

**FLORIDA RULES OF CIVIL PROCEDURE**

FLORIDA RULES OF CIVIL PROCEDURE..... 1  
CITATIONS TO OPINIONS ADOPTING OR AMENDING RULES..... 8  
RULE 1.010. SCOPE AND TITLE OF RULES ..... 15  
RULE 1.020. PRIVACY AND COURT RECORDS ..... 15  
RULE 1.030. NONVERIFICATION OF PLEADINGS ..... 15  
RULE 1.040. ONE FORM OF ACTION ..... 15  
RULE 1.041. LIMITED APPEARANCE ATTORNEYS ..... 16  
RULE 1.050. WHEN ACTION COMMENCED ..... 17  
RULE 1.060. TRANSFERS OF ACTIONS..... 17  
RULE 1.061. CHOICE OF FORUM ..... 18  
RULE 1.070. PROCESS ..... 22  
RULE 1.071. CONSTITUTIONAL CHALLENGE TO STATE  
STATUTE OR COUNTY OR MUNICIPAL  
CHARTER, ORDINANCE, OR FRANCHISE;  
NOTICE BY PARTY ..... 27  
RULE 1.080. SERVICE AND FILING OF PLEADINGS; ORDERS;  
DOCUMENTS; AND TRANSCRIPTS ..... 28  
RULE 1.090. TIME..... 29  
RULE 1.100. PLEADINGS AND MOTIONS..... 30  
RULE 1.110. GENERAL RULES OF PLEADING ..... 32  
RULE 1.115. PLEADING MORTGAGE FORECLOSURES ..... 35  
RULE 1.120. PLEADING SPECIAL MATTERS ..... 37  
RULE 1.130. ATTACHING COPY OF CAUSE OF ACTION AND  
EXHIBITS ..... 38  
RULE 1.140. DEFENSES ..... 38  
RULE 1.150. SHAM PLEADINGS ..... 42  
RULE 1.160. MOTIONS..... 43  
RULE 1.170. COUNTERCLAIMS AND CROSSCLAIMS..... 43  
RULE 1.180. THIRD-PARTY PRACTICE..... 46  
RULE 1.190. AMENDED AND SUPPLEMENTAL PLEADINGS 47  
RULE 1.200. CASE MANAGEMENT;  
PRETRIAL PROCEDURE ..... 49  
RULE 1.201. COMPLEX LITIGATION ..... 58  
RULE 1.202. CONFERRAL PRIOR TO FILING MOTIONS ..... 64  
RULE 1.210. PARTIES ..... 66  
RULE 1.220. CLASS ACTIONS ..... 67

RULE 1.221.	HOMEOWNERS' ASSOCIATIONS AND CONDOMINIUM ASSOCIATIONS.....	72
RULE 1.222.	MOBILE HOMEOWNERS' ASSOCIATIONS .....	73
RULE 1.230.	INTERVENTIONS .....	73
RULE 1.240.	INTERPLEADER.....	73
RULE 1.250.	MISJOINDER AND NONJOINDER OF PARTIES	74
RULE 1.260.	SURVIVOR; SUBSTITUTION OF PARTIES .....	75
RULE 1.270.	CONSOLIDATION; SEPARATE TRIALS .....	76
RULE 1.280.	GENERAL PROVISIONS GOVERNING DISCOVERY.....	76
RULE 1.285.	INADVERTENT DISCLOSURE OF PRIVILEGED MATERIALS .....	88
RULE 1.290.	DEPOSITIONS BEFORE ACTION OR PENDING APPEAL.....	90
RULE 1.300.	PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN .....	92
RULE 1.310.	DEPOSITIONS ON ORAL EXAMINATION.....	93
RULE 1.320.	DEPOSITIONS UPON WRITTEN QUESTIONS .	103
RULE 1.330.	USE OF DEPOSITIONS IN COURT PROCEEDINGS.....	104
RULE 1.340.	INTERROGATORIES TO PARTIES .....	107
RULE 1.350.	PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY ON LAND FOR INSPECTION AND OTHER PURPOSES.....	112
RULE 1.351.	PRODUCTION OF DOCUMENTS AND THINGS WITHOUT DEPOSITION .....	116
RULE 1.360.	EXAMINATION OF PERSONS.....	119
RULE 1.370.	REQUESTS FOR ADMISSION .....	121
RULE 1.380.	FAILURE TO MAKE DISCOVERY; SANCTIONS .....	123
RULE 1.390.	DEPOSITIONS OF EXPERT WITNESSES.....	130
RULE 1.410.	SUBPOENA.....	132
RULE 1.420.	DISMISSAL OF ACTIONS .....	136
RULE 1.430.	DEMAND FOR JURY TRIAL; WAIVER .....	139
RULE 1.431.	TRIAL JURY .....	140
RULE 1.440.	SETTING ACTION FOR TRIAL .....	146
RULE 1.442.	PROPOSALS FOR SETTLEMENT.....	148
RULE 1.450.	EVIDENCE.....	152
RULE 1.452.	QUESTIONS BY JURORS.....	154

