law issue.

Juvenile is interested in a rule requiring rehearing motions in TPR and dependency cases when a party wants to challenge on appeal a trial court's failure to make mandated fact findings. Juvenile points out that rehearing is rare in their cases. Also, their cases are quicker than family cases, often expedited, and so they would like the rule to be: no rehearing motion = waiver of any challenge to a trial court's failure to make mandated fact findings. This is different from the position that Civil Rules takes and Family Law is considering. In any event, there is interest in getting the conflict resolved in the family and juvenile arenas.

The memos were then discussed in great detail. In short, all agreed that no rule amendments are necessary, other than: (a) Family Law wanting to proceed with a rule it is already working on,

which will affirmatively state that a rehearing motion is not necessary to preserve an appellate challenge to a trial court's failure to make statutorily mandated findings (siding with the Second and Fourth DCAs); and (b) Juvenile's desire to explore an amendment related to requiring rehearing (it was noted many times, though, that any such rule would need to be very carefully worded so as not to conflict with existing Juvenile rules and general case law on rehearing).

At the end of the meeting, all agreed that Ceci would draft a joint subcommittee report and circulate it among this subcommittee's members. The report would then be shared with the various rules committees at the June Bar meeting to see if any of the committees at large have any concerns. That will, in turn, inform what additional actions are to be taken. It will likely require an extension from the FSC until November, which gets two rules committee meetings completed before then (June and October).

Davis, Mikalla

From: Thomas Bishop <tbishop@bishopmills.com>
Sent: Wednesday, June 3, 2020 8:38 AM
To: Davis, Mikalla; Hogan, John; Caballero, Cosme; Kula, Elliot; Sherry, Jason; Alexander, Kurt E; Tragos, Peter L; Solomon, Stanford R
Subject: Daubert Subcommittee
Attachments: 8.20.19 Draft Rule 1-280.docx

Committee:
In advance of the committee meeting please find the draft rule discussed. I suggest the following report:

1. There is a wide variance in the procedures being used by trial courts to address Daubert motions. Some courts are having protracted evidentiary hearings on all motions, causing delay and expense. Other courts are addressing motions on written submissions and argument unless there are disputed facts. These inconsistencies can create potential unfairness, and an unnecessary burden on litigants and courts. Clarity in appropriate procedures, consistent with Florida law and Federal court decisions addressing fair procedures for Daubert motions, would be useful.
2. We recommend implementing a rule of procedure for addressing Daubert motions, emphasizing the trial court's discretion in reviewing written submissions and determining whether evidentiary proceedings are necessary.
3. We submit a draft rule that we suggest addresses these concerns.

Please let me know if you agree, or wish to discuss further.

TEB

Thomas E. Bishop
Attorney and Barrister
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Jacksonville, FL 32202
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Please note: Florida has very broad public records laws. Many written communications to or from The Florida Bar regarding Bar business may be considered public records, which must be made available to anyone upon request. Your e-mail communications may therefore be subject to public disclosure.

Rule 1.280(b)(5)(e) – Draft Proposed Rule.

(a) Any challenge to the admissibility of expert testimony pursuant to Rule 90-702 of the Florida Evidence Code shall be made by written motion, and shall identify and incorporate all materials supporting the relief requested. Any party opposing the challenge to the admissibility of the anticipated expert testimony shall respond in writing to the challenge, within 10 days or such other time as may be ordered by the court, and shall identify and incorporate all materials supporting the admissibility of the anticipated expert testimony.

(b) The court shall promptly consider the competing written submissions and rule on the challenge based on the submissions or may schedule a hearing to consider argument and, if necessary for resolution of the motion, evidence. If the admissibility of the expert testimony requires greater context than practicable before trial, the court may defer ruling until trial.

RULE 1.530. MOTIONS FOR NEW TRIAL AND REHEARING; AMENDMENTS OF JUDGMENTS

(a) Jury and Non-Jury Actions. A new trial may be granted to all or any of the parties and on all or a part of the issues. On a motion for a rehearing of matters heard without a jury, including summary judgments, the court may open the judgment if one has been entered, take additional testimony, and enter a new judgment.

(b) Time for Motion. A motion for new trial or for rehearing shall be served not later than 15 days after the return of the verdict in a jury action or the date of filing of the judgment in a non-jury action. A timely motion may be amended to state new grounds in the discretion of the court at any time before the motion is determined.

(c) Time for Serving Affidavits. When a motion for a new trial is based on affidavits, the affidavits shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

(d) On Initiative of Court. Not later than 15 days after entry of judgment or within the time of ruling on a timely motion for a rehearing or a new trial made by a party, the court of its own initiative may order a rehearing or a new trial for any reason for which it might have granted a rehearing or a new trial on motion of a party.

(e) When Motion Is Unnecessary; Non-Jury Case. When an action has been tried by the court without a jury, the sufficiency of the evidence to support the judgment may be raised on appeal whether or not the party raising the question has made any objection thereto in the trial court or made a motion for rehearing, for new trial, or to alter or amend the judgment.

(f) Order Granting to Specify Grounds. All orders granting a new trial shall specify the specific grounds therefor. If such an order is appealed and does not state the specific grounds, the appellate court shall relinquish its jurisdiction to the trial court for entry of an order specifying the grounds for granting the new trial.

(g) Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment shall be served not later than 15 days after entry of the judgment, except that this rule does not affect the remedies in rule 1.540(b).

Committee Notes

1992 Amendment. In subdivision (e), the reference to assignments of error is eliminated to conform to amendments to the Florida Rules of Appellate Procedure.

2013 Amendment. Subdivisions (b) and (g) are amended to change the deadlines for service of certain motions from 10 to 15 days after the specified event. Subdivision (d) is amended to change the deadline for a court to act of its own initiative.

Court Commentary

1984 Amendment. Subdivision (b): This clarifies the time in which a motion for rehearing may be served. It specifies that the date of filing as shown on the face of the judgment in a non-jury action is the date from which the time for serving a motion for rehearing is calculated.

There is no change in the time for serving a motion for new trial in a jury action, except the motion may be served before the rendition of the judgment.

RULE 1.535 REMITTITUR AND ADDITUR

(a) Within the time provided in rule 1.530 (b), any party may serve a motion for remittitur or additur. The motion shall state the applicable Florida law under which it is being made, the amount the movant contends the verdict should be, and the specific evidence that supports the amount stated or a statement of the improper elements of damages included in the damages award.

(b) If a remittitur or additur is granted, the court must state the specific statutory criteria relied on.

(c) Any party adversely affected by the order granting remittitur or additur may reject the award and elect a new trial on the issue of damages only by filing a written election within 15 days after the order granting remittitur or additur is filed.

PROPOSED RULE 1.530 WITH INCORPORATED RULE 1.535

RULE 1.530. MOTIONS FOR NEW TRIAL AND REHEARING; AMENDMENTS OF JUDGMENTS

(a) **Jury and Non-Jury Actions**. A new trial may be granted to all or any of the parties and on all or a part of the issues. On a motion for a rehearing of matters heard without a jury, including summary judgments, the court may open the judgment if one has been entered, take additional testimony, and enter a new judgment.

(b) **Time for Motion**. A motion for new trial or for rehearing shall be served not later than 15 days after the return of the verdict in a jury action or the date of filing of the judgment in a non-jury action. A timely motion may be amended to state new grounds in the discretion of the court at any time before the motion is determined.

(c) **Time for Serving Affidavits**. When a motion for a new trial is based on affidavits, the affidavits shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

(d**) On Initiative of Court**. Not later than 15 days after the date of filing of the judgment or within the time of ruling on a timely motion for a rehearing or a new trial made by a party, the court of its own initiative may order a rehearing or a new trial for Florida Rules of Civil Procedure January 2, 2020 128 any reason for which it might have granted a rehearing or a new trial on motion of a party.

(e) **When Motion Is Unnecessary; Non-Jury Case**. When an action has been tried by the court without a jury, the sufficiency of the evidence to support the judgment may be raised on appeal whether or not the party raising the question has made any objection thereto in the trial court or made a motion for rehearing, for new trial, or to alter or amend the judgment.

(f) **Order Granting to Specify Grounds**. All orders granting a new trial shall specify the specific grounds therefor. If such an order is appealed and does not state the specific grounds, the appellate court shall relinquish its jurisdiction to the trial court for entry of an order specifying the grounds for granting the new trial.

