# FINAL REPORT

# WORKGROUP ON IMPROVED RESOLUTION OF CIVIL CASES

## Table of Contents

## I. Background

Established within the Judicial Management Council (JMC) on October 31, 2019,[1] the Workgroup on Improved Resolution of Civil Cases (Workgroup) has been guided by the goals of the Long-Range Strategic Plan for the Florida Judicial Branch 2016–21,[2] with a focus on two of those goals:

- Goal 1.2—Ensure the fair and timely resolution of all cases through effective case management.
- Goal 1.3—Utilize caseload and other workload information to manage resources and promote accountability.[3]

The Workgroup was charged with the following:

- Reviewing the civil case management recommendations endorsed in 2016 by the Conference of Chief Justices and the Conference of State Court Administrators[4] and the outcomes of pilot projects or other initiatives that have implemented these recommendations in this and other states.
- Reviewing recent initiatives in other states wherein rules of court were amended or other measures were taken to achieve timelier, more cost-effective, or otherwise improved resolution of civil cases.
- Reviewing laws, rules of court, and practices that have improved the management and resolution of civil cases in the federal court system and that, if adopted in Florida, would improve the resolution of civil cases.
- Examining this state's laws, rules of court, and practices relating to civil procedure and case management to determine whether changes can be made to improve the resolution of civil cases. This examination had to include consideration of whether this state's laws and rules of court sufficiently address and deter a failure to prosecute, a violation of discovery, presentation of an unsupported claim or defense, and causation of an improper delay in litigation.
- Making recommendations, if warranted, to improve the resolution of civil cases and propose any revisions in this state's laws, rules of court, or practices necessary to implement the Workgroup's recommendations.[5]

In an interim report considered by the JMC on March 5, 2021, the Workgroup recommended that the chief justice issue an administrative order on case management directed to the chief judges of the state's 20 judicial circuits. Pursuant to the recommendation, the chief judges would be required to issue a local administrative order requiring each case subject to the Florida Rules of Civil Procedure, with certain exceptions, to be actively managed by the judge assigned to the case. The JMC adopted the recommendation without objection, and the chief justice issued an amendment to Fla. Admin. Order No. AOSC20-23 on March 9, 2021, incorporating the Workgroup's recommendation as section III.G.[6] Section III.G.1. required the chief judges to issue their respective administrative orders so as to take effect on April 30, 2021. In response to a request by the chief judges, the chief justice on April 13, 2021, issued an amended section III.G. extending certain deadlines.[7]

The purpose of section III.G. is to initiate active case management in the civil courts, given that an increased workload is anticipated due to delays in court proceedings caused by the Covid-19 pandemic and that the rule amendment proposals herein will require time to take effect if adopted. The administrative order seeks to strike a balance between providing sufficient direction and limitations, while encouraging flexibility at the local level to address the pandemic-generated workload.[8]

Since its interim report, the Workgroup has continued its review of pilot projects, rule amendments, and other measures implemented in other states for purposes of improving the resolution of civil cases and closely examined federal rules of court and practices addressing the management and resolution of civil cases. The discussion, findings, and recommendations in this report are based on this review, as well the members' analysis of Florida's civil case management data, laws, and rules of procedure and extensive experience as civil judges and federal and state civil litigators.

## II. Overview

This report focuses on four topics that are based on the following broad recommendations for case management found in the legal literature:[9]

- *Judicial case management:* Effective judicial case management requires early judicial intervention, setting deadlines soon after the case is filed, and setting deadlines (including for trial) for early dates appropriate to the case.[10]
- *Maintaining the schedule:* Effective case management requires adherence to the schedule. Topics addressed under this broad category include discovery practice, motion practice, failure to prosecute, continuances, and small claims.[11]
- *Case reporting and judicial accountability:* Public reporting of relevant case management data may encourage effective judicial case management and judicial accountability. A proposed new subdivision to rule 2.550 addresses this issue.[12]
- *Continuing education:* Buy-in from the legal community, both judges and attorneys, is necessary for effective case management. This topic is addressed in a brief discussion of continuing judicial and legal education.[13]

Within these topics, the report

- defines "case management" and "differentiated case management";
- summarizes research on and the current status of case management and related civil practice and procedure in the federal judiciary, other states, and Florida;
- proposes amendments to Florida court rules to implement the Workgroup's recommendations; and
- briefly discusses the need for continuing judicial education (CJE) and continuing legal education (CLE) programs to ensure that judges and attorneys become aware of the new rules and know what is expected of them.

With respect to the proposed rule amendments, the Workgroup recommends the following courses of action:

- The promulgation of new or amended Rules of Civil Procedure and Rules of General Practice and Judicial Administration to institute "differentiated case management" standards in the civil divisions of Florida's circuit and county courts. The proposed rules require trial judges to engage in active case management from the inception of a lawsuit. They are designed to provide trial judges with practical means of fulfilling their responsibilities under Florida Rule of General Practice and Judicial Administration 2.545(b) to "take charge of all cases at an early stage in the litigation and . . . control the progress of the case thereafter until the case is determined."
- The promulgation of amended Rules of Civil Procedure, Rules of General Practice and Judicial Administration, and Small Claims Rules, including those on motion practice, discovery, and continuances, to ensure attorney compliance with trial court orders and timetables in the differentiated-case-management protocol.
- The promulgation of a new reporting requirement in rule 2.250(b) to enhance judicial accountability in case resolution.

The proposed new and amended rules drafted by the Workgroup are compiled in Appendix 1, where they are shown in legislative format.[14] The appropriate portions of the main text of this report cross-reference each draft rule.

## III. Judicial case management

This section begins with a presentation of the problems with judicial case management that have given rise to this report and goes on to propose "differentiated case management" (DCM) as a major component of the solution. The section then surveys case management research and initiatives in the federal jurisdiction and the states, including Florida; summarizes the federal civil rules on case management; reviews several states' DCM rules and practices; and summarizes the current status of judicial case management in Florida. The section concludes with a proposed amended rule for implementing DCM in Florida along with proposals for amendments to several additional case management–related rules.

### A. *Background*

#### 1. The underlying problems

a. *Public perceptions*

Citing numerous research studies and commentators, circuit judge and Workgroup member Jennifer Bailey has summarized key problems facing civil courts in a recent law review article.[15] These include

- Widespread complaints about the costs of delays in civil lawsuits, with the perception that cases are driven by cost, not merit.
- The resulting perception on the part of people with modest cases that there is no point in going to court for resolution.
- The resulting turn to alternative dispute resolution (ADR) formats such as arbitration, mediation, and private judges. The shift to private forums involves more than the

loss of court "business" to competing modalities. The ramifications go deeper: "Privatizing litigation has many risks, including lack of appellate safeguards, loss of the development of common law, lack of transparency, and loss of public confidence and benefit."[16]

The *Call to Action* report reflects similar sentiments, noting that "[r]unaway costs, delays, and complexity" associated with civil litigation in state courts "are undermining public confidence and denying people the justice they seek."[17] People may find the prospect of navigating the civil courts "daunting" due to a "maze-like process that costs too much and takes too long."[18] In short, the public's perception is that justice from the civil courts is slow, inefficient, and not worth the cost, especially when ADR modalities are available.

b. *Florida data*

At present, the primary measure for progress in case management in the state's trial courts is clearance rates. The Florida Office of the State Courts Administrator (OSCA) and the Florida Clerks of Courts are currently in the process of implementing the Uniform Case Reporting System that will include additional performance measures such as time to disposition and age of pending caseload.[19] Accordingly, this discussion is limited to clearance rates and some additional basic data.

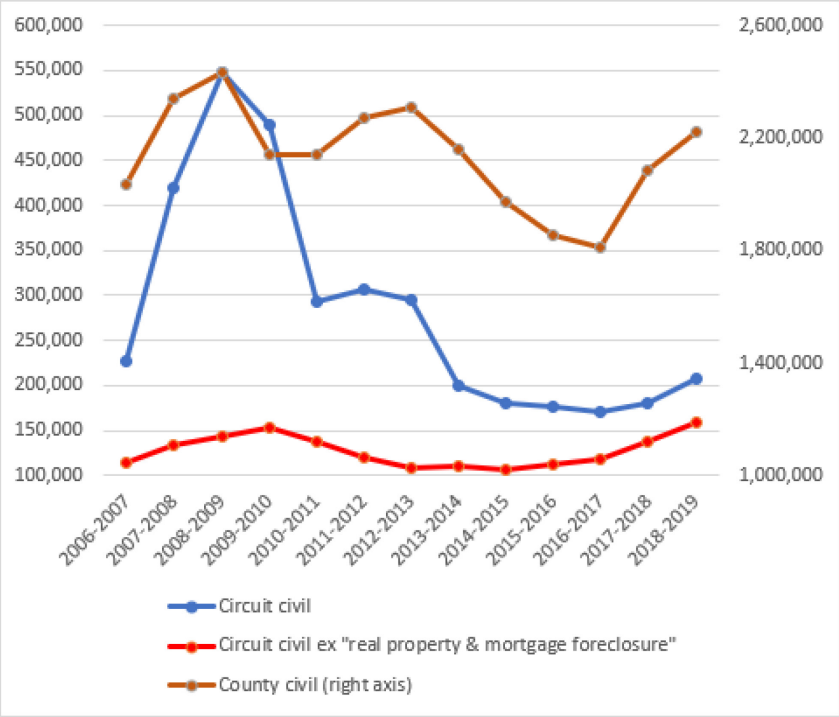
i. Clearance rates

Clearance rate is defined as the number of disposed cases divided by the number of filed cases during a given time period, expressed as a percent.[20] For example, if 100,000 cases are filed during a given year and the court disposes of 90,000 cases, the clearance rate is 90%. If, theoretically, the clearance rate holds at 100% over the years, the court's pending caseload remains steady. If the clearance rate is chronically below 100%, that would imply a buildup of pending cases. Clearance rates can be calculated statewide, by circuit, by county, by court division, by case category, and so on.[21]

The discussion that follows in this and the next subsection is based on statistics available from OSCA for fiscal years (FY) 2006–07 through 2018–19.[22] During this period, the total numbers of circuit judges and county judges throughout the state—a variable that might otherwise confound analysis of the data—remained constant. All statistics stated below are based on statewide totals in the respective circuit and county courts. Circuit court data is compiled by OSCA for the criminal, civil, family, and probate divisions, while county court data is presented in the two categories of criminal and civil. The statistics presented here focus primarily on civil cases in the circuit and county courts. Additionally, within the civil category, the annual OSCA reports break down the data for circuit civil cases by various case categories and subcategories.

The trend in total circuit civil case filings is confounded by the mortgage foreclosure crisis, which began manifesting itself in FY2007–08.[23] Total circuit civil case filings are therefore not always a useful measure, at least for that year and the several years following. However, annual circuit civil filings other than in the "real property and mortgage foreclosure" category showed a moderate increase during the foreclosure crisis, then a moderate decrease to FY2006–07 levels, then an increase to a figure substantially above the FY2006–07 level. Specifically, total circuit civil filings except "real property and mortgage foreclosure" filings for the beginning and ending fiscal years were 113,448 and 158,464, an increase of almost 40%. County civil filings followed a similar up-down-up trend, with the totals for the beginning and ending fiscal years at 2,032,496 and 2,220,444, an increase of about 9%. *See* Chart 1.

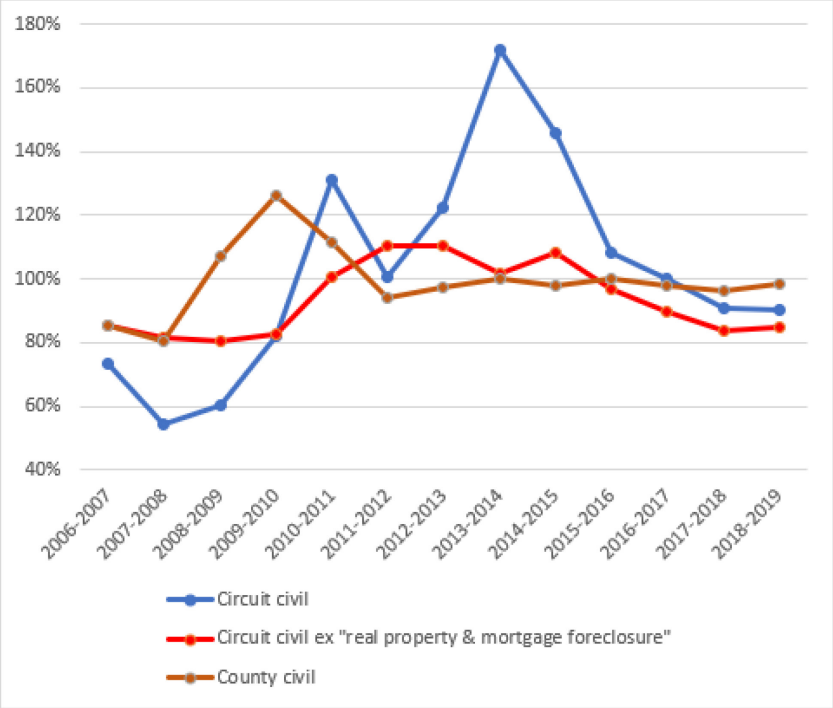
Chart 1. Civil filings by FY




Turning to the clearance rate, the foreclosure crisis, again, confounds the data. Nevertheless, clearance rates over the period under consideration show interesting patterns. *See* Chart 2.

The overall circuit civil clearance rate varied greatly over the period under consideration due to the foreclosure crisis. However, important for purposes of this study, the rate began as low as 73.5% in FY2006–07 and ended at a still-less-than-optimal level of 90.2% in FY2018–19. Interestingly, circuit civil cases other than in the "real property and mortgage foreclosure" category reflect a lower overall performance considering only the beginning and ending fiscal years: 85.5% and 85.0%.

Chart 2. Civil clearance rates by FY




During the foreclosure crisis, the clearance rate for circuit civil overall dropped to 54.5% and 60.1% in FY2007–08 and FY2008–09. The clearance rates for cases other than foreclosures, however, remained relatively steady during this period, at the low end of the 80% range. Thus, almost all the decrease can be attributable to foreclosure filings, with the foreclosure-case clearance rate (not shown in the chart) falling to 41.7% in FY2007–08. However, by FY2009–10, the clearance rates for circuit civil overall and foreclosure cases had recovered to the low end of the 80% range. Furthermore, thanks largely to additional nonrecurring appropriations from FY2010–11 to FY2014–15 that enabled staff increases (including the use of senior judges) and technology enhancements, the clearance rate for circuit civil overall surged to 131.2% in FY2010–11 and reached a peak of 172.1% in FY2013–14. In civil categories except foreclosures, the clearance rate rose to the 100-110% range during FY2010–11 through FY2014–15; however, the rate then dropped back to 85.0% by FY2018–19.

No individual circuit consistently performed well over time. By circuit, FY2018–19 clearance rates for cases other than foreclosures ranged from 32.1% to 105.6%, with most circuits in the 70% range to the low 90% range.

The trends in county civil were different: a low clearance rate of 85.3% in FY2006–07 and a relatively strong 98.4% by FY2018–19. In the wake of the foreclosure crisis the county civil clearance rate rose to 126% (FY2009–10) and remained steady at just under 100% in FY2011–12 and thereafter. Across circuits, county court clearance rates were fairly consistent, ranging in FY2018–19 from 87.3% to 115.9% with most other circuits in the mid to high 90% range.

Other circuit court divisions generally have higher clearance rates. During the period reflected in Chart 2, in circuit criminal and family, clearance rates hovered at the high

end of the 90% range during the period, occasionally crossing a few points over 100%. In the criminal division, this performance is probably attributable, at least in part, to certain constitutional constraints such as speedy trial. In the family division (which includes dependency, termination of parental rights, and juvenile delinquency cases), similar factors may also keep clearance rates steady, with delinquency cases moving quickly and dependency/termination cases having statutory time limits. Nevertheless, to the extent that other categories of domestic relations cases (dissolution, child support, domestic violence, paternity, etc.), which work under the Family Law Rules of Procedure similar to the civil rules, make up the vast majority of the family category (about 84% of "family" cases filed in FY2018–19), it would appear that litigants, attorneys, and courts have worked out on their own how to keep cases moving.

Taken together, one interpretation of the trends just noted is as follows. In the circuit civil category, absent emergent circumstances such as the foreclosure crisis, during which additional nonrecurring appropriations afforded greater resources, the courts on average statewide ended the period under examination with a less-than-optimal clearance rate of about 90%, or 85% if foreclosure cases are omitted from consideration. This implies a need for action—the subject of the present report. Of course, the statistics presented here do not, alone, imply that a certain program or protocol is called for, just that something needs to be done to raise clearance rates. Although it may be tempting to suggest that the answer is simply one of needing more money, given that clearance rates in the circuit civil division improved so markedly once financial infusions were made after the foreclosure crisis hit, that explanation, at least as the *sole* explanation, is contradicted by the relatively good performance of other circuit divisions during "normal" times, as just noted.

A comparison between trends in circuit civil and county civil does not lend itself to an obvious interpretation. Clearance rates in circuit civil overall and county civil rose approximately the same number of percentage points over the period under examination, ending at 90.2% and 98.4%, respectively. This may reflect parallel experience gained and lessons learned during the foreclosure crisis,[24] although the circuit civil rate does need improvement. On the other hand, that hypothesis is at least partially defeated by the fact that the rate for circuit civil except foreclosure cases began and ended at about 85%. Again, the bottom line would appear to be that, with respect to circuit civil at least, action in some form is needed to bring up the clearance rate.

ii. Cases going to trial[25]

The number of cases going to bench trial in Florida's circuit courts surged by two orders of magnitude between FY2008–09 and FY2013–14 (from 504 to 49,493) due to the mortgage foreclosure crisis, and foreclosure bench trials still accounted for an exceptionally large proportion of all bench trials as late as FY2018–19. Therefore, to ensure meaningful comparisons, all data presented in this subsection subtracts out the figures for "real property and mortgage foreclosure" cases.

Circuit civil bench trials have been low as a percentage of total dispositions since at least FY2006–07, falling from 0.7% of disposed cases that year to 0.3% (423 trials out of 134,672 cases disposed) in FY2018–19. Jury trials halved in percent terms during

the same period, from 1.0% to 0.5% (1,101 trials out of 134,672 cases disposed). Total trials approximately halved in percent terms, from 1.7% to 0.8%.

In county civil, the number of bench trials decreased from 0.3% of total cases in FY2006–07 to 0.1% (2,790 trials out of 2,186,008 cases disposed) in FY2018–19. Jury trials are virtually nonexistent on the civil side of county court. They fell from 0.008% of total dispositions in FY2006–07 to 0.002% (41 trials) in FY2018–19. The percent values for total trials were thus the same as those for bench trials.

The trend is similar, albeit more pronounced, in the federal system. Cases reaching trial amounted to 4.1% of total civil cases "terminated" during the fiscal year ending September 30, 2007, and only 0.7% of cases during the fiscal year ending September 20, 2019. This occurred even as the number of terminated cases rose, from 239,292 to 311,520. The percentage of jury trials dropped more dramatically, from 3.7% to 0.5% of terminated cases during the same time range.[26]

As will be discussed below,[27] the implication of the trend away from trials is that judges must be more active during the pretrial stages in moving cases toward resolution.

## 2. What is judicial case management?

### a. *Definition and categories of "case management"*

Although "case management" or "judicial case management" mean "different things to different people," the terms mean "in essence, . . . trial judges using the tools at their disposal with fairness and common sense . . . to achieve the goal described"[28] in Florida Rule of Civil Procedure 1.010, which is to "secure the just, speedy, and inexpensive determination of every action." Stated conversely, case management is implicit in rule 1.010.[29] The requirement of some form of case management is more explicit in Florida Rule of General Practice and Judicial Administration 2.545(b): "The trial judge shall take charge of all cases at an early stage in the litigation and shall control the progress of the case thereafter until the case is determined."

Case management can be categorized into three styles:

- *Traditional case management*, in which case progress is almost entirely the responsibility of litigants, with judges becoming involved only when a hearing or trial is requested and case progress in the court is otherwise inactive. "The traditional deferential approach of judges sitting back and resolving only the matters put to them by the parties is still the dominant mode of operation in civil courts."[30]

  The drawbacks to this approach are legion. Traditional case management "requires cases to compete for judicial attention on an on-demand, first-come-first-served basis depending on the availability of resources, the urgency of the issues in any given case does not always guarantee access. In other words, access depends on which cases are earlier in the judge's queue and how much time and attention those cases require."[31] As a result, "crowded dockets and overzealous litigants compete for the attention of the most expensive resource in the courthouse: the judge's time. Without case management, there is no organization or prioritization of those demands."[32]

- *Reactive case management*, in which the court becomes "involved upon request for enforcement or by a party" and "recognizes an obligation to act when there is [a] period of inactivity . . . or the case is aged beyond the judge's tolerance level."[33]

  Court involvement under the reactive approach is "ad hoc and irregular, triggered only by a request of the parties or inactivity in the case," unless a procedural rule with a deadline applies. "There is no defined overall plan for the case and no end date in the horizon." Intermediate deadlines are calculated back from the trial date, which is usually set not at the initial stages of a case but when the parties finally feel they may be ready for trial. Rule-based and party-set deadlines are often defeated by lenient continuance policies found in court rules or permitted by many judges.[34]

- *Active* (or *proactive*) *case management*, in which the court system "recognizes an obligation to provide consistent momentum through a court-supervised case management plan *designed from the outset* to ensure effective progress through case stages, with a defined anticipated resolution deadline, whether by trial or settlement, without unnecessary delay between events."[35]

  "Properly done, active judicial case management ensures that the pretrial activities in each case are appropriate and proportional to the needs of the case. Judges individually tailor the pretrial process in each case, sometimes by guiding the parties to make better choices, sometimes by working with the parties to help them agree on the size and scope of the pretrial activities, and sometimes by resolving disputes and imposing limits when the parties cannot agree or when the parties both engage in unreasonable behaviors."[36]

The Florida Rules of Civil Procedure currently straddle all three forms of case management. Rule 1.200, governing pretrial procedure, lies somewhere between the traditional and reactive approaches.[37] However, if a case is designated "complex," the court is required to be more proactive under rule 1.201.[38]

b. *Differentiated case management*

This report by the Workgroup includes recommendations for amendments to Florida's rules of court to establish protocols for active judicial case management in the circuit and county civil divisions. More specifically, the Workgroup recommends a modality known as "differentiated case management" (DCM), which may be defined as "a system for managing cases based on the complexity of each case and the requirement for judicial involvement. Civil cases having similar characteristics are identified, grouped and assigned to designated tracks. Each track employs a case management plan tailored to the general requirements of similarly situated cases."[39] DCM thus has two basic components: (1) the assignment of each case to an appropriate track based on the case's complexity and anticipated level of judicial involvement and (2) case management plans, or templates, appropriate to each track.

DCM has been endorsed by the Conference of Chief Judges and Conference of State Court Administrators, as reflected in the *Call to Action* report.[40] The amendments to Florida Rule of Civil Procedure 1.200 recommended in the present report[41] incorporate the three-track approach called for by *Call to Action*:

- streamlined track—cases that present uncomplicated facts and legal issues that require minimal judicial intervention but close court supervision;
- complex track—cases that present multiple legal and factual issues, involve many parties, or otherwise are likely to require close court supervision; and
- general track—cases whose characteristics do not justify assignment to either the streamlined or complex tracks.[42]

Florida's statutes and civil rules currently reflect a partial, albeit less-than-robust, system of DCM. Section 51.011, Florida Statutes (2020), delineates a "summary procedure" for certain categories of cases; this is essentially a streamlined track. Additionally, Florida Rule of Civil Procedure 1.201 details procedures for complex cases. However, the majority of civil cases, which are not designated as complex and are not subject to section 51.011, do not come under any DCM protocol. Finally, small claims heard in Florida's county courts have their own rules of procedure,[43] representing a well-established form of differentiation.

Taking the lead, several local trial courts in Florida have instituted one form or another of DCM. For example, as early as 2012 the 20th Circuit implemented a "Civil Differentiated Case Management (DCM) Procedures and Backlog Reduction Plan."[44] Several circuits, including the Ninth, have taken a different approach, by establishing separate business/complex litigation divisions, some with their own rules of procedure.[45] Some of these initiatives, as well as rules changes and programs instituted in the federal system and other states over the past several decades, will be described below.

It may be noted that, contrary to what is perhaps a popular perception, the federal civil rules do not mandate DCM in the sense of establishing multiple tracks. However, some individual district courts have created such a system in their local rules.[46]

### 3. Is active judicial case management the solution?

a. *Supporting arguments*

There are several reasons why active judicial case management should become the norm. One is simply the reality of the modern litigation environment, as exemplified by the fact that as of FY2018–19, only 0.8% of general civil cases in the Florida circuit courts proceeded to trial.[47] Essentially, more than 99% of cases were resolved in some form pretrial.

> Regardless of the cause of the decline in trials, . . . the consequence is the same: if judges are to have a meaningful role in advancing the "just, speedy, and inexpensive" determination of matters before them, they cannot primarily play their part in a black robe ruling on evidentiary objections at trial. Rather, the role of judges must adapt to the new litigation climate and must focus on the pretrial process.[48]

An important reason for encouraging active judicial case management is that the practice should translate into enhanced access to the courts. To the extent that cases are more actively managed at the early stages, with common litigation-over-litigation triggers such as discovery addressed up front by both rule and judicial oversight,

efficiency toward resolution will be enhanced and litigation costs reduced. Reduced costs should in turn make the courts a more attractive option for dispute resolution for litigants who might otherwise turn to alternative modalities or not bother to seek any resolution.[49] In contrast, as already noted, in the traditional approach to case management, access to the court depends on which cases happen to be earlier in the judge's queue.[50]

It may be noted that judicial case management has strong (albeit not universal) support among members of the bench and bar:

> Four nationwide surveys show that solid majorities of attorneys and judges believe early judicial intervention . . . helps to focus the litigation, by narrowing the issues and limiting discovery. These and other surveys also show general agreement that early and active judicial involvement for the duration of a case is a positive development for the pretrial process and leads to more satisfactory results for clients."[51]

Summarizing another survey, by the American College of Trial Lawyers, one commentator notes that the survey authors

> recommended that judges have a more active role at the beginning of a case in designing the scope of discovery and the direction and timing of the case all the way to trial. The authors also noted that according to one Fellow, judges need to actively manage each case from the outset to contain costs; nothing else will work.
>
> The [survey] recommends that this increased judicial involvement occur early and often: Early judicial involvement is important because not all cases are the same and because different types of cases require different case management. The survey also stresses the necessity of initial pretrial conferences to discuss discovery at an early stage. Further, the survey emphasizes the importance of frequent status conferences and the need for the parties to make periodic reports of these conferences to the court.
>
> These surveys suggest that the primary consumers of judicial services—practicing trial lawyers and clients—believe that the system works better with active judges. Surely their opinions carry significant weight in evaluating the proper role of judges.[52]

b. *Philosophical and practical objections to judicial case management; responses*

On the other hand, numerous objections to active judicial case management have been raised in the legal literature, noting the lack of empirical research[53] to support the proposition that active judicial case management serves to resolve the problems identified previously,[54] as well as objections ranging from the philosophical to the procedural. The following summarizes these objections, along with responses, based primarily on a law review article published in 2015 (presented without further pinpoint citations except where needed for clarity):[55]

- Lack of transparency/case management is off the record. *Response:* Rules can be drafted to require that case management conferences be on the record.[56]

- Improper settlement pressure by the judge.[57] *Response:* Survey data suggests that such pressure does not exist in the majority of cases. Any such pressure should be policed; it should not serve as an excuse for not engaging in judicial management. Any requirement of metrics reflecting case turnover should be crafted to avoid incentivizing coercive settlement tactics. All case management conferences should be of record. Rules can be drafted to address judicial involvement in settlement.[58]
- Lack of impartiality—i.e., judges hear a great deal of "evidence" at pretrial conferences that would be inadmissible at trial. *Response:* This should not be an issue. Judges are accustomed to hearing inadmissible evidence at hearings and trials (such as when the court rejects proffered evidence) but have to disregard it when making their decisions.
- Judges are not trained as managers. *Response:* Judges will have to learn a different skill set or be required to train accordingly.
- Judges lack the necessary information at the early stages to make decisions on, for example, the scope of discovery. *Response:* This is actually an argument for ongoing case management. A judge could make an initial ruling on, e.g., scope of discovery, and adjust it as discovery progresses.
- Case management gives judges too much discretion. *Response:* That this objection is even voiced implies "issues much more profound than how active or managerial our judges are—it signals a lack of faith in the entire judicial system."[59] Judges must exercise discretion throughout a case in any event.

The preceding is not intended as an exhaustive compendium of objections to judicial case management and responses to the objections. Nevertheless, it demonstrates that objections to judicial case management are not insurmountable.

**4. Why are judges not engaging in case management?**

a. *Because appropriate rules are not in place*

The Florida Rules of Civil Procedure are to be "construed to secure the just, speedy, and inexpensive determination of every action."[60] A basic premise of this report is that the civil rules, along with the relevant provisions of the Rules of General Practice and Judicial Administration, do not currently provide trial judges with the specific tools they need to effect the goals of the Workgroup. Although the legal authority relevant to case management is addressed in more detail below,[61] we note here that some rules of court may be merely hortatory, or an unhelpful mix of mandatory and aspirational provisions,[62] when firmness would seem to be required; are sometimes mostly optional;[63] may not require early invocation even though the rule is otherwise a useful case management tool;[64] may be virtually devoid of substance, not to mention teeth;[65] may be partially self-neutralizing;[66] may provide an all-too-easy-to-use escape hatch;[67] and may inconsistently avoid targeting for sanction those persons who are responsible for delay or other problems.[68] Rule 2.545(b), in contrast, is mandatory and sets forth "specific steps" that a trial judge must follow:

> Case Control. The trial judge shall take charge of all cases at an early stage in the litigation and shall control the progress of the case thereafter until the case is determined. The trial judge shall take specific steps to monitor and control the pace of litigation, including the following:
>
> (1) assuming early and continuous control of the court calendar . . . .

Nevertheless, the remainder of the language in the rule is general and essentially requires individual judges, or at least individual circuits, to create their own case management protocols. Relatively few circuits have done so. The Workgroup aims to address these and other shortcomings in the rules.

b. *Other factors*

Survey data from Florida circuit judges reported in Judge Bailey's study reflect additional factors, some related to the rules or lack thereof, behind the lack of judicial engagement in case management:

- *Lack of awareness?* Awareness is not the problem. Judges are generally aware of the concept of active judicial case management, as it is mandated in a general sense in rule 2.545(b) and taught at judicial conferences.[69] Over 90% of respondents agreed that case management was part of a judge's duties.[70]
- *Misunderstanding of what judicial case management should entail?* Responding judges had various ideas of what form judicial case management should take, with some judges taking a reactive approach and others engaging in a more active style.[71] Perhaps the key underlying problem is that the "current Civil Rules are built upon the expectations that judges will manage their cases. But the rules themselves provide little guidance on the critical questions of calibration and scale necessary to guide judges on how to manage."[72] The survey also brought out a "continuing obsession" with the trial date as the "driver of case progress," a virtually meaningless polestar given that extremely few cases go to trial.[73] All this implies the need for a deadline structure set early and based on something other than working back from the trial date.
- *Philosophical opposition?* Though a minority, a full one-third of survey respondents believed that whether a judge chooses to engage in case management is based on notions of "judicial independence." It is not clear why this should have been the breakdown of responses when, as noted previously, over 90% of respondents believed case management to be part of a judge's duties. This ambivalence can be taken as further support for the need for rule-based case management standards and procedures, with a mandate for compliance.[74]
- *Competing incentives?*[75] Competing incentives include elections, bar polls, and other concerns about attorney attitudes. Judges tended to acknowledge that none of these matters should be a consideration when making judicial decisions. Clearly defined rule-based case management procedures, while not eliminating such concerns, will provide clear justification for their use, thus at least theoretically reducing any basis for attorney ill-will toward case-managing judges.

- *Institutional inertia and local court culture?* About 60% of respondents agreed with the assertion that their local legal culture includes active case management, notwithstanding that no empirical evidence exists for the assertion. Indeed, other responses reflected strong institutional inertia, making it difficult, for example, to advocate for changes in case management practices. Judges who wanted to actively engage in case management had to do so on their own, by putting in "extra effort . . . to design their own processes and systems with their staff, without systemic support."[76]
- *Lack of time, staff, and technology support?* Majorities of responding judges agreed that they and their staff need better training in case management; that judges would be more likely to engage in active case management if provided with trained staff support, judicial training, and time to engage in case management; and that judges would be more likely to embrace case management if it were a mandatory system component of the circuit's operation, including technology and staff, across the civil docket instead of depending on individual judges to elect to case manage.[77]

The common themes that emerged from the survey of Florida's circuit judges were that judicial case management is a valuable means of ensuring timely and just resolution of cases, that it should be used to a greater extent, and that judges need to be provided with the structure (clear rules, training for themselves and court staff, and technology) to implement case management.

## B. ***Research on judicial case management***

### 1. The state of the research

Although there is available a wealth of descriptive material on case management initiatives in court systems and individual courts around the country,[78] there are relatively few reports on empirical research that sort out which new procedures and practices do or do not work to move cases through the courts more efficiently while ensuring just resolutions. Indeed, one commentator has written:

> The [federal and state] efforts [at civil litigation reform] share common elements as well as common flaw [sic]. The proposed reforms are based more on anecdote than research and evaluation. They have often been enacted in states without first determining whether a problem exists and, more importantly, without being evaluated to determine if they are working.[79]

And:

> Most of the reforms . . . have been formulated and implemented without critical insight. While some of the reforms are based on empirical evidence, most are based on anecdotes and conventional wisdom rather than hard data that a problem even exists—let alone that the particular reform will solve the perceived problem. Moreover, few reforms have been subjected to the kind of rigorous analytical scrutiny that most agree is necessary to determine whether a program is actually achieving its goals, and to demonstrate to legislatures and the public that a specific program and the courts in general are worthy of increased financial support.[80]

Additionally, designing good experiments in the scientific sense may sometimes be virtually impossible in the civil litigation context,[81] making the default practice of instituting new measures based on trial and error, and experience, inevitable.[82]

To be realistic, then, one has to start somewhere. With clearance rates in the Florida's circuit civil courts stagnating and with existing court rules on case management ranging from the aspirational to the mostly optional,[83] the Workgroup has reached a consensus on recommendations for amendments to relevant court rules based on the existing empirical evidence, recommendations made by experts around the country,[84] and the members' collective decades of experience as litigators and judges in Florida's trial courts.

## 2. Research in the federal judiciary

### a. *The RAND study*

Three decades ago, Congress enacted the Civil Justice Reform Act of 1990 (CJRA).[85] The CJRA directed each federal district court to implement a "civil justice expense and delay reduction plan" to effect several purposes: "facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes."[86] Though leaving specific planning to the courts, Congress did mandate that the courts at least consider certain protocols and procedures, including DCM, early judicial management, and a joint case management plan to include discovery.[87] The CJRA required the federal Judicial Conference to designate 10 district courts as "pilot programs," with case management programs to be affirmatively implemented, and 10 courts as controls with mere discretion to implement programs.[88] The Conference hired the RAND Corporation to conduct the research.

Although the RAND study was wide-ranging, the results of the research most relevant to the Workgroup's goals are that the following procedures are effective in moving cases *when used in combination:*

(1) early judicial case management;

(2) early setting of the trial schedule;

(3) shortening discovery cutoff;

(4) periodic public reporting of the status of each judge's docket; [and]

(5) conducting scheduling and discovery conferences by telephone . . . .[89]

The RAND evaluation found that early judicial case management on its own "significantly reduced time to disposition" but also "significantly increased lawyer work hours"—thus *increasing* costs to clients.[90] However, "when early judicial intervention is combined with shortened discovery, the increase in lawyer work hours is mitigated."[91]

### b. *IAALS study*

Nothing as extensive as the RAND study appears to have been undertaken in the federal system since that landmark research. We summarize one further project here,

conducted by the Institute for the Advancement of the American Legal System (IAALS).[92] That study entailed a docket analysis of 7700 federal civil cases terminated between October 2005 and September 2006 in eight federal district courts, interviews with judges and the courts' clerical staff, and attorney surveys.[93] The study sought to determine which factors contribute most strongly to delay in case resolution.[94] Findings relevant to the Workgroup's project may be summarized as follows:

- Cases in which a trial date is set early, discovery issues are raised and resolved within a set discovery period, and dispositive motions are filed as early as possible tend to be resolved more quickly than other cases.
- Holding a hearing on a discovery motion tends to result in an earlier ruling on the motion. However, the trend is less clear for dispositive motions.
- In each of the courts studied, about 90% of motions to extend time (for any stage, from responding to a discovery request to trial date) were granted. But in those courts with faster average time to disposition, many fewer motions to extend time were filed in the first place.
- External reporting of data, as required by federal law, appears to encourage courts to rule on certain motions, as evidenced by a greater proportion of rulings during the weeks before the reporting deadlines.
- Based on interviews with judges and existing legal literature, the researchers concluded that "efficient case processing is most likely to occur where the local legal community, steered by the expectations of the judiciary, embraces (or at least accepts) strong case management."[95]

The researchers made the following recommendations, while acknowledging that pilot studies should be conducted to test them:

- Early in the pretrial process, dates for close of discovery, the filing of dispositive motions, and trial should be set, and the deadlines kept except in truly unusual circumstances.
- Motions should be ruled on expeditiously. Attorneys should file dispositive motions as early as possible in a case.
- Attorneys should effect discovery early in the discovery period so disputes can be resolved well before discovery cutoff.
- Extensions of time at all stages of the case should be limited.
- Statistics should be tracked internally and reported externally.[96]

### 3. Research in the states

The following subsections constitute a summary of initiatives in state courts around the country, presented in approximate chronological order of reporting. As a general note, it is often difficult to tease out specific causal relationships, such as which factor or factors caused time to resolution to be shorter in cases brought under a given initiative. In other words, positive trends generally have to be taken as the result of the initiative as a

"package," which may encompass such multiple variables as active case management, stricter discovery procedures, stronger prohibitions against continuances, and so on.[97]

a. *Two early experiments*

Although the discussion of case management tends to focus on the federal system, the earliest reported initiative was undertaken by the Circuit Court of Wayne County, Michigan, in 1929. Having noticed that about half of cases settled before trial, the court began requiring informal pretrial conferences to clear its backlog of other pending cases, with a view toward encouraging settlement. Many cases settled as a result, and those that went to trial did so within 12 months rather than 45 months, as had been the experience before implementation of the new procedure. The Superior Court of Suffolk County, Massachusetts, witnessed similar results after adopting a similar system in 1935.[98]

b. *Economic Litigation Pilot Program in California*

In the early 1980s an Economic Litigation Pilot Program was implemented in two high-volume California courts aimed at reducing the cost of litigation in relatively small-dollar cases.[99] The program, however, focused on reducing discovery with little attention to judicial case management. Interrogatories were completely eliminated, and depositions of nonparties severely restricted; this was designed to force the parties to put all their cards on the table up front.[100] Results relevant to the Workgroup's goals may be summarized as follows:

- There was no clear trend in case-processing times; one court showed a significant reduction and the other, no change.
- Any reduction in time to disposition occurred only in the post-discovery phase, even though reducing discovery was a key aim of the program.
- In general, attorneys found the discovery restrictions counterproductive; the restrictions stymied their efforts and made it more difficult to analyze the merits of a case with a view toward settlement.[101]

Additional comments on this study are presented under the Kentucky study, next.

c. *Caseflow management study in Campbell County Circuit Court, Kentucky*

A controlled experiment in case management was conducted in a two-judge trial court in Kentucky in the early 1980s, modeled in part on the California program just described but tweaking that program to include active case management governed by special rules, with half of the civil caseload randomly assigned for case management and half assigned to proceed as usual.[102] Results relevant to the Workgroup's goals may be summarized as follows:

- On average, cases filed under the special rules took five months to resolve, well reduced from 16 months for cases proceeding under the regular rules; each major stage of a case was also shortened.

- An additional 16% cases closed during discovery in the special-rules group. However, in both groups, once discovery was completed, there was no difference in proportions of cases settled, proceeding to summary judgment, and proceeding to trial.
- Special-rules cases required more conferences per case on average but fewer motions. Overall, judge time amounted to the same between the two groups, and most attorneys saved time under the special rules, at least according to attorney surveys. Reduced discovery was apparently the primary time saver. Preliminary results reflected cost savings to clients in noncontingency cases.[103]

The reviewers compared the results of the California ELP program and the Kentucky program, noting the mere "mixed success" of the former. They attributed the generally better Kentucky results to several factors:

- effecting *early* and *ongoing* judicial and administrative case management in Kentucky, as opposed to judge interaction at a later stage in California and then no ongoing monitoring;
- allowing interrogatories in Kentucky, limited to 20, as opposed to none in California;
- using the final pretrial conference in Kentucky as a device to force counsel to prepare for trial rather than as a mandatory settlement conference as in California; and
- a tighter trial deadline (shorter number of days) in Kentucky.[104]

As noted above, the California attorneys participating in the ELP program were generally dissatisfied with the results; the Kentucky attorneys were largely satisfied.[105]

The reviewers concluded that five principles help ensure effective caseflow management:

- early judicial control,
- continuous judicial control,
- short scheduling,
- reasonable accommodation of attorneys' schedules, and
- "calendar integrity," i.e., refraining from overscheduling and honoring the deadlines set.[106]

d. *Colorado CAPP initiative*

From 2012 to 2015, five district courts[107] in Colorado undertook a Civil Access Pilot Project (CAPP) applicable to business actions, with the IAALS conducting a docket study of those courts and five nonparticipating comparison courts as well as attorney and judge surveys.[108] CAPP rules supplemented the state's civil rules and mandated, inter alia, initial disclosure, a joint case management report with proposed deadlines and levels of discovery, an initial case management conference resulting in a case management order that established permitted discovery and set deadlines (including trial), the assignment of a single judge for the life of a case, and continuances and other

extensions only under extraordinary circumstances.[109] Results relevant to the Workgroup's goals may be summarized as follows:

- CAPP cases increased the probability of an earlier resolution by 69%, with median time to resolution 59 days less.
- The initial case management conference was reported by judges to be the most useful tool "for determining a proportionate pretrial process," while initial disclosure was reported as the least useful tool.
- Fewer motions were filed per case under CAPP. A few attorneys suggested that the rules should also include deadlines for judges to rule on motions; a regime of strict deadlines should apply to everyone, attorneys thought.
- CAPP cases did not reflect a lower number of motions to continue filed or granted. However, there were fewer general requests for extension in CAPP cases, and fewer such motions were granted.[110]

e. *Florida's 11th Circuit pilot project*

In 2016 Florida's 11th Circuit (Miami-Dade County) established a Civil Case Management Unit to test Recommendation 7 of the *Call to Action* report: "Courts should develop civil case management teams consisting of a responsible judge supported by appropriately trained staff."[111] Four of the 25 judges of the circuit's civil division, along with a case manager, judicial assistant, and bailiff for each judge, were formed into four teams. All 25 judges had a judicial assistant and bailiff; only the four project judges had a case manager. The four project teams were given special training for the project, while nonproject judges and their staffs continued to operate under standard administrative practices.[112]

Cases were assigned by the clerk's office at random to project judges and the other judges in the division. Initial pathway assignment (streamlined, standard, or complex), made by the bailiff and reviewed by the case manager, was based simply on the substantive category of the case. The parties were then sent a "welcome letter" informing them of case deadlines corresponding to the assigned pathway, without mentioning which pathway the case was assigned to, and the rules. Case managers and JAs kept track of their cases, conferring with the judge as necessary.[113]

To determine the impact of the project, cases newly filed and assigned to project and nonproject civil judges during a one-year period in 2016–17 were tracked from the beginning of that period to the end of the fifth month after the end of that period. For purposes of the study, cases assigned to nonproject judges were tagged with the appropriate pathway designation. The proportions of the three pathway designations were virtually identical between project and nonproject cases, as was the number of case assignments per judge.[114]

Results relevant to the Workgroup's goals may be summarized as follows:

- At the end of the pilot period (17 months), 56.2% of project cases had closed, in contrast to 40.7% of nonproject cases, a statistically significant difference. Significant differentials in closure rates were also seen in major case categories (tort, foreclosure, etc.).[115]

- At statistically significant levels, there were proportionally more settlements and fewer dismissals for project cases; there was no significant difference in the proportion of cases going to judgment.[116]
- Contrary to expectations, which were posited on the existence of active case management in project cases, there were more scheduled hearings per case in project cases at a statistically significant level, a factor that would presumably impact the costs of litigation.[117]
- As expected, there were significantly more case conferences per case in the project cases; such conferences were part of the project.[118]
- Taking into account closed cases only, a statistically significantly *greater* proportion of project cases had motions for continuance during the course of the case; the same was true for general motions for extension of time. When broken down by quarter (i.e., of the main one-year study period), however, there was no difference between project and nonproject cases for either motions for continuance or motions for extension of time during the last three quarters; the difference was in the first quarter only.[119] This likely reflected a learning curve on the part of attorneys involved in project cases. It can be inferred that, to the extent that a stricter case management program will generate a greater number of requests for continuance, a firmer continuance rule than existing civil rule 1.460 is warranted.
- In general, attorneys and judges expressed satisfaction with the case management project.[120]

## C. ***Examples of case management rules***

After summarizing common features of case management rules across the country, this section looks briefly at the case management rules found in the Federal Rules of Civil Procedure, the rules in those states that have instituted some form of DCM,[121] and, as an example of a federal jurisdiction that has adopted DCM, the rules of the Southern District of Florida.[122] Florida's current case management statutes and rules are discussed in a later section.[123] As the summaries reflect, different jurisdictions have taken a variety of approaches to DCM, assigning cases to tracks based on damages claimed (Arizona), anticipated case complexity (New York, Southern District of Florida), and substantive case category (Massachusetts, New Jersey).

