Supreme Court of Florida

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August 9, 2023

The Florida Bar News Editor
The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300

In Re: Amendments to Florida Rules of Civil Procedure,
Case No. SC2023-0962

Dear Editor:

I have provided you with a copy of the proposed Rules in the above case. Please publish said Rules in the September 1, 2023, Bar News. Please publish a statement that the Court has placed the proposed Rules on the Internet at location: **https://acis.flcourts.gov/portal/search/case**.

Any comments should be filed with the Florida Supreme Court on or before October 2, 2023. If filed by an attorney in good standing with The Florida Bar, the comment must be electronically filed via the Florida Courts E-Filing Portal (Portal) in accordance with *In re Electronic Filing in the Supreme Court of Florida via the Florida Courts E-Filing Portal*, Fla. Admin. Order No. AOSC13-7 (Feb. 18, 2013). If filed by a nonlawyer or a lawyer not licensed to

practice in Florida, the comment may be, but is not required to be, filed via the Portal. Any person unable to submit a comment electronically must mail or hand-deliver the originally signed comment to the Florida Supreme Court, Office of the Clerk, 500 South Duval Street, Tallahassee, Florida 32399-1927; no additional copies are required or will be accepted.

Thank you for your cooperation in this matter.

Most cordially,

John A. Tomasino

JAT/so
Enclosure
cc: Hon. Charles T. Canady, Supreme Court Justice Liaison
Diane West, Director of Central Staff, Florida Supreme Court
Chief Judges of the District Courts of Appeal
Clerks of the District Courts of Appeal
Chief Judges of the Judicial Circuits
Clerks of the Judicial Circuits
F. Scott Westheimer, President, The Florida Bar
Roland Sanchez-Medina, Jr., President-elect, The Florida Bar
Joshua E. Doyle, Executive Director, The Florida Bar
Heather Savage Telfer, Bar Liaison, The Florida Bar
Judson Lee Cohen, Chair, Civil Procedure Rules Committee

The Florida Bar's Civil Procedure Rules Committee (Committee), in Case No. SC2023-0962, has submitted to the Florida Supreme Court a report proposing amendments to the Florida Rules of Civil Procedure in response to the Court's request for the Committee to refine and study aspects of the proposals submitted by the Workgroup on Improved Resolution of Civil Cases (Workgroup). The Committee has provided two alternative tracks of proposed amendments to implement case management requirements into the civil rules. Track A includes amendments that are based on the Court's existing case management requirements that went into effect during the COVID-19 pandemic. Track B is a refinement of the Workgroup's proposal for differentiated case management, including the requirement that parties in general cases meet and confer and then submit a proposed case management order. Both tracks include initial discovery and supplementation of discovery requirements as well as the elimination of the "at issue" requirement of rule 1.440 (Setting Action for Trial) and the narrowing of grounds for continuances.

The Court invites all interested persons to comment on the proposals. In addition to any other comments that interested persons wish to offer, the Court invites interested persons to state a preference for either Track A or Track B. Both tracks are reproduced in full below and online at https://www.floridasupremecourt.org/Case-Information/Rules-Cases-Proposed-Amendments. All comments must be filed with the Court on or before October 2, 2023, with a certificate of service verifying that a copy has been served on the Committee Chair, Judson Lee Cohen, 100 Biscayne Boulevard, Suite 2802, Miami, FL 33132, jcohen@weinsteincohen.com, and on the Bar Staff Liaison to the Committee, Heather Telfer, 651 E. Jefferson Street, Tallahassee, Florida 32399, htelfer@floridabar.org, as well as a separate request for oral argument if the person filing the comment wishes to participate in oral argument, which may be scheduled in this case. The Committee Chair has until October 23, 2023, to file a response to any comments filed with the Court. If filed by an attorney in good standing with The Florida Bar, the comment must be electronically filed via the Florida Courts E-Filing Portal (Portal). If filed by a nonlawyer or a lawyer not licensed to practice in Florida,

the comment may be, but is not required to be, filed via the Portal. Any person unable to submit a comment electronically must mail or hand-deliver the originally signed comment to the Florida Supreme Court, Office of the Clerk, 500 South Duval Street, Tallahassee, Florida 32399-1927.

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO FLORIDA RULES OF CIVIL PROCEDURE, CASE NO. SC2023-0962

Track A (compared against current rules)

RULE 1.200. CASE MANAGEMENT; PRETRIAL PROCEDURE

(a) ~~Case Management Conference.~~ ~~At any time after responsive pleadings or motions are due, the court may order, or a party by serving a notice may convene, a case management conference. The matter to be considered must be specified in the order or notice setting the conference. At such a conference the court may:~~

~~(1) schedule or reschedule the service of motions, pleadings, and other documents;~~

~~(2) set or reset the time of trials, subject to rule 1.440(c);~~

~~(3) coordinate the progress of the action if the complex litigation factors contained in rule 1.201(a)(2)(A)–(a)(2)(H) are present;~~

~~(4) limit, schedule, order, or expedite discovery;~~

~~(5) consider the possibility of obtaining admissions of fact and voluntary exchange of documents and electronically stored information, and stipulations regarding authenticity of documents and electronically stored information;~~

~~(6) consider the need for advance rulings from the court on the admissibility of documents and electronically stored information;~~

~~(7) discuss as to electronically stored information, the possibility of agreements from the parties regarding the extent to which such evidence should be preserved, the form in which such evidence should be produced, and whether discovery of such information should be conducted in phases or limited to particular individuals, time periods, or sources;~~

~~(8) schedule disclosure of expert witnesses and the discovery of facts known and opinions held by such experts;~~

~~(9) schedule or hear motions in limine;~~

~~(10) pursue the possibilities of settlement;~~

~~(11) require filing of preliminary stipulations if issues can be narrowed;~~

~~(12) consider referring issues to a magistrate for findings of fact; and~~

~~(13) schedule other conferences or determine other matters that may aid in the disposition of the action.~~**Applicability; Exemptions.** The requirements of this rule apply to all civil actions except:

(1) actions required to proceed under section 51.011, Florida Statutes;

(2) actions proceeding under section 45.075, Florida Statutes;

(3) actions subject to the Florida Small Claims Rules, unless the court, under rule 7.020(c), has ordered the action to proceed under one or more of the Florida Rules of Civil Procedure and the deadline for the trial date specified in rule 7.090(d) no longer applies;

(4) an action or proceeding initiated under chapters 731–736, 738, and 744, Florida Statutes;

(5) an action for review of an administrative proceeding;

(6) eminent domain actions under article X, section 6 of the Florida Constitution or chapter 73, Florida Statutes. Eminent domain actions proceeding under chapter 74, Florida Statutes, are excluded until 20 days after the order granting quick take;

(7) a forfeiture action in rem arising from a state statute;

(8) a petition for habeas corpus or any other proceeding to challenge a criminal conviction or sentence;

(9) an action brought without an attorney by a person in the custody of the United States, a state, or a state subdivision;

(10) an action to enforce or quash an administrative summons or subpoena;

(11) a proceeding ancillary to a proceeding in another court;

(12) an action to enforce an arbitration award;

(13) an action involving an extraordinary writ or remedy under rule 1.630;

(14) actions to confirm or enforce foreign judgments;

(15) all proceedings under chapter 56, Florida Statutes;

(16) a civil action pending in a special division of the court established by administrative order issued by the chief judge of the circuit or local rule (*e.g.*, a complex business division or a complex civil division) that enters case management orders;

(17) all proceedings under chapter 415, Florida Statutes, and sections 393.12 and 825.1035, Florida Statutes; and

(18) a claim requiring expedited or priority resolution under an applicable statute or rule.

(b) ~~Pretrial Conference.~~ ~~After the action is at issue the court itself may or shall on the timely motion of any party require the parties to appear for a conference to consider and determine:~~

~~(1) the simplification of the issues;~~

~~(2) the necessity or desirability of amendments to the pleadings;~~

~~(3) the possibility of obtaining admissions of fact and of documents that will avoid unnecessary proof;~~

~~(4) the limitation of the number of expert witnesses;~~

~~(5) the potential use of juror notebooks; and~~

~~(6) any matters permitted under subdivision (a) of this rule.~~ **Case Track Assignment.** Not later than 120 days after an action commences as provided in rule 1.050, the court must assign each civil case to 1 of 3 case management tracks either by an initial case management order or an administrative order on case management issued by the chief judge of the circuit: streamlined, general, or complex. Assignment does not reflect on the financial value of the case but rather the amount of judicial attention required for resolution.

(1) "*Complex*" cases are actions designated by court order as complex under rule 1.201(a). Complex cases must proceed as provided in rule 1.201.

(2) "*Streamlined*" cases are actions that reflect some mutual knowledge about the underlying facts, have limited needs for discovery, well-established legal issues related to liability and damages, few anticipated dispositive pretrial motions, minimal documentary evidence, and a trial length of less than 2 days.