(g) **Motion to Alter or Amend a Judgment**. A motion to alter or amend the judgment shall be served not later than 15 days after the date of filing of the judgment, except that this rule does not affect the remedies in rule 1.540(b).

(h) Motion for Remittitur or Additur.

(1) Not later than 15 days after the return of the verdict in a jury action or the date of filing of the judgment in a non-jury action, any party may serve a motion for remittitur or additur. The motion shall state the applicable Florida law under which it is being made, the amount the movant contends the verdict should be, and the specific evidence that supports the amount stated or a statement of the improper elements of damages included in the damages award.

(2) If a remittitur or additur is granted, the court must state the specific statutory criteria relied on.

(3) Any party adversely affected by the order granting remittitur or additur may reject the award and elect a new trial on the issue of damages only by filing a written election within 15 days after the order granting remittitur or additur is filed.

RULES 1.530/1.535 SUBCOMMITTEE REPORT

Rules Involved: Rule 1.530/1.535

Date of Report: June 10, 2020

Chair: Paul Regensdorf

Members (include areas of practice for each):

1. **Paul Regensdorf, Civil, trial and appellate**
2. **Lance Curry, Civil, trial and appellate**
3. **Elliot Kula, Civil, trial and appellate**
4. **Hinda Klein, Civil, trial and appellate**
5. **Katie Ender, Civil, trial and appellate**
6. **Scott Dimond, Civil, trial**
7. **Vivian Fazio, Civil, trial**
8. **Judge Donald Scaglione, Circuit Judge**
9. **Judge John Bowman, Circuit Judge**
10. **Judge Daryl Trawick, Circuit Judge**

Other participants: Mikalla Davis, The Florida Bar

Meeting dates: The Sub-committee met, by conference call, on March 3, March 18, March 24, and May 8, 2020, as well as through numerous email exchanges among the members

I. Summary of Original Proposal, Report and Action Proposed:

Summary of Original Proposal: (1) The original proposal was to amend Rule 1.530 dealing with posttrial motions so that each of the various subdivisions defined the starting point for the 15-day calculation the same way – some key the starting time to the date of the filing of the judgment, and others key the starting time to the entry of the judgment.
(2) The proposal was then broadened to bring Rule 1.535 Remittiturs and Additurs, into Rule 1.530 with the other posttrial motions.

Summary of Report: The Subcommittee has amended Rule 1.530 to provide that all posttrial motions have to be filed within 15 days of the date of the filing of the judgment. It also brings what was Rule 1.535 into Rule 1.530, where it is more logically placed.

Action Proposed: The Subcommittee proposes the passage of the attached amended Rule 1.530.

II. History/Background:

a. Source of proposal:

The original proposal for an amendment to Rule 1.530 came from CPRC member Paul Regensdorf. He asked the Committee to make the language of Rule 1.530 uniform as to the starting time for the calculation of when posttrial motions have to be filed. He also suggested that Rule 1.535 be rolled into Rule 1.530 for consistency.

b. Relevant Rules Committee history:

Rule 1.530 has not been addressed in some time. Rule 1.535 is a fairly new rule. No record explains why it was created as a separate rule.

b. Are similar proposals under consideration by other Rules Committees or Bar Sections?

No.

c. Input sought/materials considered by subcommittee:

The only external information looked at was the history of Rule 1.535, along with a discussion of the chair of the original Rule 1.535 subcommittee.

III. Issues Identified by the Subcommittee:

a. Concerns About Present Rule: Rule 1.530 is inconsistent, and Rule 1.535 should not be separate.

b. Concerns About Proposed Changes: None.

IV. Subcommittee Recommendation

The subcommittee unanimously recommends by a vote of 9-0 (one not participating due a family emergency) the adoption of the form amendments to Rule 1.530, and the incorporation of Rule 1.535 into Rule 1.530.

V. Majority Position:

a. Summary.

Rule 1.530 is now internally consistent and incorporates all available posttrial motions.

b. Rationale.

These changes provide a rule that is less likely to be misconstrued or misapplied.

c. Key Points.

The time limits to file all posttrial motions are now defined in the same way and in the same rule. The provisions of Rule 1.535 have been copied into 1.530 verbatim.

d. Anticipated Impact of Change:

i. **Does the proposed change necessitate a change in other Rules?**

No, but a change in Rule 9.020 to add Motions for Remittitur or Additur as authorized motions to toll rendition.

ii. What is the anticipated impact of the change on practitioners?

Eliminated risks of misapplication.

VI. Minority Position(s):

a. Summary

None

b. Rationale.

N/A

c. Key Points.

N/A

d. Anticipated Impact of Change:

i. Does the proposed change necessitate a change in other Rules?

N/A

ii. What is the anticipated impact of the change on practitioners?

N/A

iii. Does the proposed change secure the just, speedy, and inexpensive determination of every action?

N/A

VII. Time Considerations for Adopting Proposal:

There are no extraordinary time pressures but should be done promptly.

Attach Text of the Proposed Amendments as Exhibits to this Report.

See Attached.

All changes to Rule 1.530 passed 9-0.

PROPOSED RULE 1.530 WITH INCORPORATED RULE 1.535

RULE 1.530. MOTIONS FOR NEW TRIAL AND REHEARING; AMENDMENTS OF JUDGMENTS

(a) **Jury and Non-Jury Actions**. A new trial may be granted to all or any of the parties and on all or a part of the issues. On a motion for a rehearing of matters heard without a jury, including summary judgments, the court may open the judgment if one has been entered, take additional testimony, and enter a new judgment.

(b) **Time for Motion**. A motion for new trial or for rehearing shall be served not later than 15 days after the return of the verdict in a jury action or the date of filing of the judgment in a non-jury action. A timely motion may be amended to state new grounds in the discretion of the court at any time before the motion is determined.

(c) **Time for Serving Affidavits**. When a motion for a new trial is based on affidavits, the affidavits shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

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(e) **When Motion Is Unnecessary; Non-Jury Case**. When an action has been tried by the court without a jury, the sufficiency of the evidence to support the judgment may be raised on appeal whether or not the party raising the question has made any objection thereto in the trial court or made a motion for rehearing, for new trial, or to alter or amend the judgment.

(f) **Order Granting to Specify Grounds**. All orders granting a new trial shall specify the specific grounds therefor. If such an order is appealed and does not state the specific grounds, the appellate court shall relinquish its jurisdiction to the trial court for entry of an order specifying the grounds for granting the new trial.

(g) **Motion to Alter or Amend a Judgment**. A motion to alter or amend the judgment shall be served not later than 15 days after the date of filing of the

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(1) Not later than 15 days after the return of the verdict in a jury action or the date of filing of the judgment in a non-jury action, any party may serve a motion for remittitur or additur. The motion shall state the applicable Florida law under which it is being made, the amount the movant contends the verdict should be, and the specific evidence that supports the amount stated or a statement of the improper elements of damages included in the damages award.

(2) If a remittitur or additur is granted, the court must state the specific statutory criteria relied on.

(3) Any party adversely affected by the order granting remittitur or additur may reject the award and elect a new trial on the issue of damages only by filing a written election within 15 days after the order granting remittitur or additur is filed.

PROPOSED AMENDED

RULE 1.525. MOTIONS FOR COSTS AND ATTORNEYS' FEES

~~Any~~

(a) Entitlement. A party seeking a judgment taxing costs~~,~~ and/or an order determining entitlement to attorneys' fees~~, or both~~ shall file and serve a motion seeking that relief no later than: (1) 30 days after the filing of the judgment, ~~including a judgment~~ final order of dismissal, or ~~the~~ service of a notice of voluntary dismissal~~, which judgment or notice~~ that concludes the action as to that party; or (2) if a timely and authorized Rule 1.530 or Rule 1.535 motion is filed that tolls or delays the rendition of the judgment or final order for appellate purposes, 30 days after the filing of an order disposing of the last of such post-trial motions or the entry of a final judgment or final order, whichever is later.

(b) Amount. A party that has been determined to be entitled to attorneys' fees shall file a motion seeking to establish the amount of such fees no later than 1 year after the filing of the judgment or order establishing that party's entitlement to attorneys' fees. If the underlying final judgment or final order is appealed, the deadline to file that motion

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to establish amount is extended until no later than 1 year after the rendition of the final disposition of that appeal.