### 1. Common features

A feature common to the federal jurisdiction and those states that have some form of early case management directed in their rules is one or more of three procedures:

- an early meeting among the parties alone, usually focused on discovery and often with a report to the court for discussion during the next stage;
- a scheduling conference or initial case management conference with the court at which the parties' report (if any) and other matters, primarily discovery and scheduling, are addressed;
- a scheduling order or case management order, either memorializing the results of the case management conference (if any) or issued sua sponte by the court.

It would appear that almost every possible combination of the three key stages, with additional variations, is being implemented in one jurisdiction or another.[124] Several jurisdictions exempt certain types of cases from some or all of the jurisdiction's early case management requirements.[125] The lack of uniformity is consistent with the observation that few empirical studies have been done on pretrial case management, such that the states are essentially experimenting with what works best for them.

### 2. Case management in the Federal Rules of Civil Procedure

The key federal rule on case management is Federal Rule of Civil Procedure 16, which is coordinated with rule 26(f), part of the general discovery rule.[126] The two rules entail a somewhat complicated set of interlocking deadlines and alternative procedures. In brief, in most cases the parties must meet together early in the course of the case and prepare a written discovery plan for the court to approve.[127] Based on the parties' discovery plan, the court must issue a scheduling order with certain required items (deadlines for joining other parties, amending pleadings, completing discovery, and filing motions); the order may also address various optional matters.[128] There is no requirement that the court meet with the parties before issuing this order, although the option for the court to hold a scheduling conference before issuing the scheduling order does exist.[129] As previously noted,[130] the Federal Rules of Civil Procedure do not provide for *differentiated* case management.

### 3. Arizona

Under Arizona's civil rules, filed cases are initially placed into one of three tiers based on damages claimed:[131]

- Tier 1: "Simple cases" in which damages claimed are $50,000 or less.[132]
- Tier 2: Cases of "intermediate complexity" in which damages claimed are more than $50,000 but less than $300,000 and cases seeking nonmonetary relief (alone or in conjunction with damages under $300,000).[133]
- Tier 3: "Logistically or legally complex" cases in which damages claimed are $300,000 or more.[134]

The court may evaluate a case and reassign it to a different tier within 20 days after the parties file their joint report following their "early meeting." Additionally, the parties may stipulate to or move for reassignment "at the earliest practicable time."[135]

Otherwise, Arizona's case management procedures resemble those of the federal rules. The parties are required to have an "early meeting" within 30 days after a party files an answer or within 120 days after the action commences, whichever occurs first. The topics of discussion include the appropriate tier assignment, disclosures, witnesses, documents, motions, and agreements toward resolution. Within 14 days after the meeting the parties must file a joint report, to include their positions on each of the topics discussed; argument against the other side's positions is not permitted. At the same time, they must file a proposed scheduling order, with proposed deadlines for each disclosure and discovery stage/category, filing dispositive motions, and trial date along with the projected number of days for trial.[136]

The court must hold a scheduling conference if a party requests one and may hold one on its own motion.[137] The court must issue a scheduling order as soon as practicable after submission of the joint report and proposed scheduling order, or after the scheduling conference, if any.[138]

### 4. California

In 1990 the California legislature enacted a statute directing the state's judiciary to "adopt standards of timely disposition for the processing and disposition of civil and criminal actions." The rules were required to establish "a case differentiation classification system based on the relative complexity of cases" and to ensure that each stage of litigation would be timely accomplished.[139] The judiciary's resulting differentiation protocol provides basic guidelines, but "[e]ach court must adopt local rules on differential case management consistent with" state-level court rules.[140]

The court assigned to a given case is required to make an initial estimate of the time required for disposition of the case based on such factors as case category, number of claims alleged, number of parties with separate interests, and complexity of issues.[141] The court uses the evaluation to have the case treated in one of three ways: ordinary, exceptional (allowing for 3 years to disposition), or expedited (disposition in 6 to 9 months).[142] Cases in the ordinary category are to be managed so as to meet specified disposition goals, based on whether a case entails a value of $25,000 or less or more than $25,000.[143] The respective goals for cases in these two monetary categories are stated in terms of percentage of cases to be disposed of by certain time periods from filing:

- 90% / 75% of cases to be disposed of within 12 months from filing
- 98% / 85% within 18 months from filing
- 100% / 100% within 24 months from filing[144]

An initial case management conference is required in all cases.[145] Thirty days prior to the conference, the parties must meet and confer to discuss a long list of potential issues such as possible settlement and resolving discovery disputes.[146] They must prepare and file case management statements or a joint statement prior to the case management conference.[147] The court issues a case management order after the conference.[148]

### 5. Maryland

Maryland is unusual in that its rule governing case management directs the county administrative judge in each county to develop and implement a tiered DCM plan for the circuit court (similar to Florida's circuit courts[149]), subject to the approval of the chief judge of the state's court of appeals (the highest court).[150] The district courts (similar to Florida's county courts[151]) are not directed to implement DCM plans.

### 6. Massachusetts

Massachusetts has multiple trial court departments comprising, on the civil side, the superior, district, land, and housing courts, as well as a Boston Municipal Court.[152] Under the rules of the superior court, whether to have a case actively managed and set on an individualized track is left to the parties' discretion, with the court available to resolve disputes on that issue itself, as well as on limits on discovery, deadlines, and other matters.[153] However, in response to the Massachusetts Supreme Judicial Court's directives regarding "excessive delay," a standing order overrides the rules, mandating that all cases be placed on one of three tracks based on case category: fast track, average track, accelerated track.[154] A party may move to have its case transferred to a different track or to proceed on the basis of "individual" tracking under the civil rules.[155] Any early case management conference remains optional.[156] The standing order includes a very detailed table of deadlines for each track, including deadlines for final disposition.[157] Cases not resolved by the appropriate deadline are referred to a regional administrative justice for coordination with the local court.[158] Detailed rules or orders outlining DCM protocols for other court departments also exist.[159]

### 7. New Jersey

When filing a civil case in a New Jersey trial court other than a foreclosure and "all other general equity actions," the plaintiff must select on the civil cover sheet a case type listed under one of four tracks, I-IV. Track I includes such categories as tenancy, PIP, and UIM; Track II, employment and personal injury; and Track III, civil rights, medical malpractice, and product liability. Track IV is reserved for such categories as complex commercial and construction litigation, as well as specific actions such as "Bristol-Myers Squibb Environmental" and "Stryker Trident Hip Implants."[160] Parties may seek track reassignment by "certification of good cause."[161]

The tracks have at least two purposes. First, most discovery is required to be completed by a specified number of days counting from the filing of the first answer: 150 days for Track I, 300 days for Track II, and 450 days for Tracks III and IV.[162] The second purpose relates to case management. Each case is assigned to a "managing judge" when the complaint is filed, with that judge presiding over all pretrial motions and management conferences until completion of discovery; after that, a "civil presiding judge" handles motions.[163] It is only in Track IV cases that the designated judge also presides at trial, "insofar as practicable and absent exceptional circumstances."[164] Cases assigned to Track IV are somewhat more actively managed than other cases, in that a case management conference "shall be conducted" in Track IV cases "as soon as practicable after joinder" but such conferences are merely available by a party's request or the court's direction in the other tracks.[165]

### 8. New York

New York's civil DCM program applies "to such categories of cases designated by the Chief Administrator of the Courts as being subject to differentiated case management" and is "implemented in such counties, courts or parts of courts as designated by the Chief Administrator."[166] Whereas a preliminary conference is available by request in cases not subject to DCM,[167] such a conference is required where the DCM program is

in place.[168] At the conference, the court places the case into one of three tracks: expedited, with discovery to be completed within 8 months; standard, 12 months; or complex, 15 months. The court may shorten or extend the time limits as needed.[169]

By the 60th day before the discovery deadline, the court and parties must hold a "compliance conference" to monitor the progress of discovery, explore possible settlement, and set a deadline for filing the required "note of issue."[170] Within 180 days after the filing of the note of issue, the court holds a pretrial conference, at which it sets a date for trial, which must be within eight weeks of the conference.[171]

### 9. Federal example: DCM in the Southern District of Florida

The civil divisions of several federal district courts have incorporated DCM protocols into their local rules.[172] By way of example, the following summarizes the procedure outlined in the local rules of the Southern District of Florida.

In addition to a more-detailed discovery plan than the plan required by federal rule 26(f), the parties must submit to the court a joint proposed scheduling order, which must include a proposed assignment to one of three case tracks, taking into account the number of parties, number of experts, volume of evidence, and other factors:

- Expedited—a "relatively non-complex case," with discovery to be completed between 90 and 179 days of issuance of the court's scheduling order and trial projected as lasting one to three days.
- Standard—discovery to be completed between 180 and 269 days from the scheduling order and trial anticipated as lasting 3 to 10 days. Most cases are assigned to this track.
- Complex—"an unusually complex case," with discovery to be completed between 270 and 365 days from the scheduling order and trial anticipated as lasting over 10 days.[173]

The court may but is not required to hold a scheduling conference, and must issue a scheduling order.[174] The parties must have a second meet-and-confer no later than 14 days before the scheduled pretrial conference to discuss settlement, prepare a pretrial stipulation, stipulate to facts, examine all trial exhibits (except those to be used for impeachment), and exchange any info that may expedite trial.[175] The pretrial stipulation must be filed with the court at least seven days before the pretrial conference.[176] Discovery must be completed no later than 14 days before the pretrial conference.[177]

## D. ***Case management in Florida***

### 1. Existing programs

#### a. *Circuits with case management programs*

This section summarizes case management initiatives in the Florida circuit and county courts, based on a canvassing of the 20 circuits' websites. It may also be noted that Fla. Admin. Order No. AOSC21-17[178] requires that each circuit as of April 30, 2021, implement a case management plan; such plans either supersede or complement existing case management protocols.

- The 7th Circuit (Flagler, Putnam, St. Johns, and Volusia Counties) has promulgated a series of Uniform Pretrial Procedures in Civil Actions, applicable to the circuit court.[179] The procedure reflects a rather different one contemplated by the Workgroup, as there is no required early judicial involvement; additionally, deadlines are set back from a pretrial docket sounding. One of four form orders issues when the case is at issue. The orders are differentiated by whether trial is to be jury or nonjury and, for each of these options, whether a pretrial conference is scheduled by the order or offered as an option for the parties to request.
- The 16th Circuit (Monroe County) promulgated a civil case management plan, applicable to the circuit court only, in 2013.[180] The plan entails DCM but in categories different from those contemplated by the Workgroup: jury cases (with a time standard of 18 months to disposition after filing), nonjury cases (12 months), and complex cases (24 months). Two key orders issue in all cases: a "trial order" entered "as early as possible" in the case, setting deadlines for a pretrial conference and trial, and a "scheduling order" entered only when time standards have been met or exceeded. The scheduling order sets most other deadlines, such as for discovery and various categories of motions.
- The 17th Circuit (Broward County) has issued administrative orders that require the use of uniform case management orders in designated county and circuit civil cases.[181] The county court Uniform Order Setting Pretrial Deadlines and Related Requirements must be used when a jury trial is demanded. The order may issue when a case is at issue pursuant to rule 1.440 but otherwise no later than 18 months after the action was filed; unlike the procedure contemplated by the Workgroup, it does not issue in the earliest stages of the case. The order may specify dates for a pretrial conference, calendar call, and trial period. Discovery must be completed by 90 days from the date of the order; the order defines additional deadlines. The parties are required to file a joint pretrial stipulation within 100 days of the order, and presentation at trial is limited to witnesses and exhibits disclosed and objections raised in the joint pretrial stipulation.

  The circuit court Uniform Trial Order/Order for Mandatory Calendar Call in the 17th Circuit applies to civil cases other than cases designated as complex and residential foreclosures. When a case is at issue and ready for trial, the parties are required to agree on dates for a pretrial conference and trial period, selecting from open dates shown on the court's website. One party then fills out the Uniform Trial Order online, which then issues to all parties, specifying dates for the trial period and calendar call. The deadlines set forth in the Uniform Trial Order—for disclosure of fact, expert, and rebuttal witnesses, compulsory medical examinations; completion of discovery; dispositive motions; deposition objections; and expert challenges—are set at specified numbers of days before calendar call. Motions not heard before calendar call are deemed abandoned. By Day 10 before calendar call the parties must file a joint pretrial stipulation.
- The 20th Circuit (Charlotte, Collier, Glades, Hendry, and Lee Counties) appears to be the only circuit in Florida to have implemented a case management protocol similar to the one the Workgroup is contemplating.[182] Cases are differentiated into three tracks—complex, standard, and expedited—with tracking based

presumptively on case category (e.g., auto negligence initially assigned as standard, foreclosures as streamlined).

b. *Business courts*

The Business Law Section of The Florida Bar[183] is currently evaluating the possibility of instituting a statewide business court system for handling commercial disputes via revisions to the Florida Rules of General Practice and Judicial Administration, with a regional business court established in each region corresponding to the jurisdictional boundaries of the five district courts of appeal.[184] As of this writing, however, the Bar's and section's websites do not reflect recent activity toward the realization of this project.

Separate from the Bar's initiative, four circuit courts in Florida have established business/complex litigation divisions: the 9th Circuit's Business Court;[185] the 11th Circuit's Complex Business Litigation Division;[186] the 13th Circuit's Complex Civil Litigation Division/Business Court;[187] and the 17th Circuit's Complex Business and Complex Tort Divisions.[188]

**2. Each player's role in case management**

a. *The circuit clerks*

Elected in each county,[189] clerks of the circuit court are responsible for maintaining case files and a progress docket.[190] The clerk must also report "the activity of all cases before all courts within the clerk's jurisdiction to the supreme court in the manner and on the forms established by the office of the state courts administrator and approved by order of the court."[191] The rule does not specify reporting frequency. Chapter 28, Florida Statutes, delineates other responsibilities of the clerk.[192]

b. *The chief judges of each circuit*

The chief judge of each judicial circuit, who must be a circuit judge, "shall exercise administrative supervision over all the trial courts within the judicial circuit and over the judges and other officers of such courts."[193] The chief judge of a circuit has the authority to require all judges and court officers and personnel to "comply with all court and judicial branch polices, administrative orders, procedures, and administrative plans."[194] The chief judge's powers include the following:

- to assign judges to divisions and determine the length of assignments,[195]
- to supervise dockets and calendars,[196]
- to "assign cases to a judge or judges for the preparation of opinions, orders, or judgments";
- to reassign a proceeding when the assigned judge is to be absent;
- to "assign any judge to temporary service for which the judge is qualified in any court in the same circuit;"
- to request the chief justice to temporarily assign additional judges from outside the circuit when the proper administration of justice so requires;[197] and

- otherwise to do "everything necessary to promote the prompt and efficient administration of justice in the courts over which he or she is chief judge."[198]

The chief judge is responsible to the chief justice for such information as "caseload, status of dockets, and disposition of cases."[199] The chief judge is required to "regularly examine the dockets of the courts under the chief judge's administrative supervision, and require a report on the status of the matters on the dockets. The chief judge may take such action as may be necessary to cause the dockets to be made current."[200]

Taken together, these statute and rules provide the chief judges with a very general framework of powers and responsibilities but virtually no practical guidance in, for example, causing dockets to be made current on a circuit-wide basis, much less implementing a circuit-wide case management protocol. And, although as noted earlier several circuits have instituted case management programs,[201] a chief judge may well be hesitant to attempt to implement such a program given such factors as the local legal culture, the creation of inter-circuit inconsistencies in practice, and the need for approval of local rules[202] and the possibility of a challenge to an administrative order.[203]

c. *Individual judges*

"Judges and lawyers have a professional responsibility to conclude litigation as soon as it is reasonably and justly possible to do so. However, parties and counsel shall be afforded a reasonable time to prepare and present their case."[204] The basic parameters of a trial judge's case management role are defined as follows:

> The trial judge *shall* take charge of all cases at an early stage in the litigation and *shall* control the progress of the case thereafter until the case is determined. The trial judge *shall* take specific steps to monitor and control the pace of litigation, including the following:
>
> (1) assuming early and continuous control of the court calendar;
>
> (2) identifying priority cases as assigned by statute, rule of procedure, case law, or otherwise;
>
> (3) implementing such docket control policies as may be necessary to advance priority cases to ensure prompt resolution;
>
> (4) identifying cases subject to ADR processes;
>
> (5) developing rational and effective trial setting policies; and
>
> (6) advancing the trial setting of priority cases, older cases, and cases of greater urgency.[205]

This provision, with its mandatory "shall" language, gives a trial judge wide authority in controlling case flow. However, the rule does not currently contain enough detail to provide trial judges with practical assistance in case management.

Judges have "a duty to expedite priority cases to the extent reasonably possible."[206] Priority cases are defined as "cases that have been assigned a priority status or assigned an expedited disposition schedule by statute, rule of procedure, case law, or otherwise."[207] Parties may "file a notice of priority status" in "all noncriminal cases

assigned a priority status by statute, rule of procedure, case law, or otherwise."[208] The notice must identify, inter alia, any deadlines imposed by law and "any unusual factors that may bear on meeting the imposed deadlines."[209] A party may also seek review by motion to the chief judge if the party believes that a priority case has not been appropriately advanced on the docket.[210] However, the Rules of General Practice and Judicial Administration emphasize as having priority those cases in the categories of juvenile dependency, elections, constitutional amendments, and capital postconviction.[211] The rules do not appear to specifically provide a system for keeping general civil cases on track.

Judges are required to "maintain a log of cases under advisement and inform the chief judge of the circuit at the end of each calendar month of each case that has been held under advisement for more than 60 days."[212] What should happen after that is not specified in the rule.[213]

The general policy statement on continuances found in the Rules of General Practice and Judicial Administration is a mix of mandatory and hortatory: "All judges *shall* apply a firm continuance policy. Continuances *should be* few, good cause *should be* required, and all requests *should be* heard and resolved by a judge."[214] There would seem to be no express enforcement procedure other than denying the continuance. Further, motions to continue must include an explanation of the impact of the motion on the progress of the case only if it is a priority case.[215]

d. *Trial court administrators*

The statutes and rules do not appear to give trial court administrators a specific role in case management. Trial court administrators "shall perform such duties as the chief judge may direct."[216]

e. *Attorneys*

The sets of court rules such as the Florida Rules of Civil Procedure direct attorneys (and judges) in various aspects of case management. These are discussed in later sections.[217] Here, we summarize the attorney's oath and relevant Bar rules.

Several phrases in the Oath of Admissions to the Florida Bar[218] capture a lawyer's obligation to not engage in dilatory practice. These include the following:

> I will maintain the respect due to courts of justice and judicial officers.
>
> I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law.
>
> To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications.
>
> I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged.

> I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay anyone's cause for lucre or malice.

The Workgroup does not have any definitive recommendations for amending the Bar Oath. However, to update the Oath and make the "delay" provision more all-encompassing, the following suggested as an amendment to the last paragraph:

> I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay anyone's cause for ~~lucre or~~ malice or to secure financial or strategic advantage.

At least two rules of professional conduct address timing in litigation. Rule 4-3.2, "Expediting Litigation," requires that "[a] lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client." The Comment to the rule identifies several areas in which delay is improper: merely for the attorney's own convenience, to "frustrat[e] an opposing party's attempt to obtain rightful redress," and to realize "financial or other benefit."[219]

Rule 4-1.3, "Diligence," requires that "[a] lawyer shall act with reasonable diligence and promptness in representing the client." Whereas rule 4-3.2 is concerned more with delay as it affects court processes and opposing parties, rule 4-3.1 emphasizes the adverse impact on one's own client. In other words, keeping a case moving is actually in the interest of an attorney and his or her client.

These rules do not require amendment. However, the rules should be emphasized in CLE materials.

### 3. Existing legal authority governing case management in Florida

a. *Summary procedure under section 51.011*

Section 51.011, Florida Statutes (2020), titled "Summary Procedure," provides a sort of built-in DCM for case categories specified by statute or rule. Section 51.011 does not specify which categories apply; rather, other statutes governing these categories refer to section 51.011.[220] When section 51.011 applies, time periods specified in the statute supersede any conflicting time periods in the small claims rules.[221]

The summary nature of the proceedings is reflected in the following provisions of section 51.011:

- The answer, which must include any defenses raised, must be filed within five days after service of process. Likewise, any counterclaim must be fully answered within five days. No pleadings other than the complaint, answer, counterclaim, and answer to the counterclaim are permitted.[222]
- Depositions on oral examination are permitted "at any time." "Other discovery and admissions may be had only on order of court setting the time for compliance." "No discovery postpones the time for trial except for good cause shown or by stipulation of the parties."[223]
- Where a jury trial is authorized, a party may demand it in "any pleading or by a separate paper served not later than 5 days after the action comes to issue." The

statute appears to allow for the use of an existing jury if one happens to be present "at the close of pleading or the time of demand for jury trial," in which case "the action may be tried immediately." Otherwise, a special venire can be summoned.[224]

- Any motion for new trial must be filed within five days after a jury's verdict or, in the case of a bench trial, after entry of judgment. Any reserved motion for directed verdict must be renewed during the same five-day period.[225]

The Workgroup's proposed case management rule exempts section 51.011 cases from its operation.[226]

b. *Expedited trials under section 45.075*

Section 45.075, Florida Statutes (2020), titled "Expedited Trials," was enacted by the legislature as part of Chapter 99-225, Laws of Florida, "a comprehensive bill addressing multiple aspects of civil litigation" and "containing extensive revisions to Florida's tort system."[227] Parties may jointly stipulate to an "expedited trial" procedure in a civil case, to be conducted under the specific parameters set forth in the statute. These include

- a requirement that interrogatories and requests for production be served within 10 days of the order adopting the stipulation, with responses served within 20 days after receipt;
- completion of discovery within 60 days after the court adopts the joint stipulation;
- the court's ability to limit the number of depositions taken;
- the option to have the case tried by jury;
- trial within 30 days after the 60-day discovery cutoff, court calendar permitting;
- a one-day limit on trial;
- a one-hour limit on jury selection;
- a three-hour limit to each side's case presentation, including opening, evidence presentation, and closing;
- the use of a verified written report from expert witnesses and an affidavit of the witness's curriculum vitae in lieu of calling the witness;
- the use at trial of "excerpts from depositions, including video depositions, regardless of where the deponent lives or whether the deponent is available to testify"; and
- the option of using " 'plain language' jury instructions" and a " 'plain language' verdict form."[228]

Notably, "[t]he court may refuse to grant continuances of the trial absent extraordinary circumstances."[229]

The statute does not appear to have been construed by the courts since its enactment in 1999. Although the Workgroup can find no hard data on the extent to which this statute is invoked, anecdotally it appears to be rarely used.[230] In any event, the

Workgroup's proposed case management rule exempts section 45.075 cases from its operation.[231]

c. *Time standards under rule 2.250*

Rule 2.250 establishes "presumptively reasonable time period[s]" for the "completion of cases in the trial . . . courts."[232] While allowing for delays due to complexity, "most cases *should be* completed within" the time periods specified in the rule.[233] The "presumptively reasonable" time periods in the general civil category, from "filing to final disposition" are as follows:

- jury cases—18 months (filing to final disposition)
- nonjury cases—12 months (filing to final disposition)
- small claims cases—95 days (filing to final disposition)[234]

The Workgroup recommends three relatively minor amendments to this portion of rule 2.250.[235] First, because counting from case filing to final disposition does not reflect potential variations in the time needed to serve the complaint on all defendants in civil cases, the Workgroup recommends a counting procedure that takes into account that variation.[236] Second, a separate time standard for complex cases,[237] not currently included in the rule, appears to be appropriate.[238] The Workgroup recommends a 30-month period to take into account both case complexity and the fact that the process of declaring a case complex may occur well after case filing. Finally, a sentence added to the introductory paragraph of subdivision (a) excludes periods of time when a case is on inactive status from the calculation of the time periods listed in the rule.

d. *Case management rules 1.200 and 1.201*

Civil pretrial procedure is addressed in rule 1.200, with a separate provision governing complex cases appearing in rule 1.201. These rules are discussed below, where amendments to them are proposed.[239]

**4. Summary of principles and research findings underlying the Workgroup's recommended amendments to the civil case management rules**

The following summarizes key principles underlying the amendments to the civil case management rules recommended by the Workgroup and presented in the next subsection:

- The public generally perceives the courts as inefficient.[240]
- In FY2018–19, the circuit civil clearance rate statewide was 90.2%; for civil cases other than "real property and mortgage foreclosure" cases, the rate was as low as 85.0%. However, the county civil rate was a relatively strong 98.4%.[241]
- Only 0.8% of cases in Florida's circuit civil divisions (other than real property and mortgage cases) and 0.002% of cases in the state's county civil divisions went to trial in FY2018–19,[242] which strongly implies the need for judges to be active in pretrial case management.

- A number of surveys of judges and attorneys reflect strong support for judicial case management.[243]
- The Florida Rules of Civil Procedure and the Florida Rules of General Practice and Judicial Administration that address case management are mostly aspirational or optional. Where they are mandatory, enforcement mechanisms are weak or nonexistent. Specifically:
    - Rule 2.250 establishes "presumptively reasonable time period[s]" for major case categories, including civil cases. The rule provides merely that "most cases should be completed within" the time periods specified.[244]
    - Rule 2.545 requires that the trial judge "shall" take charge of all cases early in the litigation, control the progress of the case thereafter, and take specific steps to monitor and control the pace of litigation.[245] Specific steps, however, are not provided nor are enforcement mechanisms for these requirements.
    - Rule 1.200, governing such aspects of pretrial procedure as case management conferences and pretrial conferences in civil cases, is mostly optional and in practice tends to be invoked when a case is moving toward trial; it requires no early judicial monitoring of civil cases.[246]
    - A complex case is, of course, governed under rule 1.201 if that rule is invoked.[247] However, there is no requirement of an initial triage that could assign cases to the complex track at an early stage of the proceedings.

Additionally, the following research findings and other recommendations support the Workgroup's proposed amendments:

- Results of a survey of Florida circuit judges[248] reflect a desire to engage in case management, but the responses tend to imply a need for greater guidance, one form of which would be rules with greater specificity.
- The federal RAND study of the 1990s reflects a need for a coordinated protocol within civil procedural rules.[249] Specifically, that study found that early judicial intervention alone does shorten time to disposition but increases lawyer work hours and thus costs to clients. However, the downside of this protocol is offset if procedures call for a relatively early discovery cut-off.
- Two small state court studies in the 1980s demonstrated that efforts to control discovery without early judicial intervention provided no clear benefit in terms of time to completion. When an early case management conference, which resulted in a discovery plan, was added, however, cases resolved significantly faster.[250]
- In Florida's one pilot project, conducted in the circuit civil division of the 11th Circuit,[251] an initial triage into streamlined, general, and complex tracks with strong case management throughout the course of the case resulted in a significantly greater proportion of study cases closed (vs. control cases) during the study period, with judges and attorneys generally expressing satisfaction with the program.

## 5. Recommended rule amendments

The Workgroup recommends an entirely new case management rule. The number 1.200 has been retained for this rule, with most of existing rule 1.200 deleted; exceptionally, part of current rule 1.200(b), governing pretrial conferences, has been retained. Rule 1.201, governing case management in complex cases, is retained but significantly amended for consistency with new rule 1.200. Finally, rule 1.440 has also been significantly amended for consistency with rules 1.200 and 1.201. The three rules are discussed in separate subsections next.

### a. *Case management in general under rule 1.200*

Civil pretrial procedure is addressed in rule 1.200. In the Workgroup's view, rule 1.200 suffers from two infirmities. First, its provisions are mostly optional. Second, and even though it appears that attorneys and courts do avail themselves of the rule with some frequency, in practice active judicial case management, including scheduling, occurs only when a case is approaching trial. The rule does not require early judicial case management.

As such, the Workgroup recommends a substantial rewriting of rule 1.200.[252] Subdivisions (a), (c), and (d) are deleted in their entirety and replaced with what is essentially a new rule, with the term "Case Management" added to the rule's title. Subdivision (b), governing pretrial trial conferences, is retained to some extent but amended significantly.

New subdivision (a) lays the groundwork for the following substantive subdivisions by listing the objectives of case management, relating rule 1.200 to the overarching objectives stated in rule 1.010 (the just, speedy, and inexpensive determination of every action) and rule 2.545(a) (concluding litigation as soon as is reasonably and justly possible).

New subdivision (b) lists case categories exempt from the rule. The list may be broadly subdivided into two types of exemptions: those cases subject to other procedures defined by rule or statute (namely, cases proceeding under section 51.011[253] or 45.075,[254] Florida Statutes; cases subject to the Florida Small Claims Rules, with certain exceptions; cases requiring, by statute, expedited or priority handling;[255] and cases proceeding under a circuit's local administrative order or local rule governing specialized business and complex-litigation divisions)[256] and certain categorical exemptions, such as habeas and other writ proceedings.[257] The exemption of the latter categories is based primarily on a review of federal and state case management rules calling for such exemptions.[258]

New subdivision (c) defines the three differentiated case tracks: complex, streamlined, and general. The assignment of cases to the appropriate track can be made in either of two ways, as decided by local rule or administrative order: by the judge assigned to each case when the case is filed or by criteria, such as case category, delineated in a local administrative order. Assignment should take place promptly but must be made within 120 days after filing. The subdivision emphasizes that track assignment does not reflect a case's financial value but rather the rather the amount of judicial attention that will be required for resolution.

New subdivision (d) sets forth the ways in which track assignment can be changed. The court by its own motion may change a case's track assignment at any time.[259] Parties may move to have a case moved onto or off of the complex track 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.[260] Otherwise, in cases in which a joint case management report is required, a party may move to change the track assignment by the date on which the parties must file their joint case management report.[261] When a case management report is not required, the parties may move to change the track assignment within 120 days after first filing or 30 days after service on the last defendant, whichever occurs first.[262]

Subdivision (e), titled "Case Management Order," is essentially the core of the rule, at least for cases on the general track. The issuance of case management orders and related procedures in complex cases, addressed in rule 1.201, is cross-referenced in subdivision (e)(1). The procedure in streamlined cases is relatively simple: the court on its own issues a case management order no later than 120 days after the case is filed or 30 days after service on the first defendant is served, whichever comes first.[263] As provided for in subdivision (g), form orders may be used; such orders must be uniform within a given circuit.

Early procedure in general cases is more detailed.[264] The parties must meet and confer within 30 days after initial service of the complaint on the first defendant served and work out projected deadlines in seven categories, including discovery, potential dispositive motions, and anticipated trial readiness date.[265] Within 120 days after the case is filed or within 30 days after service on the last defendant, whichever is earlier, the parties must file a joint case management report and proposed case management order based on the meet and confer, failing which the court will issue its own case management order.[266] The contents of the joint case management report are delineated in subdivision (e)(3)(C). The contents of the proposed case management order are listed in subdivision (e)(3)(D), which requires the parties to set numerous deadlines, to propose a trial period or a date for a case management conference to set the trial period, and to state the anticipated number of days for trial.[267] The court must issue the case management order as soon as practicable after receiving the parties' proposed order; the court may also call a case management conference before issuing the case management order.[268]

As an overriding exception in the general track, a circuit may by administrative order create uniform case management orders applicable to certain types of cases that may issue without a meet-and-confer process, party-generated joint case management report and proposed case management order, and case management conference.[269]

Modifications of the deadlines set in the case management order and extensions of time in general are addressed in subdivision (f). A party must demonstrate good cause for the court to alter a deadline for court filings and hearings set in the case management order.[270] Having a trial period or trial date changed requires a party to establish grounds for continuance under proposed rule 1.460.[271] Alteration of other individual deadlines by stipulation of the parties is permissible only if the alteration does not affect the parties' ability to comply with subsequent deadlines in the case management order.[272] If the basis for the requested extension would also affect subsequent dates

already scheduled, the parties must seek an amendment to the case management order, not a mere extension of time.[273]

The court may ask for periodic updates on case progress.[274] The rule makes it clear that so-called notices of unavailability do not affect deadlines.[275] If trial does not timely occur under the schedule set in the case management order, "no further activity may take place absent leave of court," and the court must reset the case to the next immediately available trial period.[276]

The procedures governing case management conferences are set forth in new subdivision (h), which replaces current rule 1.200(a) entirely. A conference may be set by the court or requested by a party with at least 20 days' notice.[277] At least seven days before the conference, the parties must, if required by the court, file and serve on the court an updated joint case management report and a statement of outstanding motions or issues.[278] The rule emphasizes that parties must be prepared to discuss all case-related matters.[279] Subdivision (h)(4) lists the potential issues that may be addressed at a case management conference; deadlines may also be revisited if the parties have demonstrated a good-faith attempt to comply with existing deadlines or a significant change in circumstances.[280] Additionally, the court may consider compliance and noncompliance with the case management order and impose sanctions without resort to a prefatory order to show cause, given that the parties are on notice, under the case management order, of what is required of them.[281] Any proposed orders, either agreed on by the parties or competing drafts, must be submitted to the court within seven days after the conference.[282] Finally, if both parties fail to appear at a case management conference, the court may assume that the case has been resolved and dismiss it without prejudice.[283]

The skeleton of current rule 1.200(b), governing pretrial conferences, has been retained (as new subdivision (i)), but the list of items for discussion has been altered. The option for discussing "the necessity or desirability of amendments to the pleadings"[284] has been deleted, as any such issue should have been resolved earlier.[285] Other items have been expanded or modernized; for example, "the potential use of juror notebooks"[286] has been updated to read "the use of technology and other means to facilitate the presentation of evidence and demonstrative aids at trial."[287] Three additional sets of trial-related matters are reflected in subdivisions (i)(5)–(7). Finally, the amended subdivision delineates how a post-conference order is to issue.

The Workgroup proposes deleting the phrase "Subject to rule 1.200 governing amendment of a pretrial order" from rule 1.370(b),[288] as rule 1.200 does not at present nor in the Workgroup's amended form include a provision governing amendment of a pretrial order.

b. *Complex cases under rule 1.201*

Rule 1.201 is a separate case management rule for complex civil litigation. The Workgroup proposes a number of changes to the rule[289] for consistency with new rule 1.200.

The introductory paragraph of subdivision (a) and subdivision (a)(3), which describe two ways in which a case may be designated complex, are deleted, as the track designation

of a case is now delineated in proposed rule 1.200.[290] The definition of "complex" is retained and cross-referenced from proposed rule 1.200(c)(1). In light of current litigation trends, one minor addition to the list of factors that a court may consider when designating a case as complex is reflected in subdivision (a)(2)(D): "complex issues associated with electronically stored information."

One minor wording change is proposed for subdivision (b),[291] which concerns the initial case management report and initial case management conference. This subdivision is otherwise unchanged.

The Workgroup proposes significant amendments to subdivision (c), both for consistency with new rule 1.200 and to clarify the procedure associated with the initial case management order that issues in complex cases. A new first sentence provides that such an order must issue within 10 days after completion of the initial case management conference. Because most of the items to be included in the order as listed in the current rule are also found in proposed rule 1.200, most of the list in rule 1.201(c) is proposed as being deleted, with a cross-reference to rule 1.200 substituted. Current item (c)(5), a briefing schedule, is retained, as this is not included in proposed rule 1.200. Current subdivision (c)(4), which is a separate instruction and not an item for inclusion in the case management report, is moved to new subdivision (d). The second sentence of subdivision (d) is newly added to clarify how the court may set subsequent case management conferences. Current subdivision (d), concerning the final case management conference, is relabeled as (e) but is otherwise unchanged.

c. *Rule 1.440*

Rule 1.440, "Setting Action for Trial," requires substantial amendment[292] to ensure consistency with the Workgroup's proposed amendments to rules 1.200 and 1.201.[293] Perhaps the most significant amendment is the deletion of the concept of a case being "at issue."[294] With cases to be actively managed by the court, including the early setting of deadlines, a separate status qualifying a case as ready for trial is no longer needed. Further, as noted in the proposed rule comment, parties have often, in Workgroup members' experience, used the "at issue" requirement as a shield to prevent the case from moving forward to trial.

After cross-referencing rules 1.200 and 1.201, subdivision (a) provides that in cases other than those governed by rule 1.201, rule 1.440 governs how the court fixes the "actual trial period" — as opposed to the process of projecting a trial period in a case's early stages as contemplated by rule 1.200. Subdivision (a) also provides that a party's failure to file a pleading responsive to the complaint or a counterclaim does not prevent the court for proceeding to trial on the issues raised by the complaint or counterclaim.

Subdivision (b) addresses how a party may request a trial to be set in two situations: when a case is not subject to either rule 1.200 or rule 1.201 and when a case subject to one of these rules is ready to be tried earlier than projected by the case management order issued in the case.

Subdivision (c) describes the process of setting an actual (again, as opposed to a projected) trial period. Subdivision (c)(1) allows for setting an early trial period when the court finds, either upon notice by a party or the court's own initiative, that the case is

ready to proceed to trial earlier than the period set in the case management order entered under rule 1.200 or rule 1.201. In cases subject to rule 1.200, the court must enter an order fixing the trial period not later than 45 days prior to the projected trial period set forth in the case management order but not earlier than the deadline for filing a responsive pleading.[295] In cases not subject to either rule 1.200[296] or rule 1.201, the court shall enter an order fixing the trial period if it finds, based on a party's notice or sua sponte, that the action is ready for trial.[297] The 30-day requirement, though phrased differently from the current rule, is retained: the court may not set the trial period in any of the scenarios just noted for a time less than 30 days from the date of the order setting the trial period.[298] The provision regarding parties in default in cases in which damages are not liquidated is retained from the current rule.[299]

As part of the rewrite of rule 1.200 discussed previously,[300] the reference to "at issue" in current rule 1.200(b) has been deleted. The reference to this term in rule 1.820(h) is recommended to be changed to "ready to be tried."[301]

## E. ***Additional proposed case management–related rules***

In the following subsections the Workgroup introduces three proposed new rules to enhance case management in the trial court: a rule governing the categorization of cases as active and inactive, a rule creating a "pretrial coordination court," and a general civil sanctions rule.

### 1. Rule on active/inactive case status

In the experience of Workgroup members, cases may go on inactive status due to, for example, an appellate stay or a bankruptcy filing, with the case then not promptly returning to active status[302] when the basis for the stay no longer exists. This requires judges and clerks to actively monitor a case's active versus inactive status when this should be the responsibility of the parties.

The Workgroup recommends new Rule of General Practice and Judicial Administration 2.251[303] to ensure that in all cases in the trial courts (not only cases governed by the Rules of Civil Procedure), the parties take responsibility for informing the court when a case is required to go on or come off of inactive status, such as when a bankruptcy stay is imposed or lifted;[304] the proposed rule also permits parties to request a change in status when permissible but not required.[305] When an appeal or original proceeding has been filed relative to a case in the trial court, the case may not be placed on inactive status unless either extraordinary circumstances exist or the parties stipulate that that an appellate ruling is dispositive or the entire case.[306]

The rule provides for sanctions when a party fails to inform the court that an inactive designation is no longer necessary.[307] The respective roles of the parties, the court, and the clerk are set forth in the proposed rule.[308] The proposed rule also provides that any deadlines set by orders issued under case management rules 1.200 and 1.201 are tolled during any periods of inactive status.[309]

## 2. Rule governing "pretrial coordination court"

As a supporting feature of case management, the Workgroup proposes rule 1.271,[310] creating in each circuit a "pretrial coordination court" (PCC) and governing the court's procedures. The purpose of the court is to coordinate pretrial procedure in multiple lawsuits filed at around the same time in a given court over similar issues of law or fact as one means of "secur[ing] the just, speedy, and inexpensive determination"[311] of similar lawsuits. Case categories in which a PCC could come into play include tobacco litigation[312] and multiple insurance lawsuits filed in the wake of a hurricane or following the discovery of construction material defects.[313] Much of the proposed rule is modeled on Texas Rule of Judicial Administration 13,[314] which governs the procedure for multidistrict litigation in that state.[315]

The applicability of the rule is summarized in subdivision (a) of the draft rule. Subdivision (b) defines the terms used in the rule.[316] The PCC is any civil court division to which related cases may be transferred for pretrial coordination under the rule.[317] (As such, a circuit need not establish a separate "pretrial coordination division" under the rule.) As a result, there could be multiple PCCs in a given circuit addressing multiple groups of cases at a given time.

Subdivision (c) governs the process of transferring individual cases to a PCC. Transfer of a case or cases to a PCC may be sought by motion of a party, by "request" of the presiding judge, and by "notice of impending transfer" issued by the administrative judge in charge of assignment of cases to PCCs.[318] The filing of a motion, request, or notice does not stay proceedings in the trial court, although the trial court or administrative judge may stay proceedings until an order on the motion, request, or notice is entered.[319] Parties have the opportunity to respond to a motion, request, or notice.[320] The administrative judge responsible for PCC transfers may decide a motion or request on written submissions or hearing and may consider specified forms of evidence.[321]

A case is deemed transferred to the PCC when the order of transfer is filed.[322] However, if a motion for severance is pending in the trial court, the case is deemed transferred when the trial court rules on the motion, which must occur within 14 days of the date on which the transfer order is filed; otherwise the case is deemed transferred on the 14th day.[323] Once a case is transferred to the PCC, the original trial court may take no further action except to issue an order on a motion for severance or for good cause after consultation with the PCC.[324] The rule provides for a retransfer process when the PCC judge can no longer preside.[325]

Subdivision (d) governs the PCC itself. A judge must complete specified coursework before presiding over a PCC.[326] The PCC judge has exclusive authority over all pretrial procedure in a case transferred to the PCC, as well as the authority to set aside or modify an order of the original trial court.[327]

Post-resolution issues proceed before the original trial court,[328] except that motions for rehearing and new trial are addressed by the PCC.[329] Subdivision (d)(3) summarizes the principles of case management that the PCC should follow. The PCC and the trial court must cooperate in setting a case for trial.[330]

The decision tree for retention of a case by the PCC or remand to the trial court is set forth in subdivision (e). To the extent that an individual case progresses to trial, in most situations trial is to be held in the original trial court.[331] However, by stipulation of the parties, the PCC may try a single case as a bellwether case or conduct a consolidated trial on specific common or preliminary issues.[332] If a case proceeds to finality in the PCC (including after any motion for new trial or rehearing is resolved), the case is then returned to the trial court.[333] Cases not reaching finality in the PCC are remanded to the trial court.[334]

Subdivision (f) delineates those situations in which the trial court, after remand, may and may not alter orders issued by the PCC. Finally, subdivision (g) requires an appellate court to expedite review of an order or judgment in a case pending in a PCC.