RULE 1.453.	JURY REQUEST TO REVIEW TESTIMONY.....	154
RULE 1.455.	JUROR NOTEBOOKS.....	155
RULE 1.460.	MOTIONS TO CONTINUE TRIAL .....	155
RULE 1.470.	EXCEPTIONS UNNECESSARY; JURY INSTRUCTIONS .....	157
RULE 1.480.	MOTION FOR A DIRECTED VERDICT.....	159
RULE 1.481.	VERDICTS .....	160
RULE 1.490.	MAGISTRATES.....	160
RULE 1.491.	GENERAL MAGISTRATES FOR RESIDENTIAL MORTGAGE FORECLOSURE MATTERS .....	164
RULE 1.500.	DEFAULTS AND FINAL JUDGMENTS THEREON.....	166
RULE 1.510.	SUMMARY JUDGMENT .....	168
RULE 1.520.	VIEW .....	172
RULE 1.525.	MOTIONS FOR COSTS AND ATTORNEYS' FEES .....	172
RULE 1.530.	MOTIONS FOR NEW TRIAL AND REHEARING; AMENDMENTS OF JUDGMENTS; REMITTITUR OR ADDITUR .....	172
RULE 1.535.	[REPEALED AUG. 25, 2022, EFFECTIVE OCT. 1, 2022] .....	175
RULE 1.540.	RELIEF FROM JUDGMENT, DECREES, OR ORDERS .....	175
RULE 1.545.	FINAL DISPOSITION FORM.....	177
RULE 1.550.	EXECUTIONS AND FINAL PROCESS .....	177
RULE 1.560.	DISCOVERY IN AID OF EXECUTION .....	177
RULE 1.570.	ENFORCEMENT OF FINAL JUDGMENTS .....	179
RULE 1.580.	WRIT OF POSSESSION .....	181
RULE 1.590.	PROCESS IN BEHALF OF AND AGAINST PERSONS NOT PARTIES.....	182
RULE 1.600.	DEPOSITS IN COURT.....	182
RULE 1.610.	INJUNCTIONS.....	182
RULE 1.620.	RECEIVERS .....	185
RULE 1.625.	PROCEEDINGS AGAINST SURETY ON JUDICIAL BONDS .....	185
RULE 1.630.	EXTRAORDINARY REMEDIES .....	186
RULE 1.650.	MEDICAL MALPRACTICE PRESUIT SCREENING RULE .....	188