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PROPOSED

RULE 1.525. MOTIONS FOR COSTS AND ATTORNEYS' FEES

(a) Entitlement. A party seeking a judgment taxing costs and/or an order determining entitlement to attorneys' fees shall file and serve a motion seeking that relief no later than: (1) 30 days after the filing of the judgment, final order of dismissal, or service of a notice of voluntary dismissal that concludes the action as to that party; or (2) if a timely and authorized Rule 1.530 or Rule 1.535 motion is filed that tolls or delays the rendition of the judgment or final order for appellate purposes, 30 days after the filing of an order disposing of the last of such post-trial motions or the entry of a final judgment or final order, whichever is later.

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759 So.2d 28 (2000)

Michael C. SHIPLEY and Melanie Miller Shipley, Appellants,

v.

BELLEAIR GROUP, INC., a Florida corporation, Appellee.

No. 2D99-1209.

District Court of Appeal of Florida, Second District.

March 24, 2000.

Jeffrey L. Hinds and Stephen A. Baker of Allan & Shipp, P.A., St. Petersburg, for Appellants.

Thomas G. Hersem, Clearwater, for Appellee.

ALTENBERND, Judge.

Michael and Melanie Shipley (the Shipleys) appeal an order striking their post-judgment motion for attorneys' fees and costs. We reverse. The Shipleys prevailed in their action to collect money due on a promissory note from the payor, Belleair Group, Inc. (Belleair). The note expressly provided for the recovery of attorneys' fees. The Shipleys had pleaded their right to fees in their complaint, and the trial court specifically retained jurisdiction in the final judgment to award fees and costs. Although the Shipleys filed their motion for attorneys' fees approximately eighty days after the entry of final judgment, this delay, standing alone, is not a legal basis to strike their motion.

On June 29, 1998, the Shipleys filed a complaint against Belleair alleging breach of a promissory note. The promissory note, in the amount of $182,000, was executed by
29 Belleair on October 16, 1996. It required Belleair to make interest payments *29 for a period of two years, and a final payment when the note came due on October 16, 1998. The note contained a typical clause providing for the payment of the costs of collection including attorneys' fees. The complaint expressly alleged a right to attorneys' fees pursuant to the note.

Following a bench trial, the trial court entered a judgment on November 6, 1998. The judgment awarded damages of $164,961.76 and expressly retained jurisdiction "for the purpose of determining an appropriate award of costs and attorney fees." Belleair did not pay the judgment when entered. Thus, the Shipleys obtained writs of execution and garnishment, and initiated proceedings supplementary in aid of execution. Eventually, Belleair tendered a draft in the full amount of the judgment, although the record does not indicate when this occurred. After receiving payment on the judgment, the Shipleys dismissed a pending garnishment action and ended all collection efforts. The Shipleys'

attorneys allegedly rendered their final service on the collection of the note and judgment on December 22, 1998.

On January 29, 1999, the Shipleys' attorneys filed a motion to tax fees and costs, seeking both pre-judgment and post-judgment fees and costs. The motion attached exhibits detailing the requested fees and costs. Belleair responded with a motion to strike the request for fees and costs. Belleair does not claim in this motion that its payment satisfied the unresolved fees and costs. In fact, the record contains no satisfaction of the judgment. Belleair does not maintain that it suffered any prejudice by the Shipleys' delay in filing a post-judgment fees and costs motion. Relying on this court's opinion in *Wunderle v. Fruits, Nuts & Bananas, Inc.*, 715 So.2d 325 (Fla. 2d DCA 1998), Belleair claims that the Shipleys' delay in filing the motion for almost eighty days after the final judgment is unreasonable as a matter of law. The trial court accepted this argument and struck the motion for fees and costs.

The legislature has expressly authorized an award of costs to a prevailing party. *See* § 57.041, Fla. Stat. (1999). Under the American Rule, the law has long authorized an award of attorneys' fees to a prevailing party when provided by contract. *See, e.g., Webb v. Scott,* 129 Fla. 111, 176 So. 442 (1936). The Florida Rules of Civil Procedure contain no specific rule implementing these rights. *Cf.* Fla. R.App. P. 9.400 (providing for attorneys' fee motion and setting time for service). Thus, there is no rule governing the timing or content of such a motion for fees and costs. Only when the fees are requested as a sanction under Florida Rule of Civil Procedure 1.442(g) do the rules specify a thirty-day period within which to seek the award. *See Spencer v. Barrow,* 752 So.2d 135 (Fla. 2d DCA 2000).

In *Stockman v. Downs,* 573 So.2d 835 (Fla.1991), the supreme court stated that a claim for attorneys' fees must usually be pleaded to give the opponent notice of the claim. Failure to plead such a request can result in a waiver of the right to recover the fees. The court's holding in *Stockman* actually recognized an exception to this general rule when the opposing party has notice of the claim and acquiesces to it. In *Stockman,* the court noted that "proof of attorney's fees may be presented after final judgment, upon motion within a reasonable time." *Id.* at 838. The opinion does not further elaborate what might constitute a "reasonable" time.

In *Wunderle,* 715 So.2d 325, this court held that fees were not recoverable because the plaintiff had not pleaded a right to fees prior to a jury trial and also delayed sixty days in filing its motion. *See* 715 So.2d at 326. Technically, this court's discussion of unreasonable delay in *Wunderle* is dicta because the outcome was controlled by the failure of the plaintiff in that case to allege a claim for fees. Even if the discussion in *Wunderle* were not dicta, it would be distinguishable because the trial court in this case
30 expressly reserved jurisdiction to award the fees and *30 costs in the future. *See United States Fidelity & Guar. v. Martin County,* 669 So.2d 1065, 1066 (Fla. 4th DCA 1996). Moreover, the delay in this case is more appropriately measured from the conclusion of the collection efforts.

In the absence of a more specific rule of procedure such as rule 1.442(g), a reservation of jurisdiction to award further relief apparently allows an action to remain pending for an additional year without prosecution. *See* Fla. R. Civ. P. 1.420(e). Although we agree that

the prevailing party's decision to delay the filing of a motion for fees within this one-year period could be "unreasonable" under the facts of a particular case, a delay of eighty days cannot be said to be unreasonable as a matter of law. Before a prevailing party is entirely stripped of its ability to recover fees, the losing party probably should be required to demonstrate some degree of prejudice arising from the prevailing party's delay in filing the motion.

This court is not authorized to create a rule of civil procedure stating that motions will be unreasonable or untimely as a matter of law if filed more than a certain number of days after the entry of a judgment.[1] *See* Art. V, § 2, Fla. Const. Accordingly, we can only evaluate the unreasonableness of a motion under all the facts and circumstances of a particular case. *Compare* *Folta v. Bolton,* 493 So.2d 440, 444 (Fla.1986) (holding fee motion filed approximately two months after final judgment was timely) and *Martin County,* 669 So.2d 1065 (finding fee motion filed some seven months after mandate was timely) *with* *Wunderle,* 715 So.2d 325 (stating sixty-day delay in filing fee motion was unreasonable) and *National Envtl. Prods., Ltd. v. Falls,* 678 So.2d 869 (Fla. 4th DCA 1996) (holding fee motion pursuant to section 57.105(1) filed six months after mandate untimely). The uncertainty created by this case law suggests that a rule of procedure concerning such motions might be appropriate. *See* Scott D. Makar, *Post-Judgment Motions for Attorneys' Fees: Time for a Bright-Line Rule,* 71 Fla. B.J. 14 (Feb.1997). In the appellate arena, it is relatively easy to create a bright-line rule that is measured from the date of mandate because a mandate always concludes the work in the appeal. *See* Fla. R.App. P. 9.400(a). A final judgment, however, does not necessarily end all legal work in many civil cases, especially in dissolutions, collection matters, and cases that are appealed. Post-trial motions can complicate the timing of a motion for fees and costs. It would be useful to have a rule that specified the contents as well as the timing for such motions, but any such rule would need to accommodate the differing needs of lawyers and parties in the various types of lawsuits governed by the Florida Rules of Civil Procedure.

We reverse the order striking the motion for fees and costs and remand for further proceedings.

Reversed and remanded.

CAMPBELL, A.C.J., and FULMER, J., Concur.

[1] We are aware that the supreme court has requested the Civil Procedure Rules Committee of The Florida Bar to draft an adequate proposal governing motions to tax fees and costs.