### 3. General sanctions rule

Other than rule 1.380, a broad provision governing discovery sanctions, the civil rules include only scattered references to sanctions that the trial court may impose.[335] To provide trial judges with clarity in the area of sanctions, the Workgroup recommends that a single rule delineating available sanctions and codifying certain sanctions-related case law be incorporated into the civil rules. The Workgroup proposes new rule 1.275, "Sanctions."[336]

The proposed rule recites the general principle that the court may impose a sanction if a party or attorney fails to comply with the civil rules or order of the court.[337] The rule is to be taken as supplemental to any other civil rule specifying a sanction.[338]

The available sanctions range from a simple reprimand to dismissal, default, referral to The Florida Bar, and contempt.[339] The court may not use continuance of trial as a sanction unless the continuance does not act to the detriment of the nonoffending party.[340] Reasonable expenses are a permitted sanction;[341] a separate subdivision defines the extent of "reasonable expenses."[342] The court may not impose an expense sanction if the court finds that a party's or attorney's noncompliance was "substantially justified."[343]

Subdivision (f), concerning dismissal or default as sanctions, reflects the anchor case of *Kozel v. Ostendorf*[344] and its progeny, with certain refinements:

- The list of six factors that the court must consider when imposing a dismissal or default sanction is taken from *Kozel*;[345] however, the Workgroup feels it appropriate to add "gross[] noncomplian[ce]" as one consideration within the first factor.
- There is a split between the District Courts of Appeal as to whether the *Kozel* analysis should apply to dismissals with prejudice only, or to dismissals without prejudice as well.[346] The proposed rule requires a *Kozel* analysis only when the more-severe sanction of dismissal with prejudice (as well as default) is being considered by the court.[347]
- Case law tends to emphasize the first factor (whether the noncompliance was willful, etc.), raising it to the level of a required finding with respect to both dismissals and defaults.[348] The proposed rule, however, overrides such a

requirement, providing instead that the court must weigh all the factors and that "[n]o single factor shall be dispositive."[349]

- In its order of dismissal or default as sanction, the trial court must include written findings as to each *Kozel* factor.[350] However, there is a preservation requirement: the sanctioned party must either request the court to make the necessary findings or object to the lack of findings.[351] Subdivision (f) of the proposed rule summarizes these principles. The timing of the request is set to correspond to that of a motion for rehearing under rule 1.530(b).[352]

Other than where this or another rule provides, the court need not find willfulness on the offending party or attorney before imposing a sanction, but any sanction must be commensurate with the offending conduct.[353] To ensure client compliance, the proposed rule requires the attorney representing a client subject to a sanction to deliver a copy of the sanctions order to the client.[354] Finally, the proposed rule provides that the appellate standard of review of a trial court's decision to impose sanctions is abuse of discretion.[355]

## IV. Maintaining the schedule

Under the broad topic of "maintaining the schedule," the Workgroup proposes significant rule amendments in the areas of discovery practice, motion practice, continuances, and failure to prosecute. The Workgroup also recommends several amendments to the Florida Small Claims Rules and one related change to the Florida Rules for Certified & Court-Appointed Mediators.

### A. *Discovery*

#### 1. The Workgroup's overall goals on discovery

Much of the debate in the legal literature on whether to amend the discovery rules in the states and the federal jurisdiction focus on whether discovery "abuse" exists. If it does, so the argument goes, the rules need to be changed to curb that abuse; if not, the rules should be left alone.[356] The contention of the amendment-resistant camp is that most discovery problems exist in high-stakes cases, with the bulk of ordinary case proceeding without discovery problems, or often without any discovery at all.[357]

Although Workgroup members are aware of instances of what may be termed discovery abuse, the Workgroup's amendments do not focus solely on that issue. In addition to recommending rule amendments that address general discovery conduct,[358] deposition conduct in particular,[359] and sanctions,[360] the Workgroup proposes amendments that seek to accomplish the judicial branch's overall goal of ensuring the "fair and timely resolution of all cases through effective case management"[361] and that are therefore consistent with its recommendations for case management in general.[362] To the extent that trial judges enforce with sanctions provided in the discovery and other case management rules and hold the parties to the deadlines that the judge has set for the case,[363] the Workgroup anticipates that many issues of discovery abuse will resolve on their own. Additionally, continuing legal education should emphasize "core values" as a means of ameliorating discovery abuse.[364]

## 2. Aspects of discovery addressed by the Workgroup

a. *Overall scope of discovery*

In a series of amendments, the overall scope of discovery as defined in Federal Rule of Civil Procedure 26 has been altered from "obtain[ing] discovery regarding any matter, not privileged, which is *relevant to the subject matter involved in the pending action*"[365] to the present wording, "obtain[ing] discovery regarding any nonprivileged matter that is *relevant to any party's claim or defense*."[366] One purpose of the amendments was to "address the rising costs of litigation related to [the] broad discovery" allowed by the federal rule, at least as viewed by the rule drafters.[367]

States modeling their civil rules after the federal rules have adopted one form or the other of these approaches.[368] Florida's general discovery rule, rule 1.280, tracks the earlier version of the federal rule: "Parties may obtain discovery regarding any matter, not privileged, that is *relevant to the subject matter of the pending action* . . . ."[369] In the absence of any apparent need to bring this phrase of Florida Rule of Civil Procedure 1.280(b)(1) into precise alignment with Federal Rule of Civil Procedure 26(b)(1), the Workgroup does not recommend an amendment.

b. *Discovery cutoff*

The federal civil rules do not mandate a discovery cutoff or deadline; rather, the parties must include in the discovery plan resulting from their rule 26(f) conference a time by which "discovery should be completed."[370] A number of states have adopted rule-defined discovery cutoffs, usually timed from an earlier point in the proceedings such as the filing of the last answer or the issuance of the scheduling order but sometimes timed back from the trial date.[371] Two states with tiered DCM protocols, Arizona[372] and Utah,[373] have tiered discovery cutoffs. In contrast, the Southern District of Florida's DCM protocol does not define discovery cutoffs; rather, the parties in each case must discuss a time limit for completing discovery and include a detailed discovery schedule in their proposed scheduling order submitted to the court.[374] The Florida civil rules do not currently mandate a discovery cutoff time.

Although research results are not fully consistent, some studies have shown that a predefined discovery period shortens time to disposition.[375] The question then becomes whether a discovery cutoff should be defined in the rules or on a case-by-case basis in the case management process. On balance the Workgroup concludes that the latter approach is preferable, similar to the process used in the federal system.[376]

c. *Proportionality*

The concept of "proportionality" in discovery is one means by which those who believe that the civil justice system is broken have sought to reign in the alleged excesses of the default of "broad and liberal" discovery:[377]

> The idea of proportionality is to reverse the default understanding that parties are entitled to discovery of all facts without limit unless and until a court says otherwise, because the monetary and time costs of unlimited discovery reduce access to justice. It is the purpose of this rule to make clear that all facts are not necessarily

> subject to discovery. Rather, all pre-trial activities must focus on the facts required to appropriately resolve the particular dispute.[378]

The word "proportional" was added to Federal Rule of Civil Procedure 26 in 2015, the version currently in effect:

> Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.[379]

Whether the addition of the word "proportional" to the federal rule actually changed anything, however, is open to question. As one court has noted, "Rule 26(b)(1), as amended, although not fundamentally different in scope from the previous version[,] constitutes a reemphasis on the importance of proportionality in discovery but not a substantive change in the law."[380]

Corresponding Florida rule 1.280(b)(1) has not been "updated" to reflect the language of the federal rule, and no other sets of Florida court rules currently address "proportionality" in their discovery provisions.[381] Florida case law, however, does occasionally address the general notion of proportionality in discovery, albeit without using that term.[382]

Research involving proportionality in discovery tends to look at rules that both require that consideration be given to "proportionality" as a concept and impose specific limits on various aspects of discovery. As such, the experimental design makes it virtually impossible to determine whether the nominal emphasis on "proportionality" had any impact on practice.[383]

After careful consideration of the pros and cons of amending the Florida civil rules with respect to proportionality, the Workgroup has concluded that it will not recommend adding the term "proportional(ity)" to the discovery rules. Given existing research on the topic and the Workgroup's other recommended amendments, the net impact of adding the term would be to create yet another trigger point for discovery litigation—over what counts as "proportional."

d. *Limits on volume of discovery by category*

Under the Florida civil rules, there are few limits on discovery volume.[384] The only categories entailing numerical limits are interrogatories[385] and requests for admission.[386] The federal rules impose limits on interrogatories and depositions.[387] Nationwide, although many states have imposed limits on discovery volume,[388] there is little if any discernible pattern as to which categories have had limits imposed and as to the numerical limits per category.

What research exists does not tend to support a theory that limits on discovery volume lead to more-efficient resolution of cases. For example, the Economic Litigation Pilot

Program in California, focusing on reducing discovery and summarized above, demonstrated that eliminating interrogatories and curtailing depositions on nonparties effected no clear difference in case-processing times and only generated attorney dissatisfaction.[389]

Given the paucity of definitive research on the value of limits on discovery volume and the lack of consistency in existing rules nationwide, the Workgroup does not recommend any amendments to the Florida civil rules that would alter the existing limitations.

e. *Discovery conduct in general*

Based primarily on members' experience, the Workgroup believes that a rule clearly laying out the standards of conduct that should be followed by attorneys when conducting discovery is necessary. A new rule, numbered 1.279 for placement at the beginning of the discovery section of the civil rules, is proposed.[390] Subdivision (a) summarizes essential principles.

Subdivision (b) lays out the obligations of attorneys and parties. In particular, subdivision (b)(3) directs attorneys to advise clients of their discovery obligations and states that courts may presume that attorneys have done so. Subdivision (b)(2)(C) lists multiple sources delineating appropriate standards of conduct, including the Oath of Admission to The Florida Bar,[391] The Florida Bar Creed of Professionalism,[392] The Florida Bar Professionalism Expectations,[393] and the *Florida Handbook on Civil Discovery Practice*.[394]

Finally, subdivision (c)(1) reminds the court of its authority to sanction parties and attorneys for discovery abuse and of its obligation to prevent unreasonable litigation delay, and subdivision (c)(2) directs courts to take appropriate steps to ensure compliance with the discovery rules.

The case law that forms the basis of the rule is cited in a proposed Comment.

f. *Mandatory early disclosure*

The federal rules and the rules of some states provide for two categories of mandatory early disclosure between the parties outside the traditional discovery process: initial fact disclosure and expert disclosure. Each of these is described below. However, after careful consideration the Workgroup recommends a new rule subdivision requiring only initial fact disclosure, with expert disclosure left to the individualized case management process.

i. Initial fact disclosure

"Initial fact disclosure" or simply "initial disclosure" refers to a discovery process in some jurisdictions' civil rules requiring parties to exchange specified categories of materials early in the lawsuit without waiting for a demand from the opposing party. "This information has traditionally been obtainable through discovery requests or as a result of standard pretrial provisions and local rules."[395] The Florida civil discovery rules do not currently include an initial-disclosure requirement.

(1) *The federal rule*

The federal judiciary added mandatory initial fact disclosure to Federal Rule of Civil Procedure 26 in 1993, but allowed individual district courts to opt out.[396]

> The major purpose of the 1993 initial disclosure amendments was to accelerate the exchange of basic information about the case and to eliminate the paperwork involved in requesting such information. The rule was based on the experience of district courts that had previously required disclosures through local rules, court-approved standard interrogatories, or standing orders. The Advisory Committee noted that where jurisdictions had mandatory disclosures, litigants saved both time and expense, particularly if they met and conferred about the disclosures before engaging in further discovery.[397]

The adoption of the new rule was extremely controversial, with opponents viewing initial disclosure as "anathema to the adversarial tradition": attorneys would be required to use their skills to help the opposing party.[398] In 2000, after about half the federal district courts had instituted opt-out provisions by local rule, thus defeating the goal of uniformity in rules of practice,[399] rule 26 was amended to delete the local opt-out option. However, the court in individual cases could allow the parties to omit initial disclosure, the parties could stipulate out of them, and certain case categories were omitted from the requirement.[400] These provisions are essentially the same in the current version of the rule.[401]

The current federal rule provides that within 14 days of the rule 26(f) conference, the parties must exchange, without waiting for a discovery request, the following information:

(i) the name and, if known, the address and telephone number 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;

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

(iii) a computation of each category of damages claimed by the disclosing party—who must also make available for inspection and copying as under Rule 34 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; and

(iv) for inspection and copying as under Rule 34, any insurance 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.[402]

(2) *State rules*

A number of states have promulgated initial-disclosure provisions within their civil rules.[403] Several states have significantly more extensive initial-disclosure requirements compared to the federal rule.[404] Several states include separate lists of items for specified categories of cases.[405] Most states, as well as the federal jurisdiction, require that parties make initial disclosure based on information then "reasonably available" to them, irrespective of whether they have completed their own investigations.[406] Additionally, most states, as well as the federal jurisdiction, do not require actual documents or other materials to be handed over; a description is sufficient at this stage.[407]

Across the jurisdictions, there is no consistent point from which to count the disclosure period or number of days for disclosure; typical starting or target points are the parties' early conference, [408] the initial case management conference,[409] or a specified number of days after the answer is filed.[410]

Most, but not all, jurisdictions with initial disclosure provisions allow parties to stipulate out of the process and to obtain a court order exempting the case from initial disclosure.[411]

Most jurisdictions include in their rules a duty to supplement initial disclosure.[412]

(3) *Florida court rules on initial fact disclosure*

As noted, the Florida Rules of Civil Procedure do not require initial fact disclosure. The Family Law Rules of Procedure, however, include a detailed initial-disclosure rule.[413] The rule applies to most family law categories.[414] For most applicable proceedings, the parties must disclose to each other a long list of documents, mostly financial;[415] for proceedings in which temporary financial relief is requested, the list is shorter.[416] If a party fails to timely disclose required material "before a nonfinal hearing or in violation of the court's pretrial order," that material is not admissible in evidence "at that hearing";[417] however, there appears to be no analogous sanction for purposes of a final hearing.

ii. <u>Expert disclosure</u>

Separate from mandating initial fact disclosure, the federal rules and several states' rules require disclosure of information regarding a party's anticipated expert witnesses. Most jurisdictions that require initial disclosure also require expert disclosure,[418] and several jurisdictions (or court levels within jurisdictions) that do not require initial fact disclosure do require expert disclosure.[419] Most but not all jurisdictions with expert disclosure provisions bifurcate the requirements for what must be disclosed between a "witness . . . retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony" (or some variation on this phrasing) versus other experts.[420] The key distinction is that the former must provide a written report, usually with considerable detail,[421] while the latter must usually provide a summary of the facts and opinions on which the expert is expected to testify.[422]

iii. Research

Research on initial fact disclosure in the form of attorney and judge surveys and actual experimental initiatives in courts has produced mixed results, which may be summarized as shown in the following subsections addressing key topics. For ease in reference, the studies cited are as follows:

- The federal RAND study[423]
- A 1997 survey of attorneys taken on the 1993 amendments to the federal rules at the behest of the Federal Judicial Center (FJC)[424]
- A 2009 IAALS study conducted in conjunction with the American College of Trial Lawyers,[425] updated in 2015[426]
- A 2011 pilot project on employment cases in federal district courts[427]
- A 2014 IAALS survey of empirical research[428]
- A 2017 federal pilot project on initial disclosure conducted in two district courts[429]
- An IAALS study of the Colorado Simplified Civil Procedure Rule[430]
- An NCSC study of Automatic Disclosure Pilot Rules in New Hampshire[431]
- An NCSC study of Utah's discovery rules as amended in 2011[432]

(1) *Time to disposition; likelihood of settlement*

The RAND study found no significant difference in time to disposition between district courts that implemented early disclosure policies and those that did not.[433] Similarly, the 2011 federal pilot project, in which individual judges were permitted to adopt a protocol requiring initial disclosure of specific documents in employment cases, found no statistically significant difference in case-processing times between the pilot judges and a control group.[434] Pilot cases were more likely to settle, but there was no difference in time to settlement.[435] In the 1997 federal survey, 36% of attorneys reported an increase in settlement discussions and only 6% reported a decrease as a result of the implementation of initial disclosure.[436] The Colorado study, in which most discovery was actually replaced, not merely prefaced, by an early-disclosure protocol, likewise found no significant impact on time to resolution.[437] The New Hampshire study, in which multiple new case management and discovery protocols, including initial disclosures, were instituted, showed virtually identical times to disposition in pre- and post-implementation cases.[438]

In contrast, the Utah study of the state's discovery rules as updated in 2011, which required early disclosure of documents and physical evidence to be introduced at trial, found a statistically significant reduction in time to disposition, but only among cases that survived at least one year from filing.[439] Settlement rates increased between 13 and 18 percentage points, depending on the category of case.[440]

(2) *Change in volume of traditional discovery; related issues*

Most studies that address the impact of initial disclosures on the amount of traditional discovery propounded later in the case are attorney surveys, and such surveys tend to

reflect a perception that initial disclosure does not reduce discovery volume. Though strongly urging states to implement initial disclosure rules, the 2014 IAALS summary frankly acknowledged that "[s]urveyed attorneys nationwide generally do not believe that [Federal Rule of Civil Procedure] 26(a)(1) initial disclosures reduce discovery . . . . Moreover, very high percentages reported that additional discovery is required after initial disclosures."[441] Although the 2017 federal pilot project reported general agreement among surveyed attorneys that initial disclosure resulted in the production of relevant information earlier in the case, respondents tended to disagree that the protocol reduced discovery overall, mostly disagreed or were neutral to the hypothesis that initial disclosures resulted in disclosures that would not have occurred in the ordinary discovery process, and were evenly divided as to whether initial disclosures reduced discovery requests.[442] These results were in contrast to the 1997 federal survey, which found that attorneys were more likely than not to report that initial disclosure reduced the amount of discovery and that as many as 43% reported a reduction in discovery requests.[443]

(3) *Discovery disputes; litigation over discovery*

As with other topics, studies showed a range of results on the impact of initial disclosure on the frequency of discovery disputes, usually measured by the number of discovery motions filed. The RAND study "did not find evidence that the initial disclosures gave rise to the explosion of litigation that was predicted,"[444] even when one side refused to engage in the disclosure process; some opposing counsel simply ignored the problem.[445] In the 1997 federal survey, 33% of attorneys reported a decrease in disputes related to discovery, compared to 5% reporting an increase as a result of the implementation of initial disclosure.[446] The 2011 federal pilot project examining employment cases found that the number of discovery motions filed in pilot cases was about half that in nonpilot cases.[447] Anecdotally, participating judges reported a "reduction in combat" over document requests.[448] The 2017 federal study, however, reported that attorneys were about evenly divided as to whether initial disclosure reduced discovery disputes.[449] The New Hampshire study showed no reduction in discovery disputes in cases under the new automatic disclosure rules.[450] In Utah, in which a three-tier case management system was imposed, discovery disputes, expressed in the percentage of cases in which discovery motions were filed, doubled in low-tier debt collection cases after implementation of the new rules, fell in other low-tier and in high-tier cases, and remained the same in mid-tier cases. Discovery disputes tended to occur earlier in post-implementation cases.[451]

(4) *Attorney work hours; litigation expenses*

The RAND study found no significant difference in attorney work hours—thus costs to clients—between courts that enacted mandatory early disclosure and those that did not.[452] Attorney surveys have shown variable results: the 1997 federal survey reported that attorneys tended to believe that initial disclosure reduced clients' overall litigation expenses;[453] the IAALS report concluded that, overall, attorneys do not believe that initial disclosure saves clients money;[454] attorneys participating in the 2017 federal pilot project tended to disagree with the proposition that the initial-disclosure protocol reduced overall costs.[455] The Colorado study found a significantly lower number of

motions filed in cases in which the early-disclosure protocol was implemented, which may reflect a reduction in costs to clients.[456]

iv. Recommendations on early disclosure

Although the research on initial fact disclosures has yielded mixed results, the Workgroup has concluded that, on balance, a rule requiring initial fact disclosure will be an effective means of achieving the Workgroup's goal of ensuring the fair and timely resolution of all cases. Accordingly, the Workgroup recommends an amendment to Florida Rule of Civil Procedure 1.280 to require initial fact disclosure. Proposed new subdivision 1.280(a)[457] is modeled after Federal Rule of Civil Procedure 26(a), with adjustments made for Florida practice. The proposed rule requires early disclosure of the same categories of items listed in the federal rule, with the additional requirement that, if standard interrogatory forms exist for the category of case,[458] responses to those interrogatories must be included as part of the initial disclosures.[459] An exception to the requirement of providing a damages computation, for noneconomic damages to be set by the jury, is included in subdivision (a)(1)(C).

As in federal rule 26(a)(1)(A), the parties may obtain a court order exempting them from the disclosure requirement in a given case; however, in contrast to the federal rule, the proposed Florida rule does not permit parties on their own to stipulate out of initial fact disclosures.[460] Categorical exemptions from the proposed rule are listed in rule 1.200(b), with a cross-reference to that rule included in rule 1.280(a)(2); however, the court may direct that initial closures be made in an exempt case.[461]

Rather than timing disclosures from an initial party conference as in federal rule 26(a)(1)(C), the rule sets a simple deadline: 45 days from service of the complaint,[462] which is 15 days after the deadline for the parties to have their meet-and-confer in cases on the general track under draft rule 1.200(e)(3)(A).[463] As in federal rule 26(a)(1)(E), parties are required to make initial disclosures based on the information available to them at the time of disclosure; they are not excused from disclosure due to incomplete information, another party's failure to disclose, or a partial objection to disclosure.[464] A provision requiring the filing of a certificate of compliance, modeled after Florida Family Law Rule of Procedure 12.285(j), is included in the proposed rule.[465]

In contrast to its recommendation on initial fact disclosure, the Workgroup does not suggest any amendment to the discovery rules that would require initial disclosure of experts. The Workgroup contemplates that the handling of expert disclosures will be an issue addressed during early case management proceedings on a case-by-case basis.

g. *Supplementation of disclosures and discovery responses*

Florida's civil rule on supplementation of discovery responses, rule 1.280(f), is unique in that it is the only civil supplementation rule nationwide that provides, without exception, that a party has no duty to update a discovery response as long as the response was complete when made: "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."[466] It is only by implication that there may be

a duty to update discovery responses with information known but not disclosed at the time of disclosure and perhaps also to correct erroneous information.

The rule is also unique within Florida, as most of the other major sets of rules—family law,[467] juvenile delinquency and dependency,[468] and criminal procedure[469]—impose a continuing duty in one form or another.[470]

The supplementation provisions of other states' civil rules, as well as those of the federal jurisdiction, take one of two forms: an explicit affirmative duty to supplement discovery responses when the responding party learns that the disclosure or response was incomplete or incorrect[471] or a "no duty" rule with exceptions that make the rule tantamount to an affirmative-duty rule.[472] The rules typically require supplementation with respect to initial disclosures and responses to interrogatories, requests for production, and requests for admission.[473] Some jurisdictions require supplementation with corrections to deposition answers when the deposition was of an expert required to provide a written report (and the report must be updated as well, if necessary).[474]

In line with its goal of ensuring the timely resolution of cases, the Workgroup recommends amending rule 1.280(f) (which would become rule 1.280(g)) to reflect a duty to supplement initial disclosures and responses to interrogatories, requests for production, and requests for admission.[475] The rule is based on Federal Rule of Civil Procedure 26(e)(1). The proposed rule additionally includes a cross-reference to rule 1.380 on sanctions.

h. *Timely responses to discovery requests notwithstanding partial objections*

Workgroup members have observed that in many cases, once a party or person responding to discovery objects to one or more but not all of the questions posed or items requested, the party or person withholds the entirety of the requested discovery until the objections are resolved by the court. Consistent with its goal of ensuring timely case resolution, the Workgroup recommends amending rules 1.340 (interrogatories),[476] 1.350 (requests for production of documents and things or for entry on land),[477] and 1.351 (requests for production from nonparties)[478] to clarify that the responding party or nonparty has a duty to timely respond to all unobjected-to discovery requests. As rule 1.370, governing requests for admission, contemplates that an entire set of requests must be timely responded to with answers or objections, failing which any unresponded-to matter is admitted,[479] the Workgroup recommends no corresponding amendment to that rule.

i. *Depositions*

To address abuses that occur all too frequently during depositions, the Workgroup recommends the creation of a new rule, numbered 1.335 and titled "Standards for Conduct in Depositions, Objections, Claims of Privilege, Termination or Limit, Failure to Appear, and Sanctions."[480] Proposed rule 1.335 includes a transfer from rule 1.310 of those portions that address deposition conduct.[481]

Proposed rule 1.335(a) is a reminder to practitioners that depositions "are court proceedings and attorneys are expected to conduct themselves as if in front of a judicial officer." The subdivision references the standards of behavior delineated in proposed

rule 1.279.[482] Subdivision (b) requires attorneys to instruct their clients to act with courtesy during a deposition.

Subdivisions (c) and (d) incorporate the respective portions of rule 1.310(c) concerning objections and instructions not to answer. In subdivision (c), the modifier "legally permitted" has been placed before the term "objection" or "objections." Subdivision (e) reproduces rule 1.310(d), with cross-references adjusted. Subdivision (f) reproduces rule 1.310(h), with references to sanctions rule 1.380 added. Finally, subdivision (g) is a general sanctions provision with a reference to rule 1.380 and reminders to attorneys of how deposition misconduct adversely affects the administration of justice.

j. *Discovery issues immediately pretrial:* Binger v. King Pest Control

One discovery-related issue that concerned Workgroup members is the sudden, immediate-pretrial emergence of previously undisclosed matters, including witnesses or the revelation that a witness will be testify differently than at deposition. The principles that a trial court must follow in determining how to proceed under these circumstances are outlined in *Binger v. King Pest Control*[483] and its progeny:

> [A] trial court can properly exclude the testimony of a witness whose name has not been disclosed in accordance with a pretrial order. The discretion to do so must not be exercised blindly, however, and should be guided largely by a determination as to whether use of the undisclosed witness will prejudice the objecting party. Prejudice in this sense refers to the *surprise in fact of the objecting party*, and it is not dependent on the adverse nature of the testimony. Other factors which may enter into the trial court's exercise of discretion are:
>
> (i) the objecting party's ability to cure the prejudice or, similarly, his independent knowledge of the existence of the witness;
>
> (ii) the calling party's possible intentional, or bad faith, noncompliance with the pretrial order; and
>
> (iii) the possible disruption of the orderly and efficient trial of the case (or other cases).
>
> If after considering these factors, and any others that are relevant, the trial court concludes that use of the undisclosed witness will not substantially endanger the fairness of the proceeding, the pretrial order mandating disclosure should be modified and the witness should be allowed to testify.[484]

Although the cases relying on *Binger* generally do not reverse the trial court's sanction for nondisclosure of a witness or changed testimony, some Workgroup members believe that *Binger* may nevertheless influence both judges and attorneys: judges, to avoid reversal, may be averse to imposing a relatively harsh but legally justifiable sanction for last-minute discovery violations, while attorneys may game the "surprise in fact" principle to avoid disclosure.

The Workgroup recognizes, however, that most issues associated with *Binger* abuse do not easily lend themselves to a rule-based remedy.[485] Rather, the Workgroup

recommends that the principles of *Binger* be made a topic of continuing judicial and legal education.

k. *Discovery sanctions*

Discovery sanctions in Florida are governed primarily by rule 1.380.[486] The two broad areas of conduct for which sanctions may be imposed are failure to respond to discovery requests, governed by subdivisions (a), (c), and (d) of rule 1.380, and failure to comply with a court order directing discovery, governed by subdivision (b). These two areas of conduct can be seen as sequential stages: sanctions for discovery misconduct before an order compelling discovery has issued, followed by potential sanctions for disobeying an order that issued (in most situations) during the first stage. Although there is some overlap in the potential sanctions available at each stage, in general the sanctions for discovery violations the second stage are more severe than those of the first stage.

The current rule is disorganized and has a number of internal inconsistencies. The Workgroup suggests a revamped rule 1.380[487] incorporating the following changes:

- The amended rule simplifies the sanctions regime while retaining the basic two-stage structure of the current rule.[488] Current subdivisions (c) (concerning failures to admit) and (d) (which includes a cross-reference to the sanctions listed in subdivision (b) for certain discovery misbehavior) are consolidated into the two-stage structure. As a result, the amended rule has two main subdivisions covering the two stages. First, as in the current rule, subdivision (a) addresses the need for a court order when the opposing party is alleged to have failed to respond to an initial discovery request and imposes an expense sanction. Second, subdivision (b) addresses more-serious issues.
- However, new subdivision (b), titled "Discovery Violations Interfering with Adjudication of Case," is broader than current subdivision (b). The current rule lists sanctions for failures to comply with a court order. The amended version addresses this same misbehavior, in subdivision (b)(1), but subdivision (b)(2) additionally addresses "misuse[] or abuse[ of] discovery rules for tactical advantage or delay" and failures to disclose or supplement that "interfered with, or [were] calculated to interfere with, the court's ability to adjudicate the issues in the case"—essentially, ongoing and more-serious discovery violations in the nature of those addressed in subdivision (a) but that are not necessarily violations of a court order.
- As in the current rule, amended subdivision (b) imposes an expense sanction and lists optional substantive sanctions. Current subdivision (d), which cross-references the sanctions in current subdivision (b), is essentially incorporated into new subdivision (b) but is otherwise eliminated as to its specifics.
- Currently, for most categories of failures to respond to a discovery request, the court, after providing an opportunity for hearing, "shall" require the party failing to act to pay the movant's expenses, which "may" include attorney's fees.[489] The amended rule eliminates the "may" language associated with attorney's fees to clearly include attorney's fees as a mandatory component of the expense sanction unless a listed exception applies.[490]

- Currently, only in those categories of failure to respond addressed in rule 1.380(a) and only when the movant's motion to compel is granted can the attorney representing the offending party also be sanctioned with the expense;[491] the other expense/fee sanctions mentioned in rule 1.380 are imposable only on the party or, in appropriate situations, the deponent.[492] In the amended rule, at all points at which an expense sanction is imposed, the relevant attorney is made subject to the sanction.[493]
- Revised subdivision (a)(5)(C) provides greater specificity to the procedure for imposing an expense sanction when a motion to compel is granted in part and denied part as compared to current rule 1.380(a)(4).
- The failure to make an initial disclosure under proposed rule 1.280(a) is included as the basis for a sanction under new subdivision 1.380(a)(2)(A). The problematic behavior associated with examination of persons is described with greater specificity than in the current rule,[494] in new subdivision (a)(2)(F).
- The unique expense sanction associated with requests for admission, provided for in current rule 1.380(c), does not fit neatly into the sanctions scheme of proposed rule 1.380. The Workgroup recommends moving this subdivision to rule 1.370, as subdivision (c).[495]
- Revised subdivision (b)(3)(A) lists the potential sanctions (other than expenses) for violations "interfering with adjudication of case." The list is similar to that of current rule 1.380(b)(2), with discrete sanctions broken out into separate subdivisions in the proposed revision and the language and logical arrangement of the list otherwise cleaned up. An additional sanction, under which a party may not present evidence or a witness if the party has failed to provide the underlying documentation or identify the witness during discovery, is added to the list at subdivision (b)(3)(A)(viii). Finally, a "such other sanction" catch-all is added at subdivision (b)(3)(A)(ix).
- Two new subdivisions list the factors to be considered when imposing these sanctions. The factors that the court must consider when a party misuses the discovery rules for tactical advantage or delay or otherwise fails to make or supplement discovery in a manner that is alleged to have interfered with the court's ability adjudicate the issues in the case are listed in subdivision (b)(2); these were developed by members of the Workgroup as appropriate to this situation. When the court contemplates the sanction of dismissal or default, the court must consider the factors listed in subdivision (b)(3)(B); these are taken from *Kozel v. Ostendorf*.[496]

I. *Proposed rule amendments*

The Workgroup's proposed amendments to the civil discovery rules are compiled in Appendix 1.[497] In addition to the rules discussed above, the text of the appropriate subdivisions of rules 1.320,[498] 1.370,[499] 1.410,[500] and 1.650[501] is reproduced to show amendments to cross-references to rules for which amendments are being proposed. Similarly, otherwise unchanged subdivisions of rules entailing proposals for amendment are also shown if a cross-reference needs to be updated.

## B. ***Motion practice***

### 1. Current rules

General directives on motions are found at several places in the rules, but there is no rule delineating such aspects of motion practice as briefing, hearings, or a timetable for resolution. Under the current rules, motions must be made in writing unless made during a hearing or trial.[502] Notices of hearing "must specify each motion or other matter to be heard."[503] Motions and notices of hearing (other than motions permitted to be addressed ex parte) must "be served a reasonable time before the time specified for the hearing."[504] The only other general motion rule is rule 1.160, which is a single paragraph concerning motions for "the issuance of mesne process and final process" that are "grantable as of course by the clerk."[505]

### 2. Recommendations

Workgroup members have identified two motion-related issues that cause delays in case resolution. First, although it is assumed that most motions will be heard by the court and not resolved on the filed papers alone, movants often fail to set motions for hearing or to prompt the court if a motion has not been resolved after a period of time. Delayed litigation of issues raised by motions contributes to delayed case resolution, whether by settlement or trial. In some cases, courts are forced to create hearing times in the few days before trial to attempt to resolve the outstanding issues. When this is not possible, courts may be forced to continue trials so that motions can be litigated. Motions to dismiss are a particular source of delay when filed but not scheduled for hearing. A motion to dismiss filed but unheard prevents the pleadings from closing and trial from being set.[506]

Related to this first issue, the seemingly universal assumption that motions must go to hearing needs to be reexamined. Although motions that raise factual issues for resolution generally require hearings,[507] many motions can be resolved without hearing, potentially saving time and money in the case.

The second issue is that, in the experience of Workgroup members, trial judges often take too long to rule on motions. This delay results in the same types of delays just described.

To resolve these issues and to ensure that motion practice is consistent with the major amendments to the case management and discovery rules contemplated by the Workgroup, the Workgroup recommends a mostly new motions rule 1.160,[508] a new rule on setting hearings (numbered 1.161),[509] and an expansion of rule 2.215(f)[510] concerning a judge's duty to rule. Key changes are summarized as follows:

- Rule 1.090(d)[511] and 1.100(b)[512] are deleted, with provisions that remain viable incorporated into amended rule 1.160 and new rule 1.161. A cross-reference from rule 1.420(b) to rule 1.090(d) is deleted as unnecessary.[513]
- New subdivision 1.160(a) exempts those categories of motions that are governed by another motions rule or are otherwise not appropriate for inclusion in the general motions rule: rule 1.480 (directed verdict), rule 1.500 (relating to defaults), rule 1.510 (summary judgment), rule 1.525 (costs and attorneys' fees), rule 1.530

(rehearing and new trial), and rule 1.540 (relief from judgment). In cases of contradiction, any other motion-governing rule prevails over rule 1.160. Rule 1.160 does not apply to motion practice in complex cases proceeding under rule 1.201.

- Under subdivision (d), parties may file motions stipulating relief. The court is not required to grant such a motion.
- Under subdivision (e), parties may file ex parte motions when permitted by law but must include the legal authority supporting the use of an ex parte motion.[514]
- Subdivision (f) governs motions on matters requiring expedited resolution, often termed "emergency" motions. This subdivision specifies the scenarios in which such a motion may be filed and requires that the motion include a signed certificate regarding the factual basis supporting the need for expedited resolution.
- Subdivision (c) delineates a detailed meet-and-confer requirement, coordinated with new rule 1.161, which describes the procedure for setting hearings. Subdivision (c)(2)(B) describes the procedure for informing the court that the parties do not desire a hearing on the motion.
- Unless a hearing is required by law the court has the option of resolving the motion on hearing or on the filings alone, as described in subdivision (j).
- Subdivision (j) also delineates the parties' and court's responsibilities (including timing) for briefing motions.
- A new rule, 1.161, titled "Scheduling of Hearings on Motions," is recommended to ensure that parties take action to schedule a motion hearing. The rule is separate from rule 1.160 to cover the categories of motions excluded from the operation of rule 1.160. Subdivision (b) describes the hearing-setting process in detail. Subdivision (c) delineates the procedure for hearing a motion requiring expedited resolution; as indicated in the rule, it is to be read in conjunction with rule 1.160(f). Subdivision (d) emphasizes the need for the parties to request a cancellation of a motion hearing when they have resolved the issue among themselves.
- The Workgroup originally contemplated including in draft rule 1.160 a procedure requiring the court to timely rule on motions but ultimately decided that a more appropriate location for such a provision would be Florida Rule of General Practice and Judicial Administration 2.215(f) ("Duty to Rule within a Reasonable Time"), which covers all court divisions. The draft of amended rule 2.215(f) adds specificity to the existing provision that a judge "has a duty to rule . . . on every matter submitted . . . within a reasonable time" by requiring a 60-day turnaround for ruling on motions. In the interest of completeness, the draft rule also includes a similar provision for rulings after trial.[515] Finally, the draft rule expands on the existing rule's reporting requirement by requiring the chief judge to attempt to rectify any reported delays and, if the delay cannot be rectified, to report the matter to the chief justice. The rule allows for rulings beyond the 60-day deadline when the court must review a large volume of evidence.

## C. ***Failure to prosecute***

### 1. Current rule

Rule 1.420(e) describes a multi-step process for a determination of whether a case should be dismissed for failure to prosecute. First, if "no activity by filing of pleadings, order of the court, or otherwise has occurred for a period of 10 months" and the court has not entered an order staying the action or approved a stipulation for stay, "any interested person, whether a party to the action or not, the court, or the clerk of the court may serve notice to all parties that no such activity has occurred."[516]

The service of such a notice triggers a 60-day recovery period. At this point, the case can continue only if: (1) a party engages in "record activity" during the 60-day period; (2) the court issues a stay during the 60-day period; or (3) a party shows cause why the case should not be dismissed.[517] In the absence of any of these three circumstances, the court "shall" dismiss the action on its own motion or on a motion of any interested person (whether a party or not), but only after reasonable notice to the parties.[518] A party may then avoid dismissal only by showing "good cause" in writing at least five days before the hearing on the motion, after which the court presumably orders the case dismissed or not.[519]

The rule clarifies that mere inaction for a year is "not sufficient cause for dismissal for failure to prosecute."[520] In other words, to have a case dismissed for failure to prosecute, one or more of the several players must go through the process just described, beginning at the 10-month point after the latest case activity.

### 2. Case law construing the rule

"The purpose of rule 1.420(e) is to encourage prompt and efficient prosecution of cases and to clear court dockets of cases that have essentially been abandoned. The underlying policy is to avoid protracted litigation by forcing parties to advance each case toward resolution."[521] The rule is "designed to relieve the judiciary of concern for inactive litigation."[522] The supreme court has emphasized, however, that the primary concern of the courts, even in light of rule 1.420(e), is resolution of cases on the merits.[523]

The 10-month period must be the period immediately preceding service of the notice, not some earlier 10-month period.[524] Case law has created exceptions under which the 10-month period is tolled; for example, the period is tolled when a notice of trial has been properly served and filed and the clerk or the court is responsible for delay in setting the trial date.[525]

Rule 1.420(e) is available only if the entire case can be dismissed.[526] Thus, record activity by any plaintiff during the 10-month period defeats the operation of the rule as against other plaintiffs who may have been inactive during the period.[527] Similarly, "under Florida Rule of Civil Procedure 1.420(e) a motion to dismiss for failure to prosecute may not be granted as to some of the defendants in a case and not as to others."[528] Dismissal under rule 1.420(e) must be without prejudice.[529]

The supreme court has established a bright-line principle based on the language of the rule that *any* record activity during the pre-notice period (at the time, one year; now, 10 months) will preclude invocation of the rule:

> [T]he language of the rule is clear—if a review of the face of the record does not reflect any activity in the preceding year, the action shall be dismissed, unless a party shows good cause why the action should remain pending; however, if a review of the face of the record reveals activity by "filings of pleadings, order of court, or otherwise," an action should not be dismissed. This construction of the rule establishes a bright-line test that will ordinarily require only a cursory review of the record by a trial court. . . . We find this bright-line rule appealing in that it establishes a rule that is easy to apply and relieves the trial court and litigants of the burden of determining and guessing as to whether an activity is merely passive or active. It is this burden which has created the difficulty with which litigants and trial courts have struggled to determine whether a particular filing or action will advance the cause to resolution.[530]

The supreme court has applied the same principle to the 60-day recovery period under the current rule. In *Chemrock Corp. v. Tampa Electric Co.*, 23 So. 3d 759, 763 (Fla. 1st DCA 2009), the First District ruled that the plaintiff's motion filed during the 60-day recovery period, which acknowledged the 10-month lapse but which did not actually attempt to "re-commence prosecution," was insufficient to avoid dismissal under the rule, noting also that "[s]hould [the plaintiff] prevail, it will be able to continue the litigation perpetually by filing similar acknowledgments ('Yes—we still have not done anything') whenever a notice of lack of prosecution is filed." Nevertheless, the supreme court on conflict review held that the bright-line rule of *Wilson v. Salamon* also applied to the 60-day recovery period, such that "record activity" during the latter period would be sufficient to preclude dismissal under the rule.[531] Under this ruling, it would seem that the mere filing of a paper in an attempt to show good cause under the rule itself constitutes "record activity," in which case it would logically follow that it is unnecessary to show good cause or have a hearing; the filing itself, a form of "record activity," would appear to be sufficient to ensure that the case will continue.

To the extent that good cause is an issue on appeal, it is reviewed for abuse of discretion.[532]

### 3. Recommendations

The Workgroup recommends significant revisions to rule 1.420(e) and a corresponding revision to form 1.989, "Order of Dismissal for Lack of Prosecution."[533] In line with its goal of ensuring that cases progress at a reasonable pace, the Workgroup proposes reducing the initial triggering period of inactivity from 10 months to six months.[534] Additionally, the activity that prevents the dismissal process from being triggered is, under the proposed amendments, limited to the filing of pleadings or "other paper"; the entry of a court order would no longer prevent the running of the six-month period.[535]

Other than the court's issuance or approval of a stay during the 60-day recovery period,[536] under the proposed revision the plaintiff can prevent the case from being dismissed by one of two means:

- Engaging in "post-notice record activity" during the recovery period.[537] Contra the supreme court's *Chemrock* opinion, "post-notice record activity" that will prevent dismissal under the proposed rule is limited: filing and setting for hearing a motion to stay the action or a dispositive motion, filing and service of a notice for trial, or the court's issuance of an order that sets pretrial deadlines or a trial date.[538]
- Filing during the recovery period a motion demonstrating to the court that "extraordinary cause" supports keeping the case pending.[539] The rule limits "extraordinary cause" to "matters that were unforeseen despite ordinary diligence" and excludes mere "good cause or excusable neglect."[540] The Workgroup believes that plaintiffs and their attorneys, who presumably have a real desire to see their cases move to completion in a timely fashion, should be held to a standard that permits excusal only when a lack of case activity over a period of six months was caused by unforeseeable circumstances.

The change from undefined "good cause" to defined "extraordinary cause" as the basis for recovery of a case otherwise susceptible to dismissal under rule 1.420(e) is additionally based on the Workgroup's conclusion from a review of the case law that the courts have expanded the circumstances constituting "good cause" too far, especially in the context of illness or disability. The following are examples of situations that the courts have found to constitute or not constitute "good cause."[541]

- The stay resulting from the filing of a petition for bankruptcy in federal court[542] or removal of case to federal court[543] constitutes good cause.
- Activity in a related action constitutes good cause.[544]
- Settlement:
  - A completed settlement constitutes good cause.[545]
  - Ongoing or attempted settlement negotiations do not constitute good cause.[546]
- Illness or disability of the plaintiff or counsel: The cases are mixed. One court has written that "[a]lthough the degree of the disability required in order to constitute good cause for the trial court to retain the cause on the court's calendar is unclear, the collective decisions have resolved this question in favor of adjudicating a case on its merits."[547] The extent of the illness or disability seems to be the deciding factor,[548] although in some cases in which the appeals court concludes that the illness or disability was severe enough to warrant continuing the case, the scenario described in the opinion would appear to have allowed for case activity during the initial rule 1.420(e) period notwithstanding the disability or illness. In one case, for example, the plaintiff's counsel, a solo practitioner, was unable to practice law for approximately the middle third of the initial one-year period then provided for in rule 1.420(e) due to a serious injury from an auto accident. The appeals court concluded that the plaintiff had shown good cause warranting reversal of the trial court's dismissal.[549] It is not clear why this scenario should constitute "good cause" or why the trial court's dismissal was an abuse of discretion when, at least based on the chronology recited in the opinion, there were two to three months before the

end of the rule 1.420(e) one-year period during which counsel was back in practice such that he could have engaged in some record activity.[550]

- A calamity preventing record activity could constitute good cause.[551]
- Discovery activity during the 10-month period can constitute good cause.[552]
- Estoppel situations:
  - Misleading activity of defendant can constitute good cause; the defendant is equitably estopped from asserting absence of good cause.[553]
  - When an individual judge has established a procedure outside the formal filing process and the parties follow that procedure during a period of no formal record activity, the court may not properly grant a rule 1.420(e) motion to dismiss.[554]
- When a motion remains pending at the end of a 10-month period during which there has been no record activity, the plaintiff must still show good cause why the action should not be dismissed; the mere pendency of a motion does not constitute good cause.[555]

The Workgroup's revision additionally proposes a deadlines for a response to the show-cause filing, with the court to determine whether a hearing on the filing is required.[556] The period of "mere inaction" in the last sentence of the present rule has been amended from "1 year" (representing the current 10-month initial period plus the 60-day recovery period) to "8 months" (representing to corresponding total time in the amended version).[557]

## D. ***Continuances***

### 1. Current rules

Florida Rule of Civil Procedure 1.460 provides little guidance for the court to deny a motion for continuance:

> 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.