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

(c) ~~Notice.~~ ~~Reasonable notice must be given for a case management conference, and 20 days' notice must be given for a pretrial conference. On failure of a party to attend a conference, the court may dismiss the action, strike the pleadings, limit proof or witnesses, or take any other appropriate action. Any documents that the court requires for any conference must be specified in the order. Orders setting pretrial conferences must be uniform throughout the territorial jurisdiction of the court.~~**Case Management Order.**

(1) *Complex Cases.* Case management orders in complex cases must issue as provided in rule 1.201.

(2) *Streamlined and General Cases.* In streamlined and general cases, the court must issue a case management order that specifies the projected trial period based on the case track assignment or the actual trial period, consistent with administrative orders entered by the chief judge of the circuit. The order must also set deadlines that are differentiated based on whether the case is streamlined or general and must be consistent with the time standards specified in Florida Rule of General Practice and Judicial Administration 2.250(a)(1)(B) for the completion of civil cases. The order must specify no less than the following deadlines:

(A) service of complaints;

(B) service under extensions;

(C) adding new parties;

(D) completion of fact and expert discovery;

(E) resolution of all objections to pleadings;

(F) resolution of all pretrial motions; and

(G) completion of mediation.

(3) *Strict Enforcement of Deadlines.* The case management order must indicate that the deadlines established in the order will be strictly enforced by the court.

(4) *Timing of Issuance.* The court must issue the case management order no later than 120 days after commencement of the action as provided in rule 1.050 or 30 days after service of the complaint on the last of all named defendants, whichever date comes first. No case management conference is required to be set by the court before issuance.

(5) *Changes to Track Assignment or Deadlines.* Parties may by motion seek to change the track assignment or amend the deadlines set forth in the case management order. Parties may also request a case management conference as set forth in subdivision (e), but must comply with the case management order in place.

(6) *Notices of Unavailability.* Notices of unavailability have no effect on the deadlines set by the case management order. If a party is unable to comply with a deadline in a case management order, the party must take action consistent with subdivision (c)(5).

(7) *Inability to Meet Case Management Deadlines.* If any party is unable to meet the deadlines set forth in the case management order for any reason, including due to the unavailability of hearing time, the affected party may promptly move for a case management conference and alert the court. The motion must identify the issues to be addressed in the case management conference.

(d) ~~Pretrial Order.~~ ~~The court must make an order reciting the action taken at a conference and any stipulations made. The order controls the subsequent course of the action unless modified to prevent injustice.~~**Forms.** Except for case management orders issued in cases governed by rule 1.201, the forms for case management orders will be set by the chief judge of the circuit. The form orders must comply with the requirements of this rule.

(e) Case Management Conferences.

(1) *Scheduling.* The court may set case management conferences on its own notice or on motion of a party. Case management conferences may be scheduled on an ongoing periodic basis, or as needed with reasonable notice before the conference.

(2) *Preparation Required.* Attorneys and self-represented litigants who appear at a case management conference must be prepared on the pending matters in the case, be prepared to make decisions about future progress and conduct of the case, and have authority to make representations to the court and enter into binding agreements concerning motions, issues, and scheduling. If a party is represented by more than 1 attorney, the attorney(s) present at a case management conference must be prepared with all attorneys' availability for future events.

(3) *Issues That May Be Addressed.* Issues that may be addressed at a case management conference include, but are not limited to:

(A) determining what additional disclosures, discovery, and related activities will be undertaken and establishing a schedule for those activities, including whether and when any examinations will take place;

(B) determining the need for amendment of pleadings or addition of parties;

(C) determining whether the court should enter orders addressing 1 or more of the following:

(i) amending any dates or deadlines, contingent on parties establishing a good-faith effort to comply or a significant change of circumstances;

(ii) setting forth any requirements or limits for the disclosure or discovery of electronically stored information, including the form or forms in which the information should be produced and, if appropriate, the sharing or shifting of costs incurred by the parties in producing the information;

(iii) setting forth any measures the parties must take to preserve discoverable documents or electronically stored information;

(iv) adopting any agreements the parties reach for asserting claims of privilege or of protection for work-product materials after production;

(v) determining whether the parties should be required to provide signed reports from retained or specially employed experts;

(vi) determining the number of expert witnesses or designating expert witnesses;

(vii) resolving any discovery disputes, including addressing ongoing supplementation of discovery responses;

(viii) assisting in identifying those issues of fact that are still contested;

(ix) addressing the status and timing of dispositive motions;

(x) addressing the status and timing of motions filed under section 90.702, Florida Statutes, or related law;

(xi) obtaining stipulations for the foundation or admissibility of evidence;

(xii) determining the desirability of special procedures for managing the action;

(xiii) determining whether any time limits or procedures set forth in these rules or local rules should be modified or suspended;

(xiv) determining a date for filing the joint pretrial statement;

(xv) setting a trial period if one was not set or reviewing the anticipated trial period and confirming the anticipated number of days needed for trial;

(xvi) discussing any time limits on trial proceedings, juror notebooks, brief pre-voir dire opening statements, and preliminary jury instructions and the effective management of documents and exhibits; and

(xvii) discussing other matters and entering other orders that the court deems appropriate.

(4) *Revisiting Deadlines.* At any conference under this rule, the court may revisit any of the deadlines previously set where the parties have demonstrated a good-faith attempt to comply with the deadlines or have demonstrated a significant change of circumstances, such as the addition of new parties.

(5) *Other Hearings Convertible.* Any scheduled hearing may be converted to a sua sponte case management conference by agreement of the parties at the time of the hearing.

(6) *Proposed Orders.* At the conclusion of the case management conference, unless the court is drafting its own order, the court must set a deadline for submitting proposed orders arising out of the case management conference. A proposed order must be submitted by that deadline unless an extension is requested. If the parties do not agree to the contents of a proposed order, competing proposed orders must be submitted to the court. The parties must notify the court of the basis of any objections at the time the competing orders are submitted.

(7) *Failure to Appear.* If none of the parties appear at a case management conference, the court may conclude that the case has been resolved and may issue an order to show cause why the case should not be dismissed without prejudice.

(f) Pretrial Conference. After the action has been set for an actual trial date and the deadlines in the case management order have expired, the court itself may, or must on the timely motion of

any party, require the parties to appear for a conference to consider and determine:

(1) a statement of the issues to be tried;

(2) the possibility of obtaining evidentiary and other stipulations that will avoid unnecessary proof;

(3) the witnesses who are expected to testify, evidence expected to be proffered, and any associated logistical or scheduling issues;

(4) the use of technology and other means to facilitate the presentation of evidence and demonstrative aids at trial;

(5) the order of proof at trial, time to complete the trial, and reasonable time estimates for voir dire, opening statements, closing arguments, and any other part of the trial;

(6) the numbers of prospective jurors required for a venire, alternate jurors, and peremptory challenges for each party;

(7) finalize jury instructions and verdict forms; and

(8) any matters permitted under subdivision (e)(3).

(g) If Trial Is Not Reached During Trial Period. If a trial is not reached during the trial period set by court order, the court should enter an order setting a new trial period that is as soon as practicable from the date of the order. The order resetting the trial period must reflect what further activity will or will not be permitted.

Committee Notes

1971 Amendment - 2012 Amendment. [No Change]

202__ Amendment. Rule 1.200 as amended is intended to implement the case management procedures initially established by the Court during the Coronavirus Disease 2019 pandemic. The rule is not intended to preclude the possibility of administrative orders

issued by the chief judge of the circuit that refine and supplement the procedures delineated in the rule, particularly circuit or county-wide rollover practices for situations where a trial is not reached during the trial period scheduled by the case management order.

Court Commentary

[No Change]

RULE 1.201. COMPLEX LITIGATION

(a) Complex Litigation Defined. At any time after all defendants have been served, and an appearance has been entered in response to the complaint by each party or a default entered, any party, or the court on its own motion, may move to declare an action complex. However, any party may move to designate an action complex before all defendants have been served subject to a showing to the court why service has not been made on all defendants. The court ~~shall~~will convene a hearing to determine whether the action requires the use of complex litigation procedures and enter an order within 10 days of the conclusion of the hearing.

(1) A "complex action" is one that is likely to involve complicated legal or case management issues and that may require extensive judicial management to expedite the action, keep costs reasonable, or promote judicial efficiency.

(2) In deciding whether an action is complex, the court must consider whether the action is likely to involve:

(A) numerous pretrial motions raising difficult or novel legal issues or legal issues that are inextricably intertwined that will be time-consuming to resolve;

(B) management of a large number of separately represented parties;

(C) coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court;

(D) pretrial management of a large number of witnesses, or a substantial amount of documentary evidence;

(E) substantial time required to complete the trial;

(F) management at trial of a large number of experts, witnesses, attorneys, or exhibits;

(G) substantial post-judgment judicial supervision; and

(H) any other analytical factors identified by the court or a party that tend to complicate comparable actions and which are likely to arise in the context of the instant action.