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.

NOT FINAL UNTIL TIME EXPIRES
TO FILE MOTION FOR REHEARING

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE
COUNTY, FLORIDA

RICHARD MARTIN,

Appellant,

v.

GREGORY ATWOOD d/b/a
GREG'S SPORTSCARDS

Appellee.
_____/

APPELLATE DIVISION
CASE NO. 2017-318-AP-01

LOWER COURT CASE NO.
98-1090-SP-05

Opinion filed:

On Appeal from the County Court in and for Miami-Dade County, Florida, Hon. Lourdes Simon, County Court Judge

Daniel J. Rose, Daniel J. Rose, P.A., for Appellant.

Charles F. Atwood, III, Law Offices of Charles F. Atwood III, for Appellee.

Before: DARYL E. TRAWICK, LISA WALSH and THOMAS REBULL, JJ.

OPINION

WALSH, J.

On November 2, 1998, a $360 judgment was entered in favor of the Plaintiff, Gregory Atwood, d/b/a/ Greg's Sportscards. The judgment found entitlement to attorneys' fees and reserved jurisdiction to fix the amount. No motion to fix the amount of attorneys' fees was filed, and on November 18, 1998,

the judgment was satisfied by the Defendant, Richard Martin. Almost 20 years later, Plaintiff filed his motion to determine the amount of attorney's fees, and the trial court entered an order taxing fees. On appeal, the Defendant argues that the 20-year delay in filing a motion to fix the amount of attorneys' fees violated Rule 1.525, Florida Rules of Civil Procedure.

Rule 1.525 states that "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, ..." In *Amerus Life Ins. Co. v. Lait*, 2 So. 3d 203 (Fla. 2009), the Court held that Rule 1.525 does not limit the time for filing a motion to tax fees if the judgment determined entitlement to fees. 2 So. 3d 203, 207-08. Similarly, in *Ramle International v. The Greens Condominium Association, Inc.*, 32 So. 3d 647 (Fla. 3d DCA 2010), the court held that because the judgment found entitlement to fees, there was no error in taxing attorneys' fees on a motion filed 11 months after the judgment was entered. *See also Chamizo v. Forman*, 933 So. 2d 1240 (Fla. 3d DCA 2006) (holding where judgment found entitlement to fees and costs, no error to entertain a motion for fees filed 44 days after judgment was entered).

Justice Wells, in his dissent in *Lait*, urged the Court to strictly enforce the time limits in the rule, to rely upon the Court's earlier decision in *Saia Motor Freight Line, Inc. v. Reid*, 930 So. 2d 598 (Fla. 2006) as well as the "plain and literal language in the rule." 2 So. 3d at 208-09. Strictly applying the rule creates "predictability and clarification" in the law. *Id.* (citing the rationale advanced by the Florida Bar Civil Rules Committee). It avoids prejudice and unfair surprise.

Although Justice Wells' dissent in *Lait* is persuasive, we are bound by the decisions in *Lait, Ramle International* and *Chamizo*. We must abide by those decisions and therefore, we affirm.

REBULL, J. concurs

TRAWICK, J. dissents

The final judgment in favor of Appellee was entered on November 2, 1998 in the amount of $360. The court found that the Appellee was entitled to attorney's fees and reserved jurisdiction to determine the amount. No further action was taken to determine the amount of fees until Appellee filed a motion to tax attorney's fees on March 30, 2017. After an evidentiary hearing held on May 8, 2017, the court entered a handwritten order awarding attorney's fees in the amount of $1,160. The court denied Appellant's subsequent motion for rehearing.

Appellant asks this Court to reverse the trial court's order, arguing that the Appellee failed to show good cause for waiting over 19 years to seek the award of fees. He claims that Appellee is acting in bad faith as part of a "revenge-like vendetta". As a result, he contends that he has been greatly prejudiced, a conclusion highlighted by the fact that the case file was destroyed in 2002. Appellant also cites Florida Small Claims Rule 7.175,[1] which he quoted in pertinent part:

> Any party seeking a judgment taxing costs or attorney's fees, or both shall serve a motion no later than 30 days after filing of the judgment . . . .

Appellant maintains that Appellee's delay here violates both the letter and intent of this Rule.

In *Amerus Life Ins. Co. v. Lait*, 2 So.3d 203, 207 (Fla. 2009), the Supreme Court considered an order granting a motion to tax fees and costs. The motion was filed

[1] Appellant maintains that the Florida Rules of Civil Procedure were never invoked by Appellee, and as a result, the Small Claims Rules must be applied. This argument is of little moment. The same 30-day requirement for service of an attorney's fees motion under Small Claims Rule 7.175 is also contained in Florida Rule of Civil Procedure 1.525. Thus, the fact that the majority's analysis as well as the cited cases reference Rule 1.525 is a distinction without a difference.

eight months after a final judgment was entered. The final judgment contained a finding of entitlement to attorney's fees and costs and a reservation on the amounts. The Court held that the 30-day requirement for filing motions to tax costs under Rule 1.525 does not apply when entitlement has been determined and there is a reservation of jurisdiction to make an award. In reaching this conclusion, the Court said that the purpose of the Rule was to avoid "prejudice and unfair surprise to the losing party." *Lait*, 2 So.3d at 207. Once a determination of entitlement has been made, any prejudice to the losing party caused by uncertainty due to a tardy motion is alleviated since that party is aware that fees and costs must be paid in the future. *Id*.

It is instructive to note Justice Wells' dissent, which was joined by Justice Canady. Justice Wells felt that Rule 1.525 established a bright-line rule for entitlement as well as the award of attorney's fees. A strict reading of the language of the rule supports his conclusion. As a result, he believed that the delay in filing the attorney's fee motion was precisely the type of situation Rule 1.525 was intended to eliminate. *Id*. at 208-09. He noted that the Court has always stated that finality is an important goal in all litigation, and that delays such as the one being considered by the Court defeat this goal and subvert the intent of the rule. *Id*. at 209.

Similarly, in *Ramle International v. The Greens Condominium Association, Inc.*, 32 So.3d 647 (Fla. 3d DCA 2010), the court considered an eleven month delay in filing a motion to determine the amount of fees. Again, relying on *Lait*, the court found that the 30-day time limit of Rule 1.525 does not apply when the court has already determined entitlement to fees and costs and reserved jurisdiction as to the amounts. *Id*. at 647.

While *Lait, Ramle International* and *Chamizo v. Forman*, 933 So. 2d 1240 (Fla. 3d DCA 2006) (a 44-day delay) all found that there is no 30-day time limit to filing a motion to determine the amount of fees when a finding of entitlement has been made in the final judgment, none of these cases addressed a delay for filing such a motion anywhere approaching the 19-year, 4-month delay in this case. As a result of this factual distinction and the inherent prejudice in a delay of this length, I do not believe that *Lait, Ramle International* or *Chamizo* are binding precedent. The concerns expressed by Justice Wells in his dissent in *Lait* are even more compelling here than they were in *Lait*. No good cause was established by the Appellee for this extraordinary delay. As noted by my colleagues in the majority, while there is nothing in the record other than the destruction of the case file to establish prejudice, I would find that a presumption of prejudice should apply with a delay substantially beyond the eleven-month delay in *Ramle International*. Certainly such a presumption should apply to the delay in this case. I agree with both Justice Wells and the Appellant that such unjustified and lengthy delays contravene the intent of both Florida Rule of Civil Procedure 1.525 and Florida Small Claims Rule 7.175 and undermine the goal of finality in litigation.

I dissent.

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493 So.2d 440 (1986)

Howard FOLTA, et Ux, Plaintiffs-Appellants, Cross-Appellees,
v.
Joseph BOLTON, M.D., et al., Defendants-Appellees, and
Tarpon Springs General Hospital, Inc., Etc., Defendant-Appellee, Cross-Appellant.

No. 66,784.

Supreme Court of Florida.

September 4, 1986.

441 *441 Dixon, Dixon, Hurst & Nicklaus, P.A., and Mark Hicks of Daniels and Hicks, P.A., Miami, for plaintiffs-appellants, cross-appellees.

Thomas Saieva of McClain, Saieva, Thompson & Walsh, Tampa, for defendants-appellees.

Jeffrey C. Fulford of Adams, Hill & Fulford, Orlando, for defendant-appellee, cross-appellant.

PER CURIAM.