Meanwhile, Florida Rule of General Practice and Judicial Administration 2.545(e) is mostly aspirational:

> Continuances. All judges shall apply a firm continuance policy. Continuances should be few, good cause should be required, and all requests should be heard and resolved by a judge. All motions 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. All motions for continuance in priority cases shall clearly identify such priority status and explain what effect the motion will have on the progress of the case.

In complex actions, "[c]ontinuance of the trial . . . should rarely be granted and then only upon good cause shown."[558]

### 2. Case law construing the rules

A ruling on a motion to continue

> is treated with a relatively high degree of deference, even among other kinds of discretionary decisions. The Florida Supreme Court has noted that a reversal on the ground that the trial court erred in denying a motion for a continuance requires a "clear showing of a palpable abuse of . . . judicial discretion." *Webb v. State*, 433 So. 2d 496, 498 (Fla. 1983). We take this to mean that the court has required even *greater deference to continuance orders* than is required of other discretionary rulings.[559]

As such, the appellate courts tend to reverse orders denying a continuance only in more extreme situations.[560]

### 3. Recommendations

The Workgroup recommends a greatly expanded rule 1.460 on continuances,[561] to establish *disincentives* to continuances, especially the use of continuances as a means of circumventing deadlines set in the initial case management order. The proposed rule is consistent with rule 1.010 (stating that the Florida Rules of Civil Procedure "rules shall be construed to secure the just, speedy, and inexpensive determination of every action") and rule 2.545(b) ("The trial judge shall take charge of all cases at an early stage in the litigation and shall control the progress of the case thereafter until the case is determined.") and (e) ("All judges shall apply a firm continuance policy. Continuances should be few[ and] good cause should be required.").

The proposed rule has two subdivisions: (a) motions to continue nontrial events and (b) motions to continue trial. Both types of motions must be signed by the client,[562] and both require conferral with the opposing party.[563] Otherwise, motions to continue nontrial events have few requirements: a factual basis for the continuance, the proposed action, the proposed date by which the parties will be ready for the event, and a description of the impact of the continuance on remaining case management deadlines.[564]

A motion to continue trial, a rather more serious matter than a motion to continue a pretrial event, entails more procedural steps under subdivision (b). At the outset the subdivision makes clear that a trial continuance may be granted only when "extraordinary unforeseen circumstances" require a continuance.[565] Lack of preparation and other specified circumstances are not acceptable grounds for a trial continuance.[566]

In particular, subdivision 1.460(b)(6)(F) precludes parties from using trial conflicts (e.g., another trial in which counsel is involved scheduled for the same day) as the basis for a continuance. Rather, this subdivision cross-references Florida Rule of General Practice and Judicial Administration 2.550, which governs how trial conflicts are to be resolved. The Workgroup proposes minor amendments to rule 2.550(c) to clearly require the two presiding judges to resolve the conflict.[567]

If the potential basis for a trial continuance is the need to amend pleadings "due to extraordinary unforeseen circumstances," no continuance will be granted within 60 days before trial if no additional discovery is required.[568] If discovery is required, the party seeking amendment must facilitate that discovery, failing which the court may deny the continuance.[569]

The proposed rule exhorts trial judges to use other available remedies to avoid continuing trial.[570]

Orders granting a trial continuance must state the factual basis for the continuance, schedule any action required to cure the need for continuance, and set a new trial date.[571] Any continuance is limited to six months from the original trial date, absent extraordinary good cause.[572] Counsel must serve the order on the client and be prepared to try to the case on the new date.[573]

Finally, the rule provides that an order granting or denying a continuance may be reversed only if the appellate court concludes that the order represents a "gross abuse of discretion."[574]

## E. ***Small Claims***

Florida Rule of General Practice and Judicial Administration 2.250(a)(1)(B) provides a "presumptively reasonable" period of 95 days for small claims cases to proceed to final disposition. The Workgroup recommends amendments to several Florida Small Claims Rules to ensure the timely resolution of small claims cases. The Workgroup does not recommend any amendment to rule 7.110(e), concerning failure to prosecute,[575] as the small claims rules have sufficient time standards to avoid the kinds of delay issues that arise under the civil rules.

### 1. Service of process

Rule 7.070 currently incorporates Florida Rule of Civil Procedure 1.070(a)-(h)[576] but not paragraph (j), which sets a preliminary 120-day limit on service of initial process in civil cases.[577] There is otherwise no clear time limit for service in the small claims rules, with the result that cases can be "pending" for lack of service for months if not years. Although rule 7.020(c) permits a trial judge to invoke rule 1.070(j) in individual cases, it takes much judicial labor and docket management effort to do this on a case-by-case basis.

The Workgroup recommends incorporating the language of rule 1.070(j) into rule 7.070, with current rule 7.070 becoming subdivision (a) and the new provision subdivision (b).[578] However, in light of the inherently expedited nature of most small claims cases, the Workgroup recommends a 90-day deadline rather than the 120-day deadline of rule 1.070(j).

### 2. Invocation of rules of civil procedure

Rule 7.020(c) provides that in any action, "the court may order that action to proceed under 1 or more additional Florida Rules of Civil Procedure on application of any party of the stipulation of all parties or on the court's own motion." The Workgroup

recommends that rule 7.020(c) be amended to provide that invocation of any portion of the rules of civil procedure that eliminates the deadline for trial under rule 7.090(d) will require case management in accordance with amended rule 1.200.[579]

### 3. Discovery

Rule 7.020(b) allows parties to avail themselves of the discovery rules included in the Florida Rules of Civil Procedure, rules 1.280–1.380, without leave of court if both parties are represented by counsel. When parties do employ the civil discovery rules, significant delays often result, defeating the "presumptively reasonable" period during which small claims cases should proceed to finality[580] or the deadline for a small claims trial under rule 7.090(d). The Workgroup recommends amending rule 7.020(b) to require a party to seek the leave of court before engaging in discovery under the civil rules even when both parties are represented by counsel.[581] In light of this amendment, a need to distinguish between represented and unrepresented parties, as occurs in the current rule, no longer exists.

### 4. Mediation

Rule 7.090(f) governs mediation in small claims court. Florida Rules for Certified and Court-Appointed Mediators 10.420(a) provides that "[u]pon commencement of the mediation session, a mediator shall describe the mediation process and the role of the mediator" and inform the participants that mediation is consensual, that the mediator is an impartial facilitator without authority to impose a resolution or adjudicate any aspect or the dispute, and that communications made during mediation are confidential except where disclosure is required or permitted by law. The chair of the Florida Supreme Court's Mediator Ethics Advisory Committee has opined that "a mediator is not permitted [to conduct and] may [not] suggest or offer the option of conducting a single orientation session for multiple plaintiffs and defendants in different cases."[582]

Notwithstanding that opinion, the Workgroup recommends amending rule 10.420(a) to provide that for mediations conducted in conjunction with pretrial conferences in small claims cases pursuant to rule 7.090(f), a mediator may present the orientation session to mediation participants in a group setting—whether in person, by remote or virtual appearance, or prerecorded video—rather than by individual case.[583] Currently, in many areas of Florida, a single session of small claims pretrial conferences may involve more than 100 cases on a single docket. Requiring mediators to provide the orientation session to each case separately, as required by the ethics opinion, results in unnecessarily lengthy delays in processing small claims cases.

## V. Case reporting and judicial accountability

While the bulk of this report has focused on the tools needed to effect active judicial case management—in the form of new and amended rules of procedure—whether cases are actively managed will depend on whether a given judge enforces the rules and the extent of that enforcement.[584] Unfortunately, survey results tend to reflect a mediocre level of enforcement of civil rules[585] and a lack of conviction over where

enforcement responsibility lies.[586] Although litigants can certainly ask for enforcement of the rules by motion, it is the judge who issues the order.

As one means of promoting engagement in judicial case management, the Workgroup recommends an addition to Florida Rule of General Practice and Judicial Administration 2.250(b), numbered as subdivision (b)(2).[587] Current rule 2.245(a) requires that the "clerk of the circuit court shall report the activity of all cases before all courts within the clerk's jurisdiction to the supreme court in the manner and on the forms established by the office of the state courts administrator and approved by order of the court." Additionally, current rule 2.250(b) provides that

> [a]ll pending cases in circuit and district courts of appeal exceeding the time standards [delineated in rule 2.250(a)] shall be listed separately on a report submitted quarterly to the chief justice. The report shall include for each case listed the case number, type of case, case status (active or inactive for civil cases and contested or uncontested for domestic relations and probate cases), the date of arrest in criminal cases, and the original filing date in civil cases.

The Workgroup's proposed addition requires the chief judge of each circuit to serve on the chief justice and the state courts administrator an annual report listing all active civil cases that were pending three years or more as of the end of the fiscal year.[588] Due to the Covid-19–generated workload, however, the Workgroup feels it prudent to delay implementation of the rule until the fiscal year beginning on July 1, 2023.[589]

## VI. Continuing education

Though not suggesting specific curricula for judicial education and continuing legal education, the Workgroup presents the following suggestions for education related to civil case management. One key goal of any educational program should be to ensure consistency in practice.

### A. *Judicial education*

Judicial education in Florida can be divided broadly into two components: required Florida Judicial College programs for new trial and appellate judges[590] and required periodic continuing judicial education (CJE).[591] The Florida Judicial College programs are provided by the Florida judiciary,[592] while multiple entities within[593] and outside[594] the judiciary offer CJE coursework.

The Workgroup recommends that a presentation of amended rule 1.200 be included in any case management component taught at the trial court program of the Florida Judicial College, along with an emphasis on such related rules as expanded rule 1.160 and new rule 1.161 (concerning motion practice) and expanded rule 1.460 (concerning continuances). To the extent feasible, a session on technology best practices should be included in the program if it is not already.

As for CJE, the Workgroup recommends course offerings in the following areas:

- Active judicial case management in the trial court: philosophy and practice, with an emphasis on the idea that judges must enforce the rules to keep cases moving.

- How the new and expanded rules are intended to work, including but not necessarily limited to:
  - Amended rules 1.200 (case management) and 1.201 (complex cases)
  - Motion practice under expanded rule 1.160 and new rule 1.161
  - Continuances under expanded rule 1.460
  - Dismissals for failure to prosecute under amended rule 1.420(e)
  - Sanctions under new rule 1.275 and amended rule 1.380
  - Time standards and case reporting under rule 2.250; the timing and reporting requirements of amended rule 2.215(f)
  - Technology best practices
- How to properly interpret and apply *Binger v. King Pest Control*, 401 So. 2d 1310 (Fla. 1981)

In conjunction with proposed rule 1.271 creating PCCs,[595] coursework to qualify judges for such courts will need to be developed.

### B. ***Continuing legal education***

The Florida Bar is responsible for all aspects of continuing legal education (CLE) in Florida.[596] And in terms of providing guidance to their colleagues, Bar members seem very responsive to significant changes in the law.[597] The Workgroup anticipates that members of the Bar involved in legal education will be similarly responsive should the rule recommendations in the present report be adopted by the supreme court. Accordingly, the Workgroup suggests a focus on the following topics and issues:

- Professionalism,[598] with a focus on discovery practice (especially deposition practice and late pretrial discovery practice pursuant to *Binger*)
- The case management timetable under the amended rules, including differences from the federal rules
- Discovery practice, including the new initial-disclosure requirement, proper deposition practice (including appropriate objections), and amended sanctions rule 1.380
- Motion practice under amended rule 1.160 and new rule 1.161
- Continuances under expanded rule 1.460
- Dismissals for failure to prosecute under amended rule 1.420(e)
- Sanctions under new rule 1.275
- Technology best practices

## C. ***Education for support personnel***

Support personnel such as judicial assistants, case managers, technology staff, relevant personnel in circuit court administration, and clerk staff will, along with judges, need to be trained in the practical aspects of case management under the new rules, including the use of technology.

## Appendix 1: Proposed Rule Amendments

### Rule 1.090. Time

(a)–(c) *[Unchanged]*

~~**(d) For Motions.** A copy of any written motion which may not be heard ex parte and a copy of the notice of the hearing thereof shall be served a reasonable time before the time specified for the hearing.~~

### Rule 1.100. Pleadings and Motions

(a) *[Unchanged]*

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

(~~c~~ b) *[Unchanged]*

(~~d~~ c) *[Unchanged]*

(~~e~~ e) *[Unchanged]*

### Rule 1.160. Motions

**(a) Application.** This rule shall apply to all motions other than motions made pursuant to rules 1.480, 1.500, 1.510, 1.525, 1.530, and 1.540. In the event of contradiction between this rule and a rule governing a specific type of motion, the latter shall prevail. This rule shall not apply to cases certified as complex pursuant to rule 1.201.

**(b) Relief and Grounds.** A request for an order must be made by motion. The motion must be in writing, unless made orally during a hearing or trial, at the court's discretion, subject to any other relevant rules and orders of the court. The motion must state with particularity the grounds upon which it is based and the substantial matters of law to be argued. Any party may file supporting or opposing memoranda for any motion filed.

**(c) Obligation to Meet and Confer.** With the exception of stipulated motions filed pursuant to subdivision (d), ex parte motions filed under subdivision (e), and motions requiring expedited resolution under subdivision (f), prior to the filing of any motion filed under this rule, the parties, whether represented by counsel or self-represented, shall meet and confer to discuss the motion. If a party is represented by counsel, such party shall meet and confer through counsel, who shall have full authority to resolve all issues relating to the motion.

**(1) Substance of Conference.** The parties shall attempt in good faith to resolve or otherwise narrow the issues raised in the motion. The parties shall also discuss whether a hearing will be scheduled or requested, and how much time should be reserved for any such hearing. If a hearing will not be scheduled or

requested, the parties shall discuss whether the parties prefer that the court decide the motion with memoranda under subdivision (j)(1) or without memoranda under subdivision (j)(2).

**(2) Outcome of Conference.** If the parties are able to resolve the motion without the court's consideration, the party filing the motion shall propose a stipulated order to the court within 5 days after the conference. If the parties are not able to resolve the motion, the party seeking relief may file and serve the subject motion. In that event, the parties shall proceed as follows:

**(A) Hearing Requested.** If either party requests a hearing, the hearing shall be scheduled within 5 days after the conclusion of the meet and confer conference, pursuant to subdivision (i) and in accordance with rule 1.161.

**(B) No Hearing to Be Requested.** If the parties agree that a hearing shall not be requested, the party filing the motion shall, within 5 days after the conference, advise the judicial office of that fact, and indicate whether the parties request the court to decide the motion with memoranda under subdivision (j)(1) or without memoranda under subdivision (j)(2). In such an event, the court shall, within 5 days, either instruct the parties to schedule a hearing in accordance with rule 1.161 or shall decide the motion without hearing under subdivision (j).

**(3) Nature of Conference.** To comply with this rule, the parties shall have a substantive conversation in person or by telephone or videoconference. An exchange of correspondence between the parties does not satisfy the requirement to meet and confer.

**(4) Scheduling of Conference.** The conference shall occur prior to the filing of the motion, and prior to scheduling a hearing under rule 1.161. The parties shall respond promptly to inquiries and communications from opposing parties when they are attempting to schedule the conference. If the party filing the motion is unable to reach the opposing party after at least 3 good faith attempts, that party shall identify the dates and times of the efforts made in the certificate of compliance filed under subdivision (c)(5). In that event, the movant may file the subject motion and schedule a hearing in accordance with rule 1.161.

**(5) Certificate of Compliance.** The party filing the motion shall, within 5 days after conclusion of the conference, file and serve a certificate of compliance stating that the conference has occurred. If the conference did not occur, the certificate of compliance shall describe the 3 or more good faith attempts to schedule the conference. The certificate of compliance shall indicate the date of the conference, the names of the participants, and the outcome of the conference, including whether a hearing is requested, and if no hearing is requested, whether the parties request the court to decide the motion with or without written memoranda.

**(d) Stipulated Motions.** A party seeking relief that has been agreed to by the other parties may file a stipulated motion. The title of any such motion shall indicate that

the relief has been stipulated to by the other parties. At the time the stipulated motion is filed, the movant shall also submit a proposed order to the court, the form of which has been agreed to by the other parties. The court is under no obligation to grant a stipulated motion.

**(e) Ex Parte Motions.** A party seeking ex parte relief may file an ex parte motion when permitted by law. The title of any such motion shall indicate that ex parte relief is being requested. Any such motion shall include the legal authority authorizing ex parte relief to be issued. At the time the motion is filed, the movant shall also submit a proposed order to the court.

**(f) Motions Requiring Expedited Resolution ("Emergency" Motions).** A party seeking an order for matters that require expedited resolution may immediately file such a motion. The title of any such motion shall indicate that the motion requires expedited resolution. Any such motion shall be verified, and shall include a factual basis supporting a good-faith need for expedited resolution. Any such motion shall also include a certificate of exigent circumstances signed by the attorney or the self-represented party filing the motion. Matters requiring expedited resolution shall include only those situations in which irreparable harm, death, manifest injury to person or property, or dispossession from real property will occur if expedited relief is not granted. Failure of a party or an attorney to act timely shall not constitute exigent circumstances or the required basis for an expedited hearing. The court may sanction abuses of this subsection through monetary or other appropriate sanctions.

**(g) Evidentiary Motions.** If a motion requires that issues of material fact be decided in order for the court to resolve the motion, the court shall hold an evidentiary hearing on the motion. The title of any such motion shall specify that an evidentiary hearing is requested.

**(h) Nonevidentiary Motions.** If it is not necessary for the court to decide issues of material fact to rule on a motion, and except as otherwise specifically provided in these rules or other applicable legal authority, the court may, but is not required to, hold a hearing on a motion.

**(i) Motions Decided with Hearing.** All hearings on motions shall be scheduled in accordance with rule 1.161.

**(j) Motions Decided without Hearing.** If the court declines to conduct a hearing on a motion, the court shall inform the parties of that decision within 5 days after when the hearing was scheduled or requested. The court may at that time direct the parties to file memoranda on the motion or may rule on the motion summarily.

**(1) Motions Decided with Memoranda.** If the court declines to conduct a hearing, the court may, within 10 days after declining to conduct a hearing, direct the parties to file memoranda on the motion. In that event, the movant shall file a supporting memorandum within 20 days after the court's order. The respondent may file an opposing memorandum within 20 days after the service of the movant's supporting memorandum. If the response memorandum raises a new issue, the movant may file a reply memorandum within 10 days after service of the response memorandum. Any such

memoranda shall include a statement of the party's preferred disposition of the motion, together with the factual and legal grounds supporting that disposition. Within 10 days after the expiration of the time permitted for the completion of briefing on a motion without hearing, the movant shall file and serve on all parties and the court a request to submit for decision. The request shall state the dates on which the motion, response memoranda, and reply memoranda were filed, if applicable, and shall request the court to make a ruling on the motion.

**(2) Motions Decided Summarily.** If the court declines to conduct a hearing and declines to direct the parties to submit memoranda, the court shall rule on the motion summarily within 10 days after declining to conduct a hearing. If the court fails to rule within 10 days after declining to conduct a hearing, the movant shall, within an additional 10 days, file and serve on all parties and the court a request to submit for decision. The request shall state the date on which the motion was filed and shall request the court to make a ruling on the motion.

**(k) Abandonment of Motions.** A motion shall be deemed abandoned and denied if either of the following occurs:

(1) The movant does not timely schedule and notice a hearing as required by subdivision (i).

(2) The movant does not timely file and serve a request to submit for decision pursuant to subdivision (j)(1) or (j)(2).

**(l) Motions Grantable by the Clerk.** All motions and applications in the clerk's office for the issuance of mesne process and final process to enforce and execute judgements, for entering defaults, and for such other proceedings in the clerk's office as do not require an order of court shall be deemed motions and applications grantable as of course by the clerk. The clerk's action may be suspended or altered or rescinded by the court upon cause shown.

**2021 Commentary**

The phrase in subdivision (c) concerning conferral between represented and self-represented parties is intended to serve as a reminder to litigants that contact between an attorney for one party and a self-represented party is not prohibited. *Cf.* R. Regulating Fla. Bar 4-4.2, 4-4.3.

**Rule 1.161. Scheduling of Hearings on Motions**

**(a) In general.** Motions shall be filed at the time they are ready for prosecution. Meeting and conferral shall take place in accordance with rule 1.160(c).

**(b) Procedure.**

(1) For motions for which a hearing is requested, the movant shall, within 3 business days after the conclusion of the meet and confer conference, schedule the motion for hearing in accordance with the reasonable times

defined in subdivision (b)(3). Where online scheduling is available, the movant shall coordinate a date and time for hearing among the parties. Where scheduling takes place manually through the judicial office, the movant shall contact that office, which shall offer the parties 3 dates and times The parties shall accept or reject the dates by e-mail to all parties and the court within 48 hours. If rejected, the rejecting party must identify the conflict and suggest 3 alternatives within 48 hours.

(2) If the parties cannot agree on a date and time available within a reasonable time as defined in subdivision (b)(3), the movant shall submit the motion to the judge's or other judicial officer's chambers with a certification that the parties could not agree on scheduling. The court shall either schedule the matter with the parties' cooperation or unilaterally schedule the matter.

(3) A reasonable time from the date of scheduling the hearing to the date of the hearing is as follows:

(A) no more than 30 days for matters requiring a hearing time of less than 15 minutes;

(B) no more than 45 days for matters requiring a hearing time of 15 minutes to less than 30 minutes;

(C) no more than 60 days for requiring a hearing time of 30 minutes to less than 1 hour; and

(D) no more than 120 days for matters requiring a hearing of 1 hour or longer.

These schedules may be amended by administrative order in local jurisdictions in situations of docket stress. If a matter is unable to be set, either online or through the office, within the timeframes defined in this subdivision, the movant shall certify to the court that there is no acceptable time available within a reasonable time and that the court may proceed under subdivision (b)(2).

(4) If the parties cannot agree on the amount of time required, the movant shall certify to the court that the parties are unable to agree on scheduling and the court may elect how it wishes to proceed consistent with subdivision (b)(2). The court may reject time requests that it determines unreasonable and set the matter for the amount of time it deems appropriate or proceed under subdivision (b)(2).

(5) Within 5 days after the parties have agreed on or the court has determined the date, time, and length of the hearing, the movant shall file and serve a notice of hearing.

**(c) Motions Requiring Expedited Resolution ("Emergency" Motions).** A party seeking a hearing for a matter that requires expedited resolution may, after a good-faith effort to notify the opposing party, certify to the court, by delivery to the judge's chambers, that the matter requires expedited resolution and a hearing is requested to be set in a timeframe shorter than those indicated in this rule. The parties shall otherwise follow the procedures set forth in rule 1.160(f).

**(d) Cancellation of hearings.** Hearings set pursuant to this rule may be canceled by the parties only if an agreement has been reached on the merits of the motion and the parties have entered into an agreed order or stipulation approved by the court, if the case otherwise has been resolved of record, or if the court approves the cancellation or continuance. In any instance, all parties have the responsibility to insure the court has promptly been notified that the hearing should be canceled. If the parties fail to timely cancel the hearing, they shall both be required to appear at the time of the scheduled hearing to explain to the court why they failed to promptly notify the court that the hearing was no longer needed.

**2021 Commentary**

Subdivision (d) attempts to redress a recurring issue involving the administration of justice. The court's hearing time is limited. The court must be made cognizant of all the cases before it, not simply the case having reserved hearing time. Parties who fail to promptly cancel unneeded hearings limit the availability of hearing time for other cases.

**Rule 1.190. Amended and Supplemental Pleadings**

(a) *[Unchanged]*

**(b) Amending Affirmative Defenses Involving Comparative Fault.**

(1) Any motion to amend seeking to plead the fault of a party or nonparty must

(A) be timely in accordance with the Florida Rules of Civil Procedure, the case management order, and other orders of the court; and

(B) absent a showing of good cause and no prejudice to the other parties or the court, be brought within 15 days of when the party seeking to amend reasonably should or could have known, with the exercise of due diligence, of the party's or nonparty's alleged fault.

(2) In order to allocate any or all fault to another party or a nonparty, a party seeking to amend must

(A) affirmatively plead the fault of the party or nonparty in accordance with rule 1.140 and other applicable rules and decisional law; and

(B) absent a showing of good cause, identify the party or nonparty, if known, or describe the nonparty as specifically as practicable by motion with the proposed defense attached to the motion.

(~~b~~ c) *[Unchanged]*

(~~c~~ d) *[Unchanged]*

(~~d~~ e) *[Unchanged]*

(~~e~~ f) *[Unchanged]*

(~~f~~ g) *[Unchanged]*

**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.~~

**(a) Objectives.** In accordance with rule 1.010, the purpose of the Florida Rules of Civil Procedure is to secure the just, speedy, and inexpensive determination of every action. In accordance with Florida Rule of General Practice and Judicial Administration 2.545(a), the purpose of case management is to conclude litigation as soon as it is reasonably and justly possible to do so while affording parties a reasonable time to prepare and present their case. The purpose of the present rule is to provide a mandatory uniform framework by which the trial court shall exercise case control under rule 2.545(b). The court must manage a civil action with the following objectives:

(1) expediting a just disposition of the action and establishing early and continuing control so that the action will not be protracted because of lack of management;

(2) avoiding unnecessary delay between critical case events;

(3) ensuring that the case management schedule adopted in the case meets the needs of the action;

(4) ensuring that discovery is relative to the needs of the action, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of proposed discovery outweighs its likely benefit;

(5) discouraging wasteful, expensive, and duplicative pretrial activities;

(6) improving the quality of case resolution through more thorough and timely preparation;

(7) facilitating the appropriate use of alternative dispute resolution;

(8) conserving parties' resources;

(9) managing the court's calendar to eliminate unnecessary hearing and trial settings and continuances; and

(10) adhering to applicable standards for timely resolution of civil actions under the Florida Rules of General Practice and Judicial Administration.

**(b) 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 pursuant to 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 for review on an administrative record;

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

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

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

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

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

(10) an action to enforce an arbitration award;

(11) an action involving an extraordinary writ or remedy pursuant to rule 1.630;

(12) actions to confirm or enforce foreign judgments; and

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

(14) a civil action pending in a special division of the court established by local administrative order or local rule (e.g., a complex business division or a complex civil division) that manages cases consistent with the objectives of subdivision (a) and enters case management orders with timelines, schedules, and deadlines for key events in the case.

~~**(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.~~

**(c) Case Track Assignment.** At commencement, but not later than 120 days after filing, each civil case shall be assigned to one of three 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 that have been or may be designated by court order as complex in accordance with the definition of "complex" and associated criteria delineated in rule 1.201(a). Upon such designation, the action shall 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, as are cases that are to be resolved by a bench trial.

(3) "General" cases are all other actions that do not meet the criteria for streamlined or complex. 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 for trial and a more significant need for judicial attention.

~~**(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.~~

**(d) Changes in Track Assignment.**

**(1) Change Requested by a Party.**

**(A) Cases in which a joint case management report is required.** Any motion to change the track assignment to which a case is assigned must be made by the date on which the parties must file their joint case management report in those cases in a joint case management report is required. Any such motion must be filed separately from the joint case management report and may not exceed 3 pages in length. Any responsive memorandum may not exceed 3 pages in length and must be filed within 5 days after service of the motion. No reply memorandum is permitted.

**(B) Cases in Which a Joint Case Management Report Is Not Required.** When a case management report is not required, parties may seek a change in track assignment by motion filed within 120 days after first filing or 30 days after service on the last defendant, whichever occurs first.

**(C) Exception—Complex Cases.** A party may seek by motion to have a case changed to or from the complex track 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.

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

**(e) Case Management Order.**

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

**(2) Streamlined Cases.** In streamlined cases the court shall issue a case management order no later than 120 days after the case is filed or 30 days after service on the first defendant is served, whichever comes first. No case management conference is required to be set by the court prior to issuance. Parties seeking to amend the deadlines set forth in the case management order shall follow the procedures set forth in subdivision (f). Parties may request a case management conference as set forth in subdivision (h); however, they must comply with the case management order in place.

**(3) General Cases.**

**(A) Meet and Confer.** Parties shall meet and confer within 30 days after service after initial service of the complaint on the first defendant served. The parties should discuss and identify deadlines for:

(i) their anticipated disclosures concerning witnesses, including the number of fact witnesses, whether they will seek to use expert witnesses, and how much deposition testimony they expect will be necessary;

(ii) their anticipated disclosures of documents, including any issues already known to them concerning electronically stored information;

(iii) motions they expect to file, so that the parties can determine whether any of the motions can be avoided by stipulations, amendments, or other cooperative activity;

(iv) any agreements that could aid in the just, speedy, and inexpensive resolution of the case;

(v) the discovery that will be required to be taken and timing, including disclosures, supplements, interrogatories, requests for production, third party discovery, depositions, examinations, and inspections;

(vi) potential dispositive motions, jury instructions; and

(vii) anticipated trial readiness date.

**(B) Joint Case Management Report and Proposed Case Management Order.**

**(i) In General.** After the meet and confer, the parties must file a joint case management report and a proposed case management order. Parties may submit their joint case management report and proposed case management order as early in the case as possible. The court may accept, amend, or reject the parties' proposed order. Proposed orders that do not comply with the Florida Rules of General Practice and Judicial Administration deadline for case resolution will be rejected.

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

**(iii) Failure to File.** If the parties fail to file the joint case management report and proposed case management order by 120 days after filing or 30 days after service on last defendant, whichever occurs first, the court shall issue its own case management order without input from the parties.

**(C) Content of Joint Case Management Report.** The joint case management report shall include the following as applicable to the case:

(i) the case's track assignment;

(ii) a brief factual description of the case,

(iii) the legal issues in the case;

(iv) pleadings already filed;

(v) whether additional pleadings (counterclaims, cross-claims, third-party claims) are expected to be filed;

(vi) a list of anticipated motions;

(vii) a summary of documents and other evidence already known to the parties;

(viii) discovery already propounded;

(ix) any issues associated with electronically stored information;

(x) names (or job title, etc., if name not known) of all fact witnesses;

(xi) whether each fact witness has been deposed and, if not, the date by which deposition is expected to be accomplished;

(xii) names of all expert witness (if unknown, the anticipated area of testimony);

(xiii) whether any inspections have been conducted or have been or will be requested, with details;

(xiv) whether any comprehensive medical examinations have been performed or have been or will be performed;

(xv) whether any form of alternative dispute resolution is anticipated;

(xvi) whether jury or nonjury trial will be requested, requested trial period, and anticipated trial length;

(xvii) the name and contact information (telephone number and e-mail address) of each attorney and self-represented party, subject to Florida Rule of General Practice and Judicial Administration 2.516;

(xviii) a list of persons to whom the joint case management report has been furnished; and

(xix) a signature by a representative of each party.

**(D) Content of Proposed Case Management Order.**

(i) The proposed case management order must specify the following deadlines by date certain:

1. initial disclosures in accordance with rule 1.280(a);

2. addressing issues associated with confidentiality, protective orders, evidence preservation, and electronically stored information;

3. propounding written discovery;

4. disclosing nonexpert witnesses;

5. identifying areas of expert testimony;

6. completing all discovery other than depositions;

7. completing inspections and examinations;

8. identifying and disclosing expert witnesses and their opinions;

9. adding parties, provided that disclosure of additional parties must be timely made after the disclosing party becomes aware of them;

10. amending affirmative defenses to reflect the addition of any *Fabre* defendants;

11. completing fact witness depositions;

12. completing expert witness depositions;

13. final supplementation of discovery and disclosures;

14. use of and timing of alternative dispute resolution;

15. filing motions directed to evidence, including *Daubert* motions pursuant to section 90.702, Florida Statutes, or related law; and

16. filing dispositive motions;

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

1. a proposed trial period or a date for a case management conference to set a trial period; and

2. the anticipated number of days for trial.

The proposed case management order also may address other appropriate matters, including any issues with track assignment.

**(E) Case Management Order.** The court must issue a case management order as soon as practicable either after receiving the parties' joint case management report and proposed case management order or after holding a case management conference. The court's case management order may, at the court's discretion, incorporate revisions to the parties' proposed order.

**(F) Exception.** Each circuit may create by administrative order uniform case management orders that are universally applicable to certain types of cases and that will issue without a case management conference, the "meet and confer" process, and the requirement of a proposed case management order and joint case management report set forth in this subdivision (e)(3)(A)–(D).

**(f) Extensions of Time; Modification of Deadlines**

**(1) Modification of Dates Established by Case Management Order.** The parties may seek by motion to modify the deadlines established in the case management order that govern court filings or hearings only by court order for good cause. Once a trial period or date is set, the parties must establish grounds for continuance under Rule 1.460 to change that period or date.

**(2) Individual Deadlines.** Parties may not extend deadlines by agreement if the extension affects their ability to comply with the remaining dates on the schedule. Any motion for extension of time to comply with a deadline must specify the reason for noncompliance and the specific date by which the activity can be completed, including confirming availability and cooperation of any required participant such as a third-party witness or expert, and must otherwise comply with rule 1.460(a). Motions for extension of time shall not be granted if the effect is to delay the case or if the extension affects the remaining deadlines, in the absence of extraordinary unforeseen circumstances. If the problem affects a subsequent date or dates, parties must seek an amendment of the case management order as opposed to an individual motion for extension.

**(3) Periodic Updates.** The court may require periodic updates advising it of the progress of the case and compliance with deadlines during the pendency of the case. Such additional reports may be specified in the case management order or requested independently by the court.

**(4) Notices of Unavailability.** Notices of unavailability shall not affect the deadlines set by the case management order. Parties must seek amendment of the deadline.

**(5) When Trial Does Not Timely Occur.** If a trial is not reached during the trial period scheduled by the case management order, no further activity may take place absent leave of court, and the case shall be reset to the next immediately available trial period.

**(g) Forms.** The parties must file the joint case management report and the proposed case management order using any forms approved by the court or local administrative order. Except for case management orders issued in cases governed by rule 1.201, the forms of the case management order and the case management report shall be set by local administrative order and shall be uniform within each circuit, whether it be a single form approved for all types of cases or forms approved for particular case types. Under all circumstances, however, the form orders and reports must comply with the requirements of rule 1.200.

**(h) Case Management Conferences.**

**(1) Scheduling.** The court, after entry of the case management order, may set case management conferences on its own notice or upon motion of a party Case management conferences may be scheduled on an ongoing periodic basis, or as needed with at least 20 days' notice prior to the case management conference.

**(2) Advance Filings.** The parties shall file, with courtesy copy served on the court, the following items no later than 7 days prior to a case management conference: an updated joint case management report (if required by the court) and a statement identifying outstanding motions or issues for the court, including any matter that is under advisement.

**(3) Preparation Required.** Attorneys and self-represented parties 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 more than one attorney is involved, counsel shall be prepared with all attorneys' availability for future events. The court may address any outstanding motion at the case management conference, and the parties should be prepared.

**(4) Issues That May Be Addressed.** Issues that may be addressed at a subsequent case management conference or in an updated joint case management report 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 one or more of the following:

(i) amending any dates or deadlines, contingent upon parties establishing a good-faith effort to comply or a significant unforeseen 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) eliminating nonmeritorious claims or defenses;

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

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

(xi) addressing the status and timing of *Daubert* motions filed pursuant to section 90.702, Florida Statutes, or related law, which may be raised by a party or the court, including motions for a pretrial determination of

whether the expert's opinion is of a character or on a subject matter eligible for *Daubert* exclusion;

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

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

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

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

(xvi) reviewing the anticipated trial period and confirming the anticipated number of days needed for trial;

(xvii) 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

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

**(5) 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.

**(6) Compliance and Noncompliance; Sanctions.** At a case management conference the court may consider compliance, noncompliance, and consequences of noncompliance with the case management order. Parties should appear for the conference ready to address their conduct of the case, case deadlines, and any pending motions or outstanding issues. As may be appropriate, the court may enter orders sanctioning a party or attorney as authorized by rule 1.275. No order to show cause is required as the parties are on notice of their obligations under the case management order and the necessity of complying.

If a party finds that the party is unable to comply, the party shall immediately file a motion for a case management conference laying out the issue and proposing a remedy. The party must seek consideration of the matter by the court by setting a case management conference or submitting the matter to the court for consideration as a written submission as soon as the party determines that the party is unable to comply.

**(7) 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, in which case the report requirement is excused; however, the parties in that instance should be prepared to address all pending motions or issues.

**(8) Proposed Orders.** All proposed orders reflecting rulings made at a case management conference must be submitted to the court within 7 days after the

conference. If the parties do not agree to the content of the order, competing orders must be delivered to the court within 7 days, along with a copy of the relevant portion of the transcript if a court reporter was present.

**(9) Failure to Appear.** If both parties fail to appear at a case management conference, the court may conclude that the case has been resolved and may thereupon dismiss the case without prejudice. Such dismissal shall not be deemed a sanction, but shall be without prejudice to a party's seeking relief under rule 1.540.

**(~~b~~ i) Pretrial Conference.** After the action ~~is at issue~~ has been set for trial 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~~ a statement of the issues to be tried;

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

(~~3~~ 2) the possibility of obtaining ~~admissions of fact and of documents~~ evidentiary and other stipulations that will avoid unnecessary proof;

(4 3) the ~~limitation of the number of expert~~ witnesses who will testify, evidence to be proffered, and any associated logistical or scheduling issues;

(~~5~~ 4) the ~~potential use of juror notebooks; and~~ 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) finalization of jury instructions and verdict forms; and

(~~6~~ 8) any matters permitted under subdivision (~~a~~ h)(4) ~~of this rule~~.

The court must enter an order reciting the action taken at the pretrial conference and any stipulations made. The order entered by the court shall control the course of the trial.

**2021 Commentary**

Rule 1.200 as amended is intended to supersede any case management rules issued by circuit courts and administrative orders on case management to the extent of contradiction. The rule is not intended to preclude the possibility of local administrative orders that refine and supplement the procedures delineated in the rule.

**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, or complex issues associated with electronically stored information;

(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 shall be designated or redesignated as complex in accordance with rule 1.200.

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

(1) *[No change]*

(2) *[No change]*

(3) Notwithstanding rule 1.440, at the initial case management conference, the court ~~will~~ shall 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 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, no later than 2 months prior to 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 upon good cause shown.

**(c) The Case Management Order.** Within 10 days after completion of the initial case management conference, the court shall enter a case management order. The case management order shall address each matter set forth ~~under~~ in rule 1.200~~(a)~~(e)(2)(D) 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 the court considering such matters.

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

**(d) Additional case management conferences and hearings.** 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 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 or orders. The attorneys for the parties as well as any self-represented parties 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.

**(~~d~~ e) Final Case Management Conference.** *[No change]*

**Rule 1.271. Pretrial Coordination Court**

**(a) Applicability.** This rule applies to civil actions that involve one or more common questions of fact or law that, as determined by the administrative judge, are anticipated as requiring significant case management and that would therefore benefit from consolidated or coordinated handling and case management.

**(b) Definitions.** As used in this rule:

(1) "Court division" means the individual court division or section in which a case is filed, except when the context reflects a reference to the pretrial coordination court.

(2) "Pretrial coordination court" (PCC) means the court division to which related cases are transferred for coordinated pretrial proceedings under this rule.

(3) "Related" means that cases involve one or more common questions of fact, law, or both.

(4) "Administrative judge" refers to the administrative judge of the circuit court designated by the chief judge under Florida Rule of General Practice and Judicial Administration 2.215(b)(5) as having administrative responsibility over assignment of cases to PCCs. In this rule, "administrative judge" refers to the chief judge of the circuit in circuits in which no administrative judge has been appointed in the civil division.

(5) "Bellwether case" refers to a case fundamentally similar to a group of related cases, with a trial conducted to gauge how jurors will react to the evidence and arguments. The outcome of the trial of a bellwether case does not dictate the outcome of related cases.

**(c) Transfer to a PCC.**

**(1) Request for Transfer.**

**(A) Motion for Transfer by a Party.** A party in a case may move for transfer of the case and related cases to a PCC. The motion must be in writing and must:

(i) list the case number, style, court division, and trial judge of each related case for which transfer is sought;

(ii) state the common question or questions of fact or law involved in the cases and any legal basis for the transfer;

(iii) contain a clear and concise explanation of the reasons that transfer would be for the convenience of the parties and witnesses and would promote the just and efficient conduct of the cases;

(iv) list all parties in each related case and the names, addresses, telephone numbers, and e-mail addresses of all attorneys and self-represented parties; and

(v) certify consultation with all attorneys or self-represented parties in all cases for which transfer is sought and state whether each attorney or party agrees to the motion.

**(B) Request for Transfer by a Judge.** A trial court judge may request a transfer of related cases to a PCC. The request must be in writing and must list the cases to be transferred and state the common question or questions of fact or law. The request shall be made to the chief judge, who may rule on the request or refer it to the administrative judge.

**(C) Transfer on Administrative Judge's Initiative.** The administrative judge may, on the judge's own initiative or in response to a request under subdivision (B), issue a notice of impending transfer. The notice must be served on an attorney for each party, each self-represented party, and each assigned trial judge.

**(2) Effect on the Trial Court of the Filing of a Motion, Request, or Notice.** The filing of a motion or request for or notice of transfer under this rule does not automatically stay proceedings or orders in a case's civil division during the pendency of the motion. The trial court or administrative judge may stay all or part of any trial court proceedings until an order on motion or request for or notice of transfer to a PCC is entered.

**(3) Response; Reply.** Any party in a related case may file:

(A) a response to a motion or request for or notice of transfer within 10 days after service of such motion, request, or transfer; and

(B) a reply to a response within 10 days after service of such response.

The administrative judge may request additional briefing from any party.

**(4) Length of Pleadings.** Without leave of the administrative judge, the following must not exceed 20 pages: a motion to transfer filed under subdivision (c)(1)(A), a response, and a reply.

**(5) Service.** A party must, upon filing, serve a motion, response, reply, or other document on the administrative judge, the trial judge in each related case in which transfer is sought, and all parties in each related case.

**(6) Notice.** Any date of submission or hearing on a motion to transfer must be noticed to all parties in all related cases.

**(7) Evidence.** The administrative judge may order parties to submit evidence by affidavit or deposition and to file documents, discovery, or stipulations from cases under consideration for transfer.

**(8) Decision.** The administrative judge may decide any matter on written submission or after a hearing. The administrative judge may order transfer in a written order finding that related cases involve one or more common questions of fact or law and that transfer to a specified court division, to serve as the PCC for the related cases, will promote the just and efficient conduct of the related cases.

**(9) Contents of Order of Transfer.** An order of transfer must:

(A) list all parties who have appeared and remain in the case, and the names, addresses, phone numbers, and bar numbers of their attorneys or, if a party is self-represented, the party's name, address, and phone number; and

(B) list those parties who have not yet appeared in the case.

**(10) When Transfer Effective.**

**(A) In General.** A case is deemed transferred from the trial court to the PCC when the order of transfer is filed with the trial court and the PCC.

**(B) When Motion for Severance Is Pending.** If, when an order of transfer is filed in the trial court, a motion for severance has been filed but the trial court has not ruled, the trial court must rule on the motion within 14 days after the date on which the order of transfer is filed, or the motion is deemed granted by operation of law. The case is deemed transferred when the trial court rules on the motion severance or the motion is deemed granted by operation of law.

**(11) Further Action in Trial Court Limited.** After an order of transfer is filed, the trial court must take no further action in the case except:

(A) to rule on a motion for severance pending when the order of transfer was filed, or

(B) for good cause stated in the order after conferring with the PCC.

**(12) Retransfer.** On its own initiative, on a party's motion, or at the request of the PCC, the administrative judge may order cases transferred from one PCC to another PCC when the judge presiding over the PCC has died, resigned, been replaced at an election, requested retransfer, been recused, or been disqualified or in other circumstances when retransfer will promote the just and efficient conduct of the cases.

**(d) Proceedings in the PCC.**

**(1) Judges Who May Preside.** The administrative judge may assign as judge of the PCC a trial judge in the civil division or a senior judge approved by the chief justice of the Florida Supreme Court. Judges who sit as on PCC

assignments shall have completed case management education as approved by the Florida Court Education Council.