RULE 1.700.	RULES COMMON TO MEDIATION AND ARBITRATION .....	193
RULE 1.710.	MEDIATION RULES .....	195
RULE 1.720.	MEDIATION PROCEDURES .....	195
RULE 1.730.	COMPLETION OF MEDIATION.....	200
RULE 1.750.	COUNTY COURT ACTIONS .....	201
RULE 1.800.	EXCLUSIONS FROM ARBITRATION.....	202
RULE 1.810.	SELECTION AND COMPENSATION OF ARBITRATORS.....	203
RULE 1.820.	HEARING PROCEDURES FOR NON-BINDING ARBITRATION.....	203
RULE 1.830.	VOLUNTARY BINDING ARBITRATION.....	206
RULE 1.900.	FORMS .....	207
FORM 1.901.	CAPTION.....	209
FORM 1.902.	SUMMONS.....	210
FORM 1.903.	CROSSCLAIM SUMMONS.....	216
FORM 1.904.	THIRD-PARTY SUMMONS.....	217
FORM 1.905.	ATTACHMENT .....	217
FORM 1.906.	ATTACHMENT — FORECLOSURE .....	218
FORM 1.907.	GARNISHMENT.....	218
FORM 1.908.	WRIT OF REPLEVIN.....	220
FORM 1.909.	DISTRESS.....	221
FORM 1.910.	SUBPOENA FOR TRIAL.....	222
FORM 1.911.	SUBPOENA DUCES TECUM FOR TRIAL.....	224
FORM 1.912.	SUBPOENA FOR DEPOSITION.....	226
FORM 1.913.	SUBPOENA DUCES TECUM FOR DEPOSITION .....	228
FORM 1.914(a).	EXECUTION .....	230
FORM 1.914(b).	NOTICE TO APPEAR .....	231
FORM 1.914(c).	AFFIDAVIT OF CLAIMANT IN RESPONSE TO NOTICE TO APPEAR .....	232
FORM 1.915.	WRIT OF POSSESSION .....	233
FORM 1.916.	REPLEVIN ORDER TO SHOW CAUSE.....	234
FORM 1.917.	NE EXEAT .....	235
FORM 1.918.	LIS PENDENS .....	235
FORM 1.919.	NOTICE OF ACTION; CONSTRUCTIVE SERVICE — NO PROPERTY.....	236
FORM 1.920.	NOTICE OF ACTION; CONSTRUCTIVE SERVICE — PROPERTY.....	237

FORM 1.921.	NOTICE OF PRODUCTION FROM NONPARTY .....	237
FORM 1.922.	SUBPOENA DUCES TECUM WITHOUT DEPOSITION.....	239
FORM 1.923(a).	EVICTON SUMMONS—RESIDENTIAL.....	244
FORM 1.923(b).	SUMMONS ACTION FOR BACK RENT OR OTHER DAMAGES .....	251
FORM 1.924.	AFFIDAVIT OF DILIGENT SEARCH AND INQUIRY .....	252
FORM 1.925.	COMPLAINT TO QUIET TITLE.....	255
FORM 1.932.	OPEN ACCOUNT.....	256
FORM 1.933.	ACCOUNT STATED .....	256
FORM 1.934.	PROMISSORY NOTE .....	257
FORM 1.935.	GOODS SOLD.....	258
FORM 1.936.	MONEY LENT .....	258
FORM 1.937.	REPLEVIN.....	259
FORM 1.938.	FORCIBLE ENTRY AND DETENTION .....	260
FORM 1.939.	CONVERSION .....	260
FORM 1.940.	EJECTMENT.....	260
FORM 1.941.	SPECIFIC PERFORMANCE .....	261
FORM 1.942.	CHECK .....	262
FORM 1.944(a).	MORTGAGE FORECLOSURE .....	263
FORM 1.944(b).	MORTGAGE FORECLOSURE.....	265
FORM 1.944(c).	MOTION FOR ORDER TO SHOW CAUSE .....	270
FORM 1.944(d).	ORDER TO SHOW CAUSE .....	271
FORM 1.945.	MOTOR VEHICLE NEGLIGENCE COMPLAINT .....	273
FORM 1.946.	MOTOR VEHICLE NEGLIGENCE WHEN PLAINTIFF IS UNABLE TO DETERMINE WHO IS RESPONSIBLE.....	274
FORM 1.947.	TENANT EVICTION .....	274
FORM 1.947(b).	ANSWER—RESIDENTIAL EVICTION .....	275
FORM 1.948.	THIRD-PARTY COMPLAINT. GENERAL FORM	278
FORM 1.949.	IMPLIED WARRANTY .....	279
FORM 1.951.	FALL-DOWN NEGLIGENCE COMPLAINT .....	280
FORM 1.960.	BOND. GENERAL FORM.....	280
FORM 1.961.	VARIOUS BOND CONDITIONS.....	281
FORM 1.965.	DEFENSE. STATUTE OF LIMITATIONS .....	281
FORM 1.966.	DEFENSE. PAYMENT.....	282