Pursuant to Florida Rule of Appellate Procedure 9.150, the United Statutes Court of Appeals for the Eleventh Circuit has certified to us two questions concerning attorney's fees in a medical malpractice action. *Folta v. Bolton*, 758 F.2d 520 (11th Cir.1985). We have jurisdiction. Art. V, § 3(b)(6), Fla. Const.

This action arose when Howard Folta brought a medical malpractice action against Tarpon Springs General Hospital and several of its employees including a radiologist named Dr. Berje. Folta claimed that Tarpon Springs was vicariously liable for the negligence of its employees.

Folta brought two unrelated claims against Dr. Berje, one alleging negligence in interpreting an x-ray of his hip and the other alleging the negligent failure to diagnose a fracture of the neck. A directed verdict was entered in favor of Dr. Berje as to the claim concerning the neck injury. The jury found Dr. Berje 100% responsible for the hip injury; accordingly, a judgment against Berje was entered on that claim.

Folta chose to bring five separate, distinct and severable claims against Tarpon Springs. Each claim involved different acts or conduct occurring at different times, by different

persons, allegedly agents or servants of the hospital, resulting in different injuries.[1] Tarpon Springs ultimately prevailed on at least three and possibly four of the claims.
442 Folta prevailed on at least one of the five claims.[2] *442 Section 768.56, Florida Statutes (1983),[3] provides that attorney's fees shall be awarded to the "prevailing party" in a medical malpractice action. The trial court found, and Tarpon Springs argues here, that Folta is not entitled to prevailing party attorney's fees because Folta only prevailed on one of his five asserted claims.

Folta appealed the denial of attorney's fees to the Eleventh Circuit. Tarpon Springs filed a cross-appeal alleging that it should be awarded prevailing party attorney's fees for those claims upon which Folta was unsuccessful. Similarly, Dr. Berje argues that he is entitled to an award of prevailing party attorney's fees for those fees incurred defending the neck injury claim.

The first question certified to this Court is:

> [W]hen a plaintiff in a medical malpractice suit recovers a judgment against a defendant based on but one of five separate and distinct claims brought against that defendant, which of the two parties is considered the "prevailing party" for purposes of awarding attorney's fees pursuant to § 768.56?

758 F.2d at 523.

We hold that in a multicount medical malpractice action, where each claim is separate and distinct and would support an independent action, as opposed to being an alternative theory of liability for the same wrong, the prevailing party on each distinct claim is entitled to an award of attorney's fees for those fees generated in connection with that claim. We reach this conclusion after considering the instant case in light of our decision in *Hendry Tractor Co. v. Fernandez*, 432 So.2d 1315 (Fla. 1983). In *Hendry Tractor,* we held that a plaintiff in a multicount personal injury action who prevailed on one theory of liability, but lost on another, was entitled to recover costs pursuant to section 57.041, Florida Statutes (1979). Folta argues that under the reasoning of *Hendry Tractor* and other authority, he was the "prevailing party" and thus, was entitled to recover all the attorney's fees he incurred for the entire litigation. Although section 57.041 provides for costs to "the party recovering judgment" and section 768.56 provides for "prevailing party" attorney fees, we concede that the same principles should be applied under each provision.

However, the instant case is procedurally distinguishable from *Hendry Tractor.* In *Hendry Tractor,* the plaintiffs brought suit on two theories of liability, negligence and breach of warranty/strict liability, for injuries arising out of a single set of circumstances. Florida's adoption of modern pleading rules permitting alternative pleadings of causes of action arising, or which could arise, out of the same transaction was a significant factor in our conclusion in *Hendry Tractor* that this Court's 1908 interpretation of the then applicable cost statute, section 1736, Florida Statutes (1906), in *Marianna Mfg. Co. v. Boone,* 55 Fla. 289, 45 So. 754 (1908) was outdated. 432 So.2d at 1317. In *Marianna Mfg. Co.,* we concluded that "[w]here the verdict is in effect for the defendant on any one or more of

the counts of a declaration the costs should be taxed as the statute and rules direct." 55 Fla. at 291, 45 So. at 755.

Another factor in our refusal in *Hendry Tractor Co.* to apply the principles enunciated in *Marianna Mfg. Co.* was our recognition of the "interdependence of recovery theories arising in the area of products liability." *Hendry Tractor,* 432 So.2d at 1317. We
443 reasoned, that because the theories *443 of strict liability and negligence "complement" each other, they are best presented together to ensure that all pertinent issues are addressed. We then concluded "to penalize with costs a party recovering net judgment for following such a legitimate procedural avenue would run contrary to fundamental principles of justice." *Id.*

None of the concerns underlying our holding in *Hendry Tractor* are implicated in the instant case. In this case, we are not dealing with alternative theories of liability for a single injury sustained; we are dealing with five separate and distinct claims brought against Dr. Berje. The Eleventh Circuit states that "each of these distinct claims form (sic) the basis of a lawsuit in and of itself." 758 F.2d at 522. We interpret this to mean that each claim is an independent cause of action for which a separate suit could have been maintained.

If separate suits had in fact been filed and tried, the defendants would clearly have been entitled to attorney's fees in those suits in which they prevailed. *See, e.g., Cato v. West Florida Hospital,* 471 So.2d 598 (Fla. 1st DCA 1985). We see no reason why this should not be the case where, as here, instead of filing multiple law suits the plaintiff joins all his claims in one suit, and loses one or more of these independent claims. In such a case, the defendant would be the "prevailing party" under section 768.56 on those claims which are determined in his favor.

Such an approach, unlike the "net winner" approach advocated by Folta, is consistent with the legislative purpose underlying section 768.56 to discourage frivolous medical malpractice actions. *See* Ch. 80-67, Laws of Fla. Under Folta's "net winner" approach, a plaintiff with one meritorious claim for a minor injury would be encouraged to join a number of non-meritorious claims against the same defendant for unrelated injuries, secure in the knowledge that if he prevailed on the meritorious claim, but lost on the other claims, he would collect attorney's fees for the entire litigation.

Our approach is also in accordance with the general equitable principles enunciated in section 768.56, which provides in part:

> When there is more than one party on one or both sides of an action, the court shall allocate its award of attorney's fees among prevailing parties and tax such fees against nonprevailing parties in accordance with the principles of equity.

A case involving multiple parties is sufficiently analogous to a case involving multiple claims to further persuade us to conclude that under section 768.56, where multiple claims, upon which a single medical malpractice action is predicated, are separate and distinct and would support an independent action, each party should recover attorney's

fees for those claims on which he prevails. Accordingly, we conclude that Folta is entitled to an award of attorney's fees for those fees incurred in pursuance of his successful claims; Tarpon Springs and Dr. Berje are entitled to attorney's fees on each claim in which there was a defendant's verdict. Therefore, a remand to the trial court for a hearing to determine the amount of attorney's fees incurred by the prevailing party on each claim would be in order.

The second question certified to us by the United States Court of Appeals for the Eleventh Circuit is:

> [D]oes a trial court have jurisdiction to award attorney's fees pursuant to § 768.56 when the final judgment entered in the case fails to expressly reserve jurisdiction to make such an award?

In *Finkelstein v. North Broward Hospital District,* 484 So.2d 1241 (Fla. 1986), we recently held that a trial court has jurisdiction to award prevailing party attorney's fees for a reasonable period of time despite the fact that the final judgment does not expressly reserve jurisdiction to do so.

Folta filed a motion for attorney's fees approximately two months after entry of final judgment. It appears that in their respective responses in opposition to Folta's motion for
444 attorney's fees, both Tarpon Springs and Dr. Berje raised the issue of *444 their respective entitlement to prevailing party attorney's fees on those claims in which a defendant's verdict was returned. In *White v. New Hampshire Department of Employment Security,* 455 U.S. 445, 102 S.Ct. 1162, 71 L.Ed.2d 325 (1982), relied on by this Court in *Finkelstein,* the United States Supreme Court held that a post-judgment motion for attorney's fees must be made within a reasonable time and that a motion filed four and one-half months after entry of final judgment was filed within a reasonable time. Therefore, we conclude that Folta's motion for attorney's fees, filed approximately two months after entry of final judgment, was filed within a reasonable time. The defendants' request for set-off of awards was likewise timely.