(3) If all of the parties, pro se or through counsel, sign and file with the clerk of the court a written stipulation to the fact that an action is complex and identifying the factors in (a)(2)(A) through (a)(2)(H) above that apply, the court ~~shall~~will enter an order designating the action as complex without a hearing.

(b) Initial Case Management Report and Conference. The court ~~shall~~must hold an initial case management conference within 60 days from the date of the order declaring the action complex.

(1) At least 20 days prior to the date of the initial case management conference, attorneys for the parties as well as any parties appearing pro se ~~shall~~must confer and prepare a joint statement, which ~~shall~~must be filed with the clerk of the court no later than 14 days before the conference, outlining a discovery plan and stating:

(A) a brief factual statement of the action, which includes the claims and defenses;

(B) a brief statement on the theory of damages by any party seeking affirmative relief;

(C) the likelihood of settlement;

(D) the likelihood of appearance in the action of additional parties and identification of any nonparties to whom any of the parties will seek to allocate fault;

(E) the proposed limits on the time:

(i) to join other parties and to amend the pleadings;

(ii) to file and hear motions;

(iii) to identify any nonparties whose identity is known, or otherwise describe as specifically as practicable any nonparties whose identity is not known;

(iv) to disclose expert witnesses; and

(v) to complete discovery;

(F) the names of the attorneys responsible for handling the action;

(G) the necessity for a protective order to facilitate discovery;

(H) proposals for the formulation and simplification of issues, including the elimination of frivolous claims or defenses, and the number and timing of motions for summary judgment or partial summary judgment;

(I) the possibility of obtaining admissions of fact and voluntary exchange of documents and electronically stored information, stipulations regarding authenticity of documents, electronically stored information, and the need for advance rulings from the court on admissibility of evidence;

(J) the possibility of obtaining agreements among the parties regarding the extent to which such electronically stored information should be preserved, the form in which such information should be produced, and whether discovery of such

information should be conducted in phases or limited to particular individuals, time periods, or sources;

(K) suggestions on the advisability and timing of referring matters to a magistrate, master, other neutral, or mediation;

(L) a preliminary estimate of the time required for trial;

(M) requested date or dates for conferences before trial, a final pretrial conference, and trial;

(N) a description of pertinent documents and a list of fact witnesses the parties believe to be relevant;

(*O*) number of experts and fields of expertise; and

(P) any other information that might be helpful to the court in setting further conferences and the trial date.

(2) Lead trial counsel and a client representative ~~shall~~must attend the initial case management conference.

(3) ~~Notwithstanding rule 1.440, a~~At the initial case management conference, the court will set the trial date or dates no sooner than 6 months and no later than 24 months from the date of the conference unless good cause is shown for an earlier or later setting. The trial date or dates ~~shall~~must be on a docket having sufficient time within which to try the action and, when feasible, for a date or dates certain. The trial date ~~shall~~must be set after consultation with counsel and in the presence of all clients or authorized client representatives. The court ~~shall~~must, no later than 2 months ~~prior to~~before the date scheduled for jury selection, arrange for a sufficient number of available jurors. Continuance of the trial of a complex action should rarely be granted and then only ~~up~~on good cause shown.

(c) The Case Management Order. The case management order ~~shall~~must address each matter set forth under rule

1.200(~~a~~c)(2) and set the action for a pretrial conference and trial. The case management order also ~~shall~~must specify the following:

(1) Dates by which all parties ~~shall~~must name their expert witnesses and provide the expert information required by rule 1.280(~~b~~c)(5). If a party has named an expert witness in a field in which any other parties have not identified experts, the other parties may name experts in that field within 30 days thereafter. No additional experts may be named unless good cause is shown.

(2) Not more than 10 days after the date set for naming experts, the parties ~~shall~~must meet and schedule dates for deposition of experts and all other witnesses not yet deposed. At the time of the meeting each party is responsible for having secured three confirmed dates for its expert witnesses. In the event the parties cannot agree on a discovery deposition schedule, the court, ~~up~~on motion, ~~shall~~must set the schedule. Any party may file the completed discovery deposition schedule agreed ~~up~~on or entered by the court. Once filed, the deposition dates in the schedule ~~shall~~may not be altered without consent of all parties or ~~up~~on order of the court. Failure to comply with the discovery schedule may result in sanctions in accordance with rule 1.380.

(3) Dates by which all parties are to complete all other discovery.

(4) The court ~~shall~~must schedule periodic case management conferences and hearings on lengthy motions at reasonable intervals based on the particular needs of the action. The attorneys for the parties as well as any parties appearing pro se ~~shall~~must confer no later than 15 days prior to each case management conference or hearing. They ~~shall~~must notify the court at least 10 days prior to any case management conference or hearing if the parties stipulate that a case management conference or hearing time is unnecessary. Failure to timely notify the court that a case management conference or hearing time is unnecessary may result in sanctions.

(5) The case management order may include a briefing schedule setting forth a time period within which to file briefs or

memoranda, responses, and reply briefs or memoranda, prior to the court considering such matters.

(6) A deadline for conducting alternative dispute resolution.

(d) Final Case Management Conference. The court ~~shall~~must schedule a final case management conference not less than 90 days ~~prior to~~before the date the case is set for trial. At least 10 days ~~prior to~~before the final case management conference the parties ~~shall~~must confer to prepare a case status report, which ~~shall~~must be filed with the clerk of the court either ~~prior to~~before or at the time of the final case management conference. The status report ~~shall~~must contain in separately numbered paragraphs:

(1) A list of all pending motions requiring action by the court and the date those motions are set for hearing.

(2) Any change regarding the estimated trial time.

(3) The names of the attorneys who will try the case.

(4) A list of the names and addresses of all non-expert witnesses (including impeachment and rebuttal witnesses) intended to be called at trial. However, impeachment or rebuttal witnesses not identified in the case status report may be allowed to testify if the need for their testimony could not have been reasonably foreseen at the time the case status report was prepared.

(5) A list of all exhibits intended to be offered at trial.

(6) Certification that copies of witness and exhibit lists will be filed with the clerk of the court at least 48 hours ~~prior to~~before the date and time of the final case management conference.

(7) A deadline for the filing of amended lists of witnesses and exhibits, which amendments ~~shall~~will be allowed only ~~up~~on motion and for good cause shown.

(8) Any other matters which could impact the timely and effective trial of the action.

Committee Notes

[No Change]

RULE 1.280. GENERAL PROVISIONS GOVERNING DISCOVERY

(a) Initial Discovery Disclosure.

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

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

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

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

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

(2) *Proceedings Exempt from Initial Discovery Disclosure.* Unless ordered by the court, actions and claims listed in rule 1.200(a) are exempt from initial discovery disclosure.

(3) *Time for Initial Discovery Disclosures — In General.* A party must make the initial discovery disclosures required by this rule within 14 days after the parties meet and confer under rule 1.280(h) unless a different time is set by court order.

(4) *Time for Initial Disclosures — For Parties Served or Joined Later.* A party that is first served or otherwise joined after the rule 1.280(h) conference must make the initial disclosures within 30 days after being served or joined, unless a different time is set by stipulation or court order.

(5) *Basis for Initial Discovery Disclosure; Unacceptable Excuses; Objections.* A party must make its initial discovery disclosures based on the information then reasonably available to it. A party is not excused from making its initial discovery disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party's initial discovery disclosures or because another party has not made its initial discovery disclosures. A party who formally objects to providing certain information is not excused from making all other initial discovery disclosures required by this rule in a timely manner.

(~~a~~b) Discovery Methods. Parties may obtain discovery by ~~one~~1 or more of the following methods: depositions ~~up~~on oral examination or written questions; written interrogatories; production of documents or things or permission to enter ~~up~~on 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)~~(d) ~~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~~c) 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~~under these rules.

(4) *Trial Preparation~~:~~; Materials.* Subject to the provisions of subdivision ~~(b)~~(c)(5)~~ of this rule~~, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision ~~(b)~~(c)(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 ~~up~~on 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~~must 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. ~~Upo~~On 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)~~(c)(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~~will not be required to disclose ~~his or her~~the expert's earnings as an expert witness or income derived from other services.