FORM 1.967.	DEFENSE. ACCORD AND SATISFACTION .....	282
FORM 1.968.	DEFENSE. FAILURE OF CONSIDERATION ....	282
FORM 1.969.	DEFENSE. STATUTE OF FRAUDS .....	282
FORM 1.970.	DEFENSE. RELEASE .....	282
FORM 1.971.	DEFENSE. MOTOR VEHICLE CONTRIBUTORY NEGLIGENCE .....	282
FORM 1.972.	DEFENSE. ASSUMPTION OF RISK .....	283
FORM 1.975.	NOTICE OF COMPLIANCE WHEN CONSTITUTIONAL CHALLENGE IS BROUGHT .....	283
FORM 1.976.	STANDARD INTERROGATORIES .....	284
FORM 1.977.	FACT INFORMATION SHEET .....	285
FORM 1.980.	DEFAULT.....	291
FORM 1.981.	SATISFACTION OF JUDGMENT.....	291
FORM 1.982.	CONTEMPT NOTICE .....	292
FORM 1.983.	PROSPECTIVE JUROR QUESTIONNAIRE .....	293
FORM 1.984.	JUROR VOIR DIRE QUESTIONNAIRE.....	296
FORM 1.986.	VERDICTS .....	298
FORM 1.988.	JUDGMENT AFTER DEFAULT .....	298
FORM 1.989.	ORDER OF DISMISSAL FOR LACK OF PROSECUTION .....	299
FORM 1.990.	FINAL JUDGMENT FOR PLAINTIFF. JURY ACTION FOR DAMAGES .....	300
FORM 1.991.	FINAL JUDGMENT FOR DEFENDANT. JURY ACTION FOR DAMAGES .....	300
FORM 1.993.	FINAL JUDGMENT FOR PLAINTIFF. GENERAL FORM NON-JURY .....	301
FORM 1.994.	FINAL JUDGMENT FOR DEFENDANT. GENERAL FORM. NON-JURY FINAL JUDGMENT.....	302
FORM 1.995.	FINAL JUDGMENT OF REPLEVIN.....	302
FORM 1.996(a).	FINAL JUDGMENT OF FORECLOSURE .....	306
FORM 1.996(b).	FINAL JUDGMENT OF FORECLOSURE FOR REESTABLISHMENT OF LOST NOTE .....	311
FORM 1.996(c).	MOTION TO CANCEL AND RESCHEDULE FORECLOSURE SALE.....	315
FORM 1.997.	CIVIL COVER SHEET.....	316
FORM 1.997.	INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET.....	320
FORM 1.998.	FINAL DISPOSITION FORM.....	325

FORM 1.999.	ORDER DESIGNATING A CASE COMPLEX ....	328
APPENDIX I—	STANDARD INTERROGATORIES FORMS .....	329
FORM 1.	GENERAL PERSONAL INJURY NEGLIGENCE — INTERROGATORIES TO PLAINTIFF .....	329
FORM 2.	GENERAL PERSONAL INJURY NEGLIGENCE — INTERROGATORIES TO DEFENDANT.....	331
FORM 3.	MEDICAL MALPRACTICE — INTERROGATORIES TO PLAINTIFF .....	333
FORM 4.	MEDICAL MALPRACTICE — INTERROGATORIES TO DEFENDANT .....	334
FORM 5.	AUTOMOBILE NEGLIGENCE — INTERROGATORIES TO PLAINTIFF .....	335
FORM 6.	AUTOMOBILE NEGLIGENCE — INTERROGATORIES TO DEFENDANT.....	336
APPENDIX II	.....	337
STATEWIDE UNIFORM	GUIDELINES FOR TAXATION OF COSTS IN CIVIL ACTIONS.....	337

**1.200**

pleading. At every stage of the action the court must disregard any error or defect in the proceedings which does not affect the substantial rights of the parties.

**(f) Claims for Punitive Damages.** A motion for leave to amend a pleading to assert a claim for punitive damages shall make a reasonable showing, by evidence in the record or evidence to be proffered by the claimant, that provides a reasonable basis for recovery of such damages. The motion to amend can be filed separately and before the supporting evidence or proffer, but each shall be served on all parties at least 20 days before the hearing.

#### Committee Notes

**1980 Amendment.** The last clause of subdivision (a) is deleted to restore the decision in *Scarfone v. Denby*, 156 So. 2d 694 (Fla. 2d DCA 1963). The adoption of rule 1.500 requiring notice of an application for default after filing or serving of any paper eliminates the need for the clause. This will permit reinstatement of the procedure in federal practice and earlier Florida practice requiring a response to each amended pleading, thus simplifying the court file under the doctrine of *Dee v. Southern Brewing Co.*, 146 Fla. 588, 1 So. 2d 562 (1941).