Although not within the questions certified, but argued to us by the parties herein, we further advise the United States Court of Appeals for the Eleventh Circuit that if the cause of action in this case accrued prior to July 1, 1980, the effective date of section 768.56, then any award of attorney's fees is improper. *Florida Patient's Compensation Fund v. Tillman,* 487 So.2d 1032 (Fla. 1986); *Cantor v. Davis,* 489 So.2d 18 (Fla. 1986); *Young v. Altenhaus,* 472 So.2d 1152 (Fla. 1985).

Accordingly, the case is returned to the United States Circuit Court of Appeals for further disposition of this appeal.

It is so ordered.

McDONALD, C.J., and BOYD, OVERTON, EHRLICH and SHAW, JJ., concur.

ADKINS, J., concurs in part and dissents in part with an opinion.

ADKINS, Justice, concurring in part and dissenting in part.

I concur in that portion of the majority opinion which holds that the trial court has jurisdiction to award attorney's fees. I further agree with the majority's finding that Folta is entitled to prevailing party attorney's fees for those fees generated in connection with the claims in which he ultimately prevailed. However, I disagree with the majority's conclusion that Folta, a plaintiff who received an affirmative judgment, must pay "prevailing party" attorney's fees and Tarpon Springs and Dr. Berje, parties against whom an affirmative judgment was rendered, are entitled to collect "prevailing party" attorney's fees.

Case law involving prevailing party attorney's fees fully supports the position I advocate. For example, where both a complaint and a counterclaim are filed and the plaintiff prevails on one claim and the defendant prevails on the other claim, the "prevailing party" is deemed to be the net winner when the dust settles. *Kirou v. Oceanside Plaza Condominium Association, Inc.*, 425 So.2d 650 (Fla. 3d DCA 1983); *Kendall East Estates, Inc. v. Banks*, 386 So.2d 1245 (Fla. 3d DCA 1980).

In *Kirou,* a condominium association sought to cancel a "pet agreement" and remove dogs from the premises. The owner, Kirou, filed a counterclaim for a declaration that the rules and regulations invoked by the association did not apply to him. The trial court ruled against Kirou on the counterclaim but ruled that the association could not evict the dogs. Both sides sought attorney's fees pursuant to the condominium declaration that provided for prevailing party attorney's fees. The trial court awarded both parties attorney's fees because each won part of the case. The Third District upheld the fee award to Kirou and reversed the fee award to the association. This holding was based on the fact that when the dust settled, the dogs were allowed to remain on the premises. The court noted "Kirou plainly won, and the association plainly lost the war." 425 So.2d at 651. Similarly, in this instance, Folta plainly won and Tarpon Springs and Dr. Berje plainly lost the war.

In *Banks* the vendor sued the purchasers for an underpayment on the agreed purchase price of a house. The purchasers filed a counterclaim against the vendor alleging breach of a supplementary agreement. Both parties were successful in their claims. A final
445 judgment was entered in favor of the vendor for the difference *445 in the amount of the awards. Both sides sought to obtain prevailing party attorney's fees as provided for in the contract. The trial court ordered that both parties pay their own attorney's fees. Both sides appealed. The Third District affirmed the award of attorney's fees to the vendor and reversed the order awarding attorney's fees to the purchasers. Thus, *Banks* stands for the proposition that a party who is successful in reducing the amount of damages sought by a plaintiff is not entitled to prevailing party attorney's fees. Tarpon Springs and Dr. Berje should not be considered prevailing parties merely because they successfully defended certain allegations and thereby reduced the amount of damages sought by Folta.

The majority of this Court ignores the practical problems facing a patient who is treated by many members of a hospital staff and suffers an injury caused by the negligence of one or more of the staff members. Medical malpractice, as well as the issue of who is responsible for a particular portion of the malpractice, is extremely difficult to prove,

particularly where many professionals are involved in the treatment of the patient. As a result, the injured party is often forced to sue all of the parties involved in the treatment. A patient should be allowed to join all of the potentially negligent parties without fear of having to pay attorney's fees.

The facts of this case illustrate the problems involved in proving which party actually caused which injury. Mr. Folta was taken to Tarpon Springs General Hospital following a motorcycle accident. Mr. Folta was examined in the emergency room by Dr. Rutledge, who assigned the case to Dr. Bolton. Dr. Rutledge ordered a hip x-ray. No lateral view x-ray was taken. Dr. Berje received the x-rays and diagnosed a fracture of the hip, which required surgery. It was ultimately discovered that there was no fracture. During his treatment at the hospital, Folta had a dislocation of the neck which went undiagnosed and untreated. Folta repeated complaints of pain to the physical therapist, Dr. Atkinson, and others. Folta also presented testimony that the nurses were negligent in allowing an ulcer to develop.

Dr. Rutledge was ultimately dismissed from this case pursuant to a stipulation of the parties. Dr. Bolton and Dr. Atkinson were both found to have legally caused Folta's neck injury. The trial court ultimately granted a directed verdict in favor of Dr. Berje as to the neck injury. The jury specifically found that Dr. Berje's negligence was the sole legal cause of Folta's neck injury. The jury did not find the nurses negligent in regard to Folta's ulcer.

The above-mentioned facts outline the great difficulties a hospital patient has in determining which of the many doctors legally caused the various injuries. The prevailing party should be the party that is one dollar ahead at the end of the litigation. Medical malpractice defendants can be protected by limiting the award of fees to those fees generated in pursuance of successful claims. A party who is on the losing side of a medical malpractice case, i.e., Tarpon Springs and Dr. Berje, should not be allowed to recover prevailing party attorney's fees merely because they successfully defended one allegation in a multicount complaint.

[1] The five claims brought against the hospital are as follows:

1) claim against emergency room physician — the plaintiffs attempted to hold the hospital vicariously responsible for the alleged negligence of the emergency room physician even though the claim against him individually had been dismissed prior to trial.

2) claim against physical therapist — the plaintiffs attempted to hold the hospital vicariously liable for the alleged negligence of the physical therapist in failing to inform the attending physicians of Folta's neck complaint.

3) claim against x-ray technologist — the plaintiffs attempted to hold the hospital vicariously liable for the alleged negligence of the x-ray technologist.

4) claim against radiologist — the plaintiffs attempted to hold the hospital vicariously responsible for the medical malpractice and negligence of the radiologist, Albert Berje, M.D., whom the plaintiffs claimed was an agent or employee of the hospital.

5) claim against nurses — the plaintiffs attempted to hold the hospital vicariously responsible for the alleged negligence of its nursing staff in allowing an injury to occur on the heel of Folta's foot while he was hospitalized.

[2] The jury determined that the hospital's physical therapist was 15% negligent in regard to additional damage to

Folta's neck injury.

[3] Section 768.56, Fla. Stat. (1983) provides in part:

Attorney's Fees in Medical Malpractice Actions. —

(1) Except as otherwise provided by law, the court shall award a reasonable attorney's fee to the prevailing party in any civil action which involves a claim for damages by reason of injury, death, or monetary loss on account of alleged malpractice by any medical or osteopathic physician, podiatrist, hospital, or health maintenance organization... .

This section was repealed by Ch. 85-175 § 43, Laws of Fla. Section 768.595, Florida Statutes (1985) which is entitled "Attorney's Fees in Medical Malpractice Actions" makes no provision for prevailing party attorney's fees.

Possible Issues for Rule 1.525 Amendments

1. **Rule creates a trap because motions can delay rendition of the judgment [Motions for Rehearing, New Trial, etc.], BUT those motions do not delay the 30-day deadline for filing a motion for fees. Solutions??:**

    a. **Do nothing – it's a really bright line then, even if it's so bright it blinds people into missing the deadline, thinking a proper, authorized motion has deferred rendition.**
    b. **Fix it, so that the M/Fees is not due until the judgment becomes final, i.e., the last post-trial motion is decided and the judgment is thereby "rendered" for finality purposes. But How to fix????:**
        i. **Simply say that the "judgment" that triggers the filing of the motion is a "final judgment".**
            1. **This solution is a bit subtle for the average lawyer**
            2. **It doesn't really address then motions for rehearing etc addressed to the other types of final orders, dismissals etc that fall within this rule.**
        ii. **Provide a more narrative explanation for the things that will "delay" the start of the 30-day period. [Caution: the more we say, the more room there may be for disagreement].**
        iii. **Other**

2. **The rule as framed [and the solution above] says nothing about the "assessment or award of fees" phase of the process, whereby attorneys produce time records, obtain expert witnesses, conduct discovery, etc. Solutions???:**

    a. **Do nothing. The current rule does not address this and maybe there is no need for us to now. Periods up to 11 months have been Ok'd as not being too long to file for an assessment of fees already ordered.**
    b. **Fix it in some way. [Remember the rule also addresses costs so we need to keep that in mind. In today's world, lawyers seldom file a**

motion to determine entitlement to costs, but there may be some situations where the prevailing party is not clear].