An expert may be required to produce financial and business records only under the most unusual or compelling circumstances and may not be compelled to compile or produce nonexistent documents. ~~Upo~~On motion, the court may order further discovery by other means, subject to such restrictions as to scope and other provisions ~~pursuant to~~under subdivision ~~(b)~~(c)(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~~will require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions ~~(b)~~(c)(5)(A) and ~~(b)~~(c)(5)(B) ~~of this rule~~; and

concerning discovery from an expert obtained under subdivision ~~(b)~~(c)(5)(A) ~~of this rule~~ the court may require, and concerning discovery obtained under subdivision ~~(b)~~(c)(5)(B) ~~of this rule shall~~will 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 witness ~~shall be an expert witness as~~ is 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~~must make the claim expressly and ~~shall~~must 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~~d) Protective Orders. ~~Upo~~On 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~~1 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 or the allocation of expenses;

(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~~e) 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~~A) 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~~B) 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~~f~~) Sequence and Timing of Discovery. Except as provided in subdivision ~~(b)~~(c)(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~~must not delay any other party's discovery.

(~~f~~g) 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.~~A party who has made a disclosure under this rule or who has responded to an interrogatory, a request for production, or a request for admission must supplement or correct its disclosure or response:

(1) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or

(2) as ordered by the court.

(h) Conference of the Parties.

(1) *Conference Timing.* Except in a proceeding exempted from initial disclosure under rule 1.200(a), or when the court orders

otherwise, the parties must confer as soon as practicable—and, in any event, no more than 60 days after the first defendant is served.

(2) *Conference Content; Parties' Responsibilities.* In conferring, the parties must consider the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case; make or arrange for the disclosures required by rule 1.280(a)(1); and discuss any issues about preserving discoverable information. The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging the conference. The court may order the parties or attorneys to attend the conference in person.

(i) Court Filing of Documents and Discovery. Information obtained during discovery ~~shall~~may 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~~when 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~~must comply with Florida Rule of Judicial Administration 2.425. The court ~~shall~~ ha~~ve~~s the authority to impose sanctions for violation of this rule.

(~~h~~j) Apex Doctrine. ~~A~~If a party seeks to depose a current or former high-level government or corporate officer, the officer or a party may move for an order ~~may seek an order~~ preventing the officer from being ~~subject to a~~ depos~~ition~~ed. The movant has the burden to persuade the court that the office is high-level for purposes of this rule. The motion~~, whether by a party or by the person of whom the deposition is sought,~~ must be accompanied by an affidavit or declaration of the officer explaining that the officer lacks unique, personal knowledge of the issues being litigated. If the ~~officer~~movant meets th~~is~~ese burdens ~~of production~~, the court ~~shall~~must issue an order preventing the deposition, unless the party seeking the deposition ~~demonstrates~~establishes either:

(1) that the officer is not high-level for purposes of this rule; or

(2) that ~~it~~the party has exhausted other discovery, that such discovery is inadequate, and that the officer has unique, personal knowledge of discoverable information.

If the party seeking the deposition meets its burden, then the motion must be denied. In denying the motion, the court may limit the scope and manner of the taking of the deposition under rule 1.280(c). If the motion is granted, t~~T~~he court may vacate or modify the order preventing the deposition if, after additional discovery, the party seeking the deposition can meet its burden~~ of persuasion~~ under this rule. ~~The burden to persuade the court that the officer is high-level for purposes of this rule lies with the person or party opposing the deposition.~~ *[Amendments in* double underline *and* ~~double strike through~~ *are pending in SC2021-0929]*

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

(*l*) Signing Disclosures and Discovery Requests; Responses; and Objections. Every discovery under subdivision (a) of this rule and every discovery request, response, or objection made by a party represented by an attorney must be signed by at least 1 attorney of record and must include the attorney's address, e-mail address, and telephone number. A self-represented litigant must sign the request, response, or objection and must include the self-represented litigant's address, e-mail address, and telephone number. By signing, an attorney or self-represented litigant certifies

that to the best of the person's knowledge, information, and belief formed after a reasonable inquiry:

(1) with respect to a disclosure, it is complete and correct as of the time it is made; and

(2) with respect to a discovery request, response, or objection, it is:

(A) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

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

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

No party has a duty to act on an unsigned disclosure, request, response, or objection until it is signed.

Committee Notes & Court Commentary

[No Change]

RULE 1.440. SETTING ACTION FOR TRIAL

(a) ~~When at Issue~~Setting Trial. ~~An action is at issue after any motions directed to the last pleading served have been disposed of or, if no such motions are served, 20 days after service of the last pleading. The party entitled to serve motions directed to the last pleading may waive the right to do so by filing a notice for trial at any time after the last pleading is served. The existence of crossclaims among the parties shall not prevent the court from setting the action for trial on the issues raised by the complaint, answer, and any answer to a counterclaim~~The failure of the

pleadings to be closed will not preclude the court from setting a case for trial.

(b) ~~Notice~~Motion for Trial. ~~Thereafter~~For any case not subject to rule 1.200 or rule 1.201, for any case in which any party seeks a trial for a date earlier than the projected trial period specified in a case management order, or when there is a projected trial period but no actual trial date has been set, any party may file and serve a ~~notice~~motion ~~that the action is at issue and ready~~ to ~~be~~ set the action for trial. The ~~notice~~motion must include an estimate of the time required, whether there is a basis for expedited trial, ~~indicate~~ whether ~~the trial~~it is to be ~~by~~ a jury or ~~not~~non-jury trial, ~~and~~ whether the trial is on the original action or a subsequent proceeding, and, if applicable, indicate that the court has authorized the participation of prospective jurors or empaneled jurors through audio-video communication technology under rule 1.430(d). ~~The clerk must then submit the notice and the case file to the court.~~

(c) Timing of Trial Period. Any order setting a trial period must set the trial period to begin at least 30 days after the date of the court's service of the order, unless all parties agree otherwise.

(~~c~~d) ~~Setting for Trial~~Service on Defaulted Parties. ~~If the court finds the action ready to be set for trial, it shall enter an order fixing a date for trial. Trial shall be set not less than 30 days from the service of the notice for trial. By giving the same notice the court may set an action for trial.~~ In actions in which the damages are not liquidated and when otherwise required by rule 1.500(e), the order setting an action for trial ~~shall~~must be served on parties ~~who are in~~against whom a default has been entered ~~in accordance with~~under Florida Rule of General Practice and Judicial Administration 2.516. [Amendments in double underline and ~~double strikethrough~~ are pending in *In Re: Amendments to Florida Rules of Civil Procedure 1.440 and 1.500*, SC2022-0575.]

(~~d~~e) Applicability. This rule does not apply to actions ~~to which~~under chapter 51, Florida Statutes ~~(1967), applies or to cases designated as complex pursuant to rule 1.201~~.

Committee Notes

1972 Amendment-2012 Amendment. [No Change]

202_ Amendment. This rule has been substantially amended in that it no longer requires that a case be "at issue" before it can be set for trial.

Court Commentary

[No Change]

RULE 1.460. ~~CONTINUANCES~~MOTIONS TO CONTINUE TRIAL

~~A motion for continuance shall be in writing unless made at a trial and, except for good cause shown, shall be signed by the party requesting the continuance. The motion shall state all of the facts that the movant contends entitle the movant to a continuance. If a continuance is sought on the ground of nonavailability of a witness, the motion must show when it is believed the witness will be available.~~

(a) Generally. Motions to continue trial are disfavored and should rarely be granted except for good cause shown. Successive continuances are highly disfavored. Lack of due diligence in preparing for trial is not grounds to continue the case.

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

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

(d) Motion; Contents. The moving party or counsel must make reasonable efforts to confer with the non-moving party or opposing counsel about the need for a continuance, and the non-moving party or opposing counsel must cooperate in responding

and holding a conference. All motions for continuance, even if agreed, must state with specificity:

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

(2) whether the motion is opposed;

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

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

If the required conference did not occur, the motion must explain the dates and methods of the efforts to confer. Failure to confer by any party or attorney under this rule may result in sanctions.

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

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

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

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

management conference. If the trial is continued, the new trial should be set for the earliest date practicable. The order must reflect what further activity will or will not be permitted.

Committee Notes

1980 Amendment-1988 Amendment. [No Change]

202_ Comment. This rule does not limit the discretion of trial court judges to efficiently and equitably administer their dockets.