**(2) Authority of the PCC.**

(A) The judge assigned as judge of the PCC has exclusive jurisdiction over each related case transferred pursuant to this rule unless a case is retransferred, resolved, or remanded to the trial court. The PCC has the authority to decide all pretrial matters in all related cases transferred to the PCC. Those matters include, without limitation, jurisdiction, joinder, venue, discovery, trial preparation (such as motions to strike expert witnesses, objections to exhibits, and motions in limine), referral to alternative dispute resolution, and disposition by means other than trial on the merits (such as default judgment, summary judgment, consolidated trial upon stipulation, bellwether trial upon stipulation, and settlement approval). The PCC may set aside or modify any pretrial ruling made by the trial court before transfer over which the trial court's plenary power would not have expired had the case not been transferred. The PCC's authority terminates upon case closure or upon remand to the trial court. Motions for sanctions for conduct in PCC proceedings shall be brought before the PCC.

(B) Post-resolution events such as motions for attorney's fees pursuant to offers of settlement, settlement enforcement, judgment collection, and proceedings supplementary shall proceed before the trial court judge.

**(3) Case Management.** The judge of the PCC should apply sound judicial management methods early, continuously, and actively, based on the judge's knowledge of each related case and the entire litigation, in order to set fair and firm time limits tailored to ensure the expeditious resolution of each case and the just and efficient conduct of the litigation as a whole. After a case is transferred, the PCC should, at the earliest practical date, conduct a hearing or case management conference and enter a case management order. The PCC should consider at the hearing or case management conference, and its order should address, all matters pertinent to the conduct of the litigation, including:

(A) accomplishment of the necessary events to move the case to resolution;

(B) settling the pleadings;

(C) determining whether severance, consolidation, or coordination with other actions is desirable and whether identification of separable triable portions of the case is desirable;

(D) scheduling preliminary motions;

(E) scheduling discovery proceedings and setting appropriate limitations on discovery, including the establishment and timing of discovery procedures and addressing electronically stored information; and addressing calendaring, including set-aside weeks and process for scheduling depositions and case events;

(F) issuing protective orders;

(G) arranging for mediation or arbitration pursuant to rule 1.700;

(H) appointing organizing or liaison counsel;

(I) scheduling dispositive motions;

(J) providing for an exchange of documents, including adopting a uniform numbering system for documents and establishing a document depository;

(K) addressing the use of communication equipment pursuant to rule 1.451 and Florida Rule of General Practice and Judicial Administration 2.530;

(L) evaluating alternate methods of moving the cases to resolution, including stipulations for consolidated trial or bellwether trial and where appropriate presiding over those proceedings;

(M) considering such other matters the court or the parties deem appropriate for the just and efficient resolution of the cases; and

(N) scheduling further case events as necessary.

**(4) Setting of Trials.** The PCC, in conjunction with the trial court, may set a transferred case for trial at such a time and on such a date as will promote the convenience of the parties and witnesses and the just and efficient disposition of all related proceedings. The PCC must confer, or order the parties to confer, with the trial court regarding potential trial dates or other matters regarding remand. The trial court must cooperate reasonably with the PCC, and the PCC must defer appropriately to the trial court's docket. The trial court must not continue or postpone a trial setting without the concurrence of the PCC.

**(e) Retention by the PCC; Remand to the Trial Court.**

**(1) Retention or return.** The PCC is generally for pretrial coordination. In order to assure a timely progress to resolution, cases should be returned to the original court division for trial. However, for purposes of trial, the PCC shall choose among the following options:

(A) By stipulation and agreement of parties, a single case may be tried by the PCC as a bellwether case.

(B) By stipulation and agreement of parties, the PCC may try a consolidated trial on specific common issues, such as liability.

(C) By stipulation and agreement of the parties, the PCC may try a consolidated trial on certain preliminary issues that would aid in the overall disposition of the cases, such as immunity.

(D) Where no stipulation and consensus is available, upon completion of all pretrial labor including jury instructions, related cases shall be returned to the court divisions to which they were originally assigned.

**(2) When the case reaches final disposition in the PCC.** No case in which the PCC has issued a final and appealable decision shall be returned to the trial court until after any motion for rehearing or new trial has been disposed of. A

case that has reached disposition in the PCC shall be returned to the trial court upon the disposition becoming final.

**(3) When pretrial coordination has been accomplished before disposition.** When pretrial coordination (including the completion of any bellwether or consolidated trials) has been accomplished to such a degree that the purposes of the transfer have been fulfilled or no longer apply, the PCC may remand to the original court divisions any one or more related cases remaining pending, or triable portions of related cases remaining pending, for final resolution or disposition of each individual case.

**(f) PCC Orders Binding in the Trial Court after Remand.**

**(1) Generally.** The trial court should recognize that to alter a PCC order without a compelling justification would frustrate the purpose of consolidated and coordinated pretrial proceedings. The PCC should recognize that its rulings should not unwisely restrict a trial court from responding to circumstances that arise following remand.

**(2) Concurrence of the PCC Required to Change Its Orders.** Without the written concurrence of the PCC, the trial court cannot, over objection, vacate, set aside, or modify PCC orders, including but not limited to orders related to summary judgment, jurisdiction, venue, joinder, special exceptions, discovery, sanctions related to pretrial proceedings, privileges, the admissibility of expert testimony, and scheduling.

**(3) Exceptions.** The trial court need not obtain the written concurrence of the PCC to vacate, set aside, or modify PCC orders regarding the admissibility of evidence at trial (other than expert evidence) when necessary because of changed circumstances, to correct an error of law, or to prevent manifest injustice. But the trial court must support its action with specific findings and conclusions in a written order or stated on the record.

**(g) Review.** An appellate court must expedite review of an order or judgment in a case pending in a PCC.

**Rule 1.275. Sanctions**

**(a) Generally.** The court may impose a sanction if a party or attorney fails to comply with these rules or with any court order arising out of a case filed pursuant to these rules. To the extent any rule of civil procedure specifies options for sanctioning misconduct, the sanctions set forth in this rule shall be deemed supplemental to such other rule, as appropriate.

**(b) Available Sanctions.** On a party's motion or on its own motion, the court may enter appropriate sanctions concerning such conduct unless the noncompliant party or attorney shows good cause and the exercise of due diligence. Such sanctions may include, but are not limited to, one or more of the following measures:

(1) reprimanding the party or attorney, or both, in writing or in person;

(2) requiring that one or more clients or business-entity representatives attend specified hearings or all future hearings in the action;

(3) refusing to allow the party to support or oppose a designated claim or defense;

(4) prohibiting a party from introducing designated matters in evidence;

(5) staying further proceedings, in whole or in part, until the party obeys a rule or previous order;

(6) requiring a noncompliant party or attorney, or both, to pay reasonable expenses (as defined in this rule) incurred by the opposing party because of the conduct;

(7) reducing the number of peremptory challenges available to a party;

(8) dismissing the action, in whole or in part, with or without prejudice;

(9) striking pleadings and enter a default or default judgment;

(10) referring the attorney to the local professionalism panel or The Florida Bar; or

(11) finding the party or attorney in contempt of court.

**(c) Continuance of Trial.** A continuance of a trial shall not be used as a sanction unless the court finds that the continuance does not act to the detriment of the nonoffending party.

**(d) Reasonable Expenses.** In determining the amount of reasonable expenses that may be taxed as a sanction under this rule, the court may include any attorney's fees incurred by a party as a result of the offending party's or attorney's sanctioned conduct, any out-of-pocket costs or travel expenses reasonably incurred, and any other financial loss reasonably arising as a result of the sanctioned conduct.

**(e) Limitation.** The court may not order the payment of reasonable expenses if the court finds that a party's or attorney's noncompliance was substantially justified.

**(f) Dismissal with Prejudice or Default.** Before the court may impose the sanction of either dismissal with prejudice or default, the court must consider:

(1) whether the noncompliance was willful, deliberate, contumacious, or grossly noncompliant rather than an act of neglect or inexperience;

(2) whether the attorney has previously been sanctioned in this or related cases involving the same parties;

(3) whether the client was personally involved in the act of disobedience;

(4) whether the noncompliance prejudiced the opposing party through undue expense, loss of evidence, or in some other fashion;

(5) whether the attorney offered reasonable justification for the noncompliance; and

(6) whether the noncompliance created significant problems for the administration of justice.

The court shall weigh all these factors before deciding whether to impose either a dismissal with prejudice or a default as a sanction. No single factor shall be dispositive. A written order is required, but factual findings as to each factor are not required unless the sanctioned conduct relates to an attorney who requests such findings to be made within 15 days after the date of filing of the written order of dismissal or entry of the judgment of default.

**(g) Level of Conduct.** Except as stated in this rule or elsewhere in these rules, a finding of willfulness shall not be necessary to impose a sanction provided in this rule. The sanction, however, shall be commensurate with the conduct.

**(h) Client to be Notified.** Promptly upon issuance of a sanctions order, the attorney representing the client or clients that are the subject of the order shall deliver a copy of the order to the client or clients.

**(i) Standard of Review.** Any appellate review of a trial court's decision to impose sanctions under this rule shall be abuse of discretion.

## Rule 1.279. Standards of Conduct for Discovery

**(a) In general.** The intent of the Florida Rules of Civil Procedure is to ensure fairness in the courts, a search for the truth, and the efficient delivery of justice.

(1) Discovery is a vital component of the justice system. The discovery rules provide all parties the right to relevant information in the evaluation, construction, and presentation of their case. The intent of the rules is that the relevant facts should be the determining factor in cases rather than gamesmanship, surprise, or superior trial tactics.

(2) It is in the best interest of the justice system and the parties to litigation for cases to be timely evaluated with full knowledge of the relevant facts by both sides. This promotes a search for the truth and reasonable early resolution without costly litigation. Efficiency through proper and timely disclosure of the relevant facts of a case promotes justice, the public interest, and the rights of the parties in litigation.

(3) Surprise tactics, delay, trickery, and concealment of discoverable information impairs the administration of justice and results in unnecessary expense within the litigation process. Through proper disclosure of discoverable information, all parties can evaluate the strengths and weaknesses of their case. Not meeting discovery obligations by delay, obstructing the truth, or failing to be candid with the court or opponents is discovery abuse over which the court has wide discretion.

**(b) Attorneys' and parties' obligations.**

(1) Parties to litigation and their attorneys are obligated to:

(A) timely comply with the discovery rules in good faith without gamesmanship or delay; and

(B) timely share information discoverable under the law.

(2) An attorney is an officer of the court who has a special responsibility for the quality of justice. Zealous advocacy is not inconsistent with civility, professionalism and justice.

(A) The attorney has an obligation to protect and pursue a client's legitimate interests, within the bounds of the law while maintaining a professional, courteous, and civil attitude toward all persons involved in the legal system.

(B) The attorney must not present discovery or responses for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

(C) Attorneys shall familiarize themselves with the following resources setting standards of conduct. Attorneys have a duty to conduct themselves consistent with the standards of behavior codified in:

(i) the Oath of Admission to the Florida Bar;

(ii) The Florida Bar Creed of Professionalism;

(iii) The Florida Bar Professionalism Expectations;

(iv) the Rules Regulating the Florida Bar;

(v) the Florida Rules of Civil Procedure;

(vi) judicial decisions;

(vii) orders of the judge presiding over the case; and

(viii) the *Florida Handbook on Civil Discovery Practice*.

(3) Attorneys shall advise clients of their discovery obligations and shall counsel them to comply with them. Courts may presume that attorneys have met this obligation in any instance of discovery abuse.

**(c) The court's obligations.**

(1) Where a party or attorney frustrates the court's purpose or impairs the rights of others, the court has the authority to sanction parties, law firms, and individual attorneys, to strike pleadings, and, in extreme or repeated conduct, to dismiss the action or defenses. The courts have an obligation to prevent unreasonable delay or disruption of litigation.

(2) Judges shall take appropriate steps to require parties, law firms, and attorneys to abide by these rules.

**2021 Commentary**

Rule 1.279, "Standards of Conduct for Discovery," serves as a guide for judges in the interpretation of the rules for discovery and informs attorneys of the standards that are expected in fulfilling their responsibilities under the discovery rules. The history and purpose of the discovery rules within the Florida Rules of Civil Procedure are addressed in multiple cases. *See, e.g.*, *Dodson v. Persell*, 390 So. 2d 704, 706–07 (Fla.1980) ("A

search for truth and justice can be accomplished only when all relevant facts are before the judicial tribunal. Those relevant facts should be the determining factor rather than gamesmanship, surprise, or superior trial tactics. We caution that discovery was never intended to be used and should not be allowed as a tactic to harass, intimidate, or cause litigation delay and excessive costs."); *Surf Drugs, Inc. v. Vermette*, 236 So. 2d 108, 111–12 (Fla. 1970) ("A primary purpose in the adoption of the Florida Rules of Civil Procedure is to prevent the use of surprise, trickery, bluff and legal gymnastics. Revelation through discovery procedures of the strength and weaknesses of each side before trial encourages settlement of cases and avoids costly litigation. Each side can make an intelligent evaluation of the entire case and may better anticipate the ultimate results."); *Jones v. Publix Supermarkets, Inc.*, 114 So. 3d 998, 1003–04 (Fla. 5th DCA 2012); *Cox v. Burke*, 706 So. 2d 43, 47 (Fla 5th DCA 1998).

**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:

(A) the name and the address, telephone number, and e-mail address of each individual likely to have discoverable information relevant to the subject matter of the action, along with the subjects of that information, unless the use would be solely for impeachment;

(B) a copy of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may be relevant to the subject matter of the action, 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 to be set by the jury but shall identify categories of damages claimed and provide supporting documents;

(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; and

(E) answers to any applicable standard interrogatory forms approved by the Florida Supreme Court and included in Appendix I to these rules.

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

**(3) Time for Initial Discovery Disclosures.** A party must make the initial discovery disclosures required by this rule within 45 days after the service of the complaint unless a different time is set by court order.

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

**(5) Certificate of Compliance.** All parties subject to initial discovery disclosure must file with the court a certificate of compliance identifying with particularity the documents that have been delivered and certifying the date of service of documents by that party. The party must swear or affirm under oath that the disclosure is complete, accurate, and in compliance with this rule, unless the party indicates otherwise, with specificity, in the certificate of compliance.

**(~~a~~ b) Discovery Methods.** Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property for inspection and other purposes; physical and mental examinations; and requests for admission. Unless the court orders otherwise and under subdivision ~~(c)~~(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.**

(1)–(3) *[Unchanged]*

**(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 upon a showing that the party seeking discovery has need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of the materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation. Without the required showing a party may obtain a copy of a statement concerning the action or its subject matter previously made by that party. Upon request without the required showing a person not a party may obtain a copy of a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for an order to obtain a copy. The

provisions of rule 1.380(a)(5) 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 not be required to disclose his or her earnings as an expert witness or income derived from other services.

An expert may be required to produce financial and business records only under the most unusual or compelling circumstances and may not be compelled to compile or produce nonexistent documents. Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and other provisions pursuant to subdivision ~~(b)~~(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 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 require, the party seeking discovery to pay the other party a fair part of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

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

(6) *[*Unchanged*]*

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

(~~d~~ e) *[Unchanged]*

**(~~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 not delay any other party's discovery.

**(~~f~~ g) Supplementing of Responses.** A party or attorney who has made an initial discovery disclosure, who has been ordered by the court to disclose specified information or witnesses, or who has responded to an interrogatory, a request for production, or a request for admission must supplement or correct its disclosure or response: (A) within 10 days after the date on which the party or attorney 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 (B) as ordered by the court. If a party or attorney fails timely to supplement a disclosure or response pursuant to this subdivision, the court may impose sanctions as provided in rule 1.380.

(~~g~~ h) *[Unchanged]*

**Rule 1.310. Depositions Upon Oral Examination**

(a), (b) *[Unchanged]*

**(c) Examination and Cross-Examination; Record of Examination; Oath; ~~Objections~~.** Examination and cross-examination of witnesses may proceed as permitted at the trial. The officer before whom the deposition is to be taken must put the witness on oath and must personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness, except that when a deposition is being taken by telephone, the witness must be sworn by a person present with the witness who is qualified to administer an oath in that location. The testimony must be taken stenographically or recorded by any other means ordered in accordance with subdivision (b)(4) ~~of this rule~~. If requested by one of the parties, the testimony must be transcribed at the initial cost of the requesting party and prompt notice of the request must be given to all other parties. ~~All objections made at time of the examination to the qualifications of the officer taking the deposition, the manner of taking it, the evidence presented, or the conduct of any party, and any other objection to the proceedings must be noted by the officer on the deposition. Any objection during a deposition must be stated concisely and in a nonargumentative and nonsuggestive manner. A party may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the court, or to present a motion under subdivision (d). Otherwise, evidence objected to must be taken subject to the objections.~~ Instead of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and that party must transmit them to the officer, who must propound them to the witness and record the answers verbatim.

~~**(d) Motion to Terminate or Limit Examination.** At any time during the taking of the deposition, on motion of a party or of the deponent and on a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, or that objection and instruction to a deponent not to answer are being made in violation of rule 1.310(c), the court in which the action is pending or the circuit court where the deposition is being taken may order the officer conducting the examination to cease immediately~~

~~from taking the deposition or may limit the scope and manner of the taking of the deposition under rule 1.280(c). If the order terminates the examination, it shall be resumed thereafter only on the order of the court in which the action is pending. Upon demand of any party or the deponent, the taking of the deposition must be suspended for the time necessary to make a motion for an order. The provisions of rule 1.380(a) apply to the award of expenses incurred in relation to the motion.~~

(~~e~~ d) *[Unchanged]*

**(~~f~~ e) Filing; Exhibits.**

(1), (2) *[Unchanged]*

(3) A copy of a deposition may be filed only under the following circumstances:

(A) It may be filed in compliance with Florida Rule of General Practice and Judicial Administration 2.425 and rule 1.280~~(g)~~(h) by a party or the witness when the contents of the deposition must be considered by the court on any matter pending before the court. Prompt notice of the filing of the deposition must be given to all parties unless notice is waived. A party filing the deposition must furnish a copy of the deposition or the part being filed to other parties unless the party already has a copy.

(B) If the court determines that a deposition previously taken is necessary for the decision of a matter pending before the court, the court may order that a copy be filed by any party at the initial cost of the party, and the filing party must comply with rules 2.425 and 1.280~~(g)~~(h).

(~~g~~ f) *[Unchanged]*

**~~(h) Failure to Attend or to Serve Subpoena; Expenses.~~**

~~(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to the other party the reasonable expenses incurred by the other party and the other party's attorney in attending, including reasonable attorneys' fees.~~

~~(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena on the witness and the witness because of the failure does not attend and if another party attends in person or by attorney because that other party expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to the other party the reasonable expenses incurred by that other party and that other party's attorney in attending, including reasonable attorneys' fees.~~

**Rule 1.320. Depositions upon Written Questions**

**(a) Serving Questions; Notice.** After commencement of the action any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in rule 1.410. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes. A party desiring

to take a deposition upon written questions must serve them with a notice stating (1) the name and address of the person who is to answer them, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which that person belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation, a partnership or association, or a governmental agency in accordance with rule 1.310(b)(6). Within 30 days after the notice and written questions are served, a party may serve cross questions on all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions on all other parties. Notwithstanding any contrary provision of rule 1.310(c) or rules 1.335(c) and (d), objections to the form of written questions are waived unless served in writing on the party propounding them within the time allowed for serving the succeeding cross or other questions and within 10 days after service of the last questions authorized. The court may for cause shown enlarge or shorten the time.

**(b) Officer to Take Responses and Prepare Record.** A copy of the notice and copies of all questions served must be delivered by the party taking the depositions to the officer designated in the notice, who must proceed promptly to take the testimony of the witness in the manner provided by rules 1.310(c), –(e), and (f) and 1.335(d) in response to the questions and to prepare the deposition, attaching the copy of the notice and the questions received by the officer. The questions must not be filed separately from the deposition unless a party seeks to have the court consider the questions before the questions are submitted to the witness. Any deposition may be recorded by videotape without leave of the court or stipulation of the parties, provided the deposition is taken in accordance with rule 1.310(b)(4).

**Rule 1.335. Standards for Conduct in Depositions, Objections, Claims of Privilege, Termination or Limit, Failure to Appear, and Sanctions**

**(a) Conduct in Depositions.** Depositions are court proceedings and attorneys are expected to conduct themselves as if in front of a judicial officer. Attorneys have a duty to conduct themselves consistent with the standards of behavior delineated in rule 1.279.

**(b) Witness Conduct.** Attorneys shall instruct clients and witnesses under their control to act with honesty, fairness, respect, and courtesy.

**(c) Objections During Depositions.** All legally permitted objections made at time of the examination to the qualifications of the officer taking the deposition, the manner of taking it, the evidence presented, the conduct of any party, and any other objection to the proceedings must be noted by the officer on the deposition. Any legally permitted objection during a deposition must be stated concisely and in a nonargumentative and nonsuggestive manner.

**(d) Instruction Not to Answer.** A party may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the court, or to present a motion under subdivision (e). Otherwise, evidence objected to must be taken subject to the objections.

**(e) Motion to Terminate or Limit Examination.** At any time during the taking of the deposition, on motion of a party or of the deponent and on a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, or that an objection or an instruction to a deponent not to answer are being made in violation of subdivision (d), the court in which the action is pending or the circuit court where the deposition is being taken may order the officer conducting the examination to cease immediately from taking the deposition or may limit the scope and manner of the taking of the deposition under rule 1.280(d). If the order terminates the examination, it shall be resumed thereafter only on the order of the court in which the action is pending. Upon demand of any party or the deponent, the taking of the deposition must be suspended for the time necessary to make a motion for an order. The provisions of rule 1.380(a)(5) apply to the award of sanctions or expenses incurred in relation to the motion.

**(f) Failure to Attend or Serve Subpoena; Expenses and Sanctions.**

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to the other party the reasonable expenses incurred by the other party and the other party's attorney in attending, including reasonable attorneys' fees, and may impose other sanctions as appropriate under rule 1.380.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena on the witness and the witness because of the failure does not attend and if another party attends in person or by attorney because that other party expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to the other party the reasonable expenses incurred by that other party and that other party's attorney in attending, including reasonable attorneys' fees, and may impose other sanctions as appropriate under rule 1.380.

**(g) Sanctions for Improper Conduct During Depositions.** Attorneys are officers of the court who are responsible to the judiciary for the propriety of their professional activities. Violations of this rule adversely impact the perception of our judicial system and the administration of justice. Violations also potentially create prejudice that is frequently difficult and time-consuming to determine. Therefore, any violation of this rule creates a presumption of prejudice and will result in expenses, fees, or other sanctions as provided in this rule and in rule 1.380. The court has the discretion to assess expenses, fees, and other sanctions against the attorney, the law firm, the client, or any combination thereof where warranted by the violation that occurred.

### Rule 1.340. Interrogatories to Parties

**(a) Procedure for Use.** Without leave of court, any party may serve on any other party written interrogatories to be answered (1) by the party to whom the interrogatories are directed, or (2) if that party is a public or private corporation or partnership or

association or governmental agency, by any officer or agent, who must furnish the information available to that party. Interrogatories may be served on the plaintiff after commencement of the action and on any other party with or after service of the process and initial pleading on that party. The interrogatories must not exceed 30, including all subparts, unless the court permits a larger number on motion and notice and for good cause. If the supreme court has approved a form of interrogatories for the type of action, the initial interrogatories on a subject included within must be from the form approved by the court. A party may serve fewer than all of the approved interrogatories within a form. Other interrogatories may be added to the approved forms without leave of court, so long as the total of approved and additional interrogatories does not exceed 30. Each interrogatory must be answered separately and fully in writing under oath unless it is objected to, in which event the grounds for objection must be stated and signed by the attorney making it. The party to whom the interrogatories are directed must serve the answers and any objections within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the process and initial pleading on that defendant. The court may allow a shorter or longer time. Notwithstanding any objection to one or more interrogatories, the party to whom the interrogatories are directed must timely serve answers to all unobjected-to interrogatories in accordance with this rule. The party submitting the interrogatories may move for an order under rule 1.380(a) on any objection to or other failure to answer an interrogatory.

**(b) Scope; Use at Trial.** Interrogatories may relate to any matters that can be inquired into under rule 1.280~~(b)~~(c), and the answers may be used to the extent permitted by the rules of evidence except as otherwise provided in this subdivision. An interrogatory otherwise proper is not objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or calls for a conclusion or asks for information not within the personal knowledge of the party. A party must respond to such an interrogatory by giving the information the party has and the source on which the information is based. Such a qualified answer may not be used as direct evidence for or impeachment against the party giving the answer unless the court finds it otherwise admissible under the rules of evidence. If a party introduces an answer to an interrogatory, any other party may require that party to introduce any other interrogatory and answer that in fairness ought to be considered with it.

**(c)–(d)** *[No change]*

**(e) Service and Filing.** Interrogatories must be arranged so that a blank space is provided after each separately numbered interrogatory. The space must be reasonably sufficient to enable the answering party to insert the answer within the space. If sufficient space is not provided, the answering party may attach additional documents with answers and refer to them in the space provided in the interrogatories. The interrogatories must be served on the party to whom the interrogatories are directed and copies must be served on all other parties. A certificate of service of the interrogatories must be filed, giving the date of service and the name of the party to whom they were directed. The answers to the interrogatories must be served on the party originally propounding the

interrogatories and a copy must be served on all other parties by the answering party. The original or any copy of the answers to interrogatories may be filed in compliance with Florida Rule of General Practice and Judicial Administration 2.425 and rule 1.280~~(g)~~(h) by any party when the court should consider the answers to interrogatories in determining any matter pending before the court. The court may order a copy of the answers to interrogatories filed at any time when the court determines that examination of the answers to interrogatories is necessary to determine any matter pending before the court.

**Rule 1.350. Production of Documents and Things and Entry upon Land for Inspection and Other Purposes**

**(a) Request; Scope.** Any party may request any other party (1) to produce and permit the party making the request, or someone acting in the requesting party's behalf, to inspect and copy any designated documents, including electronically stored information, writings, drawings, graphs, charts, photographs, audio, visual, and audiovisual recordings, and other data compilations from which information can be obtained, translated, if necessary, by the party to whom the request is directed through detection devices into reasonably usable form, that constitute or contain matters within the scope of rule 1.280~~(b)~~(c) and that are in the possession, custody, or control of the party to whom the request is directed; (2) to inspect and copy, test, or sample any tangible things that constitute or contain matters within the scope of rule 1.280~~(b)~~(c) and that are in the possession, custody, or control of the party to whom the request is directed; or (3) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation on it within the scope of rule 1.280~~(b)~~(c).

**(b) Procedure.** Without leave of court the request may be served on the plaintiff after commencement of the action and on any other party with or after service of the process and initial pleading on that party. The request shall set forth the items to be inspected, either by individual item or category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection or performing the related acts. The party to whom the request is directed shall serve a written response within 30 days after service of the request, except that a defendant may serve a response within 45 days after service of the process and initial pleading on that defendant. The court may allow a shorter or longer time. For each item or category the response shall state that inspection and related activities will be permitted as requested unless the request is objected to, in which event the reasons for the objection shall be stated. If an objection is made to part of an item or category, the part shall be specified. When producing documents, the producing party shall either produce them as they are kept in the usual course of business or shall identify them to correspond with the categories in the request. A request for electronically stored information may specify the form or forms in which electronically stored information is to be produced. If the responding party objects to a requested form, or if no form is specified in the request, the responding party must state the form or forms it

intends to use. If a request for electronically stored information does not specify the form of production, the producing party must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. Notwithstanding any objection to one or more requests, the party to whom the requests are directed must timely permit unobjected-to inspection and related activities or produce or identify unobjected-to documents, things, and electronically stored information in accordance with this rule. The party submitting the request may move for an order under rule 1.380(a) concerning any objection, failure to respond to the request, or any part of it, or failure to permit inspection as requested.

**(c)** *[No change]*

**(d) Filing of Documents.** Unless required by the court, a party shall not file any of the documents or things produced with the response. Documents or things may be filed in compliance with Florida Rule of General Practice and Judicial Administration 2.425 and rule 1.280~~(g)~~(h) when they should be considered by the court in determining a matter pending before the court.

**Rule 1.351. Production of Documents and Things without Deposition from Nonparties**

**(a)** *[No change]*

**(b) Procedure.** A party desiring production under this rule shall serve notice as provided in Florida Rule of Judicial Administration 2.516 on every other party of the intent to serve a subpoena under this rule at least 10 days before the subpoena is issued if service is by delivery or e-mail and 15 days before the subpoena is issued if the service is by mail. The proposed subpoena shall be attached to the notice and shall state the time, place, and method for production of the documents or things, and the name and address of the person who is to produce the documents or things, if known, and if not known, a general description sufficient to identify the person or the particular class or group to which the person belongs; shall include a designation of the items to be produced; and shall state that the person who will be asked to produce the documents or things has the right to object to the production under this rule and that the person will not be required to surrender the documents or things. A copy of the notice and proposed subpoena shall not be furnished to the person upon whom the subpoena is to be served. If any party serves an objection to production under this rule within 10 days of service of the notice, the objected-to documents or things shall not be produced pending resolution of the objection in accordance with subdivision (d). A person objecting to production under this rule must specify all bases, legal and factual, for the objection. Notwithstanding any objection to one or more requests, the person to whom the requests are directed must timely produce unobjected-to documents and things in accordance with this rule.

**(c) Subpoena.** If no objection is made by a party under subdivision (b), an attorney of record in the action may issue a subpoena or the party desiring production shall deliver to the clerk for issuance a subpoena together with a certificate of counsel or

~~pro se~~ self-represented party that no timely objection has been received from any party, and the clerk shall issue the subpoena and deliver it to the party desiring production. Service within the state of Florida of a nonparty subpoena shall be deemed sufficient if it complies with rule 1.410(d) or if (1) service is accomplished by mail or hand delivery by a commercial delivery service, and (2) written confirmation of delivery, with the date of service and the name and signature of the person accepting the subpoena, is obtained and filed by the party seeking production. The subpoena shall be identical to the copy attached to the notice and shall specify that no testimony may be taken and shall require only production of the documents or things specified in it. The subpoena may give the recipient an option to deliver or mail legible copies of the documents or things to the party serving the subpoena. The person upon whom the subpoena is served may condition the preparation of copies on the payment in advance of the reasonable costs of preparing the copies. The subpoena shall require production only in the county of the residence of the custodian or other person in possession of the documents or things or in the county where the documents or things are located or where the custodian or person in possession usually conducts business. If the person upon whom the subpoena is served objects at any time before the production of the documents or things, the documents or things shall not be produced under this rule, and relief may be obtained pursuant to rules 1.310 and 1.335.

**(d) Ruling on Objection.** If an objection is made by a party under subdivision (b), the party desiring production may file a motion with the court seeking a ruling on the objection or may proceed pursuant to rules 1.310 and 1.335.

**(e), (f)** *[No change]*

**2021 Commentary**

Subdivision (b) has been amended in part to avoid the result that a mere filing of an unspecified objection automatically requires the party desiring production instead to proceed to deposition.

**Rule 1.370. Requests for Admission**

**(a) Request for Admission.** A party may serve upon any other party a written request for the admission of the truth of any matters within the scope of rule 1.280~~(b)~~(c) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Without leave of court the request may be served upon the plaintiff after commencement of the action and upon any other party with or after service of the process and initial pleading upon that party. The request for admission shall not exceed 30 requests, including all subparts, unless the court permits a larger number on motion and notice and for good cause, or the parties propounding and responding to the requests stipulate to a larger number. Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless the party to whom the request is directed serves upon the party requesting the

admission a written answer or objection addressed to the matter within 30 days after service of the request or such shorter or longer time as the court may allow but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the process and initial pleading upon the defendant. If objection is made, the reasons shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless that party states that that party has made reasonable inquiry and that the information known or readily obtainable by that party is insufficient to enable that party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not object to the request on that ground alone; the party may deny the matter or set forth reasons why the party cannot admit or deny it, subject to rule 1.380(a)(2)(G). The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. Instead of these orders the court may determine that final disposition of the request be made at a pretrial conference or at a designated time before trial. The provisions of rule 1.380(a)(5) apply to the award of expenses incurred in relation to the motion.

**(b) Effect of Admission.** Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. ~~Subject to rule 1.200 governing amendment of a pretrial order, the~~ The court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved by it and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining an action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission for any other purpose nor may it be used against that party in any other proceeding.

**(c) Expenses on Failure to Admit.** If a party fails to admit the genuineness of any document or the truth of any matter as requested under this rule and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may file a motion for an order requiring the other party to pay the requesting party the reasonable expenses incurred in making that proof, which shall include attorney's fees. The court shall issue such an order at the time a party requesting the admissions proves the genuineness of the document or the truth of the matter, upon motion by the requesting party, unless it finds that (1) the request was held objectionable pursuant to subdivision (a), (2) the admission sought was of

no substantial importance, or (3) there was other good reason for the failure to admit.

**Rule 1.380 Failure to Make Discovery; Sanctions.**

**(a) Motion for Order Compelling Discovery.** Upon reasonable notice to other parties and all persons affected, a party may ~~apply~~ move for an order compelling disclosure or discovery ~~as follows:~~. Such a motion shall comply with rule 1.160(c).

**(1) Appropriate Court.** ~~An application~~ A motion for an order to a party ~~may~~ shall be made to the court ~~in which~~ where the action is pending or, if applicable, in accordance with rule ~~1.310(d)~~1.335(e). ~~An application~~ A motion for an order to a ~~deponent who is not a party shall~~ nonparty must be made to the ~~circuit~~ court where the ~~deposition is being~~ discovery is or will be taken.

**(2) Motion.** If any party or person fails to meet any disclosure or discovery obligation required under these rules, the discovering party may move for an order compelling such disclosure or discovery obligation to be met. Such a motion may be made when:

(A) a party fails to make or supplement a required disclosure under rule 1.280(a);

(B) a deponent fails to appear to take a deposition as required or fails to answer a question propounded or submitted under rule 1.310 or 1.320~~, or~~;

(C) a corporation or other entity fails to make a designation under rule 1.310(b)(6) or 1.320(a)~~, or~~;

(D) a party fails to answer an interrogatory submitted under rule 1.340~~, or if~~;

(E) a party in response to a request for inspection submitted under rule 1.350 fails to respond that inspection will be permitted as requested or fails to permit inspection as requested~~, or if~~;

(F) a party in response to a request for examination of a person submitted under rule 1.360(a) improperly objects to the examination, fails to respond that the examination will be permitted as requested, or fails to submit to or to produce a person in that party's custody or legal control for examination~~,~~ or if the party setting the compulsory medical examination fails to remedy a defective notice of examination upon proper objection; and

(G) any party or person fails to meet any other disclosure or discovery obligation required under these rules.

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

**(3) Motions Relating to Depositions.** When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order. If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to rule 1.280~~(c)~~(d).

**(~~3~~ 4) Evasive or Incomplete Answer.** For purposes of this subdivision an evasive or incomplete answer shall be treated as a failure to answer.

**(~~4~~ 5) Award of Expenses of Motion.**

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

**(B) If the Motion is Denied.** If the motion is denied, and after opportunity for hearing, the court shall require the moving party, the party's attorney, or both to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, ~~that may include~~ including attorneys' fees, unless the court finds that the making of the motion was substantially justified~~ or that other circumstances make an award of expenses unjust~~.

**(C) If the Motion Is Granted in Part and Denied in Part.** If the motion is granted in part and denied in part, and after opportunity for hearing, the court ~~may~~ shall apportion the reasonable expenses incurred as a result of making or opposing the motion, ~~among the parties and persons~~ including attorneys' fees and costs. To the extent the motion is granted, the court shall require the reasonable expenses incurred as a result of making the motion to be paid pursuant to subdivision (a)(5)(A). To the extent the motion is denied, the court shall require the reasonable expenses incurred as a result of opposing the motion to be paid pursuant to subdivision (a)(5)(B).

**(D) Reasonable Expenses.** In determining the amount of reasonable expenses that may be taxed as a sanction under this rule, the court may include any attorney's fees incurred by a party as a result of the offending party's or attorney's sanctioned conduct, any out-of-pocket costs or travel expenses reasonably incurred, and any other financial loss reasonably arising as a result of the sanctioned conduct.

**(b) Discovery Violations Interfering with Adjudication of Case.**

**(1) Failure to Comply with Order.** ~~(1) If, after being ordered to do so by the court, a deponent fails to be sworn or to answer a question or produce documents, the failure may be considered a contempt of the court.~~ If a party fails to obey an order to provide or permit discovery, including an order made pursuant to subdivision (a), such a failure shall be deemed to have interfered with the ability of the court to adjudicate the issues in the case. In such an event, the court shall, after opportunity for hearing, enter an order imposing discovery sanctions under subdivision (b)(3).

**(2) Discovery Abuse and Failure to Provide or Supplement Discovery.** If a party misuses or abuses discovery rules for tactical advantage or delay or fails to make or supplement discovery, including an initial discovery disclosure, as required under these rules, the court shall, after opportunity for hearing, determine whether the failure interfered with, or was calculated to interfere with, the court's ability to adjudicate the issues in the case. If the court determines that the failure did interfere with, or was calculated to interfere with, the court's ability to adjudicate the issues in the case, the court shall consider and make findings on the record as to the following factors:

(A) whether the failure was willful, grossly noncompliant, or inadvertent and whether the offending party offered a reasonable justification for the failure;

(B) the duration of the failure and whether the party responsible for the failure ultimately revealed it;

(C) whether the failure prejudiced the opposing party, or would have prejudiced the opposing party, had the information not been learned prior to trial; and

(D) whether and to what extent the party responsible for the failure mitigated prejudice to the opposing party.

Upon consideration of these factors, the court shall, if appropriate, enter an order imposing discovery sanctions under subdivision (b)(3).

~~(2) If a party or an officer, director, or managing agent of a party or a person designated under rule 1.310(b)(6) or 1.320(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or rule 1.360, the court in which the action is pending may make any of the following orders:~~

**(3) Sanctions for Discovery Violations Interfering with Adjudication of Case.**

(A) If the court finds that a discovery violation or a failure to obey a court order has occurred under subdivision (b)(1) or (b)(2), the court shall enter an order requiring the disobedient party, the party's attorney, or both to pay the reasonable expenses incurred by the opposing party arising out of such discovery violation, including attorneys' fees and costs, unless the court finds that the failure was substantially justified. The description of

"reasonable expenses" stated in subdivision (a)(5)(D) shall apply to this subdivision. In addition, the court may enter an order imposing one or more of the following additional discovery sanctions:

(A)(i) An order directing that the matters regarding which the questions were asked that are the subject of the order or any other designated facts shall be taken to be and established for the purposes of the action, in accordance with the claim of the party obtaining the order as the prevailing party claims.;

(B)(ii) An order refusing to allow prohibiting the disobedient party to from supporting or oppose opposing designated claims or defenses, or prohibiting that party from introducing designated matters into evidence.;

(C)(iii) An order striking out pleadings or parts of them or in whole or in part;

(iv) staying further proceedings until the order is obeyed, or discovery obligations are met;

(v) dismissing the action or proceeding or any part of it, or in whole or in part;

(vi) rendering a default judgment by default against the disobedient party.;

(D)(vii) Instead of any of the foregoing orders or in addition to them, an order treating as a contempt of court the failure to obey any discovery orders, except an order to submit to an examination made pursuant to rule 1.360(a)(1)(B) or subdivision (a)(2) of this rule. a physical or mental examination;

(E) When a party has failed to comply with an order under rule 1.360(a)(1)(B) requiring that party to produce another for examination, the orders listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply shows the inability to produce the person for examination.

(viii) requiring that a party not be allowed to use documents, information, or a witness to provide evidence at a hearing or at trial if that party failed to provide or disclose such documents, information, or witness as required; or

(ix) such other sanction crafted by the court as may be appropriate to the circumstances of the discovery or disclosure violation, including without limitation the sanctions provided in rule 1.275(b).

Instead of any of the foregoing orders or in addition to them, the court shall require the party failing to obey the order to pay the reasonable expenses caused by the failure, which may include attorneys' fees, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(B) Prior to imposing a sanction that will have the effect of dismissing a claim or entering a default, the court shall consider and make findings on the record as to each of the following factors. The court may only impose such a sanction if the court finds that the factors weigh in favor of the sanction:

(i) whether the violation of the order was willful, deliberate, contumacious, or grossly noncompliant rather than an act of simple negligence or inexperience;

(ii) whether the attorney or party has previously failed to comply with a discovery order in the present or other cases;

(iii) to what extent the attorney and the party were each responsible for the act of disobedience;

(iv) whether the disobedience prejudiced the opposing party through undue expense, loss of evidence, or some other fashion;

(v) whether the party offered reasonable justification for noncompliance; and

(vi) whether the delay created significant problems in judicial administration.

~~**(c) Expenses on Failure to Admit.** If a party fails to admit the genuineness of any document or the truth of any matter as requested under rule 1.370 and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may file a motion for an order requiring the other party to pay the requesting party the reasonable expenses incurred in making that proof, which may include attorneys' fees. The court shall issue such an order at the time a party requesting the admissions proves the genuineness of the document or the truth of the matter, upon motion by the requesting party, unless it finds that (1) the request was held objectionable pursuant to rule 1.370(a), (2) the admission sought was of no substantial importance, or (3) there was other good reason for the failure to admit.~~

~~**(d) Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection.** If a party or an officer, director, or managing agent of a party or a person designated under rule 1.310(b)(6) or 1.320(a) to testify on behalf of a party fails (1) to appear before the officer who is to take the deposition after being served with a proper notice, (2) to serve answers or objections to interrogatories submitted under rule 1.340 after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under rule 1.350 after proper service of the request, the court in which the action is pending may take any action authorized under paragraphs (A), (B), and (C) of subdivision (b)(2) of this rule. Any motion specifying a failure under clause (2) or (3) of this subdivision shall include a certification that the movant, in good faith, has conferred or attempted to confer with the party failing to answer or respond in an effort to obtain such answer or response without court action. Instead of any order or in addition to it, the court shall require the party failing to act to pay the reasonable expenses caused by the failure, which may~~

~~include attorneys' fees, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust. The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by rule 1.280(c).~~

**(~~e~~ c) Failure to Preserve Electronically Stored Information~~; Sanctions for Failure to Preserve~~.** If electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the court:

(1) upon finding prejudice to another party from loss of the information, may order measures no greater than necessary to cure the prejudice; or

(2) only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation may:

(A) presume that the lost information was unfavorable to the party;

(B) instruct the jury that it may or must presume the information was unfavorable to the party; ~~or~~

(C) dismiss the action or enter a default judgment~~.~~, subject to the provisions of rule 1.275(f); or

(D) impose one or more of the other sanctions described in subdivision (b)(3)(A).

**Rule 1.410. Subpoena**

**(a), (b)** *[No change]*

**(c) For Production of Documentary Evidence.** A subpoena may also command the person to whom it is directed to produce the books, documents, (including electronically stored information), or tangible things designated therein, but the court, on motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable and oppressive, or (2) condition denial of the motion on the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, documents, or tangible things. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. A person responding to a subpoena may object to discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue costs or burden. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought or the form requested is not reasonably accessible because of undue costs or burden. If that showing is made, the court may nonetheless order discovery from such sources or in such forms if the requesting party shows good cause, considering the limitations set out in rule 1.280~~(d)~~(e)(2). The court may specify conditions of the discovery, including

ordering that some or all of the expenses of the discovery be paid by the party seeking the discovery. A party seeking production of evidence at trial which would be subject to a subpoena may compel such production by serving a notice to produce such evidence on an adverse party as provided in rule 1.080. Such notice shall have the same effect and be subject to the same limitations as a subpoena served on the party.

**(d)** *[No change]*

**(e) Subpoena for Taking Depositions.**

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

(2) *[No change]*

**(f)–(h)** *[No change]*

**Rule 1.420. Dismissal of Actions**

**(a)** *[No change.]*

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

any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue or for lack of an indispensable party, operates as an adjudication on the merits.

**(c), (d)** *[No change.]*

**(e) Failure to Prosecute.**

**(1) Definitions.** As used in this subdivision:

(A) "Extraordinary cause" means that the lack of activity in the action has been caused by one or more matters that were unforeseen despite ordinary diligence. Mere good cause or excusable neglect is insufficient.

(B) "Post-notice record activity" means:

(i) the filing and setting for hearing of a motion to stay the action or of a motion that is dispositive of the entire action;

(ii) the proper filing and service of a notice for trial; or

(iii) the court's issuance of an order that sets pretrial deadlines or a trial date.