- **c. We could split up costs and fees – same rule, different sections:**
  - **i. Appellate Rule 9.400 treats each differently**
  - **ii. We could have one separate section for the taxation of costs**
  - **iii. It could have the same time deadlines for filing motion as attorney's fees or could be stricter.**
  - **iv. Costs motions invariably have the itemized claims spelled out or attached in some way.**
  - **v. Attorney's fees motions [where entitlement is in play] seldom argue anything except entitlement, leaving all of the time issues, experts, etc. for later; often no separate motion, simply a filing of records or a memorandum with attachments**
  - **vi. We could require motion for costs to be filed**
- **d. other**

3. Does the rule identify all of the types of orders/judgments that can trigger a claim for attorney's fees?

- **a. Final Judgments**
- **b. Partial final Judgments**
- **c. Voluntary dismissals**
- **d. Final order of dismissal/involuntary**

RULE 1.525 SUBCOMMITTEE REPORT

Rules Involved: Rule 1.525

Date of Report: June 5, 2020

Chair: Paul Regensdorf

Members (include areas of practice for each):

1. **Paul Regensdorf, Civil, trial and appellate**
2. **Lance Curry, Civil, trial and appellate**
3. **Elliot Kula, Civil, trial and appellate**
4. **Hinda Klein, Civil, trial and appellate**
5. **Katie Ender, Civil, trial and appellate**
6. **Scott Dimond, Civil, trial**
7. **Vivian Fazio, Civil, trial**
8. **Judge Donald Scaglione, Circuit Judge**
9. **Judge John Bowman, Circuit Judge**
10. **Judge Daryl Trawick, Circuit Judge**

Other participants: Mikalla Davis, The Florida Bar

Meeting dates: The Sub-committee met, by conference call, on March 3, March 18, March 24, and May 8, 2020, as well as through numerous email exchanges among the members

I. Summary of Original Proposal, Report and Action Proposed:

Summary of Original Proposal: (1) The original proposal was to amend Rule 1.525 [motions for entitlement to attorneys' fees] to eliminate the "trap" that existed by virtue of the Rule allowing no exception to the 30-day filing rule, for such things as posttrial motions under Rule 1.530. Those motions toll the finality of the judgment and delay the filing date for a Notice of Appeal, but have <u>no effect</u> on the 30-day filing deadline under Rule 1.525. (2) The proposal was amended to add the consideration of whether to address <u>assessment</u> of attorney's fees, and whether to create a deadline for the filing of such a motion.

Summary of Report: The Subcommittee has written an amended Rule 1.525 that adds (1) clarification for when a motion for entitlement has to be filed if posttrial motions have been filed and (2) a new section that establishes a 1 year deadline to begin the attorneys' fees assessment process.

Action Proposed: The Subcommittee proposes the passage of the attached new Rule 1.525.

II. History/Background:

a. Source of proposal:

The original proposal for an amendment to Rule 1.525 came from CPRC member Paul Regensdorf. He asked the Committee to eliminate the apparent trap that required a fees entitlement motion to be filed even though the judgment was still being reconsidered by the court on posttrial motion. A copy of his original email to the Committee Chair is attached, dated January 20, 2020.

b. Relevant Rules Committee history:

These issues have never been considered by the Committee before this year, <u>other</u> than the original rule consideration which focused on the creation of a deadline for the filing of an entitlement motion. As best as the sub-committee could determine, the specific issues raised now were not previously considered.

The proposal to remove the "trap" was briefly presented to the full Committee at the winter meeting and received general approval or favorable comment.

c. Are similar proposals under consideration by other Rules Committees or Bar Sections?

No.

d. Input sought/materials considered by subcommittee:

The case law that first caused concern was attached to the original email to the Chair. Additional case law has been attached to this report that caused concern about the absence of any deadline for beginning the assessment of fees process. Included is an appellate decision from the 11th Circuit Appellate Division allowing an assessment proceeding to begin over 19 years later.

III. Issues Identified by the Subcommittee:

a. Concerns About Present Rule: The current rule creates a 30-day period following a judgment to seek an entitlement order, without any exceptions, despite the similarity to posttrial motions. The current rule is also silent as to when the assessment process should begin, leading to confusion and needless delay.

b. Concerns About Proposed Changes: At least one member of the subcommittee was concerned that the new 1-year deadline to begin the assessment process might not be necessary.

IV. Subcommittee Recommendation

The subcommittee unanimously recommends by a vote of 10-0 the adoption of new Rule 1.525(a), which creates an improved 30-day time limit within which to file a motion for entitlement to attorneys' fees. This time limit is tolled pending the resolution of posttrial motions that also toll the need to file a notice of appeal.

The subcommittee recommends by a vote of 9-1 the adoption of new Rule 1.525(b) which establishes a one-year deadline after the filing of a judgment within which to file a motion for assessment of attorney's fees

V. Majority Position:

a. Summary.

Subdivision (a) creates an improved 30-day deadline to file a motion for entitlement and creates an exception, tolling the time to file a motion for entitlement until posttrial motions are decided.

Subdivision (b) creates a new 1-year deadline after entitlement is determined to begin the assessment process, unless an appeal is taken, in which case the 1 year runs from the final disposition of the appeal.

b. Rationale.

These changes provide more reliable certainty in the filing of necessary motions that will lead to the assessment of attorneys' fees. Each deadline or time limit is now keyed to posttrial activity that otherwise delays final resolution of the issues in the judgment or order.

c. Key Points.

Subdivision (a) now has a 30-day deadline to file an entitlement motion, but delays its running if posttrial motions challenging the judgment are filed. It starts again once the last posttrial motion is decided.

Subdivision (b) adds a one year outside deadline to file a motion to begin the assessment process, but delays its starting if an appeal of the judgment or final order is taken.

d. Anticipated Impact of Change:

i. **Does the proposed change necessitate a change in other Rules?**

No.

ii. What is the anticipated impact of the change on practitioners?

Each will add certainty, and reasonableness to the timing of filing attorneys' fees documents

VI. Minority Position(s):

a. Summary

Subdivision (b) is unnecessary because there are not many occasions when a party delays seeking an assessment of fees.

b. Rationale.

The minority view is that the change is not a frequent occurrence.

c. Key Points.

The objection is not to the form or substance of the proposed language in (b), but rather whether we need a rule setting such a limit.

d. Anticipated Impact of Change:

i. Does the proposed change necessitate a change in other Rules?

No.

ii. What is the anticipated impact of the change on practitioners?

The minority feels that practitioners do not need a deadline since they will promptly seek their fees.

iii. Does the proposed change secure the just, speedy, and inexpensive determination of every action?

The minority feels that justice in this area is speedy enough without establishing a deadline.

VII. Time Considerations for Adopting Proposal:

There are no extraordinary time pressures, but the rule is a trap for the unwary trial practitioner, and if not corrected promptly, more 30-day deadlines will be needlessly missed.

Davis, Mikalla

From: Paul Regensdorf <paul.regensdorf@gmail.com>
Sent: Monday, January 20, 2020 2:18 PM
To: Bronson, Ardith
Cc: Davis, Mikalla; Kula, Elliot; Berman, Ceci; Stearns, Jason P
Subject: Rule 1.525, Motions for attorney's fees -- rehearings
Attachments: Clampitt v. Britts, 897 So. 2d 557 - Fla_ Dist. Court of Appeals, 2nd Dist. 2005 - Google Scholar.html; HOVERCRAFT SOUTH FLORIDA v. Reynolds, 211 So. 3d 1073 - Fla_ Dist. Court of Appeals, 5th Dist. 2017 - Google Scholar.html; Jackson v. Anthony, 39 So. 3d 1285 - Fla_ Dist. Court of Appeals, 1st Dist. 2010 - Google Scholar.html; MADILL v. RIVERCREST COMMUNITY ASSN., 273 So. 3d 1157 - Fla_ Dist. Court of Appeals, 2nd Dist. 2019 - Google Scholar.html; Manimal Land Co. v. RANDALL E. STOFFT, 889 So. 2d 974 - Fla_ Dist. Court of Appeals, 4th Dist. 2004 - Goog.html

Ardith,

I hate it when I think I know something, and it turns out that I don't!! There's plenty I **don't** know and I realize that, but there's only a very little that I **think** I know. So, when I'm wrong about one of those things, I get torqued.