Track B (compared against current rules)

RULE 1.200. CASE MANAGEMENT; PRETRIAL PROCEDURE

(a) ~~Case Management Conference.~~ ~~At any time after responsive pleadings or motions are due, the court may order, or a party by serving a notice may convene, a case management conference. The matter to be considered must be specified in the order or notice setting the conference. At such a conference the court may:~~

~~(1) schedule or reschedule the service of motions, pleadings, and other documents;~~

~~(2) set or reset the time of trials, subject to rule 1.440(c);~~

~~(3) coordinate the progress of the action if the complex litigation factors contained in rule 1.201(a)(2)(A)–(a)(2)(H) are present;~~

~~(4) limit, schedule, order, or expedite discovery;~~

~~(5) consider the possibility of obtaining admissions of fact and voluntary exchange of documents and electronically stored information, and stipulations regarding authenticity of documents and electronically stored information;~~

~~(6) consider the need for advance rulings from the court on the admissibility of documents and electronically stored information;~~

~~(7) discuss as to electronically stored information, the possibility of agreements from the parties regarding the extent to which such evidence should be preserved, the form in which such evidence should be produced, and whether discovery of such information should be conducted in phases or limited to particular individuals, time periods, or sources;~~

~~(8) schedule disclosure of expert witnesses and the discovery of facts known and opinions held by such experts;~~

~~(9) schedule or hear motions in limine;~~

~~(10) pursue the possibilities of settlement;~~

~~(11) require filing of preliminary stipulations if issues can be narrowed;~~

~~(12) consider referring issues to a magistrate for findings of fact; and~~

~~(13) schedule other conferences or determine other matters that may aid in the disposition of the action.~~**Applicability; Exemptions.** The requirements of this rule apply to all civil actions except:

(1) actions required to proceed under section 51.011, Florida Statutes;

(2) actions proceeding under section 45.075, Florida Statutes;

(3) actions subject to the Florida Small Claims Rules, unless the court, under rule 7.020(c), has ordered the action to proceed under one or more of the Florida Rules of Civil Procedure and the deadline for the trial date specified in rule 7.090(d) no longer applies;

(4) an action or proceeding initiated under chapters 731-736, 738, and 744, Florida Statutes;

(5) an action for review of an administrative proceeding;

(6) eminent domain actions under article X, section 6 of the Florida Constitution or chapter 73, Florida Statutes. Eminent domain actions proceeding under chapter 74, Florida Statutes, are excluded until 20 days after the order granting quick take;

(7) a forfeiture action in rem arising from a state statute;

(8) a petition for habeas corpus or any other proceeding to challenge a criminal conviction or sentence;

(9) an action brought without an attorney by a person in the custody of the United States, a state, or a state subdivision;

(10) an action to enforce or quash an administrative summons or subpoena;

(11) a proceeding ancillary to a proceeding in another court;

(12) an action to enforce an arbitration award;

(13) an action involving an extraordinary writ or remedy under rule 1.630;

(14) actions to confirm or enforce foreign judgments;

(15) all proceedings under chapter 56, Florida Statutes;

(16) a civil action pending in a special division of the court established by administrative order issued by the chief judge of the circuit or local rule (*e.g.*, a complex business division or a complex civil division) that enters case management orders;

(17) all proceedings under chapter 415, Florida Statutes, and sections 393.12 and 825.1035, Florida Statutes; and

(18) a claim requiring expedited or priority resolution under an applicable statute or rule.

~~**(b) Pretrial Conference.** After the action is at issue the court itself may or shall on the timely motion of any party require the parties to appear for a conference to consider and determine:~~

~~(1) the simplification of the issues;~~

~~(2) the necessity or desirability of amendments to the pleadings;~~

~~(3) the possibility of obtaining admissions of fact and of documents that will avoid unnecessary proof;~~

~~(4) the limitation of the number of expert witnesses;~~

~~(5) the potential use of juror notebooks; and~~

~~(6) any matters permitted under subdivision (a) of this rule.~~

~~**(c) Notice.** Reasonable notice must be given for a case management conference, and 20 days' notice must be given for a pretrial conference. On failure of a party to attend a conference, the court may dismiss the action, strike the pleadings, limit proof or witnesses, or take any other appropriate action. Any documents that the court requires for any conference must be specified in the order. Orders setting pretrial conferences must be uniform throughout the territorial jurisdiction of the court.~~

(b) Case Track Assignment. Not later than 120 days after commencement of the action as provided in rule 1.050, each civil case must be assigned to 1 of 3 case management tracks either by an initial case management order or administrative order issued by the chief judge of the circuit: streamlined, general, or complex. Assignment does not reflect on the financial value of the case but rather the amount of judicial attention required for resolution. A party can request that the assignment be changed under subdivision (c).

(1) "*Complex*" cases are actions designated by court order as complex under rule 1.201(a). Complex cases must proceed as provided in rule 1.201.

(2) "*Streamlined*" cases are actions that, while of varying value, reflect some mutual knowledge of the underlying facts, and as a result, limited needs for discovery, well-established legal issues related to liability and damages, few anticipated dispositive pretrial motions, minimal documentary evidence, and a short, anticipated trial length. Uncontested cases should generally be presumed to be streamlined cases.

(3) "*General*" cases are actions that do not meet the criteria for streamlined, complex, or parties in agreement. These are generally cases that reflect an imbalance among the parties with regard to the knowledge of the underlying facts, and as a result, a greater need for discovery and imply a greater length of trial and a more significant need for judicial attention.

(c) Changes in Track Assignment.

(1) *Change Requested by a Party.* Any motion to change the track to which a case is assigned must be filed promptly after the appearance of good cause to support the motion. A motion, including any attached memoranda, filed under this subdivision may not exceed 3 pages in length. Any response, including any attached memoranda, may not exceed 3 pages in length and must be filed within 7 days after service of the motion. No reply memorandum is permitted.

(2) *Change Directed by the Court.* A track assignment may be changed by the court on its own motion when it finds the needs of the case require a change.

(d) Issuance of Case Management Order.

(1) *Complex Cases.* Case management orders in complex cases must be issued as provided in rule 1.201.

(2) *Streamlined and General Cases.* In streamlined and general cases, the court must issue a case management order as soon as practicable either after receiving the parties' proposed case management order or after holding a case management conference. In cases in which the parties submit a proposed case management order, the court may accept, amend, or reject the parties' proposed order. The court's case management order may also, at the court's discretion, incorporate revisions to the parties' proposed case management order.

(3) *Exception.* Each circuit may create by administrative order uniform case management orders and that will issue in each appropriate case without the requirement of a proposed case management order set forth in subdivision (e). Such administrative orders must specify the deadlines and other timeframes, by case type if appropriate, for the items listed in subdivision (e)(5).

(e) Meet and Confer Requirement; Proposed Case Management Order.

(1) *Meet and Confer Requirement.* In cases designated as general or streamlined, counsel and self-represented litigants must meet and confer within 50 days after service of the first defendant, unless extended by order of the court. Plaintiff is responsible for initiating the scheduling of the conference. Self-represented litigants must be included in the meet and confer process unless they fail to participate. If new parties are added or joined after the initial conference, all parties must conduct supplemental meet and confers within 30 days of the new party being served or joined, unless a different a different time is set by stipulation or court order.

(2) *In General.* In jurisdictions that do not have uniform case management orders, after the parties meet and confer, the parties must file a proposed case management order and submit the order for the court's signature. Proposed orders that do not comply with the Florida Rules of General Practice and Judicial Administration deadline for case resolution timeframes will be rejected.

(3) *Good-Faith Effort Required.* The attorneys of record and all self-represented litigants who have appeared in the action are jointly responsible for conferring in good faith to agree on a proposed case management order. The joint case management order must certify that the parties conferred in good faith, either in person or remotely. Self-represented litigants must be included in this process unless they fail to participate. Any failure to participate by an attorney or self-represented litigant must be reflected in the proposed case management order.

(4) *Failure to File.* Parties may file the proposed case management order as early in the case as possible, but no later than 120 days after commencement of the action as provided in rule 1.050 or 30 days after service on the last defendant, whichever comes first. In jurisdictions in which a proposed case management order is required, if the parties fail to timely file the proposed case management order, the court must either issue its own case management order without input from the parties or order the parties to file a proposed case management order. In either circumstance, the court may order the parties to show cause why there should not be a sanction for the delay.

(5) *Contents of Proposed Case Management Order.*

(A) The proposed case management order must designate the case track assignment;

(B) The proposed case management order must specify deadlines for the events listed below. If a deadline does not apply to the case, the proposed case management order should so indicate. Parties are required to consult with local rules and administrative order issued by the chief judge of the circuit for parameters within which specific deadlines must be set and for complying with the parameters when applicable. The proposed case management order must include deadlines for:

(i) adding parties;

(ii) amending the pleadings;

(iii) amending affirmative defenses, including those that reflect the addition of any *Fabre* defendants;

(iv) completing fact discovery;

(v) completing inspections, testing, and examinations, medical or otherwise;

(vi) disclosing expert witnesses intended for use at trial and the expert information required by rule 1.280(c), the parties may elect to choose staggered dates for plaintiffs and defendants;

(vii) disclosing any rebuttal expert witnesses intended for use at trial and the expert information required by rule 1.280(c);

(viii) completing expert discovery;

(ix) filing dispositive motions;

(x) filing motions under section 90.702, Florida Statutes, or related law;

(xi) final supplementation of all discovery and disclosures;

(xii) filing motions in limine;

(xiii) completing mediation or alternative dispute resolution or both;

(xiv) exchanging exhibit lists, the parties may elect to make this deadline earlier than the time of the trial statement; and

(xv) exchanging witness lists, the parties may elect to make this deadline earlier than the time of the trial statement.