(2) In ~~all~~ any action~~s~~ in which it appears on the face of the record that no activity by filing of pleadings~~, order of court,~~ or ~~otherwise~~ other paper has occurred for a period of ~~10~~ 6 months~~,~~ and ~~no~~ the court has not issued an order staying the action ~~has been issued nor~~ or approving a stipulation for stay ~~approved by the court~~, any interested person~~,~~ whether a party to the action or not, the court, or the clerk of the court may serve notice to all parties that no such activity has occurred. ~~If no such~~

(3) Except as provided in subdivision (e)(4), the court shall dismiss the action if:

(A) No record activity has occurred within the ~~10~~6 months immediately preceding the service of such notice~~, and no~~;

(B) No post-notice record activity occurs within the 60 days immediately following the service of such notice~~,~~; and ~~if no~~

(C) The court has not issued or approved a stay ~~was issued or approved~~ prior to the expiration of such 60-day period~~, the action shall be dismissed by the court on its own motion or on the motion of any interested person, whether a party to the action or not, after reasonable notice to the parties, unless a party shows good cause in writing at least 5 days before the hearing on the motion why the action should remain pending~~.

(4) During the 60-day period, a party may file a written motion with the court requesting that the action remain pending based on a showing of extraordinary cause. A written response to the motion may be filed with the court by any other party within 10 days following service of the motion. The movant shall serve the motion and the nonmoving party shall serve any response on the presiding judge pursuant to rule 1.080. The court may set a hearing for the

motion or, if resolution of the motion does not require factual findings, may rule based on the filings.

(5) Mere inaction for a period of less than ~~1 year~~8 months shall not be sufficient cause for dismissal for failure to prosecute.

**(f)** *[No change.]*

**Rule 1.440. Setting Action for Trial**

**(a)** **~~When at Issue.~~ Projecting Trial Period.** ~~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~~ A trial period shall be projected by the court in conjunction with the requirements of rule 1.200 or rule 1.201, if applicable. In any cases other than those governed by rule 1.201, the court shall fix the actual trial period in accordance with this rule. The failure of any party to file any pleading subsequent to the complaint or any counterclaim shall not prevent the court from ~~setting the action for~~ proceeding to trial ~~on the issues raised by the complaint, answer, and any answer to a counterclaim~~ under this rule on the issues raised by the complaint or by the counterclaim.

**(b)** **Notice for Trial.** ~~Thereafter~~ For any case not subject to rule 1.200 or rule 1.201 or 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, and after the deadline for a responsive pleading has passed, any party may file and serve a notice ~~that~~ to set the action ~~is at issue and ready to be set~~ for trial. The notice shall include an estimate of the time required, whether the trial is to be by ~~a~~ jury or not, and whether the trial is on the original action or a subsequent proceeding. The clerk shall then submit the notice ~~and the case file~~ to the court.

**(c)** **~~Setting for~~ Fixing Trial Period.**

(1) ~~If~~ Upon a party's notice or upon the court's own initiative, if the court finds the action ready to be set for a trial period earlier than the projected trial period specified in the case management order entered under rule 1.200 or rule 1.201, ~~it shall~~ the court may enter an order fixing ~~a date for~~ an earlier trial period.

(2) For any case subject to rule 1.200, not later than 45 days prior to the projected trial period set forth in the case management order, but no sooner than the deadline for filing a responsive pleading, the court shall enter an order fixing the trial period.

(3) For any case not subject to rule 1.200 or 1.201, upon a party's notice or upon the court's own initiative, if the court finds the action ready to be set for trial, the court shall enter an order fixing the trial period.

(4) Under any circumstance, however, ~~Trial~~ trial shall be set for a period not less than 30 days ~~from~~ after the court's service of an order setting the ~~notice for~~ trial period. ~~By giving the same notice the court may set an action for trial.~~

(5) In actions in which the damages are not liquidated, the order setting an action for trial shall be served on parties who are in default in accordance with Florida Rule of General Practice and Judicial Administration 2.516.

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

**2021 Commentary**

This rule has been substantially amended. It ties the date of trial directly to the projected trial period set forth in the case management order. It no longer relies on a rigid concept of a case being "at issue." Too often, parties have used the prior requirement of a case being at issue as a shield to prevent the case from moving forward to trial. By this amended rule, the failure of the parties to move diligently to have pleadings filed or amended will no longer thwart the ability of the court to move a case to trial. Instead, bona fide difficulties in getting pleadings filed or amended will be addressed by the court on motions to continue a trial date, which are addressed to the sound discretion of the court.

**Rule 1.460. Continuances**

~~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) Motions to Continue Nontrial Events.**

(1) Motions to continue nontrial events that are the subject of special set hearings before the court shall be in writing and signed by the client.

(2) The motion shall state with specificity:

(A) the factual basis of the need for the continuance;

(B) the proposed action and schedule to cure the need for continuance; and

(C) the proposed date by which the case will be ready for the scheduled event.

(3) The motion shall certify that the movant has conferred directly with opposing counsel or a self-represented party on the need for a continuance and shall state the outcome of the conference.

(4) The motion shall describe the potential effect of the requested continuance on remaining case management deadlines.

**(b) Motions to Continue Trial.**

(1) Motions to continue trial are disfavored. Once the case is set for trial, no continuance may be granted except for extraordinary unforeseen circumstances involving the personal health of counsel or a party, court emergencies, or other dire circumstances that provide extraordinary cause. Lack of preparation is not grounds to continue the case. Where possible, trial dates shall be set in collaboration with counsel and self-represented parties as opposed to the issuance of unilateral dates by the court.

(2) A motion to continue trial shall be in writing and signed by the client.

(3) Any motion to continue trial must be filed within 14 days after the appearance of grounds to support such a motion.

(4) The motion shall state with specificity:

(A) the factual basis of the need for the continuance;

(B) the proposed date by which the case will be ready for trial; and

(C) the proposed action and schedule that will enable the movant to be ready for trial by the proposed date.

(5) The motion shall certify that the movant has conferred directly with opposing counsel or a self-represented party on the need for a continuance and shall state the outcome of the conference.

(6) No motion to continue shall be granted upon any of the following grounds:

(A) failure to complete discovery;

(B) failure to complete mediation;

(C) outstanding dispositive motions;

(D) counsel or witness unavailability except where the record demonstrates new circumstances beyond counsel or witness control;

(E) withdrawal of counsel within 60 days of trial; or

(F) trial conflicts, which are subject to resolution under Florida Rule of General Practice and Judicial Administration 2.550.

(7) If amendment of pleadings or affirmative defenses is required due to extraordinary unforeseen circumstances supporting an order permitting such amendment, within 60 days before trial the amendment shall not serve as grounds for continuance where no additional discovery is required. If additional discovery is required, continuance shall not be granted except where cure is impossible. If discovery is required, it is the responsibility of the party seeking amendment to facilitate the needed additional discovery, and if the party fails to do so, the court may deny the amendment due to the interference with the trial date and the orderly progress of the case.

(8) Trial courts should utilize all remedies available to cure issues regarding the trial setting short of continuance, including requiring depositions to preserve testimony, remote appearance, and conflict consultations with other judges.

(9) All orders granting motions to continue shall state the factual basis, including the reason for the continuance, shall schedule the action required to cure the need for the continuance, and shall set a new trial date. Counsel shall serve all orders granting continuances upon counsel's clients. Counsel and self-represented parties shall be prepared to try the case on the trial date reset by the court.

(10) No case may be continued for a duration exceeding 6 months from its original trial date, except for extraordinary good cause, and findings regarding same shall be made on the record in any order of continuance.

(11) Orders granting or denying motions to continue shall benefit from presumption of correctness on appeal where the trial court has made factual findings regarding its ruling and shall only be reversed upon a finding of gross abuse of discretion.

**Rule 1.650. Medical Malpractice Presuit Screening Rule**

**(a), (b)** *[No change]*

**(c) Discovery.**

(1) *[No change]*

**(2) Procedures for Conducting.**

**(A) Unsworn Statements.** The parties may require other parties to appear for the taking of an unsworn statement. The statements shall only be used for the purpose of presuit screening and are not discoverable or admissible in any civil action for any purpose by any party. A party desiring to take the unsworn statement of any party shall give reasonable notice in writing to all parties. The notice shall state the time and place for taking the statement and the name and address of the party to be examined. Unless otherwise impractical, the examination of any party shall be done at the same time by all other parties. Any party may be represented by an attorney at the taking of an unsworn statement. Statements may be transcribed or electronically recorded, or audiovisually recorded. The taking of unsworn statements of minors is subject to the provisions of rule 1.310(b)(8). The taking of unsworn statements is subject to the provisions of rule ~~1.310(d)~~1.335(e) and may be terminated for abuses. If abuses occur, the abuses shall be evidence of failure of that party to comply with the good faith requirements of section 766.106, Florida Statutes.

**(B), (C)** *[No change]*

**(d)** *[No change]*

**Rule 1.820. Hearing Procedures for Non-binding Arbitration**

**(a)–(g)** *[No change]*

**(h) Time for Filing Motion for Trial.** Any party may file a motion for trial. If a motion for trial is filed by any party, any party having a third-party claim ~~at issue~~ ready to be tried at the time of arbitration may file a motion for trial within 10 days of service of the first motion for trial. If a motion for trial is not made within 20 days of service on the parties of the decision, the decision shall be referred to the presiding judge, who shall enter such orders and judgments as may be required to carry out the terms of the decision as provided by section 44.103(5), Florida Statutes.

**Form 1.989. Order of Dismissal for Lack of Prosecution**

**(a) Notice of Lack of Prosecution.**

**NOTICE OF LACK OF PROSECUTION**

PLEASE TAKE NOTICE that it appears on the face of the record that no activity by filing of pleadings~~, order of court,~~ or ~~otherwise~~ other paper has occurred for a period of ~~10~~6 months immediately preceding service of this notice~~,~~ and no stay has been issued or approved by the court. Pursuant to rule 1.420(e), if no ~~such~~ "post-notice record activity" occurs within 60 days following the service of this notice~~,~~ and if no stay is issued or approved during such 60-day period, this action ~~may~~ shall be dismissed by the court ~~on its own motion or on the motion of any interested person, whether a party to the action or not, after reasonable notice to the parties, unless a party shows good cause in writing at least 5 days before the hearing on the motion why the action should remain pending~~ unless a party, by written motion filed with the court and served on the presiding judge pursuant to rule 1.080, shows extraordinary cause why the action should remain pending. "Post-notice record activity" means (i) the filing and setting for hearing of a motion to stay the action or of a motion that is dispositive of the entire action; (ii) the proper filing and service of a notice for trial; or (iii) issuance of an order by the court that sets pretrial deadlines or the trial date.

**(b) Order Dismissing Case for Lack of Prosecution.**

**ORDER OF DISMISSAL**

This action was heard on the ~~.....~~respondent's/defendant's/~~-~~court's/~~interested party's~~/_____'s~~.....~~ motion to dismiss for lack of prosecution served on .....(date)..... The court finds that (1) notice prescribed by rule 1.420(e)(2) was served on .....(date).....; (2) there was no record activity during the ~~10~~6 months immediately preceding service of the foregoing notice; (3) there was no record activity during the 60 days immediately following service of the foregoing notice; (4) no stay has been issued or approved by the court; and (5) no party has shown ~~good~~ cause why this action should remain pending. Accordingly,

IT IS ORDERED that this action is dismissed for lack of prosecution.

ORDERED at ....., Florida, on .....(date).....

_____

Judge

**Rule 2.215. Trial Court Administration**

(a)–(e) *[Unchanged]*

**(f) Duty to Rule within a Reasonable Time.** Every judge has a duty to rule upon and announce an order or judgment on every matter submitted to that judge within a reasonable time. ~~Each judge shall maintain a log of cases under advisement and inform the chief judge of the circuit at the end of each calendar month of each case that has been held under advisement for more than 60 days.~~

**(1) Ruling.**

(A) Unless another rule of procedure requires a different timeframe, all cases submitted for determination after a trial shall be decided within 60 days after the latter of the date the trial concluded or post-trial submissions were filed.

(B) Unless another rule of procedure requires a different timeframe, all motions shall be ruled upon within 60 days after the date the motion was argued, if oral argument is conducted, within 60 days after the filing of a request to submit for decision, if applicable, or within 60 days after the date a notice waiving oral argument was filed or an order waiving oral argument was entered.

**(2) Reporting.**

(A) Each judge shall report to the chief judge decisions that have not been ruled upon within the applicable time periods. The chief judge shall confer with the judge who has any motion or judgment pending beyond the applicable time period and shall determine the reasons for the delay on the rulings. If the chief judge determines there is no just cause for the delay, the chief judge shall seek to rectify the delay within 60 days after first learning of the delay. If the delay is not rectified within 60 days, the chief judge shall report the delay to the chief justice. Just cause for delays over 60 days shall include situations in which a large volume of evidence requires additional time to review.

(B) All reports shall be filed with the clerk by the reporting judge upon submission to the chief judge.

(g)–(i) *[Unchanged]*

**Rule 2.250. Time Standards for Trial and Appellate Courts and Reporting Requirements**

**(a) Time Standards.** The following time standards are hereby established as a presumptively reasonable time period for the completion of cases in the trial and appellate courts of this state. Periods during which a case is on inactive status shall be excluded from the calculation of the time periods set forth herein. It is

recognized that there are cases that, because of their complexity, present problems that cause reasonable delays. However, most cases should be completed within the following time periods:

**(1) Trial Court Time Standards.**

(A) *[Unchanged]*

(B) Civil.

Complex cases—30 months (from date of service of initial process on the last defendant or 120 days after filing, whichever occurs first, to final disposition)

~~Jury~~ Other jury cases—18 months (~~filing~~ from date of service of initial process on the last defendant or 120 days after filing, whichever occurs first, to final disposition)

Other nonjury ~~Non-jury~~ cases—12 months (~~filing~~ from date of service of initial process on the last defendant or 120 days after filing, whichever occurs first, to final disposition)

Small claims cases—95 days (filing to final disposition)

(C)–(G) *[Unchanged]*

(2)–(4) *[Unchanged]*

**(b) Reporting of Cases.**

**(1) Quarterly Reports.** The time standards require that the following monitoring procedures be implemented:

All pending cases in circuit and district courts of appeal exceeding the time standards shall be listed separately on a report submitted quarterly to the chief justice. The report shall include for each case listed the case number, type of case, case status (active or inactive for civil cases and contested or uncontested for domestic relations and probate cases), the date of arrest in criminal cases, and the original filing date in civil cases. The Office of the State Courts Administrator will provide the necessary forms for submission of this data. The report will be due on the 15th day of the month following the last day of the quarter.

**(2) Annual Report of Pending Civil Cases.**

(A) By the last business day of July of every year, the chief judge of each circuit shall serve on the chief justice of the Florida Supreme Court and the state courts administrator a report of the status of the docket of the general civil division of that circuit, including both circuit and county courts, for the preceding fiscal year. The Office of the State Courts Administrator shall provide the necessary forms for submission of this data. The report shall, at a minimum, include the following:

(i) A list of all civil cases, except cases on inactive status, by case number and style, grouped by county, court level (circuit or county), division, and assigned judge, pending in that circuit 3 years or more from the filing of the complaint or other case-initiation filing as of the last day of the fiscal year.

(ii) Whether each such case appeared on the previous fiscal year's report and, if so, whether the same or a different judge was responsible for the case as of the previous fiscal year's report.

(iii) Whether an active case management order is in effect in the case.

(B) Cases that must remain confidential by statute, court rule, or court order shall be included in the report, anonymized by an appropriate designation. The Office of the State Court Administrator shall devise a designation system for such cases that enables the chief judge and the recipients of the report to identify cases that appear on a second or subsequent annual report.

(C) This rule shall take effect in the fiscal year beginning on July 1, 2023.

**Rule 2.251. Active and Inactive Case Status**

(a) The parties shall immediately file a motion when a case pending in a trial court is required to go on inactive status, such as, but not limited to, when a stay has been imposed by a district court of appeal or the Florida Supreme Court or when a stay is imposed by operation of federal bankruptcy law. A party may request by motion that a case be placed on inactive status for other reasons. Absent a stipulation by the parties that an appellate ruling is dispositive of the entire case, a case shall not be placed on inactive status pending review by appeal or original proceeding absent extraordinary circumstances.

(b) The parties shall file with a court a motion to remove a case's "inactive" designation within 30 days after an event occurs that removes such status or makes it unnecessary. A party may request by motion that a case on inactive status be restored to active status when otherwise permissible. A party that fails to timely inform the court that a case's "inactive" designation has become unnecessary shall be subject to sanctions, including dismissal of the action and the striking of pleadings.

(c) All motions filed under this rule shall be served on the presiding trial judge at the time of filing. Notwithstanding any other rule of procedure, the court shall within 30 days after service of the motion issue an order placing the case on the appropriate status (with the reason for the placement cited in the order) or denying the motion. The court shall order a change to a case's "active" or "inactive" designation pursuant to a motion filed under subdivision (a) or (b) when the motion definitively establishes a basis for the change. Upon issuance of an order changing the case status, the clerk shall immediately adjust the designation of the status as reflected in the docket.

(d) Deadlines defined in a case management order issued under rule 1.200 or 1.201 shall be tolled when a case is placed on inactive status.

**2021 Commentary**

This new rule is being implemented to clarify the roles of the respective players—the parties (or attorneys), the judge, and the clerk—under Fla. Admin. Order No. AOSC14-20 (Mar. 26, 2014), which defines case events and case statuses, including "active" and "inactive." Under the rule, the primary burden is on the parties to keep the court and thus the clerk updated on the status of their case, and it is the responsibility of the clerk to ensure that the status of the case is properly reflected in the case management system.

**Rule 2.550. Calendar Conflicts**

(a), (b) *[Unchanged]*

**(c) Notice and Agreement; Resolution by Judges.** When an attorney is scheduled to appear in 2 courts at the same time and cannot arrange for other counsel to represent the clients' interests, the attorney shall give prompt written notice of the conflict to opposing counsel or self-represented party, the clerk of each court, and the presiding judge of each case, if known. If the presiding judge of the case cannot be identified, written notice of the conflict shall be given to the chief judge of the court having jurisdiction over the case~~,~~ or to the chief judge's designee. The judges or their designees shall confer and ~~undertake to avoid~~ resolve the conflict by agreement among themselves. Absent agreement, conflicts ~~should~~ shall be promptly resolved by the judges or their designees in accordance with the above case guidelines.

**Rule 7.020. Applicability of Rules of Civil Procedure**

(a) *[Unchanged]*

**(b) Discovery.** ~~Any party represented by an attorney is subject to discovery pursuant to Florida Rules of Civil Procedure 1.280–1.380 directed at said party, without order of court. If a party not represented by an attorney directs discovery to a party represented by an attorney, the represented party may also use discovery pursuant to the above-mentioned rules without leave of court. When a party is not represented by an attorney, and has not initiated discovery pursuant to Florida Rules of Civil Procedure 1.280–1.380, the opposing party shall not be entitled to initiate such discovery without leave of court. However, the time for such discovery procedures may be prescribed by the court.~~ A party shall not be entitled to initiate discovery pursuant to the Florida Rules of Civil Procedure without leave of court.

**(c) Additional Rules.** In any particular action, the court may order that action to proceed under 1 or more additional Florida Rules of Civil Procedure on application of any party or the stipulation of all parties or on the court's own motion. To the extent that any 1 or more rules of civil procedure are invoked in a small claims action that eliminate the deadline for trial under rule 7.090(d), the court and parties

shall be subject to the case management provisions of Florida Rule of Civil Procedure 1.200.

**Rule 7.070. Method of Service of Process**

**(a) In General.** Service of process shall be effected as provided by law or as provided by Florida Rules of Civil Procedure 1.070(a)–(h). Constructive service or substituted service of process may be effected as provided by law. Service of process on Florida residents only may also be effected by certified mail, return receipt signed by the defendant, or someone authorized to receive mail at the residence or principal place of business of the defendant. Either the clerk or an attorney of record may mail the certified mail, the cost of which is in addition to the filing fee.

**(b) Summons; Time Limit.** If service of the initial process and initial pleading is not made upon a defendant within 90 days after filing of the initial pleading directed to that defendant, the court, on its own initiative after notice or on motion, shall direct that service be effected within a specified time or shall dismiss the action without prejudice or drop that defendant as a party; provided that if the plaintiff shows good cause or excusable neglect for the failure, the court shall extend the time for service for an appropriate period. When a motion for leave to amend with the attached proposed amended complaint is filed, the 90-day period for service of amended complaints on the new party or parties shall begin upon the entry of an order granting leave to amend. A dismissal under this subdivision shall not be considered a voluntary dismissal or operate as an adjudication on the merits under rule 7.110(a)(1).

**Rule 10.420. Conduct of Mediation**

**(a) Orientation Session.** Upon commencement of the mediation session, a mediator shall describe the mediation process and the role of the mediator, and shall inform the mediation participants that:

(1) mediation is a consensual process;

(2) the mediator is an impartial facilitator without authority to impose a resolution or adjudicate any aspect of the dispute; and

(3) communications made during the process are confidential, except where disclosure is required or permitted by law.

For mediations conducted in conjunction with pretrial conferences pursuant to Florida Small Claims Rule 7.090(f), a mediator may present the orientation session to multiple mediation participants as a group, either in person, by remote or virtual appearance, or by means of a prerecorded video presentation.

**(b), (c)** *[No change]*

## Endnotes

[1]Fla. Admin. Order No. AOSC19-73 (Oct. 31, 2019), *available at* https://www.floridasupremecourt.org/content/download/540288/file/AOSC19-73.pdf (last visited Apr. 20, 2021). *See also* Fla. Admin. Order No. AOSC20-75 (Aug. 4, 2020), *available at* https://www.floridasupremecourt.org/content/download/692120/file/AOSC20-75.pdf (last visited Apr. 20, 2021) (amending AOSC19-73).

[2]*See* Sup. Ct. of Fla., *Justice: Fair and Accessible to All—The Long-Range Strategic Plan for the Florida Judicial Branch 2016–2021* 5 (2015), *available at* https://www.flcourts.org/content/download/215844/file/2016-2021-Long-Range-Strategic-Plan-Floridaweb.pdf (last visited Apr. 20, 2021).

[3]Fla. Admin. Order No. AOSC19-73 at 2.

[4]These recommendations are reflected in a landmark report issued by the National Center for State Courts (NCSC). *See* NCSC, *Call to Action: Achieving Civil Justice for All* 7 (NCSC 2016), *available at* https://iaals.du.edu/publications/call-action-achieving-civil-justice-all (last visited Apr. 20, 2021).

[5]*Id.* at 2-3.

[6]Fla. Admin. Order No. AOSC20-23, Amend. 10 (Mar. 9, 2021), *available at* https://www.floridasupremecourt.org/content/download/724015/file/AOSC20-23-Amendment-10.pdf (last visited May 18, 2021).

[7]Fla. Admin. Order No. AOSC20-23, Amend. 12 (Apr. 13, 2021), *available at* https://www.floridasupremecourt.org/content/download/731687/file/AOSC20-23-Amendment-12.pdf (last visited May 18, 2021). Fla. Admin. Order No. AOSC20-23, as amended, terminated on June 21, 2021, pursuant to Fla. Admin. Order No. AOSC21-17. The requirements for civil case management previously set forth in section III.G. of Fla. Admin. Order No. AOSC20-23, as amended, are now set forth in section II.E.(7) of Fla. Admin. Order No. AOSC21-17. Fla. Admin. Order No. AOSC21-17 (June 4, 2021), *available at* https://www.floridasupremecourt.org/content/download/746675/file/AOSC21-17.pdf (last visited July 21, 2021)

[8]Links to the judicial circuits' administrative orders issued in response to the chief justice's administrative order may be found at https://www.flcourts.org/Resources-Services/Emergency-Preparedness/Administrative-Orders/Civil-Case-Management-Administrative-Orders (last visited May 18, 2021).

[9]*See, e.g.,* IAALS, *Civil Case Processing in the Federal District Courts: A 21st Century Analysis* (2009) 1–10, *available at* https://iaals.du.edu/sites/default/files/documents/publications/pacer_final_1-21-09.pdf (last visited Apr. 20, 2021). Some topics bearing on judicial case management in the trial courts were preliminarily discussed by the Workgroup but are not addressed in this report. These include appellate procedure and summary judgment. As for the latter, the Florida Supreme Court has recently effected significant changes, largely mooting

the issues initially discussed by the Workgroup. *See In re Amendments to Fla. R. Civ. P. 1.510*, 309 So. 3d 192 (Fla. 2020); *In re Amendments to Fla. R. of Civ. P. 1.510*, 317 So. 3d 72 (Fla. 2021) (adopting most of the language of Federal Rule of Civil Procedure 56).

[10]*See infra* p. 7.

[11]*See infra* p. 44.

[12]*See infra* p. 65.

[13]*See infra* p. 66.

[14]*See infra* p. 69.

[15]Jennifer D. Bailey, *Why Don't Judges Case Manage?*, 73 U. Miami L. Rev. 1071, 1073–78 (2019).

[16]Steven Baicker-McKee, *Reconceptualizing Managerial Judges*, 65 Am. U.L. Rev. 353, 396 (2015).

[17]NCSC, *Call to Action*, *supra* n. 4, at 2.

[18]*Id.*

[19]Internal email communication, Dec. 17, 2020; OSCA staff Zoom presentation to the JMC, Mar. 5, 2021. "Clearance rate" is defined in the next subsection. "Time to disposition" is the percentage of cases resolved within established time frames (for example, the percent of cases disposed within 180 days, within 365 days, and within 540 days). "Age of pending caseload" is the age of active cases that are pending before the court, measured as the number of days from filing until the time of measurement. CourTools, Trial Court Performance Measures, https://www.courtools.org/trial-court-performance-measures (last visited Apr. 22, 2021) (providing multiple reference files, including general definitions and explanations of each performance measure).

[20]Fla. Office of the State Courts Adm'r, *Florida's Trial Courts Statistical Reference Guide FY 2019–20: Glossary* 3 (2021), *available at* https://www.flcourts.org/content/download/720944/file/srg-ch-10-glossary-2019-20.pdf (last visited Apr. 21, 2021).

[21]Because the clearance rate measures only raw number of cases disposed of divided by raw number of cases filed within a given time period, without reference to which cases are which, it is possible that even with a relatively strong clearance rate, older cases may languish for years in a given court; there is no way to determine the age of cases from clearance rates. Other measures (*see supra* n. 19) must be used to gain a picture of how many and what percentage of cases have been pending in a given court or division for one year, two years, three years, and so on.

[22]https://www.flcourts.org/Publications-Statistics/Statistics/Trial-Court-Statistical-Reference-Guide (lasted visited Apr. 20, 2021). The fiscal year for Florida state government is July 1 through June 30.

[23]To adjust for the impact of the mortgage foreclosure crisis, some of the data presented in this narrative excludes the "real property and mortgage foreclosure" category. Whether a given statistic includes or excludes this category will be made clear in the text.

[24]The impact of the foreclosure crisis on county civil divisions was presumably less direct than on circuit civil divisions given the dollar-amount jurisdictional limit in county court. *See* § 34.04(1)(c)1., (4), Fla. Stat. (2020) ("County courts shall have original jurisdiction . . . [o]f all actions at law, except those within the exclusive jurisdiction of the circuit courts, in which the matter in controversy does not exceed, exclusive of interest, costs, and attorney fees . . . [i]f filed on or before December 31, 2019, the sum of $15,000." . . . "Judges of county courts *may* hear all matters in equity involved in any case within the jurisdictional amount of the county court, except as otherwise restricted by the State Constitution or the laws of Florida." (Emphasis added.))

[25]*See generally* https://www.flcourts.org/Publications-Statistics/Statistics/Trial-Court-Statistical-Reference-Guide (lasted visited Apr. 20, 2021).

[26]U.S. Courts, *Caseload Statistics Data Tables*, https://www.uscourts.gov/statistics-reports/caseload-statistics-data-tables (last visited Apr. 20, 2021). Specific pages are https://www.uscourts.gov/sites/default/files/statistics_import_dir/C04Sep07.pdf; https://www.uscourts.gov/sites/default/files/data_tables/jb_c4_0930.2019.pdf (last visited Apr. 20, 2021).

[27]*See infra* p. 14.

[28]William W. Schwarzer & Alan Hirsch, *The Elements of Case Management: A Pocket Guide for Judges* (3d ed., Fed. Judicial Ctr. 2017) 1, *available at* https://www.fjc.gov/content/323373/elements-case-management-third-edition (last visited Apr. 20, 2021) (defining "case management" in terms of Federal Rule of Civil Procedure 1).

[29]Bailey, *supra* n. 15, at 1121 (noting the comment to the 1967 amendment to rule 1.010: "[W]hether an action is to be determined in the manner contemplated will depend, in great measure, upon the attitudes of judges and lawyers in approaching legal controversies and in employing and applying the rules.").

[30]*Id.* at 1095, 1121.

[31]*Id.* at 1096.

[32]*Id.* at 1138.

[33]*Id.* at 1095.

[34]*Id.* at 1096–97.

[35]*Id.* at 1095 (emphasis added).

[36]Steven S. Gensler, *Judicial Case Management: Caught in the Crossfire*, 60 Duke L.J. 669, 697 (2010).

[37]*E.g.,* Fla. R. Civ. P. 1.200(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 . . . .").

[38]*E.g.*, Fla. R. Civ. P. 1.201(b) ("The court shall hold an initial case management conference within 60 days from the date of the order declaring the action complex.").

[39]S.D. Fla. Gen. R. 16.1(a)(1).

[40]NCSC, *Call to Action*, *supra* n. 4, at 19–27.

[41]*See infra* p. 37.

[42]NCSC, *Call to Action*, *supra* n. 4, at 21, 23, 26.

[43]*See generally* Fla. Sm. Cl. R.

[44]Admin. Order 1.13, 20th Jud. Cir. (May 11, 2012), *available at* https://www.ca.cjis20.org/pdf/ao/ao_1_13.pdf (last visited Apr. 20, 2021).

[45]*See* Admin. Order 2019-08-02, 9th Jud. Cir. (Nov. 20, 2019), *available at* https://www.ninthcircuit.org/sites/default/files/2019-08-02%20-%20Amended%20Order%20Regarding%20Business%20Court.pdf (last visited Apr. 20, 2021) (current version of administrative order establishing the division); Admin. Order 2004-03-04, 9th Jud. Cir. (Oct. 24, 2019), *available at* https://www.ninthcircuit.org/sites/default/files/2004-03-04%20-%20Amended%20Order%20Implementing%20Business%20Court%20Procedures.pdf (last visited Apr. 20, 2021) (promulgating current version of rules of business court procedure).

[46]*E.g.*, S.D. Fla. Gen. R. 16.1(a)(2).

[47]*See supra* p. 11.

[48]Baicker-McKee, *supra* n. 16, at 355.

[49]Corina Gerety, *Excess & Access: Consensus on the American Civil Justice Landscape* 2, 9, 17 (IAALS, 2011), *available at* https://iaals.du.edu/sites/default/files/documents/publications/excess_access2011-2.pdf (last accessed August 2, 2021) ("While fairness cannot be sacrificed for efficiency, inertia can certainly be traded for increased efficiency and expanded access. The goal should be to reduce the number left behind and increase the number for whom this public forum is realistically available."); *see also* John H. Langbein, *The Disappearance of Civil Trial in the United States*, 122 Yale L.J. 522, 551 (2012) ("Discovery is costly, so costly that the prospect of having to bear those costs can dissuade a potential litigant from advancing a meritorious claim or defense."); Richard D. Freer, *Exodus from and Transformation of American Civil Litigation*, 65 Emory L.J. 1491, 1501 (2016) ("[D]issatisfaction with the delay and expense of litigation led many to extoll the virtue of less formalized process.").

[50]*See supra* n. 31.

[51]Corina D. Gerety & Brittany K.T. Kauffman, *Summary of Empirical Research on the Civil Justice Process, 2008–2013* 45 (IAALS 2014), *available at* https://iaals.du.edu/sites/default/files/documents/publications/summary_of_empirical_research_on_the_civil_justice_process_2008-2013.pdf (last visited Apr. 20, 2021); *but see* Gensler, *supra* n. 36, at 734 (noting the observation by an academic involved in the amendment of the federal civil rules that "the case-management model will inevitably struggle to control costs if lawyers continue to act like spoiled children, requiring judges to provide the equivalent of constant adult supervision.").

[52]Baicker-McKee, *supra* n. 16, at 367–68 (citations, internal quotation marks, and emendations omitted).

[53]*See infra* p. 18.

[54]*Supra* p. 7.

[55]Baicker-McKee, *supra* n. 16, at 360–65 (summarizing the historical arguments pro and con on judicial case management) and 384 *et seq.* (summarizing the objections to judicial case management and responses thereto); *see also generally* Jessica Schuh, *Curbing Judicial Discretion in Pretrial Conferences*, 20 Lewis & Clark L. Rev. 647, 648–49 & *passim* (2016) (critical of what the author considers "almost unfettered [judicial] discretion in managing pretrial litigation" under the federal rules). For the landmark criticism of judicial case management from a legal-philosophical standpoint, see Judith Resnik, *Managerial Judges*, 96 Harv. L. Rev. 374, 380 (1982) (opining that "managerial judging may be redefining *sub silentio* our standards of what constitutes rational, fair, and impartial adjudication").

[56]The Workgroup has not drafted its proposed case management rule to require court reporting at case management conferences. As attorneys become accustomed to the new procedures, they will learn to gauge when a court reporter should be retained for case management conferences.

[57]A broader version of this critique is that judges are too actively involved too early in cases, leading to a greater number of summary judgment and compelled ADR referrals as well as alleged excessive judicial involvement in settlements. But case management entails more than these "gateway" processes, involving such "pathway" processes that "move a case from event to event to consistently progress to the resolution of the parties' choice . . . ." Bailey, *supra* n. 15, at 1134 (citing Joanna C. Schwartz, *Gateways and Pathways in Civil Procedure*, 60 UCLA L. Rev. 1652 (2013) (making the distinction between "gateway" and "pathway" processes in case management)). Judge Bailey observes that critics "express much more alarm over judicial activism in gateway case management and pay less attention to pathway management, but they blur the distinction by referring to all actions as 'case management' " and that problems arising out of gateway processes arise primarily from the federal rules and federal substantive law, with little parallel in state systems. *Id.* at 1134–35.

[58]The Workgroup's proposed case management rule does not mention settlement or improper settlement pressure. The Workgroup suggests that this issue be addressed in continuing judicial education courses.

[59]Baicker-McKee, *supra* n. 16, at 392.

[60]Fla. R. Civ. P. 1.010.

[61]*See infra* p. 33.

[62]*E.g.*, Fla. R. Gen. Prac. Jud. Admin. 2.545(e) ("All judges *shall* apply a firm continuance policy. Continuances *should* be few, good cause *should* be required . . . ." (emphasis added)).

[63]*E.g.,* Fla. R. Civ. P. 1.200(a) (providing that a court may order or a party may convene a case management conference). Though couched in terms of "may," this rule does appear to be used extensively, albeit usually when a case approaches the trial stage. More than being optional, then, the major shortcoming of the rule in terms of case management is that it does not require *early* establishment of timing control by the court.

[64]*E.g.*, Fla. R. Civ. P. 1.201(a) (allowing any party or the court to move to have a case designated as complex "[a]t *any time* after all defendants have been served" (emphasis added)).

[65]*E.g.*, Fla. R. Civ. P. 1.160 (titled "Motions" but addresses only one narrow component of motion practice), 1.460 (titled "Continuances" but addresses the issue in only a cursory manner).

[66]*E.g.*, Fla. R. Civ. P. 1.380(b)(2) (providing that "the court *shall* require the party failing to obey the [discovery] order to pay the reasonable expenses caused by the failure, which *may* include attorneys' fees . . . ." (emphasis added)).

[67]*E.g.*, Fla. R. Civ. P. 1.420(e) (concerning dismissals for failure to prosecute); *Chemrock Corp. v. Tampa Elec. Co.*, 71 So. 3d 786, 792 (Fla. 2011) (construing the rule's safe-harbor provision very broadly).

[68]*Compare, e.g.*, Fla. R. Civ. P. 1.380(a)(4) (providing that when a motion to compel discovery is granted, "the court shall require the party or deponent whose conduct necessitated the motion or the party *or counsel advising the conduct* to pay to the moving party['s] reasonable expenses" (emphasis added)) *with* Fla. R. Civ. P. 1.380(b)(2) (providing that "the court shall require the party failing to obey the [discovery] order to pay the reasonable expenses caused by the failure [to comply with a discovery order]," with no mention of counsel).

[69]Bailey, *supra* n. 15, at 1121–23.

[70]*Id.* at 1124, 1129.

[71]*Id.* at 1139–40.

[72]*Id.* at 1141 (quoting Steven S. Gensler & Lee H. Rosenthal, *Four Years After Duke: Where Do We Stand on Calibrating the Pretrial Process?*, 18 Lewis & Clark L. Rev. 643, 643 (2014)).

[73]*Id.* at 1153; *see also supra* p. 11.

[74]*Id.* at 1155–57.

[75]*See generally id.* at 1160–73.

[76]*Id.* at 1175, 1177–78.

[77]*Id.* at 1196–1207.

[78]*E.g.*, NCSC, *Pilot Projects, Rule Changes, and Other Innovations in State Courts Around the Country* (App. D to NCSC, *Call to Action*, *supra* n. 4), *available at* https://www.ncsc.org/__data/assets/pdf_file/0022/25681/ncsc-cji-appendices-d.pdf (last visited Apr. 21, 2021).

[79]Lisa Foster, *Bucking the Trend: Why California Should Reject the Conventional Wisdom on Civil Litigation Reform*, 36 T. Jefferson L. Rev. 105, 120 (2013); *see also* Bailey, *supra* n. 15, at 1087 (noting that "notwithstanding the broad enthusiasm for judicial case management and the resulting rule changes to encourage it, there remains a dearth of data on case management's effectiveness.").

[80]Foster, *supra* n. 79, at 109; *cf. also* Thomas E. Willging, *Past and Potential Uses of Empirical Research in Civil Rulemaking* 77 Notre Dame L. Rev. 1121, 1131 (2002) ("Since 1988, the frequency of experimental field research appears to have increased somewhat but remains relatively infrequent in comparison with . . . nonexperimental research approaches.").

[81]*See* Willging, *supra* n. 80, at 1131–32 ("Creating experiments to test rules that are an integral part of the litigation process may raise issues that do not occur when an entire program is applied to or withheld from experimental and control groups. For example, to apply or not apply . . . a disclosure rule to every other case seems to require intruding into the litigation process in an extraordinary manner and imposing novel demands on judges and litigators. In addition, concerns about ethical and legal fairness may inhibit experimental research."); Richard L. Marcus, *Of Babies and Bathwater: The Prospects for Procedural Progress*, 59 Brook. L. Rev. 761, 770 (1993) ("[I]f procedural reform could only be adopted after being proved effective and safe in a manner similar to the way that the FDA determines whether a new drug can be sold, it seems unlikely that there would be any formal procedural reform. The challenge, then, is to appreciate and evaluate the pertinent policy concerns and make reasonable use of empirical information. This can prove surprisingly difficult, but also yield answers."); *cf.* A. Leo Levin, *Local Rules As Experiments: A Study in the Division of Power*, 139 U. Pa. L. Rev. 1567, 1581–82 (1991) ("[W]e have very busy laboratories, some ninety-four of them [i.e., the federal district courts], but virtually no one is collecting data. With a few notable exceptions, results are reported on the basis of impressions: 'We think this is working . . . the bar seems satisfied, or at least the bar can live with it.' ").

[82]*Cf.* NCSC, *Call to Action*, *supra* n. 4, at 7 ("Recommendations [for changes in civil court procedures] should be supported by data, experience[] . . ., and/or 'extreme common sense.' ").

[83]*See supra* p. 16.

[84]*See generally, e.g.*, NCSC, *Call to Action*, *supra* n. 4.

[85]Pub. L. No. 101-650, §§ 101–06, 104 Stat. 5089, 5089–98 (1990) (codified as amended at 28 U.S.C. §§ 471–82 (2018)).

[86]28 U.S.C. § 471.

[87]*Id.* at § 473(a), (b).

[88]Pub. L. No. 101-650, § 105(a), (b), 104 Stat. 5097 (1990) (not codified).

[89]Judicial Conference of the U.S., *The Civil Justice Reform Act of 1990 Final Report*, 175 F.R.D. 62, 67 (1997).

[90]*Id.* at 94 (internal quotation marks omitted).

[91]*Id. See also* James S. Kakalik et al., Inst. for Civil Justice, *Discovery Management: Further Analysis of the Civil Justice Reform Act Evaluation Data* 42 (RAND 1998), *available at* https://www.rand.org/pubs/monograph_reports/MR941.html (last visited Apr. 26, 2021) (discussing in detail the likely reasons behind these trends, including the likelihood that early case management itself triggers attorney labor and sometimes discovery). *But see* Máximo Langer & Joseph W. Doherty, *Managerial Judging Goes International, but Its Promise Remains Unfulfilled: An Empirical Assessment of the ICTY Reforms*, 36 Yale J. Int'l L. 241, 293 n. 167 (2011) (noting the possibility of selection bias in the RAND study).

[92]*Supra* n. 9.

[93]*Id.* at 2, 23–27.

[94]*Id.* at 1–2.

[95]*Id.* at 3, 6–10.

[96]*Id.* at 9–10.

[97]Two additional small-scale research projects are not discussed in detail here. In one, undertaken beginning in 2017 in the circuit court in McHenry County, Illinois, the initiative sought to implement case management in a circuit with an already-strong 107% clearance rate. Although the research report presents the project in a positive light, "buy-in" was apparently difficult, with judges and attorneys wondering what the point was when the court was already demonstrating favorable quantitative results. Courtney Broscious & Shelly Spacek Miller, *Civil Justice Initiative: Evaluation of the Civil Justice Initiative Project Implemented by the 22nd Judicial Circuit Court, McHenry County, Illinois* (NCSC 2019), *available at* https://www.ncsc.org/__data/assets/pdf_file/0018/26604/civil-justice-initiative-evaluation-book-2.pdf (last visited Apr. 21, 2021). In the second project, undertaken in a magistrate court in Georgia (similar to a Florida county court) in 2017–18, the court focused on customer service for its heavily pro se clientele. By the end of the project period, average days to disposition had fallen in the small claims and garnishment categories. Courtney Broscious et al., *Civil Justice Initiative: Evaluation of a Demonstration Pilot Project of the Civil Justice Initiative Implemented by the Fulton*

*County Magistrate Court* (NCSC 2019), *available at* https://www.ncsc.org/__data/assets/pdf_file/0020/25481/fcmc-cji-report.pdf (last visited Apr. 21, 2021).

[98]Schuh, *supra* n. 55, at 653–54 (footnotes and citations omitted).

[99]Steven Weller et al., *ELP Revisited: What Happened When Interrogatories Were Eliminated*, 21 Judges J. 8, 10 (Summer 1982), *available at* https://heinonline.org/HOL/PrintRequest?collection=journals&nocover=&handle=hein.journals%2Fjudgej21&id=184&section=&skipstep=1&fromid=121&toid=176&format=PDFsearchable&submitx=Print%2FDownload&submit1=Print%2FDownload+Custom+Range (last visited Apr. 21, 2021).

[100]*Id.*

[101]*Id.* at 11–15.

[102]Paul R.J. Connolly & Michael D. Planet, *Controlling the Caseflow—Kentucky Style: How to Speed up Litigation without Slowing Down Justice*, 21 Judges J. 8 (Fall 1982), *available at* https://heinonline.org/HOL/Print?public=true&handle=hein.journals/judgej21&div=76&start_page=8&collection=journals&set_as_cursor=6&men_tab=srchresults&print=section&format=PDFsearchable&submit=Print%2FDownload (last visited Apr. 21, 2021). *See also* C. Lynn Oliver, *Economical Litigation: Kentucky's Answer to High Costs and Delay in Civil Litigation*, 71 Ky. Law L.J. 647 (1982), *available at* https://heinonline.org/HOL/Print?public=true&handle=hein.journals/kentlj71&div=34&start_page=647&collection=journals&set_as_cursor=3&men_tab=srchresults&print=section&format=PDFsearchable&submit=Print%2FDownload (last visited Apr. 21, 2021) (summarizing the initiative); Maurice Rosenberg, *The Impact of Procedure-Impact Studies in the Administration of Justice*, 51 L. & Contemp. Probs. 13, 22 (Summer 1988) (summarizing the Kentucky and other initiatives). Although the extent to which the program described here has been adopted elsewhere in Kentucky cannot easily be determined from Kentucky judiciary's website, the rules of the program, with some modification, have been adopted as Special Rules of the Circuit Court for the Economic Litigation Docket. *See* Ky. R. Civ. P. 88–98; *see also* Oliver, at 650–51 & n. 21.

[103]Connolly & Planet, *supra* n. 102, at 54–55.

[104]*Id.* at 57–58.

[105]*Id.* at 58.

[106]*Id.* at 56–57.

[107]Roughly equivalent to Florida's circuit courts. *See* https://www.courts.state.co.us/Courts/Index.cfm (last visited Apr. 21, 2021).