And, I am torqued about Rule 1.525. And I'm not just torqued because I was in the dark; I'm torqued because I can think of NO GOOD REASON for this point of law.

Here's my question, and a request for a rule review/amendment:

Does an authorized motion for rehearing addressed to a judgment toll – or delay – the time for filing a motion for attorney's fees under Rule 1.525??

Rule 1.525 provides as follows:

> 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 Florida Rules of Civil Procedure January 2, 2020 127 judgment of dismissal, or the service of a notice of voluntary dismissal, which judgment or notice concludes the action as to that party

I'm teaching a few attorney's fees seminars around Florida and my materials touch on this Rule. In reviewing the materials, however, it seems that there is a consistent body of law in Florida that says a valid, authorized motion for rehearing, timely filed within 15 days of the filing of a judgment, tolls the time for an appeal, but **does not toll the time for the required motion for attorney's fees**. See attached cases.

This construction certainly creates a "bright line", but I don't see the purpose of the line, particularly when the judgment is not yet "final" if there is a pending valid motion for rehearing. Until the judgment is final and all tolling motions resolved, we really don't know who the prevailing party is and on what issues.

So, I would ask that you consider appointing a committee to consider:

1. **What was the original purpose of Rule 1.525?**

2. **Is there a reason why it was written to exclude the tolling effect of motions for rehearing?**

3. **Can the original purpose of the rule be maintained IF the word "final" was inserted before the word "judgment", so that the motion for fees is not due until the court resolves all authorized post-judgment motions and files, or enters, a "final judgment"?**

4. **If a change is needed, and if the suggestion in #3 doesn't work, can some other amendment cure this problem.**

If you have any questions about this request, give me a call.

Thank you.

Paul

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Cell: 954-562-9598
Email: paul.regensdorf@gmail.com
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3494 SW Forest Hills Court
Palm City, FL 34990

VIII. Attach Text of the Proposed Amendments as Exhibits to this Report. Remember:

See Attached.

Sub-division (a) passed unanimously – 10-0

Sub-division (b) passed by a vote of 9-1.

The entire rule, 1.525(a) and (b) passed by a vote of 9-1

Davis, Mikalla

From: Paul Regensdorf <paul.regensdorf@gmail.com>
Sent: Monday, January 20, 2020 2:18 PM
To: Bronson, Ardith
Cc: Davis, Mikalla; Kula, Elliot; Berman, Ceci; Stearns, Jason P
Subject: Rule 1.525, Motions for attorney's fees -- rehearings
Attachments: Clampitt v. Britts, 897 So. 2d 557 - Fla_ Dist. Court of Appeals, 2nd Dist. 2005 - Google Scholar.html; HOVERCRAFT SOUTH FLORIDA v. Reynolds, 211 So. 3d 1073 - Fla_ Dist. Court of Appeals, 5th Dist. 2017 - Google Scholar.html; Jackson v. Anthony, 39 So. 3d 1285 - Fla_ Dist. Court of Appeals, 1st Dist. 2010 - Google Scholar.html; MADILL v. RIVERCREST COMMUNITY ASSN., 273 So. 3d 1157 - Fla_ Dist. Court of Appeals, 2nd Dist. 2019 - Google Scholar.html; Manimal Land Co. v. RANDALL E. STOFFT, 889 So. 2d 974 - Fla_ Dist. Court of Appeals, 4th Dist. 2004 - Goog.html

Ardith,

I hate it when I think I know something, and it turns out that I don't!! There's plenty I **don't** know and I realize that, but there's only a very little that I **think** I know. So, when I'm wrong about one of those things, I get torqued.

And, I am torqued about Rule 1.525. And I'm not just torqued because I was in the dark; I'm torqued because I can think of NO GOOD REASON for this point of law.

Here's my question, and a request for a rule review/amendment:

Does an authorized motion for rehearing addressed to a judgment toll – or delay – the time for filing a motion for attorney's fees under Rule 1.525??

Rule 1.525 provides as follows:

> 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 Florida Rules of Civil Procedure January 2, 2020 127 judgment of dismissal, or the service of a notice of voluntary dismissal, which judgment or notice concludes the action as to that party

I'm teaching a few attorney's fees seminars around Florida and my materials touch on this Rule. In reviewing the materials, however, it seems that there is a consistent body of law in Florida that says a valid, authorized motion for rehearing, timely filed within 15 days of the filing of a judgment, tolls the time for an appeal, but **does not toll the time for the required motion for attorney's fees**. See attached cases.

This construction certainly creates a "bright line", but I don't see the purpose of the line, particularly when the judgment is not yet "final" if there is a pending valid motion for rehearing. Until the judgment is final and all tolling motions resolved, we really don't know who the prevailing party is and on what issues.

So, I would ask that you consider appointing a committee to consider:

1. **What was the original purpose of Rule 1.525?**

2. **Is there a reason why it was written to exclude the tolling effect of motions for rehearing?**

3. **Can the original purpose of the rule be maintained IF the word "final" was inserted before the word "judgment", so that the motion for fees is not due until the court resolves all authorized post-judgment motions and files, or enters, a "final judgment"?**

4. **If a change is needed, and if the suggestion in #3 doesn't work, can some other amendment cure this problem.**

If you have any questions about this request, give me a call.

Thank you.

Paul

Paul R. Regensdorf
Attorney at Law, PLLC
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Davis, Mikalla

From: Paul Regensdorf <paul.regensdorf@gmail.com>
Sent: Monday, January 20, 2020 2:47 PM
To: Bronson, Ardith
Cc: Davis, Mikalla; Kula, Elliot; Berman, Ceci; Stearns, Jason P; Orr, Michael F
Subject: Rule 1.530 -- Possible inconsistent terminology

Ardith, and all of the other ships at sea,

When reading materials for the attached rule amendment request dealing with 1.525, I had to reread Rule 1.530 and noted a difference in terminology for which, again, I could think of any good reason for.

This could fall within the large universe of things that I do not know [see email attached], or it could just be sloppy draftsmanship over the years. I dunno.

My question deals with the act that triggers the time for starting the time for filing authorized motions. It seems to me that we use "different" language in subsections (b), (d), and (g), and my puny little brain can see no reason for the difference.

Rule 1.530(b) says that the M/Reh has to be served "not later than 15 days after… **the date of filing of the judgment…."**;

Rule 1.530(d) says that a judge can act "not later than 15 days after **entry of judgment**, or within the time of a ruling on a timely motion for rehearing or a new trial"

Rule 1.530(g) says that a M/Alter or Amend a Judgment has to be served "not later that 15 days **after entry of the judgment**".

No issue consumed more of our time on Appellate rules over the last 40 years than deciding what rendition meant, what effects it had, and how to write a rule to explain all of that. MAYBE this Committee intended a different meaning for the phrases "date of filing the judgment" and "entry of the judgment", but one of you will have to explain that difference to me. And why it should apply to motions for rehearing and new trial one way and to motions to alter or amend another.

So……I would request a new subcommittee to consider this and [probably] suggest only a small tweak. OR a much large and more patient subcommittee to explain the difference to me.

But, on a serious note, while I haven't looked into it, we need to make certain that, whatever language we end up with here, it is consistent with Rule the definition in Rule 9.020….which I think prefers the "filing" terminology to "entered" which is a weasely-worded way to define it.

Thanks,

Paul

Paul R. Regensdorf
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Sent: Monday, January 20, 2020 2:18 PM
To: Ardith Bronson (ardith.bronson@dlapiper.com) <ardith.bronson@dlapiper.com>
Cc: Mikalla Davis (midavis@floridabar.org) <midavis@floridabar.org>; Elliot Kula (elliot@kulalegal.com) <elliot@kulalegal.com>; Ceci Berman (cberman@BHAppeals.com) <cberman@BHAppeals.com>; Jason Stearns (jstearns@freeborn.com) <jstearns@freeborn.com>
Subject: Rule 1.525, Motions for attorney's fees -- rehearings

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