(C) The proposed case management order must additionally specify the following:

(i) a projected trial period or, if specified by local rules, administrative order issued by the chief judge of the circuit, or the court, an actual trial period; and

(ii) the anticipated number of days for trial.

(D) The proposed case management order may also address other appropriate matters, including any issues with track assignment. The proposed case management order must include a signature by an attorney for each party or the signature of a self-represented litigant, and a certification that the signatories conferred in good faith.

(6) *Forms*. For streamlined and general cases, the parties must file the proposed case management order using the form approved by administrative order issued by the chief judge of the circuit. The forms of the case management order will be set by chief judge of the circuit and will comply with the requirements this rule, whether it be a single form approved for all types of cases or forms approved for particular case types.

(f) Extensions of Time; Modification of Deadlines.

(1) *Deadlines are Strictly Enforced.* Deadlines in a case management order must be strictly enforced unless changed by court order. Parties may submit an agreed order to extend a deadline if the extension does not affect the ability to comply with the remaining dates in the case management order. If extending an individual case management deadline may affect a subsequent deadline in the case management order, parties must seek an amendment of the case management order, rather than submitting a motion for extension of an individual deadline.

(2) *Modification of Actual Trial Period.* Once an actual trial period is set, the parties must satisfy the requirements of rule 1.460 to change that period. During the time a trial period is still a

projection, the parties may seek to change the projected trial period through the process in subdivision (f)(3).

(3) *Modifications of Deadlines or Projected Trial Period.* Any motion to extend a deadline, amend a case management order, or alter a projected trial period must specify:

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

(B) whether the motion is opposed;

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

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

(g) Inability to Meet Case Management Deadlines. If any party is unable to meet the deadlines set forth in the case management order for any reason, including due to the unavailability of hearing time, the affected party may promptly move for a case management conference and alert the court. The motion must identify the issues to be addressed in the case management conference.

(h) Notices of Unavailability. Notices of unavailability have no effect on the deadlines set by the case management order. If a party is unable to comply with a deadline in a case management order, the party must take action consistent with subdivision (f)(1).

(i) If Trial Is Not Reached During Trial Period. If a trial is not reached during the trial period set by court order, the court should enter an order setting a new trial period that is as soon as practicable from the date of the order. The order resetting the trial

period must reflect what further activity will or will not be permitted.

(j) Case Management Conferences.

(1) *Scheduling.* The court may set case management conferences at any time on its own notice or on proper notice by a party. Whether set by the court or a party, the amount of notice must be reasonable. If noticed by a party, the notice itself must identify the specific issues to be addressed during the case management conference and must also provide a list of all pending motions. The court may set, or the parties may request, case management conferences on an as-needed basis or an ongoing, periodic basis.

(2) *Issues that may be addressed.* During a case management conference, the court may address all scheduling issues, including requests to amend the case management order, and other issues that may impact trial of the case. In addition, on reasonable notice to the parties and adequate time available during the conference, the court may elect to hear a pending motion, other than motions for summary judgment and motions requiring evidentiary hearings, even if the parties have not identified the motion as an issue to be resolved. Motions for summary judgment and motions requiring evidentiary hearings may not be heard as part of a case management conference.

(3) *Preparation Required.* Attorneys and self-represented litigants who appear at a case management conference must be prepared to:

(A) argue pending motions that are noticed by the court or a party to be heard during the case management conference;

(B) address pending matters in the case; and

(C) make decisions about future scheduling and conduct of the case.

Attorneys and self-represented litigants who appear at a case management conference must have full authority to make representations to the court and enter into binding agreements concerning motions, issues, and scheduling. If more than 1 attorney represents a party, the counsel appearing at the conference must be prepared with all attorneys' availability for future events and the ability to schedule future events for all counsel for that party.

(4) *Case Management Conference to Set Actual Trial Period.* Unless a trial order has been entered under rule 1.440, or an administrative order issued by the chief judge of the circuit directs differently, the parties must work with the court so that, at least 60 days before the first day of the projected trial period, the court may hold a case management conference to check the status of deadlines and set an actual trial period.

(5) *Proposed Orders.* At the conclusion of the case management conference, unless the court is drafting its own order, the court must set a deadline for submitting proposed orders arising out of the case management conference. A proposed order must be submitted by that deadline unless an extension is requested. If the parties do not agree to the contents of a proposed order, competing proposed orders must be submitted to the court. The parties must notify the court of the basis of any objections at the time the competing orders are submitted.

(6) *Failure to Appear.* If none of the parties appear at a case management conference, the court may conclude that the case has been resolved and may issue an order to show cause why the case should not be dismissed without prejudice.

(k) Trial Conference. After the action has been set for an actual trial period, the court may special set a trial conference on its own motion or a party may request a special set trial conference. The special set trial conference can take place no more than 60 days before the first day of the actual trial period. Issues that may be discussed at the special set trial conference include, but are not limited to:

(1) the order of witnesses who are expected to testify, evidence expected to be proffered, pre-marking of exhibits, and any associated logistical or scheduling issues;

(2) the use of technology and other means to facilitate the presentation of evidence and demonstrative aids at trial;

(3) the order of proof at trial, time to complete the trial, and reasonable time estimates for voir dire, opening statements, closing arguments, and any other part of the trial;

(4) the number of prospective jurors required for a venire, alternate jurors, and peremptory challenges for each party;

(5) finalization of jury instructions and verdict forms;

(6) deposition designations and any disputes regarding the designations; and

(7) any other matters the court considers appropriate.

(d*l*) ~~Pret~~Trial ~~Order~~Statement. ~~The court must make an order reciting the action taken at a conference and any stipulations made. The order controls the subsequent course of the action unless modified to prevent injustice.~~According to the deadline set by the court, the parties must file a joint trial statement. The joint trial statement must include the following information:

(1) *Statement of Facts.* A concise, impartial statement of the facts of the case.

(2) *Stipulated Facts.* A list of any stipulated facts requiring no proof at trial. No stipulation may be listed in this subdivision unless all parties agree.

(3) *Statements of Disputed Law and Fact.* A statement of the disputed issues of law and fact to be tried.

(4) *Exhibit Lists.* Each party must list all exhibits the party intends to introduce into evidence.

(5) *Witness Lists.* Each party must attach to the joint trial statement a list of the names of all witnesses, including expert, rebuttal, and impeachment witnesses, the party intends to call at trial.

(6) *Pending Motions.* Each party must list all motions filed by that party that still need to be resolved as of the date of the joint trial statement and, for each motion, indicate whether a hearing has been set and, if so, the date of the hearing.

(7) *Deposition Designations.* The parties must certify that they have exchanged depositions designations and indicate any designations to which a party objects with a specific description of the objection.

(8) *Jury Instructions.* If the trial is a jury trial, all agreed jury instructions and disputed jury instructions must be filed as part of the joint trial statement. Copies of any statutory citations and case law pertaining to the proposed instruction(s) must be attached.

(9) *Verdict Forms.* If the trial is a jury trial, an agreed verdict form or disputed verdict forms must be filed as part of the joint trial statement.

Failure to comply with the requirements of this subdivision may result in sanctions as determined by the court, including, but not limited to, excluding witnesses or exhibits not properly listed.

Committee Notes

1971 Amendment-2012 Amendment. [No Change]

20 Amendment. This rule is not intended to preclude the possibility of administrative orders issued by the chief judge of the circuit and local rules under Florida Rules of General Practice and Judicial Administration 2.215(e) that refine and supplement the procedures delineated in the rule.

Subdivision (k) (Trial Conference). Many courts conduct a "pretrial conference" as a mass docket, docket sounding, or

calendar call. In this type of pretrial conference, judges are essentially confirming which cases are set for trial. That is not the "trial conference" contemplated by subdivision (k). The "trial conference" described is subdivision (k) is meant to be conducted when there is a high likelihood that the case will actually go to trial.

Subdivision (*l*) (Trial Statement). The list is not intended to be restrictive. Courts are free to include more requirements in the trial statement than what is listed in this rule.

Court Commentary

[No Change]

RULE 1.201. COMPLEX LITIGATION

(a) Complex Litigation Defined. At any time after all defendants have been served, and an appearance has been entered in response to the complaint by each party or a default entered, any party, or the court on its own motion, may move to declare an action complex. However, any party may move to designate an action complex before all defendants have been served subject to a showing to the court why service has not been made on all defendants. ~~The court shall convene a hearing to determine whether the action requires the use of complex litigation procedures and enter an order within 10 days of the conclusion of the hearing.~~

(1) A "complex action" is one that is likely to involve complicated legal or case management issues and that may require extensive judicial management to expedite the action, keep costs reasonable, or promote judicial efficiency.