[108]Corina D. Gerety & Logan Cornett, *Momentum for Change: The Impact of the Colorado Civil Access Pilot Project* 1, 6 (IAALS 2014), *available at* https://iaals.du.edu/sites/default/files/documents/publications/momentum_for_change_capp_final_report.pdf (last visited Apr. 26, 2021).

[109]*Id.* at 4–5.

[110]*Id.* at 12, 25–28.

[111]NCSC, *Call to Action*, *supra* n. 4, at 27. The research project took place as a Civil Justice Initiative (CJI) Pilot Project under the auspices of the NCSC and the IAALS. *See* https://www.jud11.flcourts.org/About-the-Court/Court-Divisions/Civil/Civil-Division-Case-Management-Unit (last visited Apr. 21, 2021) (informational webpage); 11th Cir., *Miami Civil Case Management Manual* (2018), *available at* https://www.ncsc.org/__data/assets/pdf_file/0011/26300/miami-civil-case-management-manual.pdf (last visited Apr. 21, 2021); 11th Cir., *Civil Justice Initiative Pilot Project: Performance Report* (2018), *available at* https://www.ncsc.org/__data/assets/pdf_file/0019/25813/performance-report-2018.pdf (last visited Apr. 21, 2021); Lydia Hamblin & Paula Hannaford-Agor, *Civil Justice Initiative: Evaluation of the Civil Justice Initiative Pilot Project (CJIPP) Implemented by the Eleventh Judicial Circuit of Florida* (NCSC 2019), *available at* https://www.ncsc.org/__data/assets/pdf_file/0013/26230/cjipp-final-evaluation-report.pdf (last visited Apr. 21, 2021).

[112]Hamblin & Hannaford-Agor, *supra* n. 111, at 2.

[113]*Id.* at 3, 28.

[114]*Id.* at 6, 8.

[115]*Id.* at 9. It may also be noted that mean time to disposition, accounting only for cases closed during the study period, was *higher* for the project cases. However, this statistic is not a "fair" measure, given that cases not closed during the study period (of which there were more in the nonproject group) are not included in the calculation. To adjust for this, a survival analysis reflects that half of project cases would close by 280 days from filing, while half of nonproject cases would take 435 days to close. *Id*. at 12–13.

[116]*Id.* at 10.

[117]*Id.* at 14–15.

[118]*Id.* at 15.

[119]*Id.* at 19–21.

[120]*Id.* at 16 *et. seq.*

[121]Although some states without DCM have case management rules similar to the federal rules and some have apparently structured their case management rules without obvious borrowing from the federal rule, *see, e.g.*, N.H. Super. Ct. R. 5, this report limits its presentation of rules to those states that have instituted some form of *differentiated* case management.

[122]Specialized court divisions addressing, for example, business litigation are not included in this summary, nor are summaries of rules for expedited/streamlined or complex programs. *E.g.*, N.J. Ct. R. 4:102-1 *et seq.* (extensive set of case

management, discovery, and motions rules for a Complex Business Litigation Program); N.C. Bus. Ct. R. 1 *et seq.* (similar); Ala. R. Expedited Civ. Actions A *et seq.*; Ky. R. Civ. P. 88 *et seq.* (economical litigation docket); Mont. Unif. Dist. Ct. R. 6 (simplified track); Nev. Short Tr. R. *et seq.*; Or. Unif. R. Ct. 5.150 (streamlined actions); Conn. Prac. Book § 23-13 *et seq.* (complex litigation); Minn. Gen. R. Prac. 146.01 *et seq* (complex litigation).

[123]*See infra* p. 33.

[124]*E.g.*, Colo. R. Civ. P. 16(b), (d) (requiring all three stages, except that when all parties are represented by counsel, they may jointly request the court to dispense with a case management conference); Idaho R. Civ. P. 16(a)(1), (2), 26 (requiring the issuance of a scheduling order following a scheduling conference or "another method within the discretion of the presiding judge"; no provision for an early parties-only meeting). Additionally, some states have different requirements for judicial case management depending on court level. *Compare* Wyo. R. Civ. P. Cir. Ct. 6 (for circuit courts (roughly equivalent to Florida's county courts), providing that the court shall hold an early case management conference unless the judge determines it unnecessary and shall issue a case management order; no provision for an early parties-only meeting), *with* Wyo. R. Civ. P. 16, 26(f) (for district courts (roughly equivalent to Florida's circuit courts), providing for an optional discovery conference "[a]t any time after the commencement of an action" and an optional scheduling order issued after an optional scheduling conference). Some states' rules appear to include no mention of pretrial case management at all. *See generally, e.g.*, Ark. R. Civ. P. 16, 26.

[125]Exempt civil categories include actions to enforce out-of-state judgments, appropriation of property, cases subject to court annexed arbitration, consumer debt collection, eminent domain, forcible entry and detainer, foreclosures, habeas corpus, mechanic's and materialman's liens, quiet title, and small claims. *See, e.g.*, Alaska R. Civ. P. 16(g).

[126]U.S. Gov't Publ'g Office, *Federal Rules of Civil Procedure* 25, 37 (2020), *available at* https://www.uscourts.gov/sites/default/files/federal_rules_of_civil_procedure_dec_1_2019_0.pdf (last visited Apr. 22, 2021).

[127]Fed. R. Civ. P. 26(f)(1)–(3).

[128]Fed. R. Civ. P. 16(b)(1)(A), (3).

[129]Fed. R. Civ. P. 16(b)(1)(B).

[130]*See supra* n. 46.

[131]Ariz. R. Civ. P. 26.2(d)(1).

[132]Ariz. R. Civ. P. 26.2(c)(3)(A). These are cases that can be tried in one or two days, characterized by "minimal documentary evidence and few witnesses." Automobile tort, intentional tort, premises liability, and insurance coverage claims arising from the preceding are usually Tier 1 cases. Ariz. R. Civ. P. 26.2(b)(1).

[133]Ariz. R. Civ. P. 26.2(c)(3)(B), (D). These are cases with more than minimal documentary evidence and more than a few witnesses, including possibly expert witnesses. Tier 2 cases are likely to have multiple theories of liability and may involve counterclaims or cross-claims. Ariz. R. Civ. P. 26.2(b)(2).

[134]Ariz. R. Civ. P. 26.2(c)(3)(C). Tier 3 cases include class actions, antitrust cases, multiparty commercial or construction cases, securities cases, environmental torts, medical malpractice cases, and mass torts. Ariz. R. Civ. P. 26.2(b)(3).

[135]Ariz. R. Civ. P. 26.2(c)(1), (2), (d)(2), (3).

[136]Ariz. R. Civ. P. 16(b), (c)(1).

[137]Ariz. R. Civ. P. 16(d).

[138]Ariz. R. Civ. P. 16(c)(1).

[139]Cal. Gov't Code § 68603(a), (c) (2020).

[140]Cal. R. Ct. 3.711.

[141]Cal. R. Ct. 3.714(a), 3.715(a) (listing 18 factors).

[142]Cal. R. Ct. 3.714(a), (c), (d).

[143]These dollar-based tiers are called "limited" and "unlimited" civil cases in California. *See, e.g.*, https://www.courts.ca.gov/1061.htm?rdeLocaleAttr=en (last visited Apr. 21, 2021). The differentiated protocol is defined in the rules in terms of these labels and not dollar amounts. Cal. R. Ct. 3.714(b).

[144]Cal. R. Ct. 3.714(b); Cal. Stand. Jud. Admin. 2.2(f). The latter rule also defines targets for additional categories of cases, such as small claims.

[145]Cal. R. Ct. 3.722(a).

[146]Cal. R. Ct. 3.724, 3.727.

[147]Cal. R. Ct. 3.725.

[148]Cal. R. Ct. 3.728. In addition to the procedures described, parties or the court may designate a case as complex, entailing another set of procedural rules. Cal. R. Ct. 3.400 *et seq.*, 3.750. The court "should" hold an early case management conference in complex cases and may require the parties to engage in an initial meet-and-confer. Cal. R. Ct. 3.750(a), (d).

[149]*See* https://www.courts.state.md.us/circuit (last visited Apr. 22, 2021).

[150]Md. R. 16-302(b)(1)(A).

[151]*See* https://www.courts.state.md.us/district (last visited Apr. 22, 2021).

[152]*See, e.g.*, https://www.mass.gov/orgs/massachusetts-court-system (last visited Apr. 22, 2021); https://en.wikipedia.org/wiki/Massachusetts_Superior_Court (last visited Apr. 22, 2021); https://en.wikipedia.org/wiki/Massachusetts_District_Court (last visited Apr. 22, 2021). On the civil side, the superior courts hear higher-value civil cases

(roughly equivalent to Florida's circuit courts); the district courts hear lower-value cases (roughly equivalent to Florida's county courts); the housing court hears housing-related cases such as evictions and breaches of contract; and the single land court has statewide jurisdiction over real estate titles.

[153]Mass. R. Super. Ct. 20.1, .2.

[154]Mass. R. Super. Ct. Order 1-88 introductory paragraph & .B.

[155]Mass. R. Super. Ct. Order 1-88.B.1(3), .2.

[156]Mass. R. Super. Ct. Order 1-88.E.

[157]Mass. R. Super. Ct. Order 1-88.G.

[158]Mass. R. Super. Ct. Order 1-88.H.

[159]*See, e.g.*, Mass. R. Dist. Ct. Order 2-04; Mass. R. Boston Mun. Ct. Order 2-04; Mass. R. Hous. Ct. Order 1-04; Mass. R. Land Ct. Order 1-04.

[160]N.J. Ct. R. 4:5A-1; N.J. Ct. R. App. XII-B1, Civil Case Information Sheet, *available at* https://njcourts.gov/notices/2019/n190517a.pdf (last visited Apr. 21, 2021).

[161]N.J. Ct. R. 4:5A-2(a).

[162]N.J. Ct. R. 4:24-1(a). Extensions are permitted; whether consensual or contested, the appropriate stipulation or motion must be filed before the end of the discovery period. N.J. Ct. R. 4:24-1(c).

[163]N.J. Ct. R. 4:5B-1.

[164]*Id.*

[165]N.J. Ct. R. 4:5B-2.

[166]N.Y. Ct. R. 202.19(a). There appears to be no single source listing those categories and courts in which DCM has been designated as applying. *Cf.* David Paul Horowitz, *Help Is Here, Whether You Want It or Not*, 80 N.Y. St. B.J. 16, 16 (Sept. 2008) ("[T]he manner of [DCM's] implementation throughout the state has not been uniform.").

[167]N.Y. Ct. R. 202.12(a).

[168]N.Y. Ct. R. 202.19(b)(1). A "request for judicial intervention" may be filed by any party after service of process. N.Y. Ct. R. 202.6(a). The rule does not specify a time limit for such a request, but essentially a case cannot move forward unless such a request is filed, as it is in so filing that a judge will be assigned to the case. *See* https://www.nycourts.gov/courthelp/goingtocourt/rji.shtml (last visited Apr. 23, 2021).

[169]N.Y. Ct. R. 202.19(b)(2).

[170]N.Y. Ct. R. 202.19(b)(3).

[171]N.Y. Ct. R. 202.19(c)(1), (2).

[172]These include (not necessarily exhaustively): D. Ariz. L.R. Civ. P. 16.2; S.D. Fla. Gen. R. 16.1; E.D. Mo. L.R. 5.01 *et seq.*; N.D.N.Y.L. Civ. R. 16.1; M.D.N.C.L. Civ. R. 26.1; N.D. Ohio L. Civ. R. 16.1 *et seq.*; W.D. Tenn. L. Civ. R 16.2.

[173]S.D. Fla. Gen. R. 16.1(a)(2)–(4), (b)(2), (3).

[174]S.D. Fla. Gen. R. 16.1(b).

[175]S.D. Fla. Gen. R. 16.1(d).

[176]S.D. Fla. Gen. R. 16.1(e).

[177]S.D. Fla. Gen. R. 16.1(h).

[178]https://www.floridasupremecourt.org/content/download/746675/file/AOSC21-17.pdf (last visited July 21, 2021).

[179]7th Cir. Admin. Order CV-2003-002-SC, *available at* http://www.circuit7.org/Administrative%20Orders/civil/CV-2003-002-SC.html (last visited Apr. 23, 2021); *see also* http://www.circuit7.org/Administrative%20Orders/civil/CV-2003-002-SC-attachments.html (last visited Apr. 23, 2021) (containing hyperlinks to specific procedures, a table of deadlines, and form orders).

[180]16th Cir. Admin. Order 2.072, *available at* http://www.clerk-of-the-court.com/Docs/2.072.pdf (last visited Apr. 23, 2021).

[181]17th Cir. Admin. Order 2019-4-0 (county court), *available at* http://www.17th.flcourts.org/wp-content/uploads/2019/01/2019-4-CO.pdf (last visited Apr. 23, 2021); 17th Cir. Admin. Order 2019-5-Civ (circuit court), *available at* http://www.17th.flcourts.org/wp-content/uploads/2019/01/2019-5-Civ.pdf (last visited Apr. 23, 2021).

[182]https://www.ca.cjis20.org/home/main/dcm_new.asp (DCM webpage with introduction and links to form orders) (last visited Apr. 23, 2021); 20th Cir. Admin. Order 1.13, *available at* https://www.ca.cjis20.org/pdf/ao/ao_1_13.pdf (last visited Apr. 23, 2021).

[183]http://www.flabizlaw.org/committees-task-force/task-forces/business-courts-task-force/ (last visited May 19, 2021).

[184]Jim Ash, *Section Calls for Statewide Business Courts*, Fla. Bar News (Feb. 19, 2020), *available at* https://www.floridabar.org/the-florida-bar-news/section-calls-for-statewide-business-courts/ (last visited Apr. 23, 2021).

[185]https://www.ninthcircuit.org/about/divisions/business-court (informational webpage with links to forms and references) (last visited Apr. 23, 2021); 9th Cir. Admin Order 2003-17-05, *available at* https://www.ninthcircuit.org/sites/default/files/AO2003-17-05_1.pdf (last visited Apr. 23, 2021); 9th Cir. Admin. Order 2004-03-04 (2019 amendment of original order of the same number with attached Business Court Procedures), *available at* https://www.ninthcircuit.org/sites/default/files/2004-03-04%20-%20Amended%20Order%20Implementing%20Business%20Court%20Procedures.pdf (last visited Apr. 23, 2021); 9th Cir. Admin. Order 2019-08-02, *available at*

https://www.ninthcircuit.org/sites/default/files/2019-08-02%20-%20Amended%20Order%20Regarding%20Business%20Court.pdf (last visited Apr. 23, 2021).

[186]https://www.jud11.flcourts.org/About-the-Court/Ourt-Courts/Civil-Court/Complex-Business-Litigation (informational webpage) (last visited Apr. 23, 2021); 11th Cir. Admin. Order 17-11, *available at* https://www.jud11.flcourts.org/docs/17-11-Reaffirmation%20of%20the%20creation%20of%20complex%20business%20litigation%20in%20the%20circuit%20civil;-re-designation%20of%20CBL%20secions%20and%20modificatiion-Signed%20Order.pdf (last visited Apr. 23, 2021); 11th Cir., *Complex Business Litigation Rules* (Jan. 2017), *available at* https://www.jud11.flcourts.org/docs/cblrulesrevised1219pm.pdf (last visited Apr. 23, 2021).

[187]https://www.fljud13.org/BusinessCourt.aspx (informational webpage) (last visited Apr. 23, 2021); 13th Cir. Admin. Order S-2013-021, *available at* https://www.fljud13.org/Portals/0/AO/DOCS/2013-021-S.pdf (last visited Apr. 23, 2021); 13th Cir. L.R. 3, *available at* https://www.fljud13.org/Portals/0/AO/DOCS/rule3.pdf (last visited Apr. 23, 2021).

[188]http://www.17th.flcourts.org/01-civil-division/ (informational webpage) (last visited Apr. 23, 2021); 17th Cir. Admin. Order 2017-35-Civ, *available at* http://www.17th.flcourts.org/wp-content/uploads/2017/09/2017-35-civ.pdf (last visited Apr. 23, 2021).

[189]Art. 5, § 16, Fla. Const.

[190]§§ 28.13, .211 Fla. Stat. (2020).

[191]Fla. R. Gen. Prac. & Jud. Admin. 2.245(a).

[192]Additionally, "[t]he chief judge of each circuit, after consultation with the clerk of court, shall determine the priority of services provided by the clerk of court to the trial court. The clerk of court shall manage the performance of such services in a method or manner that is consistent with statute, rule, or administrative order." § 43.26(6), Fla. Stat. (2020). The failure of "any . . . clerk . . . to comply with an order or directive of the chief judge under . . . section [43.26] shall constitute neglect of duty for which such officer may be suspended from office as provided by law." § 43.26(4); *see also* Fla. R. Gen. Prac. Jud. Admin. 2.215(h) (similar). Interestingly, however, the clerk may discontinue providing or "substantially modify" a court-related function under two alternative conditions: if the chief judge consents or, unilaterally, if the clerk provides written notice of the intent to discontinue or substantially modify a function at least one year before doing so. § 28.44(1).

[193]§ 43.26(1), Fla. Stat. (2020).

[194]Fla. R. Gen. Prac. & Jud. Admin. 2.215(b)(2); *see also* Art. 5, § 2(d), Fla. Const. ("The chief judge shall be responsible for the administrative supervision of the circuit courts and county courts in his circuit.").

[195]§ 43.26(2)(a); Fla. R. Gen. Prac. Jud. Admin. 2.215(b)(4).

[196]§ 43.26(2)(c).

[197]Fla. R. Gen. Prac. Jud. Admin. 2.215(b)(4).

[198]§ 43.26(2)(e).

[199]§ 43.26(3).

[200]Fla. R. Gen. Prac. & Jud. Admin. 2.215(b)(7).

[201]*See supra* p. 28.

[202]*See* Fla. R. Gen. Prac. Jud. Admin. 2.215(e)(1).

[203]*See* Fla. R. Gen. Prac. Jud. Admin. 2.215(e)(2).

[204]Fla. R. Gen. Prac. & Jud. Admin. 2.545(a).

[205]Fla. R. Gen. Prac. & Jud. Admin. 2.545(b) (emphasis added); *see also* Fla. R. Gen. Prac. Jud. Admin. 2.215(f) ("Every judge has a duty to rule upon and announce an order or judgment on every matter submitted to that judge within a reasonable time.").

[206]Fla. R. Gen. Prac. & Jud. Admin. 2.215(g).

[207]*Id.*

[208]Fla. R. Gen. Prac. & Jud. Admin. 2.545(c)(1).

[209]*Id*.

[210]Fla. R. Gen. Prac. & Jud. Admin. 2.545(c)(2).

[211]Fla. R. Gen. Prac. Jud. Admin. 2.215(g).

[212]Fla. R. Gen. Prac. & Jud. Admin. 2.215(f).

[213]*See infra* p. 58 (proposing an amended rule 2.515(f) with greater procedural specificity).

[214]Fla. R. Gen. Prac. & Jud. Admin. 2.545(e) (emphasis added).

[215]*Id.*

[216]§ 43.26(5).

[217]As already noted, attorneys, along with judges, "have a professional responsibility to conclude litigation as soon as it is reasonably and justly possible to do so." Fla. R. Gen. Prac. & Jud. Admin. 2.545(a).

[218]*Available at* https://www.floridabar.org/prof/regulating-professionalism/oath-of-admission/ (last visited June 9, 2021)

[219]When an attorney signs a document to be filed, the signature "constitute[s] a certificate by the attorney that . . . the document is not interposed for delay." Fla. R. Gen. Prac. Jud. Admin. 2.515(a)(3).

[220]No court rule specifies that section 51.011 is to be used for a given case category; only statutes so provide. Case categories to which section 51.011 applies include the

following: proceedings under chapter 82, "Forcible Entry and Unlawful Detainer," § 82.03(4), Fla. Stat. (2020); removal of a tenant in a nonresidential tenancy, § 83.21, Fla. Stat. (2020); a right of action for possession in a residential tenancy, § 83.59(2); evictions from mobile home parks, § 723.061(3), Fla. Stat. (2020); certain contractor's liens, § 85.011(5)(a), Fla. Stat. (2020); certain actions when a person is subject to a local government's development order, § 163.3215(3), (8)(a), (b), Fla. Stat. (2020); an action in which a person is subject to an notice to surrender a vehicle or vessel, § 20.1316(4), Fla. Stat. (2020); disciplinary proceedings by the agencies responsible for regulating numerous professions, *e.g.*, § 456.072(1)(z), Fla. Stat. (2020); certain proceedings related to unclaimed property, § 717.1301(3), Fla. Stat. (2020); certain proceedings related to condominium associations, §§ 718.116(8)(e), .302(6), Fla. Stat. (2020); cooperatives, §§ 719.108(6)(e), .302(6), Fla. Stat. (2020); homeowners' associations, § 720.30851(5), Fla. Stat. (2020); and timesharing plans, § 721.15(7)(b)2., Fla. Stat. (2020).

[221]Fla. Sm. Cl. R. 7.010(b).

[222]§ 51.011(1), Fla. Stat. (2020).

[223]§ 51.011(2).

[224]§ 51.011(3).

[225]§ 51.011(4).

[226]*See infra* p. 75 (Fla. R. Civ. P. 1.200(b)(1) (draft rule)).

[227]*State v. Fla. Consumer Action Network*, 830 So. 2d 148, 150, 151 n.1 (Fla. 1st DCA 2002).

[228]§ 45.075(1)–(12).

[229]§ 45.075(14).

[230]In 2002, the Jury Innovations Committee of the JMC recommended to the supreme court as follows with respect to this statute:

> When used properly, expedited trials can be a useful tool to save jurors' time. A newly enacted but underutilized provision, section 45.075, Florida Statutes, establishes the procedures for expedited civil trials, that is, trials which must be limited to one day, but may involve a jury. In order to encourage the use of expedited jury trials, attorneys should be required by court rule to notify their clients in writing of the applicability of the expedited trial procedure. In addition, the attorney should be required to file a statement with the court that this notice has been provided to the client.

*The Recommendations*, 29 Fla. Bar News 10 (Mar. 1, 2002). In response, in an unsigned and undated filing on file with the Florida Supreme Court, the Florida Civil Procedure Rules Committee appears to have recommended no changes to the rules in conjunction with section 45.075:

> The Committee agreed that whether an expedited trial would be appropriate in a case would depend on a multitude of factors, including the facts of the case, the issues involved, the number of witnesses, the extent of the damage, the number of documents involved, the complexity of the case, and a myriad of other factors which are case specific. In general, *if a case could be submitted for a one-day expedited trial, it would often be disposed of by summary judgment or resolved during mediation*. *It would appear that few, if any, cases would lend themselves to a one-day expedited trial where each party has no more than three hours to present its case*, including the opening, all testimony and evidence, and the closing.[230]

*Response by the Florida Civil Procedure Rules Committee to the Final Report of the Judicial Management Council's Jury Innovations Committee*, 3–4 (emphasis added), *available at* https://www.floridasupremecourt.org/content/download/327128/file/05-1091_Report_CivProcRulesComm.pdf (last visited Apr. 23, 2021); *see also* Trawick, Henry, Jr., *Trawick's Florida Practice and Procedure*, 2020–21 ed., § 22:24 n.1 (Thomson Reuters 2020) (criticizing the statute as an "exercise in futility"). On the other hand, the Fort Lauderdale chapter of the American Board of Trial Advocates recommends use of the statute as one means of clearing up the Covid-19 backlog. https://www.abotaftl.org/post/expedited-jury-and-non-jury-trials-and-covid-19 (last visited Apr. 23, 2021).

[231]*See infra* p. 75 (Fla. R. Civ. P. 1.200(b)(2) (draft rule)).

[232]Fla. R. Gen. Prac. & Jud. Admin. 2.250(a).

[233]*Id.* (emphasis added).

[234]Fla. R. Gen. Prac. & Jud. Admin. 2.250(a)(1)(B).

[235]*See infra* p. 123.

[236]Fla. R. Gen. Prac. Jud. Admin. 2.250(a)(1)(B) (draft rule). *Cf.* Fla. R. Civ. P. 1.070(j) (providing for court action when service on a defendant is not made within 120 days after the filing of the initial pleading). The Workgroup does not recommend any change to how the time is counted for small claims cases, as the small claims rules include clearly defined timeframes based on the filing of the action. *See, e.g.*, Fla. Sm. Cl. R. 7.090(b).

[237]*See* Fla. R. Civ. P. 1.201.

[238]Fla. R. Gen. Prac. Jud. Admin. 2.250(a)(1)(B) (draft rule).

[239]*See infra* pp. 37 & 39.

[240]*See supra* nn. 15 *et seq.*

[241]*See supra* nn. 20 *et seq.*

[242]*See supra* n. 25.

[243]*See supra* nn. 48 *et seq.*

[244]Fla. R. Gen. Prac. Jud. Admin. 2.250(a); *see supra* nn. 232 *et seq.*

[245]Fla. R. Gen. Prac. Jud. Admin. 2.545(b); *see supra* nn. 204 *et seq.*

[246]*See infra* p. 37.

[247]*Cf.* Fla. R. Civ. P. 1.201(a), (a)(3) (delineating two ways in which a case can be declared complex: court or party motion and party stipulation).

[248]*See supra* nn. 69 *et seq.*

[249]*See supra* nn. 89 *et seq*.

[250]*See supra* nn. 99 *et seq.* & 102 *et seq.*

[251]*See supra* nn. 111 *et seq.*

[252]*See infra* p. 75.

[253]*See supra* p. 33.

[254]*See supra* p. 34.

[255]*E.g.*, § 119.11(1), Fla. Stat. (2020) (requiring that "priority" be given to actions to enforce the provisions on chapter 119, concerning public records); § 658.81, Fla. Stat. (2020) (proceedings involving the appointment of a receiver in bank liquidation cases to be "expedited").

[256]Fla. R. Civ. P. 1.200(b)(1), (2), (3), (13), (14) (draft rule).

[257]Fla. R. Civ. P. 1.200(b)(4)–(12) (draft rule).

[258]*E.g.*, S.D. Fla. Gen. R. 16.1(b)(1), (5) (exempting categories listed in Federal Rule of Civil Procedure 26(a)(1)(B) from early case management procedure).

[259]Fla. R. Civ. P. 1.200(d)(2) (draft rule).

[260]Fla. R. Civ. P. 1.200(d)(1)(C) (draft rule). The language is taken from current rule 1.201(a).

[261]Fla. R. Civ. P. 1.200(d)(1)(A) (draft rule).

[262]Fla. R. Civ. P. 1.200(d)(1)(B) (draft rule).

[263]Fla. R. Civ. P. 1.200(e)(2) (draft rule).

[264]This portion of the rule is based, in part, on Federal Rules of Civil Procedure 16(b) and 26(f).

[265]Fla. R. Civ. P. 1.200(e)(3)(A) (draft rule).

[266]Fla. R. Civ. P. 1.200(e)(3)(B)(i), (iii) (draft rule).

[267]Proposed rule 1.200(e)(3)(D)(i)10., requiring the listing in the proposed case management order of a deadline for amending affirmative defenses to reflect the addition of any *Fabre* defendants, is to be read in conjunction with an amendment to rule 1.190, *infra* p. 74, that specifies the deadline for filing a motion to amend seeking to plead the fault of a party or nonparty.

[268]Fla. R. Civ. P. 1.200(e)(3)(E) (draft rule).

[269]Fla. R. Civ. P. 1.200(e)(3)(F) (draft rule).

[270]Fla. R. Civ. P. 1.200(f)(1) (draft rule).

[271]*Id.*; *see also infra* pp. 62 (discussion of continuances) & 119 (text of proposed rule 1.460).

[272]Fla. R. Civ. P. 1.200(f)(2) (draft rule).

[273]*Id.*

[274]Fla. R. Civ. P. 1.200(f)(3) (draft rule).

[275]Fla. R. Civ. P. 1.200(f)(4) (draft rule). Proposed rule 2.251(d) provides that deadlines defined in a case management order are tolled when a case is placed on inactive status. *See infra* pp. 41 (discussion of proposed rule 2.251) & 125 (text of proposed rule).

[276]Fla. R. Civ. P. 1.200(f)(5) (draft rule).

[277]Fla. R. Civ. P. 1.200(h)(1) (draft rule). The parties may also stipulate to convert any scheduled hearing to a case management conference. Fla. R. Civ. P. 1.200(h)(7) (draft rule).

[278]Fla. R. Civ. P. 1.200(h)(2) (draft rule).

[279]Fla. R. Civ. P. 1.200(h)(3) (draft rule).

[280]Fla. R. Civ. P. 1.200(h)(5) (draft rule).

[281]Fla. R. Civ. P. 1.200(h)(6) (draft rule).

[282]Fla. R. Civ. P. 1.200(h)(8) (draft rule).

[283]Fla. R. Civ. P. 1.200(h)(9) (draft rule).

[284]Fla. R. Civ. P. 1.200(b)(2).

[285]The catch-all provision of the proposed rule, subdivision (i)(8), allows the court and parties to address any matter addressable at a case management conference; as such, amending the pleadings, *see* Fla. R. Civ. P. 1.200(h)(4)(B) (draft rule), is a permissible topic of discussion at a pretrial conference. Nevertheless, the deletion of this topic from the pretrial conference subdivision deemphasizes it.

[286]Fla. R. Civ. P. 1.200(b)(4).

[287]Fla. R. Civ. P. 1.200(i)(4) (draft rule).

[288]*See infra* p. 108.

[289]*See infra* p. 85.

[290]*See* rule 1.200(c), (d) (draft rule).

[291]Fla. R. Civ. P. 1.201(b)(3) (draft rule) (changing "will" to "shall" in the first sentence).

[292]*See infra* p. 118.

[293]Although current rule 1.440(d) provides that rule 1.440 does not apply to complex actions proceeding under rule 1.201, the Workgroup's proposed amendments to rule 1.440 take into account both rule 1.200 and 1.201.

[294]Fla. R. Civ. P. 1.440(a) (defining when a case is "at issue").

[295]Fla. R. Civ. P. 1.440(c)(2) (draft rule).

[296]*See* Fla. R. Civ. P. 1.200(b) (draft rule) (listing case categories exempted from rule 1.200).

[297]Fla. R. Civ. P. 1.440(c)(3) (draft rule).

[298]Fla. R. Civ. P. 1.440(c)(4) (draft rule).

[299]Fla. R. Civ. P. 1.440(c)(5) (draft rule).

[300]*See supra* p. 37.

[301]*See infra* p. 122.

[302]*Cf.* Fla. Admin. Order No. AOSC14-20 (Mar. 26, 2014) (defining case events and case statuses, including "active" and "inactive"), *available at* https://www.floridasupremecourt.org/content/download/645067/file/AOSC14-20.pdf (last visited May 18, 2021).

[303]*See infra* p. 125. The Workgroup recommends that the rule be numbered 2.251, for placement immediately after rule 2.250, governing time standards.

[304]Fla. R. Gen. Prac. Jud. Admin. 2.251(a) (draft rule).

[305]Fla. R. Gen. Prac. Jud. Admin. 2.251(b) (draft rule).

[306]Fla. R. Gen. Prac. Jud. Admin. 2.251(a) (draft rule).

[307]Fla. R. Gen. Prac. Jud. Admin. 2.251(b) (draft rule).

[308]Fla. R. Gen. Prac. Jud. Admin. 2.251(a)–(c) (draft rule).

[309]Fla. R. Gen. Prac. Jud. Admin. 2.251(d) (draft rule).

[310]*See infra* p. 88. The Workgroup recommends that the rule be numbered 1.271, for placement immediately after rule 1.270, governing consolidation.

[311]Fla. R. Civ. P. 1.010. *Cf. also* H.R. Rep. 90-1130, at 1899–1900 (Feb. 28, 1968) (in creating the multidistrict litigation process for the federal judiciary, stating that "the possibility for conflict and duplication in discovery and other pretrial procedures in related cases can be avoided or minimized by . . . centralized management").

[312]*See, e.g.*, *Engle v. Liggett Group, Inc.*, 945 So. 2d 1246 (Fla. 2006), and its progeny.

[313]*See, e.g.*, Bill Smith, *Defective drywall lawsuit reaches settlement, a decade after Chinese product forced many from their homes*, News-Press (Feb. 11, 2020), *available at* https://www.news-press.com/story/news/local/2020/02/11/chinese-drywall-settlement-unlikely-make-all-florida-victims-happy/4557473002/ (last visited June 7, 2021).

[314]*Available at* https://www.txcourts.gov/media/1437060/rules-of-judicial-administration-updated-with-amendments-effective-march-22-2016.pdf 21 (last visited June 7, 2021).

[315]Unlike the federal system, *see* 28 U.S.C. §§ 1407 (2018) *et seq.*, and some states, including Texas, there is no provision in the Florida Constitution or statutes for multidistrict, i.e., multi-circuit, litigation—coordination of similar lawsuits across multiple counties or circuits. As such, the Workgroup's proposal is limited to coordination of similar cases within a given court. Though not mentioned explicitly in the rule, it is assumed that litigants and courts will observe Florida's statutory venue requirements. *See* §§ 47.011, Fla. Stat. (2020), *et seq.*

[316]For further information on bellwether cases and trials, see Melissa J. Whitney, *Bellwether Trials in MDL Proceedings*, Federal Judicial Center and Judicial Panel on Multidistrict Litigation (2019), *available at* https://www.fjc.gov/sites/default/files/materials/19/Bellwether%20Trials%20in%20MDL%20Proceedings.pdf (last visited June 7, 2021).

[317]Fla. R. Civ. P. 1.271(b)(2) (draft rule) (defining "pretrial coordination court"), (d)(1) (identifying the qualifications for a judge presiding over a PCC).

[318]Fla. R. Civ. P. 1.271(c)(1)(A)–(C) (draft rule).

[319]Fla. R. Civ. P. 1.271(c)(2) (draft rule).

[320]Fla. R. Civ. P. 1.271(c)(3) (draft rule). *See also* Fla. R. Civ. P. 1.271(c)(4)–(6) (draft rule) (governing length and service of pleadings and notice of submission and hearing).

[321]Fla. R. Civ. P. 1.271(c)(7), (8) (draft rule).

[322]Fla. R. Civ. P. 1.271(c)(10)(A) (draft rule).

[323]Fla. R. Civ. P. 1.271(c)(10)(B) (draft rule).

[324]Fla. R. Civ. P. 1.271(c)(11) (draft rule).

[325]Fla. R. Civ. P. 1.271(c)(12) (draft rule).

[326]Fla. R. Civ. P. 1.271(d)(1) (draft rule).

[327]Fla. R. Civ. P. 1.271(d)(2)(A) (draft rule).

[328]*Id.*

[329]*See* Fla. R. Civ. P. 1.271(e)(2) (draft rule).

[330]Fla. R. Civ. P. 1.271(d)(4) (draft rule).

[331]*See* Fla. R. Civ. P. 1.271(e)(1), (3) (draft rule).

[332]Fla. R. Civ. P. 1.271(e)(1)(A)–(C) (draft rule).

[333]Fla. R. Civ. P. 1.271(e)(2) (draft rule); *see also* Fla. R. Civ. P. 1.271(d)(2)(B) (draft rule) (requiring that post-resolution events such as motion for attorney's fees and proceedings supplementary take place in the trial court).

[334]Fla. R. Civ. P. 1.271(e)(3) (draft rule).

[335]*E.g.*, Fla. R. Civ. P. 1.200(c) (sanctions for failure to attend a case management or pretrial conference); 1.201(c)(2) (reference to sanctions under rule 1.380 for failure to comply with a discovery schedule set in a complex case); 1.201(c)(4) (sanctions for failure to notify the court that a case management conference or hearing time is unnecessary); 1.420(b) (dismissal for failure to comply with the civil rules or a court order); 1.420(d) (costs associated with a dismissed action); 1.442(g) (procedure for sanctions associated with proposals for settlement); 1.650(c)(1) (dismissal for failure to comply with medical malpractice presuit screen rule); 1.720(f) (sanctions for failure to appear at a mediation conference); 1.730(c) (sanctions for breach of mediation agreement); Form 1.997 Instructions (sanctions for failure to file a civil cover sheet when required).

[336]*See infra* p. 93. Although the civil rules are not divided into parts, the sanctions rule is proposed to be numbered as 1.275 so that it is placed at the end of the general civil rules and before the specific rules on discovery, etc., begin.

[337]Fla. R. Civ. P. 1.275(a) (draft rule).

[338]*Id.*

[339]Fla. R. Civ. P. 1.275(b) (draft rule).

[340]Fla. R. Civ. P. 1.275(c) (draft rule).

[341]Fla. R. Civ. P. 1.275(b)(6) (draft rule).

[342]Fla. R. Civ. P. 1.275(d) (draft rule).

[343]Fla. R. Civ. P. 1.275(e) (draft rule).

[344]629 So. 2d 817 (Fla. 1993).

[345]*Id.* at 818.

[346]*Compare Fed. Nat'l Mortg. Ass'n v. Linner*, 193 So. 3d 1010, 1012–13 (Fla. 2d DCA 2016) (noting that the court "has consistently applied the *Kozel* factors to dismissals with prejudice of their functional equivalent" and that "[t]he factors set forth in Kozel apply to dismissals with prejudice because such dismissals dispose of a case and may run the risk of punishing the litigant too harshly for counsel's conduct"); *SRMOF II 2012-1 Trust v. Garcia*, 209 So. 3d 681 (Fla. 5th DCA 2017) (announcing alignment with the Second District), *with BAC Home Loans Servicing, L.P. v. Ellison*, 141 So. 3d 1290, 1291 (Fla. 1st DCA 2014) (reversing a dismissal without prejudice for the trial court's failure to apply the *Kozel* factors); *Fed. Nat'l Mortg. Ass'n v. Wild,* 164 So. 3d 94, 95 (Fla. 3d DCA 2015) (same).

[347]Fla. R. Civ. P. 1.275(f) (draft rule).

[348]*E.g.*, *Ham v. Dunmire*, 891 So. 2d 492, 495 (Fla. 2004) ("The dismissal of an action based on the violation of a discovery order will constitute an abuse of discretion where the trial court fails to make express written findings of fact supporting the conclusion that the failure to obey the court order demonstrated willful or deliberate disregard."); *Rice v. Raymond*, 17 So. 3d 1284, 1285 (Fla. 4th DCA 2009) ("We reverse the default final judgment as it was entered without first affording appellant notice of the court's intent to enter a default and under circumstances where the appellant's failure to attend the docket call could not be characterized as willful . . . .").

[349]Fla. R. Civ. P. 1.275(f) (draft rule).

[350]*Chappelle v. S. Fla. Guardianship Program, Inc.*, 169 So. 3d 291, 294–95 (Fla. 4th DCA 2015) (reversing for the trial court's failure to consider *Kozel* prior to entry of a default and make findings as to each factor, even though the court had found that the appellants and their attorney had failed to respond to discovery and to appear at mediation and a calendar call).

[351]*E.g.*, *Shelswell v. Bourdeau*, 239 So. 3d 707, 708–09 (Fla. 4th DCA 2018); *Bank of Am., N.A. v. Ribaudo*, 199 So. 3d 407, 408–09 (Fla. 4th DCA 2016) ("Ordinarily, a trial court's failure to address the *Kozel* factors would constitute reversible error, provided that the error has been preserved. . . . Here, it is clear that the trial court never considered the *Kozel* factors on the record or in its final order. . . . As such, despite the trial court's clear errors, we are unable to address them on appeal."); *Gozzo Dev., Inc. v. Prof'l Roofing Contractors, Inc.*, 211 So. 3d 145, 146 (Fla. 4th DCA 2017) (Lee, J., concurring).

[352]Fla. R. Civ. P. 1.275(f) (draft rule).

[353]Fla. R. Civ. P. 1.275(g).

[354]Fla. R. Civ. P. 1.275(h).

[355]Fla. R. Civ. P. 1.275(i).

[356]*Compare* Gordon W. Netzorg & Tobin D. Kern, *Proportional Discovery: Making It the Norm, Rather Than the Exception*, 87 Denv. U.L. Rev. 513, 513 (2010) (asserting that "[o]ur discovery system is broken. It is broken because the standard of 'broad and liberal discovery,' the hallowed principle that has governed discovery in the U.S. for over seventy years, has become an invitation to abuse. Only the most well-heeled litigants can afford to bring or defend a case that is likely to generate significant discovery, as most cases in this electronic age do. Until the default is reversed from 'all you can eat' discovery to proportional discovery geared to the needs of the case, as the rules already contemplate, the courthouse doors will remain closed to legitimate cases that the average citizen cannot afford to bring or defend."), *with* Linda S. Mullinex, *Symposium on Civil Justice Reform: Discovery in Disarray: The Pervasive Myth of Pervasive Discovery Abuse and the Consequences for Unfounded Rulemaking*, 46 Stan. L. Rev. 1393, 1396 (1994) (asserting that "reform of federal civil discovery may not have been necessary at all: There is no strong evidence documenting the alleged massive discovery abuse in the federal courts. The rulemakers never established the

existence of discovery abuse before embarking on their crusade to revamp discovery. Indeed, existing empirical studies challenged the received notion of pervasive discovery abuse.").

[357]*See generally, e.g.*, Bryant G. Garth, *Two Worlds of Civil Discovery: From Studies of Cost and Delay to the Markets in Legal Services and Legal Reform*, 39 B.C.L. Rev. 597 (1998); Lonny Hoffman, *Examining the Empirical Case for Discovery Reform in Texas*, 58 S. Tex. L. Rev. 209 (2016).

[358]*See infra* p. 47

[359]*See infra* p. 53.

[360]*See infra* p. 55.

[361]*Supra* n. 3.

[362]*Cf.* John S. Beckerman, *Confronting Civil Discovery's Fatal Flaws*, 84 Minn. L. Rev. 505, 551–52 (2000) ("The belief [is] almost universal [among members of the academic community, the bench and the bar] that the cost of discovery disputes could be reduced by greater judicial involvement and that the earlier in the process that judges became involved, the better.").

[363]*See, e.g.*, Earl C. Dudley, Jr., *Discovery Abuse Revisited: Some Specific Proposals to Amend the Federal Rules of Civil Procedure*, 26 U.S.F.L. Rev. 189, 204 (1992) (emphasizing a study demonstrating that "tight time limits, strictly enforced, were the most important factor in reducing the delay directly attributable to discovery and the average amount of time from filing to termination").

[364]*See* Jordan M. Singer, *Proportionality's Cultural Foundation*, 52 Santa Clara L. Rev. 145, 149 (2012) ("Disproportionate discovery is caused . . . by a breakdown of the core values and cultural norms that typically animate civil litigation in the United States. Faith in core values such as access to justice, adjudication on the merits, efficiency, and predictability ordinarily motivates lawyers to tailor the scope and volume of their discovery requests appropriately without judicial intervention. It is when these values are not strongly held that [excessive and abusive] discovery emerge[s].").

[365]Fed. R. Civ. P. 26(b)(1) (1993) (emphasis added).

[366]Fed. R. Civ. P. 26(b)(1) (2015).

[367]Christine L. Childers, *Keep on Pleading: The Co-Existence of Notice Pleading and the New Scope of Discovery Standard of Federal Rule of Civil Procedure 26(b)(1)*, 36 Val. U.L. Rev. 677, 696–97 (2002) (citing to the advisory committee's notes to the 2000 amendments to the rule).

[368]Brittany K.T. Kauffman, *Initial Disclosures: The Past, Present, and Future of Discovery*, 51 Akron L. Rev. 783, 802–03 (2017).

[369]Fla. R. Civ. P. 1.280(b)(1) (emphasis added).

[370]Fed. R. Civ. P. 26(f)(3)(B); *see also* Fed. R. Civ. P. 16(b)(3)(A) (directing that the court's scheduling order limit the time to complete discovery).

[371]*E.g.*, Ala. R. Expedited Civ. Actions D (120 days after last timely answer); Colo. R. Civ. P. 16(b)(11) (49 days before trial date); Iowa Code Ann. R. 1.281(2)a. (60 days before trial (expedited actions)); Me. R. Civ. P. 16C(d)(6) (six months after scheduling order issues (expedited actions)); Minn. Spec. R. Pilot Expedited Litig. Track. 4(a) (90 days after case management conference); Mont. Unif. Dist. Ct. R. 6(c)(5) (four months after scheduling order issues (simplified track)); Tex. R. Civ. P. 190.2(b)(1) (180 days after initial-disclosure due date (expedited actions)); Vt. R. Civ. P. 80.11(e)(1), (3)(B) (180 after filing of last answer; 14 additional days for expert disclosure (expedited actions)).

[372]Ariz. R. Civ. P. 26.2(f).