(2) In deciding whether an action is complex, the court must consider whether the action is likely to involve:

(A) numerous pretrial motions raising difficult or novel legal issues or legal issues that are inextricably intertwined that will be time-consuming to resolve;

(B) management of a large number of separately represented parties;

(C) coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court;

(D) pretrial management of a large number of witnesses, ~~or~~ a substantial amount of documentary evidence;

(E) substantial time required to complete the trial;

(F) management at trial of a large number of experts, witnesses, attorneys, or exhibits;

(G) substantial post-judgment judicial supervision; and

(H) any other analytical factors identified by the court or a party that tend to complicate comparable actions and which are likely to arise in the context of the instant action.

(3) ~~If all of the parties, pro se or through counsel, sign and file with the clerk of the court a written stipulation to the fact that an action is complex and identifying the factors in (2)(A) through (2)(H) above that apply, the court shall enter an order designating the action as complex without a hearing.~~A case will be designated or redesignated as complex ~~as~~in accordance with rule 1.200.

(b) Initial Case Management Report and Conference. The court ~~shall~~must hold an initial case management conference within 60 days from the date of the order declaring the action complex.

(1) At least 20 days ~~prior to~~before the date of the initial case management conference, attorneys for the parties as well as any parties appearing pro se ~~shall~~must confer and prepare a joint statement, which ~~shall~~must be filed with the clerk of the court no later than 14 days before the conference, outlining a discovery plan and stating:

(A) a brief factual statement of the action, which includes the claims and defenses;

(B) a brief statement on the theory of damages by any party seeking affirmative relief;

(C) the likelihood of settlement;

(D) the likelihood of appearance in the action of additional parties and identification of any nonparties to whom any of the parties will seek to allocate fault;

(E) the proposed limits on the time:

(i) to join other parties and to amend the pleadings~~,~~;

(ii) to file and hear motions~~,~~;

(iii) to identify any nonparties whose identity is known, or otherwise describe as specifically as practicable any nonparties whose identity is not known~~,~~;

(iv) to disclose expert witnesses~~,~~; and

(v) to complete discovery;

(F) the names of the attorneys responsible for handling the action;

(G) the necessity for a protective order to facilitate discovery;

(H) proposals for the formulation and simplification of issues, including the elimination of frivolous claims or defenses, and the number and timing of motions for summary judgment or partial summary judgment;

(I) the possibility of obtaining admissions of fact and voluntary exchange of documents and electronically stored information, stipulations regarding authenticity of documents, electronically stored information, and the need for advance rulings from the court on admissibility of evidence;

(J) the possibility of obtaining agreements among the parties regarding the extent to which such electronically stored information should be preserved, the form in which such information should be produced, and whether discovery of such information should be conducted in phases or limited to particular individuals, time periods, or sources;

(K) suggestions on the advisability and timing of referring matters to a magistrate, master, other neutral, or mediation;

(L) a preliminary estimate of the time required for trial;

(M) requested date or dates for conferences before trial, a final pretrial conference, and trial;

(N) a description of pertinent documents and a list of fact witnesses the parties believe to be relevant;

(*O*) number of experts and fields of expertise; and

(P) any other information that might be helpful to the court in setting further conferences and the trial date.

(2) Lead trial counsel and a client representative ~~shall~~must attend the initial case management conference.

(3) ~~Notwithstanding rule 1.440, a~~At the initial case management conference, the court will set the trial date or dates no sooner than 6 months and no later than 24 months from the date of the conference unless good cause is shown for an earlier or later setting. The trial date or dates ~~shall~~must be on a docket having sufficient time within which to try the action and, when feasible, for a date or dates certain. The trial date shall be set after consultation with counsel and in the presence of all clients or authorized client representatives. The court ~~shall~~must, no later than 2 months ~~prior to~~before the date scheduled for jury selection, arrange for a sufficient number of available jurors. Continuance of the trial of a complex action should rarely be granted and then only ~~up~~on good

cause shown. Any motion for continuance will be governed by rule 1.460.

(c) The Case Management Order. Within 10 days after completion of the initial case management conference, the court must enter a case management order. The case management order ~~shall~~must address each matter set forth ~~under~~in rule 1.200(~~a~~e) and set the action for a pretrial conference and trial. The case management order may also ~~shall~~ specify ~~the following~~:

~~(1) Dates by which all parties shall name their expert witnesses and provide the expert information required by rule 1.280(b)(5). If a party has named an expert witness in a field in which any other parties have not identified experts, the other parties may name experts in that field within 30 days thereafter. No additional experts may be named unless good cause is shown.~~

~~(2) Not more than 10 days after the date set for naming experts, the parties shall meet and schedule dates for deposition of experts and all other witnesses not yet deposed. At the time of the meeting each party is responsible for having secured three confirmed dates for its expert witnesses. In the event the parties cannot agree on a discovery deposition schedule, the court, upon motion, shall set the schedule. Any party may file the completed discovery deposition schedule agreed upon or entered by the court. Once filed, the deposition dates in the schedule shall not be altered without consent of all parties or upon order of the court. Failure to comply with the discovery schedule may result in sanctions in accordance with rule 1.380.~~

~~(3) Dates by which all parties are to complete all other discovery.~~

~~(4) The court shall schedule periodic case management conferences and hearings on lengthy motions at reasonable intervals based on the particular needs of the action. The attorneys for the parties as well as any parties appearing pro se shall confer no later than 15 days prior to each case management conference or hearing. They shall notify the court at least 10 days prior to any case management conference or hearing if the parties stipulate that~~

~~a case management conference or hearing time is unnecessary. Failure to timely notify the court that a case management conference or hearing time is unnecessary may result in sanctions.~~

~~(5) The case management order may include~~ a briefing schedule setting forth a time period within which to file briefs or memoranda, responses, and reply briefs or memoranda, ~~prior to~~before the court considering such matters.

~~(6) A deadline for conducting alternative dispute resolution.~~

(d) Additional case management conferences and hearings. The court may set a conference or hearing schedule, or part of such a schedule, in the initial case management order described in subdivision (c) or in a subsequent order(s). The parties must notify the court immediately if case management conference or hearing time becomes unnecessary.

(~~d~~e) Final Case Management Conference. The court ~~shall~~must schedule a final case management conference not less than 90 days ~~prior to~~before the date the case is set for trial. At least ~~10~~7 days ~~prior to~~before the final case management conference the parties ~~shall~~must confer to prepare a case status report, which ~~shall~~must be filed with the clerk of the court either ~~prior to~~before or at the time of the final case management conference. The status report ~~shall~~must contain in separately numbered paragraphs:

(1) A list of all pending motions requiring action by the court and the date those motions are set for hearing.

(2) Any change regarding the estimated trial time.

(3) The names of the attorneys who will try the case.

(4) A list of the names and addresses of all non-expert witnesses (including impeachment and rebuttal witnesses) intended to be called at trial. However, impeachment or rebuttal witnesses not identified in the case status report may be allowed to testify if

the need for their testimony could not have been reasonably foreseen at the time the case status report was prepared.

(5) A list of all exhibits intended to be offered at trial.

(6) Certification that copies of witness and exhibit lists will be filed with the clerk of the court at least 48 hours ~~prior to~~before the date and time of the final case management conference.

(7) A deadline for the filing of amended lists of witnesses and exhibits, which amendments ~~shall~~will be allowed only ~~up~~on motion and for good cause shown.

(8) Any other matters which could impact the timely and effective trial of the action.

Committee Notes

[No Change]

RULE 1.280. GENERAL PROVISIONS GOVERNING DISCOVERY

(a) Initial Discovery Disclosure.

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

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

(B) a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control (or, if not in the disclosing party's possession, custody, or control, a description by category and location of such

information) and may use to support its claims or defenses, unless the use would be solely for impeachment;

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

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

(2) *Proceedings Exempt from Initial Discovery Disclosure.* Unless ordered by the court, actions and claims listed in rule 1.200(a) are exempt from initial discovery disclosure.

(3) *Time for Initial Discovery Disclosures — In General.* A party must make the initial discovery disclosures required by this rule within 14 days after the parties meet and confer under rule 1.200(e) unless a different time is set by court order.

(4) *Time for Initial Disclosures — For Parties Served or Joined Later.* A party that is first served or otherwise joined after the initial conference under rule 1.200(b) must make its initial disclosures within 30 days after being served or joined, unless a different time is set by court order.

(5) *Basis for Initial Discovery Disclosure; Unacceptable Excuses; Objections.* A party must make its initial discovery disclosures based on the information then reasonably available to it. A party is not excused from making its initial discovery disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party's initial discovery disclosures or because another party has not made its initial discovery disclosures. A party who formally objects to providing

certain information is not excused from making all other initial discovery disclosures required by this rule in a timely manner.

(~~a~~b) Discovery Methods. Parties may obtain discovery by ~~one~~1 or more of the following methods: depositions ~~up~~on oral examination or written questions; written interrogatories; production of documents or things or permission to enter ~~up~~on 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~~(d), the frequency of use of these methods is not limited, except as provided in rules 1.200, 1.340, and 1.370.

(~~b~~c) 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~~under these rules.

(4) *Trial Preparation~~:~~; Materials.* Subject to the provisions of subdivision ~~(b)~~(c)(5) ~~of this rule~~, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision ~~(b)~~(c)(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 ~~up~~on 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~~must 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. ~~Upo~~On 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)~~(c)(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~~will not be required to disclose ~~his or her~~the expert's earnings as an expert witness or income derived from other services.

An expert may be required to produce financial and business records only under the most unusual or compelling circumstances and may not be compelled to compile or produce nonexistent documents. ~~Upo~~On motion, the court may order further discovery by other means, subject to such restrictions as to scope and other provisions ~~pursuant to~~under subdivision ~~(b)~~(c)(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 ~~up~~on 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~~will require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions ~~(b)~~(c)(5)(A) and ~~(b)~~(c)(5)(B) ~~of this rule~~; and concerning discovery from an expert obtained under subdivision ~~(b)~~(c)(5)(A) ~~of this rule~~ the court may require, and concerning discovery obtained under subdivision ~~(b)~~(c)(5)(B) ~~of this rule shall~~will 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 witness ~~shall be an expert witness as~~ is 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~~must make the claim expressly and ~~shall~~must 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~~d) Protective Orders. ~~Upo~~On 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~~1 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 or the allocation of expenses;

(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~~e) 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~~A) 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~~B) 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~~f~~) Sequence and Timing of Discovery. Except as provided in subdivision ~~(b)~~(c)(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~~must not delay any other party's discovery.

(~~f~~g) 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~~A party who has made a disclosure under this rule or who has responded to an interrogatory, request for production, or request for admission must supplement or correct its disclosure or response:

(1) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or

(2) as ordered by the court.

(h) Signing Disclosures and Discovery Requests; Responses; and Objections. Every disclosure under subdivision (a) of this rule and every discovery request, response, or objection made by a party represented by an attorney must be signed by at least 1 attorney of record and must include the attorney's address, e-mail address, and telephone number. A self-represented litigant must sign the disclosure, request, response, or objection and must include the self-represented litigant's address, e-mail address, and telephone number. By signing, an attorney or self-represented litigant certifies that to the best of the person's knowledge, information, and belief formed after a reasonable inquiry:

(1) with respect to a disclosure, it is complete and correct as of the time it is made; and

(2) with respect to a discovery request, response, or objection, it is:

(A) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

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

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

No party has a duty to act on an unsigned disclosure, request, response, or objection until it is signed.

(gi) Court Filing of Documents and Discovery. Information obtained during discovery ~~shall~~may 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~~when 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~~must comply with Florida Rule of Judicial Administration 2.425. The court ~~shall~~ ha~~ve~~s the authority to impose sanctions for violation of this rule.

(~~h~~j) Apex Doctrine. ~~A~~If a party seeks to depose a current or former high-level government or corporate officer, the officer or a party may move for an order ~~may seek an order~~ preventing the officer from being ~~subject to a~~ depos~~ition~~ed. The movant has the burden to persuade the court that the office is high-level for purposes of this rule. The motion~~, whether by a party or by the person of whom the deposition is sought,~~ must be accompanied by an affidavit or declaration of the officer explaining that the officer lacks unique, personal knowledge of the issues being litigated. If the ~~officer~~movant meets th~~is~~ese burdens ~~of production~~, the court ~~shall~~must issue an order preventing the deposition, unless the party seeking the deposition ~~demonstrates~~establishes earlier:

(1) that the officer is not high-level for purposes of this rule; or

(2) that ~~it~~the party has exhausted other discovery, that such discovery is inadequate, and that the officer has unique, personal knowledge of discoverable information.

If the party seeking the deposition meets its burden, then the motion must be denied. In denying the motion, the court may limit the scope and manner of the taking of the deposition under rule 1.280(c). If the motion is granted, t~~T~~he court may vacate or modify the order preventing the deposition if, after additional discovery, the party seeking the deposition can meet its burden ~~of persuasion~~ under this rule. ~~The burden to persuade the court that the officer is high-level for purposes of this rule lies with the person or party~~

~~opposing the deposition.~~ *[Amendments in* double underline *and* ~~double strike through~~ *are pending in SC2021-0929]*

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

Committee Notes & Court Commentary

[No Change]

RULE 1.440. SETTING ACTION FOR TRIAL

(a) ~~When at Issue~~Setting Trial. ~~An action is at issue after any motions directed to the last pleading served have been disposed of or, if no such motions are served, 20 days after service of the last pleading. The party entitled to serve motions directed to the last pleading may waive the right to do so by filing a notice for trial at any time after the last pleading is served. The existence of crossclaims among the parties shall not prevent the court from setting the action for trial on the issues raised by the complaint, answer, and any answer to a counterclaim~~The failure of the pleadings to be closed will not preclude the court from setting a case for trial.

(b) ~~Notice~~Motion for Trial. ~~Thereafter~~For any case not subject to rule 1.200 or rule 1.201, for any case in which any party seeks a trial for a date earlier than the projected trial period specified in a case management order, or when there is a projected trial period but no actual trial date has been set, any party may file

and serve a ~~notice~~motion ~~that the action is at issue and ready~~ to ~~be~~ set the action for trial. The ~~notice~~motion must include an estimate of the time required, whether there is a basis for expedited trial, ~~indicate~~ whether ~~the trial~~it is to be ~~by~~ a jury or ~~not~~non-jury trial, ~~and~~ whether the trial is on the original action or a subsequent proceeding, and, if applicable, indicate that the court has authorized the participation of prospective jurors or empaneled jurors through audio-video communication technology under rule 1.430(d). ~~The clerk must then submit the notice and the case file to the court.~~

(c) Timing of Trial Period. Any order setting a trial period must set the trial period to begin at least 30 days after the date of the court's service of the order, unless all parties agree otherwise.

(~~c~~d) ~~Setting for Trial~~Service on Defaulted Parties. ~~If the court finds the action ready to be set for trial, it shall enter an order fixing a date for trial. Trial shall be set not less than 30 days from the service of the notice for trial. By giving the same notice the court may set an action for trial.~~ In actions in which the damages are not liquidated and when otherwise required by rule 1.500(e), the order setting an action for trial ~~shall~~must be served on parties ~~who are in~~against whom a default has been entered ~~in accordance with~~under Florida Rule of General Practice and Judicial Administration 2.516. [Amendments in double underline and ~~double strikethrough~~ are pending in *In Re: Amendments to Florida Rules of Civil Procedure 1.440 and 1.500*, SC2022-0575.]

(~~d~~e) Applicability. This rule does not apply to actions ~~to which~~under chapter 51, Florida Statutes ~~(1967), applies or to cases designated as complex pursuant to rule 1.201~~.

Committee Notes

1972 Amendment-2012 Amendment. [No Change]

202_ Amendment. This rule has been substantially amended in that it no longer requires that a case be "at issue" before it can be set for trial.

Court Commentary

[No Change]

RULE 1.460. ~~CONTINUANCES~~MOTIONS TO CONTINUE TRIAL

~~A motion for continuance shall be in writing unless made at a trial and, except for good cause shown, shall be signed by the party requesting the continuance. The motion shall state all of the facts that the movant contends entitle the movant to a continuance. If a continuance is sought on the ground of nonavailability of a witness, the motion must show when it is believed the witness will be available.~~

(a) Generally. Motions to continue trial are disfavored and should rarely be granted except for good cause shown. Successive continuances are highly disfavored. Lack of due diligence in preparing for trial is not grounds to continue the case.

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

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

(d) Motion; Contents. The moving party or counsel must make reasonable efforts to confer with the non-moving party or opposing counsel about the need for a continuance, and the non-moving party or opposing counsel must cooperate in responding and holding a conference. All motions for continuance, even if agreed, must state with specificity:

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

(2) whether the motion is opposed;

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

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

If the required conference did not occur, the motion must explain the dates and methods of the efforts to confer. Failure to confer by any party or attorney under this rule may result in sanctions.

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

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

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

(h) Order on Motion for Continuance. When ruling on a motion to continue, the court must state, either on the record or in a written order, the factual basis for the ruling. An order granting a motion to continue must either set a new trial period or set a case management conference. If the trial is continued, the new trial period should be set for the earliest date practicable. The order must reflect what further activity will or will not be permitted.

Committee Notes

1980 Amendment-1988 Amendment. [No Change]

202_ Comment. This rule does not limit the discretion of trial court judges to efficiently and equitably administer their dockets.