[373]Utah R. Civ. P. 26(c)(5).

[374]S.D. Fla. Gen. R. 16.1(b)(2)(C)(iii), (3)(B).

[375]As noted previously, *see supra* nn. 89 *et seq.*, the federal RAND study found that early judicial intervention combined with a shortened discovery period reduced both time to disposition and lawyer work hours. Another early study, entailing a docket analysis of 3000 cases in six larger federal district courts in 1973–75, found that a predefined discovery cutoff, when enforced by the trial judge, tended to shorten disposition time without reducing quantity or quality of discovery. Paul R. Connolly et al., *Judicial Controls & the Civil Litigative Process: Discovery* (Fed. Judicial Ctr. 1978) *available at* https://www.fjc.gov/sites/default/files/2012/JCCLPDis.pdf (last visited Apr. 26, 2021). On the other side, later attorney-survey data collected by the Federal Judicial Center failed to show the correlation found by RAND. Richard L. Marcus, *Retooling American Discovery for the Twenty-First Century: Toward A New World Order?*, 7 Tul. J. Int'l & Comp. L. 153, 179 (1999).

[376]*See infra* p. 75 (Fla. R. Civ. P. 1.200(e)(3)(A)(v) (draft rule)).

[377]*See generally*, Netzorg & Kern, *supra* n. 356. The *Call to Action* report essentially assumes proportionality in discovery in all three tiers of cases. NCSC, *Call to Action*, *supra* n. 4, at 21–26. *Cf.* John Roberts, *2015 Year-End Report on the Federal Judiciary* 6 (Dec. 31, 2015), *available at* https://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf (last visited Apr. 26, 2021) ("Rule 26(b)(1) [as amended in 2015] crystalizes the concept of reasonable limits on discovery through increased reliance on the common-sense concept of proportionality.")

[378]Wyo. R. Civ. P. Cir. Ct. 1 comment.

[379]Fed. R. Civ. P. 26(b)(1).

[380]*N. Shore-Long Island Jewish Health Sys., Inc. v. MultiPlan, Inc.*, 325 F.R.D. 36, 47–48 (E.D.N.Y. 2018) (citation, internal quotation marks, and emendations omitted); *see also EM Ltd. v. Republic of Arg.*, 695 F.3d 201, 207 (2d Cir. 2012) (in a pre-2015 case, noting that "as in all matters relating to discovery, the district court has broad discretion to limit discovery in a prudential and proportionate way"); Jonah B. Gelbach & Bruce H. Kobayashi, *The Law and Economics of Proportionality in Discovery*, 50 Ga. L. Rev. 1093, 1097 (2016) ("[T]he 2015 Amendments move the language containing the

proportionality standard from Rule 26(b)(2)(C)(iii) (limits on discovery) to a more prominent place in Rule 26(b)(1). . . . In moving the proportionality standard back to its original home in Rule 26(b)(1), the 2015 Amendments continue the Advisory Committee's focus on amendment by reorganization."); Adam N. Steinman, *The End of an Era? Federal Civil Procedure After the 2015 Amendments*, 66 Emory L.J. 1, 31 (2016) (summarizing Advisory Committee comments to the effect that the proportionality factors have been "slightly rearranged"—i.e., repositioned in the federal rule—over the years).

[381]It may be noted, however, that the comment to rule 1.280 calls the factors in subdivision (d)(2) "proportionality and reasonableness factors." A number of other states have incorporated proportionality language into their civil discovery rules, usually some variant of the wording of the federal rule. *E.g.*, Ala. R. Civ. P. 26(b)(1); Colo. R. Civ. P. 26(b)(1); Utah R. Civ. P. 26(b)(2). Arizona has incorporated the language of the federal rule into its discovery rule but also explicitly ties proportionality to the state's DCM protocol. Ariz. R. Civ. P. 16(a)(3), 26(b)(1).

[382]*See, e.g.*, *Worley v. Cent. Fla. Young Men's Christian Ass'n, Inc.*, 228 So. 3d 18, 26 (Fla. 2017) (holding that defendant's request for production entailing 200 hours and over $90,000 in costs to discover the collateral issue of bias when the damages sought amounted to only $66,000 was "unduly burdensome.").

[383]For example, in the Colorado CAPP initiative, described earlier, Gerety & Cornett, *supra* n. 108, discovery was limited to matters that would "enable a party to prove or disprove a claim or defense or to impeach a witness" and was subject to "proportionality considerations." Only one expert witness per side per issue was permitted, and no expert depositions, only written reports, were permitted. A large majority of attorneys who conducted discovery reported that actual discovery turned out to be less than authorized by the initial case management order. A large majority also believed that discovery authorized by the case management order was proportional to the given case. *Id.* at 5, 32.

[384]Fla. R. Civ. P. 1.280(a) ("Unless the court orders otherwise and under subdivision (c) of this rule , the frequency of use of these methods is not limited, except as provided in rules 1.200, 1.340, and 1.370.").

[385]Fla. R. Civ. P. 1.340(a) ("The interrogatories must not exceed 30, including all subparts, unless the court permits a larger number on motion and notice and for good cause.").

[386]Fla. R. Civ. P. 1.370(a) ("The request for admission shall not exceed 30 requests, including all subparts, unless the court permits a larger number on motion and notice and for good cause, or the parties propounding and responding to the requests stipulate to a larger number.").

[387]Fed. R. Civ. P. 33(a)(1), 30(a)(2)(A)(i), (d)(1).

[388]*E.g.*, Ala. R. Expedited Civ. Actions D; Ariz. R. Civ. P. 26.2(f)–(h); Colo. R. Civ. P. 16.1(k)(4); Colo. R. Civ. P. 26(b)(2), (4)(A), 16(b)(11); Haw. R. Civ. P. 16.1(c)(1); Ill. Sup. Ct. R. 222(f); Ind. Commercial Ct. R. 6(D); Iowa Code Ann. R. 1.281(2)c.-e.; Ky. R.

Civ. P. 93.01, .02 (economical litigation); Me. R. Civ. P. 16C(d)(4), (5); Minn. Spec. R. Pilot Expedited Litig. Track. 4(b), (c); Mont. Unif. Dist. Ct. R. 6(c)(5); Tex. R. Civ. P. 190.2(b)(3)–(5); Utah. R. Civ. P. 26(c)(5); Vt. R. Civ. P. 80.11(e)(4), (5) (expedited actions); Wyo. R. Civ. P. Cir. Ct. 8. These citations are a compilation of rules in only those states with some form of DCM.

[389]*Supra* nn. 99 *et seq.*

[390]*See infra* p. 95.

[391]*Available at* https://www.floridabar.org/prof/regulating-professionalism/oath-of-admission/ (last visited June 9, 2021).

[392]*Available at* https://www.floridabar.org/prof/presources/creed-of-professionalism/ (last visited June 9, 2021).

[393]*Available at* https://www.floridabar.org/prof/regulating-professionalism/professionalism-expectations-2/. This resource was formerly known as "The Florida Bar Ideals and Goals of Professionalism." *See, e.g.*, *In re Amendments to Code for Resolving Professionalism Complaints*, 174 So. 3d 995, 995 (Fla. 2015).

[394]Florida Conference of Circuit Judges et al., *Florida Handbook of Discovery Practice* (17th ed. 2019), *available at* https://www.floridatls.org/wp-content/uploads/2019/04/ADA-2019-Florida-Handbook-on-Civil-Discovery-Practice.pdf (last visited June 9, 2021).

[395]Angela R. Lang, *Mandatory Disclosure Can Improve the Discovery System*, 70 Ind. L.J. 657, 667 (1995).

[396]*E.g.*, Fed. R. Civ. P. 26(a)(1) (1993).

[397]Kauffman, *supra* n. 368, at 788 (citations and internal quotation marks omitted).

[398]Amelia F. Burrows, *Mythed It Again: The Myth of Discovery Abuse and Federal Rule of Civil Procedure 26(b)(1)*, 33 McGeorge L. Rev. 75, 84 (2001).

[399]*Id.* at 84, 90−91.

[400]Fed. R. Civ. P. 26(a)(1) (2000).

[401]Fed. R. Civ. P. 26(a)(1) (2015).

[402]Fed. R. Civ. P. 26(a)(1)(A).

[403]*See* Alaska R. Civ. P. 26(a)(1); Ariz. R. Civ. P. 26.1(a); Cal. Civ. Proc. Code § 2016.090(a); Colo. R. Civ. P. 26(a)(1); Haw. R. Civ. P. 26(a)(1); Ill. Sup. Ct. R. 222(d) (cases entailing damages up to $50,000); Ind. Commercial Ct. R. 6(B); Iowa R. Civ. P. 1.500(1); Ky. R. Civ. P. 93.04 (economical litigation docket); Me. R. Civ. P. 16C(d)(1), (2) (expedited actions); Mass. R. Dist. Ct. Order 1-04.III.D. (district courts, only when a case management order directing early disclosure issues); Mich. Ct. R. 2.302(A); Minn. R. Civ. P. 26.01(a) (general civil); Minn. Spec. R. Pilot Expedited Litig. Track. 2; Mont. Unif. Dist. Ct. R. 6(c)(2) (simplified track, used in jury cases only); Nev. R. Civ. P. 16.1(a)(1) (district courts); Nev. Just. Ct. R. Civ. P. 16.1(a); N.H. Super. Ct. Civ. R. 22; N.J. Ct R. 4:103-1 (complex actions); Ohio Civ. R. 26(B)(3); Okla. Stat. Ann. tit. 12; §

3226.A.2.; Or. Unif. Tr. Ct. R. 5.150(3)(a) (streamlined actions); Tex. R. Civ. P. 194.2; Utah R. Civ. P. 26(a)(1)–(3); Vt. R. Civ. P. 80.11(e)(2) (expedited actions); Wyo. R. Civ. P. 26(a)(1) (district courts); Wyo. R. Civ. P. Cir. Ct. 5 (circuit courts).

[404]*E.g.*, Ariz. R. Civ. P. 26(a)(1)(A)–(H).

[405]*E.g.*, Ariz. R. Civ. P. 26.3(a)(1), (2) (medical malpractice); Colo. R. Civ. P. 16.1(k)(1)(B)(i), (ii) (personal-injury and employment actions prosecuted under simplified procedure); Iowa R. Civ. P. 1.500(1)b., c. (claims for personal or emotional injury and for lost time or earning capacity); Me. R. Civ. P. 16C(d)(1)(B), (2) (expedited actions involving bodily injury or emotional distress); Mass. R. Dist. Ct. Order 1-04.III.D.1., 2. (tort and contract cases in district court); Mich. Ct. R. 2.302(A)(2), (3) (first-party claims for benefits; personal injury); Nev. R. Civ. P. 16.1(a)(1)(A)(iii) (personal injury); Okla. Stat. Ann. tit. 12, § 3226.A.2.a. (physical or mental injury); Tex. R. Civ. P. 194.2(b)(10), (11) (physical or mental injury); Utah R. Civ. P. 26.2 (personal injury); Utah R. Civ. P. 26.3 (unlawful detainer).

[406]*E.g.*, Colo. R. Civ. P. 26(a)(1); Fed. R. Civ. P. 26(a)(1)(E).

[407]*E.g.*, Colo. R. Civ. P. 26(a)(1)(B) ("a copy . . ., or a description by category"); Fed. R. Civ. P. 26(a)(1)(A)(ii) ("a copy—or a description by category and location").

[408]*E.g.*, Fed. R. Civ. P. 26(a)(1)(C) (14 days after).

[409]*E.g.*, Ind. Commercial Ct. R. 6(B)(3) (21 days before); Mass. R. Dist. Ct. Order 1-04,III.D. (90 days after).

[410]*E.g.*, Ariz. R. Civ. P. 26.1(f)(1) ("30 days after the filing of the first responsive pleading to the complaint . . .").

[411]*E.g.*, Wyo. R. Civ. P. 26(a)(1)(A); Fed. R. Civ. P. 26(a)(1)(A); *but see, e.g.*, Tex. R. Civ. P. 194.2(b) (omitting any language that would permit a stipulation or court order exempting parties from the initial disclosure requirement).

[412]*E.g.*, Alaska R. Civ. P. 26(e)(1) ("A party is under a duty to supplement at appropriate intervals its disclosures . . . if the party learns that in some material respect the information disclosed 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."); Fed. R. Civ. P. 26(e)(1)(A).

[413]Fla. Fam. L.R.P. 12.285 ("Mandatory Disclosure"). Other sets of court rules, less relevant than the family law rules to the general civil context, also have initial disclosure requirements. *See* Fla. R. Crim. P. 3.220(b)–(d); Fla. R. Juv. P. 8.060(a)(2) (juvenile delinquency), 8.245(b) (juvenile dependency).

[414]Fla. Fam. L.R.P. 12.285(a)(1) (listing as exceptions domestic-violence and similar injunctions, adoptions, enforcement, contempt, simplified dissolutions, and uncontested dissolutions when the respondent is served by publication and does not file an answer).

[415]Fla. Fam. L.R.P. 12.285(e).

[416]Fla. Fam. L.R.P. 12.285(d).

[417]Fla. Fam. L.R.P. 12.285(g).

[418]Fed. R. Civ. P. 26(a)(2); Alaska R. Civ. P. 26(a)(2); Ariz. R. Civ. P. 26.1(d); Colo. R. Civ. P. 26(a)(2); Haw. R. Civ. P. 26(a)(2); Ill. Sup. Ct. R. 222(d)(6) (cases with damages of $50,000 or less); Iowa R. Civ. P. 1.500(2); Ky. R. Civ. P. 93.04(1)(d) (economical litigation docket); Me. R. Civ. P. 16C(d)(1)(A)(iv), (C), (2) (expedited actions); Mass. R. Dist. Ct. Order 1-04.III.D.3.; Minn. R. Civ. P. 26.01(b); Minn. Spec. R. Pilot Expedited Litig. Track. 2(a)(5); Mont. Unif. Dist. Ct. R. 6(c)(4) (simplified track, used in jury cases only); Nev. R. Civ. P. 16.1(a)(2) (district courts); Nev. Just. Ct. R. Civ. P. 16.1(a)(2); Ohio Civ. R. 26(B)(7); Tex. R. Civ. P. 194.3, 195.5; Utah R. Civ. P. 26(a)(4); Vt. R. Civ. P. 80.11(e)(3) (expedited actions); Wyo. R. Civ. P. 26(a)(2) (district courts); Wyo. R. Civ. P. Cir. Ct. 9 (circuit courts).

[419]Conn. Practice Book § 13-4(a), (b); D.C. Super. Ct. R. 26(a)(2); Idaho R. Civ. P. 26(b)(4)(A); Kan. Stat. Ann. § 60-226(b)(6); Mass. Super. Ct. R. 30B.

[420]Iowa R. Civ. P. 1.500(2)b., c.; Fed. R. Civ. P. 26(a)(2)(B), (C).

[421]*E.g.*, Fed R. Civ. P. 26(a)(2)(B); *see also* Iowa R. Civ. P. 1.500(2)b. (similar).

[422]*E.g.*, Fed R. Civ. P. 26(a)(2)(C); *see also* Iowa R. Civ. P. 1.500(2)c. (similar).

[423]*Supra* nn. 89 *et seq*.

[424]*See generally* Thomas E. Willging et al., *An Empirical Study of Discovery and Disclosure Practice under the 1993 Federal Rule Amendments*, 39 B.C. L. Rev. 525, 525–32 (1998) (citations omitted).

[425]Am. Coll. of Trial Lawyers Task Force on Discovery & Civil Justice and IAALS, *Final Report on the Joint Project of the American College of Trial Lawyers Task Force on Discovery and Civil Justice and IAALS* (2009), *available at* https://iaals.du.edu/sites/default/files/documents/publications/actl-iaals_final_report_rev_8-4-10.pdf (last visited Apr. 26, 2021).

[426]Am. Coll. of Trial Lawyers Task Force on Discovery & Civil Justice and IAALS, *Reforming Our Civil Justice System: A Report on Progress & Promise* (2015), *available at* https://www.actl.com/docs/default-source/default-document-library/newsroom/actl_iaals_report_on-_progress_and-_promise.pdf (last visited Apr. 26, 2021).

[427]Fed. Judicial Ctr., *Pilot Project Regarding Initial Discovery Protocols for Employment Cases Alleging Adverse Action* (2011), *available at* https://iaals.du.edu/sites/default/files/documents/publications/federal_employment_protocols_pilot_project.pdf (last visited Apr. 26, 2021); Emery G. Lee & Jason A. Cantone, *Report on Pilot Project Regarding Initial Discovery Protocols for Employment Cases Alleging Adverse Action* (Fed. Judicial Ctr. 2015), *available at* https://www.fjc.gov/sites/default/files/2016/Discovery%20Protocols%20Employment.pdf (last visited Apr. 26, 2021).

[428]Gerety & Kauffman, *supra* n. 51.

[429]https://www.fjc.gov/content/321837/mandatory-initial-discovery-pilot-project-overview (informational webpage) (last visited Apr. 26, 2021); Emery J. Lee & Jason A. Cantone, *Report on the Mandatory Initial Discovery Pilot: Results of Closed-Case Attorney Surveys Fall 2017–Spring 2019* (2019), *available at* https://www.fjc.gov/sites/default/files/materials/49/Mandatory%20Initial%20Discovery%20Pilot%20Report.pdf (last visited Apr. 26, 2021).

[430]Corina D. Gerety & Logan Cornett, *Measuring Rule 16.1: Colorado's Simplified Civil Procedure Experiment* (IAALS 2012), *available at* https://iaals.du.edu/sites/default/files/documents/publications/measuring_rule_16-1.pdf (last visited Apr. 26, 2021); *see also* Corina Gerety, *Surveys of the Colorado Bench & Bar on Colorado's Simplified Pretrial Procedure for Civil Actions* (IAALS 2010) (reporting separately on the survey component of the study), *available at* https://iaals.du.edu/sites/default/files/documents/publications/survey_colorado_bench_bar2010.pdf (last visited Apr. 26, 2021).

[431]Paula Hannaford-Agor et al., *Civil Justice Initiative: New Hampshire: Impact of the Proportional Discovery/Automatic Disclosure* (PAD) Pilot Rules (NCSC 2013), *available at* https://www.ncsc.org/__data/assets/pdf_file/0022/26680/12022013-civil-justice-initiative-new-hampshire.pdf (last visited Apr. 26, 2021).

[432]Paula Hannaford-Agor & Cynthia G. Lee, *Civil Justice Initiative: Utah: Impact of the Revisions to Rule 26 on Discovery Practice in the Utah District Courts* (NCSC 2015), *available at* https://www.ncsc.org/__data/assets/pdf_file/0023/26492/utah-rule-26-evaluation-final-report2015.pdf (last visited Apr. 26, 2021).

[433]Kakalik, *supra* n. 91, at xxiv-xxv, 48–51.

[434]Lee & Cantone, *supra* n. 427, at 1.

[435]*Id.*

[436]Kauffman, *supra* n. 368, at 792–93.

[437]Gerety & Cornett, *supra* n. 430, at 32–33.

[438]Hannaford-Agor et al., *supra* n. 431, at 7–9.

[439]Hannaford-Agor & Lee, *supra* n. 432, at iv, 14 *et seq.*

[440]*Id.* at iv.

[441]Gerety & Kauffman, *supra* n. 51, at 8.

[442]Lee & Cantone, *supra* n. 429, at 1.

[443]Kauffman, *supra* n. 368, at 792.

[444]*Id.* at 793 (citation omitted).

[445]Kakalik, *supra* n. 91, at 48.

[446]Kauffman, *supra* n. 368, at 792.

[447]Lee & Cantone, *supra* n. 427, at 1, 4.

[448]Kauffman, *supra* n. 368, at 799.

[449]Lee & Cantone, *supra* n. 429, at 1.

[450]Hannaford-Agor & Lee, *supra* n. 431, at 16.

[451]Hannaford-Agor & Lee, *supra* n. 432, at 24–25.

[452]Kakalik, *supra* n. 91, at 49.

[453]Kauffman, *supra* n. 368, at 792.

[454]Gerety & Kauffman, *supra* n. 51, at 8.

[455]Lee & Cantone, *supra* n. 429, at 1.

[456]Gerety & Cornett, *supra* n. 430, at 2.

[457]*See infra* p. 96. The procedure is termed "initial discovery disclosure" throughout the draft rule to ensure that any provision of the civil rules referring to "discovery" will be construed as including initial disclosures without the need for further specification.

[458]*See* Fla. R. Civ. P., App. I.

[459]Fla. R. Civ. P. 1.280(a)(1)(E) (draft rule).

[460]Fla. R. Civ. P. 1.280(a)(1) (draft rule).

[461]Fla. R. Civ. P. 1.280(a)(2) (draft rule).

[462]Fla. R. Civ. P. 1.280(a)(3) (draft rule).

[463]*See infra* p. 75.

[464]Fla. R. Civ. P. 1.280(a)(4) (draft rule).

[465]Fla. R. Civ. P. 1.280(a)(5) (draft rule).

[466]Fla. R. Civ. P. 1.280(f). *See also Binger v. King Pest Control*, 401 So. 2d 1310, 1312 n.4 (Fla. 1981) ("There is no continuing duty of disclosure under Florida's Rules of Civil Procedure, as there is under our criminal rules. *See* Fla. R. Crim. P. 3.220(f).").

[467]Fla. Fam. L.R.P. 12.280(g) ("A party is under a duty to amend a prior response or disclosure if the party: (1) obtains information or otherwise determines that the prior response or disclosure was incorrect when made; or (2) obtains information or otherwise determines that the prior response or disclosure, although correct when made, is no longer materially true or complete.").

[468]Fla. R. Juv. P. 8.060(h), 8.245(j) ("If, subsequent to compliance with these rules, a party discovers additional witnesses, evidence, or material that the party would have been under a duty to disclose or produce at the time of such previous compliance, the party shall promptly disclose or produce such witnesses, evidence, or material in the same manner as required under these rules for initial discovery."). In proceedings for families and children in need of services, discovery may occur only if allowed by the court; when allowed, rule 8.245 is followed. Fla. R. Juv. P. 8.680.

[469]Fla. R. Crim. P. 3.220(j). The rule is identical to the juvenile rules, except for an additional sentence requiring supplementation with previously undisclosed statements made by a disclosed person that materially alter the person's previously disclosed statement.

[470]The Florida Probate Rules adopt rule 1.280. Fla. Prob. R. 5.080(a)(1).

[471]*E.g.*, Fed. R. Civ. P. 26(e)(1) ("A party who has made a disclosure under Rule 26(a) [initial disclosures]—or who has responded to an interrogatory, request for production, or request for admission—must supplement or correct its disclosure or response: (A) 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 (B) as ordered by the court."); D.C. Super. Ct. R. 26(e) (same).

[472]*E.g.*, Haw. R. Civ. P. 26(e) ("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 party's response to include information thereafter acquired, except as follows: . . . (2) A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that (A) the response is in some material respect incomplete or incorrect or (B) the response omits information which if disclosed could lead to the discovery of additional admissible evidence.").

[473]*E.g.*, Fed. R. Civ. P. 26(e)(1).

[474]*E.g.*, Fed. R. Civ. P. 26(e)(2).

[475]*See infra* p. 96.

[476]*See infra* p. 104.

[477]*See infra* p. 106.

[478]*See infra* p. 107. The Workgroup proposes two additional amendments to rule 1.351: the addition of the qualifier "from Nonparties" to the title of the rule and the addition of a requirement that "[a] person objecting to a request under this rule must specify all bases, legal and factual, for the objection."

[479]*See* Fla. R. Civ. P. 1.370(a) ("Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter within 30 days after service of the request or such shorter or longer time as the court may allow . . . .").

[480]*See infra* p. 103. *See also* R. Regulating Fla. Bar 4-3.4(d) ("A lawyer must not: . . . (d) in pretrial procedure, make a frivolous discovery request or intentionally fail to comply with a legally proper discovery request by an opposing party.").

[481]*See infra* p. 101 (showing proposed amendments to rule 1.310).

[482]*See supra* nn. 390 *et seq.*

[483]401 So. 2d 1310 (Fla. 1981).

[484]*Id.* at 1313–14 (emphasis added; footnotes omitted); *see also Office Depot, Inc. v. Miller*, 584 So. 2d 587 (Fla. 4th DCA 1991) (reflecting an extended application of *Binger* to include a party's failure to disclose that a witness would be presenting testimony at trial opposite to that testified at deposition and provided in an expert report).

[485]On the other hand, the recommended amendment to rule 1.280(f) (renumbered as rule 1.280(g) under the Workgroup's proposal), *see supra* p. 52, and the overall greater degree of case management recommended herein should result in fewer *Binger* issues.

[486]Additionally, section 57.105(2), Fla. Stat. (2020), provides that "[a]t any time in any civil proceeding or action in which the moving party proves by a preponderance of the evidence that any action taken by the opposing party, including . . . the assertion of or response to any discovery demand . . . or the response to any request by any other party, was taken primarily for the purpose of unreasonable delay, the court shall award damages to the moving party for its reasonable expenses incurred in obtaining the order, which may include attorney's fees, and other loss resulting from the improper delay."

[487]*See infra* p. 110.

[488]Subdivision (c) of the proposed rule, corresponding to subdivision (e) of the current rule, addresses the discrete issue of electronically stored information and is mostly unchanged from the current rule. The unauthorized filing of discovery information with the court remains proscribed by rule 1.280(g) (subdivision (h) in the Workgroup's proposed revision).

[489]Fla. R. Civ. P. 1.380(a)(4), (c), (d).

[490]Fla. R. Civ. P. 1.380(a)(5)(A)–(C), (b)(3)(A) (draft rule). This brings the rule into general consistency with the federal rule, *see* Fed. R. Civ. P. 37(a)(5)(A), (B), (b)(2)(C), (d)(3), as well as the civil rules of many states.

[491]Fla. R. Civ. P. 1.380(a)(4).

[492]Fla. R. Civ. P. 1.380(c), (d).

[493]Fla. R. Civ. P. 1.380(a)(5)(A)–(C), (b)(3)(A) (draft rule). *Cf.* Fed. R. Civ. P. 37(a)(5)(A) ("If the motion is granted[,] . . . the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees."), (B) (similar), (b)(2)(C) (similar), (d)(3) (similar).

[494]Fla. R. Civ. P. 1.380(b)(2)(D), (E).

[495]*See infra* p. 108.

[496]629 So. 2d 817 (Fla. 1993) (listing factors to be considered by a court when contemplating the dismissal of an action as a sanction).

[497]*See infra* pp. 95 *et seq.*

[498]*See infra* p. 102.

[499]*See infra* p. 108.

[500]*See infra* p. 115.

[501]*See infra* p. 121.

[502]Fla. R. Civ. P. 1.100(b).

[503]*Id.*

[504]Fla. R. Civ. P. 1.090(d).

[505]Fla. R. Civ. P. 1.160.

[506]*See* Fla. R. Civ. P. 1.440(a) (providing that an action is at issue and ready to be set for trial "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."), (b) ("Thereafter any party may file and serve a notice that the action is at issue and ready to be set for trial." (emphasis added)).

[507]*See, e.g.*, *Sch. Bd. of Broward Cnty. v. Polera Bldg. Corp.*, 722 So. 2d 971, 974 (Fla. 4th DCA 1999) ("[W]here material facts are in dispute, an evidentiary hearing is required.").

[508]*See infra* p. 69.

[509]*See infra* p. 72.

[510]*See infra* p. 123.

[511]*See infra* p. 69.

[512]*See infra* p. 69.

[513]*See infra* p. 116.

[514]Statutory provisions for obtaining an order ex parte from a court in the general civil division are rare. *See, e.g.*, § 403.4154(3)(d), Fla. Stat. (2020) (allowing the Department of Environmental Protection to obtain, ex parte and prior to a formal proceeding, an injunction against the operator of a phosphogypsum stack system if an imminent hazard exists).

[515]The drafts of both 60-day provisions include an exception for other rules of procedure that set a different deadline. *See, e.g.*, Fla. R. Juv. P. 8.525(j)(1)(A) (requiring the trial court to enter an order within 30 days after a termination-of-parental-rights adjudicatory hearing when a ground for termination was established); *cf.* Fla. R. Gen. Prac. Jud. Admin. 2.110 (providing that the rules of general practice and judicial administration supersede all conflicting rules).

[516]Fla. R. Civ. P. 1.420(e).

[517]*Id.*

[518]*Id.*

[519]*Id.*; *see also* Philip J. Padovano, *Civil Practice* § 12:3. (Thomson Reuters 2020 ed.) (summarizing the operation of the rule).

[520]Fla. R. Civ. P. 1.420(e).

[521]*Patton v. Kera Tech., Inc.*, 895 So. 2d 1175, 1179 (Fla. 5th DCA 2005) (citation omitted).

[522]*Smith v. St. George Island Gulf Beaches, Inc.*, 343 So. 2d 847, 848 (Fla. 1st DCA 1976).

[523]*Wilson v. Salamon*, 923 So. 2d 363, 367–68 (Fla. 2005) ("Florida's Constitution provides that the courts will be open and accessible to our citizens to address all legitimate grievances. Art. I, § 21, Fla. Const. Hence, a primary concern of the courts is to see that cases are resolved on their merits. A secondary concern is to see that the resolution of cases on the merits is not impaired by the processing of cases without merit or cases that are filed and then abandoned in the system. It is this secondary concern that is addressed by rule 1.420(e)." (emphasis added)).

[524]*See, e.g.*, *Metro. Dade Cnty. v. Hall*, 784 So. 2d 1087, 1090 (Fla. 2001) (noting that "first, the defendant must show that there was no record activity for the year preceding the motion" (construing an earlier version of the rule)); *Jain v. Green Clinic*, Inc., 830 So. 2d 836, 838 (Fla. 2d DCA 2002) (emphasizing the proper method of timing the no-activity period).

[525]*See, e.g.*, *HHH Equities, Inc. v. Hall*, 798 So. 2d 887, 887 (Fla. 4th DCA 2001); *Mikos v. Sarasota Cattle Co.*, 453 So. 2d 402, 403 (Fla. 1984).

[526]*See Garcia v. BAC Home Loans*, 145 So. 3d 217, 218 (Fla. 5th DCA 2014) ("Rule 1.420(e) does not authorize the dismissal of a complaint; it requires the dismissal of the action.").

[527]*See, e.g.*, *Koenig v. Delotte Haskins & Sells*, 474 So. 2d 305, 305–06 (Fla. 3d DCA 1985) ("We hold that a settlement with one plaintiff is record activity calculated to hasten a cause to resolution, and therefore it was error for the trial court to dismiss the cause as to a remaining plaintiff because of alleged nonactivity pursuant to Rule 1.420.").

[528]*Personalized Air Conditioning, Inc. v. C.M. Sys. of Pinellas Cnty., Inc.*, 522 So. 2d 465, 466 (Fla. 4th DCA 1988).

[529]*See, e.g.*, *Bank One, N.A. v. Harrod*, 873 So. 2d 519, 521 (Fla. 4th DCA 2004) ("[F]ailure to prosecute permits only a dismissal without prejudice.").

[530]*Wilson v. Salamon*, 923 So. 2d 363, 368 (Fla. 2005) (citations omitted).

[531]*Chemrock Corp. v. Tampa Elec. Co.*, 71 So. 3d 786, 792 (Fla. 2011) ("By creation of the sixty-day grace period, it was not our intention to create a situation in which the plaintiff or the trial court must again guess at what type of record activity will be required during the sixty-day grace period to preclude dismissal for lack of prosecution. Just as we held in *Wilson*, the bright-line interpretation of rule 1.420(e), under which any filing of

record is sufficient to preclude dismissal, applies to both time periods set forth in the amended rule.").

[532]*E.g.*, *Eli Einbinder, Inc. v. Miami Crystal Ice Co.*, 317 So. 2d 126, 128 (Fla. 3d DCA 1975).

[533]*See infra* pp. 116 & 122.

[534]Fla. R. Civ. P. 1.420(e)(2) (draft rule). Florida's current 10 months appears to be at the high end of the initial triggering period in "failure to prosecute" rules nationwide. *See, e.g.*, Del. Ct. Com. Pleas Civ. R. 41(e) (six months); N.M. R. Civ. P. Mag. Ct. 2-305(D) (six months); Idaho R. Civ. P. 41(e)(1) (90 days); Ind. R. Tr. P. 41(E) (60 days).

[535]Fla. R. Civ. P. 1.420(e)(2) (draft rule).

[536]Fla. R. Civ. P. 1.420(e)(3)(C) (draft rule).

[537]Fla. R. Civ. P. 1.420(e)(3)(B) (draft rule).

[538]Fla. R. Civ. P. 1.420(e)(1)(B) (draft rule).

[539]Fla. R. Civ. P. 1.420(e)(4) (draft rule).

[540]Fla. R. Civ. P. 1.420(e)(1)(A) (draft rule).

[541]This list is largely based on the compilation of topics and cases found in Bruce J. Berman & Peter D. Webster, *Berman's Florida Civil Procedure* § 1.420:34 (Thomson Reuters 2020 ed.).

[542]*Woods v. Lloyds Asset Mgmt., LLC*, 191 So. 3d 918, 920 (Fla. 4th DCA 2016). Of course, the stay must apply to the party in question; it does not apply when the bankruptcy debtor is the party bringing the state action, i.e., the plaintiff. *See Sub-Acute Mgmt. Servs., Inc. v. Columbia Physician Servs. Fla. Group, Inc.*, 893 So. 2d 631, 632 (Fla. 3d DCA 2005); 11 U.S.C. § 362(a)(1) (2018) (a petition for bankruptcy operates as a stay of legal action "against the debtor").

[543]*Reyes v. Aqua Life Corp.*, 209 So. 3d 47, 49–50 (Fla. 3d DCA 2016) (citing 28 U.S.C. § 1446(d) for the proposition that "removal results in an automatic stay of the proceedings in state court, [such that] no further activity or action is permissible or may be conducted in the circuit court").

[544]*Insua v. Chantres*, 665 So. 2d 288, 289 (Fla. 3d DCA 1995) (holding that the trial court improperly dismissed a tort action while the insurer was still involved in a related declaratory action to determine extent of coverage); *Maler by & through Maler v. Baptist Hosp. of Miami, Inc.*, 532 So. 2d 79, 79 (Fla. 3d DCA 1988) (noting that "there was extensive record activity in an identical lawsuit between the same parties, the instant lawsuit being a 'protective' lawsuit"); *Cox v. Wiod, Inc.*, 764 So. 2d 671, 672 (Fla. 4th DCA 2000) (activity in an ancillary proceeding (defendants' out-of-state subpoena-related litigation) constitutes good cause); *Stephens v. Bay Med. Ctr.*, 742 So. 2d 297, 298–99 (Fla. 1st DCA 1998) (activity in consolidated case constitutes good cause).

[545]*Koenig*, 474 So. 2d at 305–06.

[546]*Allstate Ins. Co. v. Bucelo*, 650 So. 2d 1128, 1130 (Fla. 3d DCA 1995).

[547]*Schlakman v. Helliwell, Melrose & DeWolf*, 519 So. 2d 14, 15 (Fla. 3d DCA 1987).

[548]*See Chrysler Leasing Corp. v. Passacantilli*, 259 So. 2d 1, 5 (Fla. 1972) ("The severe illness of a major party to a cause is an ample justification for failure to bring a case to trial for a reasonable time."); *but see Barnes v. Ross*, 386 So. 2d 812, 814 n.4 (Fla. 3d DCA 1980) ("Apart from recognizing the general principle that illness and physical disability can constitute good cause, . . . decisions [on the issue] furnish little guidance to a trial court. The 'presumption of correctness' which we are compelled to give to trial court decisions becomes a hollow phrase if, in the name of that presumption, we place our imprimatur on decisions which dismiss for lack of prosecution, and on decisions which do not, when the underlying 'good cause for illness' showing may be stronger in the case of the dismissed action.").

[549]*Barnes*, 386 So. 2d at 814.

[550]*See Lenion v. Calohan*, 652 So. 2d 461, 463 (Fla. 1st DCA 1995) ("[A] solo practitioner's four-month physical disability in the wake of an automobile accident does [constitute good cause], apparently even if the disability abates three months before the year ends." (citing *Barnes*, 386 So. 2d 812)).

[551]*Am. E. Corp. v. Henry Blanton, Inc.*, 382 So. 2d 863, 865 (Fla. 2d DCA 1980). The cited case did not involve a calamity; the "calamity" language is a *dicta* recitation of an example of a scenario that could theoretically constitute good cause. It is difficult, though not impossible, to imagine a calamity lasting for much or all of the 10-month period; even in the face of the recent pandemic the state's courts remained at least in partial operation. To the extent that a calamity occurs near the end of the period, that should not constitute good cause. *Cf. Grossman v. Segal*, 270 So. 2d 746, 747 (Fla. 3d DCA 1972) (suggesting that a temporary illness beginning on the day before the expiration of the rule 1.420(e) period would not be a "determinative factor").

[552]*Capital Inv. Group, Inc. v. Richburg*, 944 So. 2d 1232, 1232–33 (Fla. 5th DCA 2006).

[553]*E.g.*, *Am. E. Corp.*, 382 So. 2d at 865–66 (defendant estopped from asserting lack of record activity after parties had reached a stipulation for judgment but defendant secured delays in repayment, then filed a rule 1.420(e) motion to dismiss).

[554]*Lucaya Beach Hotel Corp. v. MLT Mgmt. Corp.*, 898 So. 2d 1118, 1120 (Fla. 4th DCA 2005) (describing a scenario in which, pursuant to the judge's established procedure, the parties sent follow-up letters to the judge urging him to set a hearing as earlier requested; after no hearing was set, the defendants successfully moved to dismiss; the appeals court reversed the dismissal).

[555]*Patton v. Kera Tech., Inc.*, 946 So. 2d 983, 987 (Fla. 2006) (noting also that a statute or court rule requiring a ruling on the motion constitutes good cause).

[556]Fla. R. Civ. P. 1.420(e)(4) (draft rule).

[557]Fla. R. Civ. P. 1.420(e)(5) (draft rule).

[558]Fla. R. Civ. P. 1.201(b)(3).

[559]*Shands Teaching Hosp. & Clinics, Inc. v. Dunn*, 977 So. 2d 594, 599 (Fla. 1st DCA 2007) (emphasis added).

[560]*See, e.g.*, *Fisher v. Perez*, 947 So. 2d 648, 654 (Fla. 3d DCA 2007) (concluding that the trial court abused its discretion when it denied a motion for continuance based on defendant's only medical expert's sudden and unforeseeable medical emergency); *but see Lopez v. Lopez*, 689 So. 2d 1218, 1219 (Fla. 5th DCA 1997) ("[I]t is reversible error to refuse to grant a motion for continuance where a party or his counsel is unavailable for physical or mental reasons which prevent a fair and adequate presentation of the party's case. If evidence exists that some severe harm or prejudice to the other party will occur by granting the motion, it is appropriate to deny it." (citations omitted)).

[561]*See infra* p. 119.

[562]Fla. R. Civ. P. 1.460(a)(1), (b)(2) (draft rule).

[563]Fla. R. Civ. P. 1.460(a)(3), (b)(5) (draft rule).

[564]Fla. R. Civ. P. 1.460(a)(2), (4) (draft rule).

[565]Fla. R. Civ. P. 1.460(b)(1) (draft rule).

[566]Fla. R. Civ. P. 1.460(b)(1), (6) (draft rule).

[567]*See infra* p. 126.

[568]Fla. R. Civ. P. 1.460(b)(7) (draft rule).

[569]*Id.*

[570]Fla. R. Civ. P. 1.460(b)(8) (draft rule).

[571]Fla. R. Civ. P. 1.460(b)(9) (draft rule).

[572]Fla. R. Civ. P. 1.460(b)(10) (draft rule).

[573]Fla. R. Civ. P. 1.460(b)(9) (draft rule).

[574]Fla. R. Civ. P. 1.460(b)(11) (draft rule).

[575]*Cf. supra* nn. 516 *et seq.* (addressing Florida Rule of Civil Procedure 1.420(e), concerning failure to prosecute in civil cases).

[576]"Service of process shall be effected as provided by law or as provided by Florida Rules of Civil Procedure 1.070(a)–(h)." Fla. Sm. Cl. R. 7.070.

[577]Florida Rule of Civil Procedure 1.070(j) provides:

> If service of the initial process and initial pleading is not made upon a defendant within 120 days after filing of the initial pleading directed to that defendant the court, on its own initiative after notice or on motion, shall direct that service be effected within a specified time or shall dismiss the action without prejudice or drop that defendant as a party; provided that if the plaintiff shows good cause or excusable neglect for the failure, the court shall

extend the time for service for an appropriate period. When a motion for leave to amend with the attached proposed amended complaint is filed, the 120-day period for service of amended complaints on the new party or parties shall begin upon the entry of an order granting leave to amend. A dismissal under this subdivision shall not be considered a voluntary dismissal or operate as an adjudication on the merits under rule 1.420(a)(1).

[578]*See infra* p. 127.

[579]*See infra* p. 126.

[580]*See* Fla. R. Gen. Prac. Jud. Admin. 2.250(a)(1)(B).

[581]*See infra* p. 126. The Workgroup concludes that forms 7.323 and 7.353, which reference rule 7.020, require no amending.

[582]Mediator Ethics Advisory Comm., Op. 2016-006 (2017), *available at* https://www.flcourts.org/content/download/216860/file/MEACOpinion2016-006.pdf (last visited Apr. 28, 2021).

[583]*See infra* p. 127.

[584]Bailey, *supra* n. 15, at 1098 ("The success of proactive court case management depends on the issuance of a reasonable plan, preferably issued in collaboration with the parties, the monitoring and enforcement of the intermediate deadlines, and the degree to which the parties and the court engage in managing the case through the process.").

[585]*See, e.g.*, Am. Coll. of Trial Lawyers Task Force on Discovery, *supra* n. 425, at 2 (summarizing the results of a survey: "Where [litigation] abuses occur, judges are perceived not to enforce the rules effectively."); Bailey, *supra* n. 15, at 1096 (citing a survey of Arizona's mandatory disclosure rules, which found that 21% of judges enforced the rules almost always or often; 19%, half the time; and a majority 55%, almost never or occasionally).

[586]Baily, *supra* n. 15, at 1143–44 (reporting on the author's survey of Florida circuit judges reflecting ambivalence over enforcement: 91% of judges "put the responsibility for rule compliance, deadline, and other enforcement on . . . litigants," but 98% of judges also agreed that judges are responsible for enforcing rules, orders, and deadlines.).

[587]*See infra* p. 123. *See also supra* n. 95 (concerning how a reporting requirement in the federal judiciary appears to encourage rulings on motions).

[588]Fla. R. Gen. Prac. Jud. Admin. 2.250(b)(2)(A) (draft rule). *Cf.* Raymond A. Noble, *Access to Civil Justice: Administrative Reflections from New Jersey* 45 Rutgers L. Rev. 49, 59 (1992) *available at* https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/rutlr45&id=59&men_tab=srchresults (last visited Apr. 20, 2021) (noting that when Chief Justice Arthur T. Vanderbilt finally instituted much-needed administrative reforms in the New

Jersey state courts in the 1940s, he insisted "receiving weekly reports detailing all activities of judges").

[589]Fla. R. Gen. Prac. Jud. Admin. 2.250(b)(2)(C) (draft rule).

[590]*See generally* Fla. R. Gen. Prac. Jud. Admin. 2.320(b)(2) (defining the minimum educational requirements for new judges).

[591]*See generally* Fla. R. Gen. Prac. Jud. Admin. 2.320.

[592]*See* https://www.flcourts.org/Publications-Statistics/Publications/Short-History/Maintaining-a-Professional-Judiciary-Workforce#judges-others (last visited June 24, 2021).

[593]*See generally id.*

[594]*See* Fla. R. Gen. Prac. Jud. Admin. 2.320(c) (providing that judicial and legal entities outside of the Florida judiciary must have their coursework approved by the Florida Court Education Council).

[595]*See supra* n. 326.

[596]*See generally* R. Regulating Fla. Bar 6-10 (Continuing Legal Education Requirement Rule).

[597]*See, e.g.*, Joseph W. Etter & Julia Kapusta, *A Primer on Florida's New Summary Judgment Standard*, 95 Fla. Bar J. 38 (July/Aug. 2021) (summarizing and providing practical tips on the new summary judgment standard recently announced by the Florida Supreme Court in *In re Amendments to Fla. R. Civ. P. 1.510*, 309 So. 3d 192 (Fla. 2020), and *In re Amendments to Fla. R. of Civ. P. 1.510*, 317 So. 3d 72 (Fla. 2021)).

[598]*See supra* n. 364 (concerning "core" legal values).