**2003 Amendment.** Subdivision (a) is amended in accordance with *Totura & Co., Inc. v. Williams*, 754 So. 2d 671 (Fla. 2000). See the amendment to rule 1.070(j). Subdivision (f) is added to state the requirements for a party moving for leave of court to amend a pleading to assert a claim for punitive damages. See *Beverly Health & Rehabilitation Services, Inc. v. Meeks*, 778 So. 2d 322 (Fla. 2d DCA 2000).

#### **RULE 1.200. CASE MANAGEMENT; PRETRIAL PROCEDURE**

**(a) Applicability; Exemptions.** The requirements of this rule apply to all civil actions except:

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

- (2) actions proceeding under section 45.075, Florida Statutes;
- (3) actions subject to the Florida Small Claims Rules, unless the court, under rule 7.020(c), has ordered the action to proceed under one or more of the Florida Rules of Civil Procedure and the deadline for the trial date specified in rule 7.090(d) no longer applies;
- (4) an action or proceeding initiated under chapters 731–736, 738, and 744, Florida Statutes;
- (5) an action for review of an administrative proceeding;
- (6) eminent domain actions under article X, section 6 of the Florida Constitution or chapters 73 and 74, Florida Statutes;
- (7) a forfeiture action in rem arising from a state statute;
- (8) a petition for habeas corpus or any other proceeding to challenge a criminal conviction or sentence;
- (9) an action brought without an attorney by a person in the custody of the United States, a state, or a state subdivision;
- (10) an action to enforce or quash an administrative summons or subpoena;
- (11) a proceeding ancillary to a proceeding in another court;
- (12) an action to enforce an arbitration award;
- (13) an action involving an extraordinary writ or remedy under rule 1.630;
- (14) actions to confirm or enforce foreign judgments;
- (15) all proceedings under chapter 56, Florida Statutes;

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

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

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

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

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

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

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

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

(1) *Change Requested by a Party.* Any motion to change the track to which a case is assigned must be filed promptly after the appearance of good cause to support the motion.

(2) *Change Directed by the Court.* A track assignment may be changed by the court on its own motion.

**(d) Case Management Order.**

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

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

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

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

(4) *Timing of Issuance.* The court must issue the case management order no later than 120 days after commencement of the action as provided in rule 1.050. No case management conference is required to be set by the court before issuance.

**(e) Extensions of Time; Modification of Deadlines.**

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

(2) *Modification of Actual Trial Period.* Once an actual trial period is set, the parties must satisfy the requirements of rule 1.460 to change that period. During the time a trial period is still a projection, the parties may seek to change the projected trial period through the process in subdivision (e)(3).

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

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

(B) whether the motion is opposed;

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

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

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

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

**(h) If Trial Is Not Reached During Trial Period.** If a trial is not reached during the trial period set by court order, the court must enter an order setting a new trial period that is as soon as practicable, given the needs of the case and resources of the court. The order resetting the trial period must reflect what further activity will or will not be permitted.

**(i) Forms.** Except for case management orders issued in cases governed by rule 1.201, the forms for case management orders will be set by the chief judge of the circuit. The form orders must comply with the requirements of this rule.

**(j) Case Management Conferences.**

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

management conferences on an as-needed basis or an ongoing, periodic basis.

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

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

(4) *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.

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

(6) *Failure to Appear.* On failure of a party to attend a case management conference, the court may dismiss the action, strike the pleadings, limit proof or witnesses, or take any other appropriate action against a party failing to attend.

**(k) Pretrial Conference.** After the action has been set for an actual trial period, the court itself may, or must on the timely motion of any party, require the parties to appear for a pretrial conference to consider and determine:

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

### **Committee Notes**

**1971 Amendment.** The 3 paragraphs of the rule are lettered and given subtitles. The present last paragraph is placed second as subdivision (b) because the proceeding required under it is taken before that in the present second paragraph. The time for implementation is changed from settling the issues because the language is erroneous, the purpose of the conference being to settle

**1.202**

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

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

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

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

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

### **Committee Notes**

**2012 Amendment.** Subdivision (b)(1)(J) is added to address issues involving electronically stored information.

### **RULE 1.202. CONFERRAL PRIOR TO FILING MOTIONS**

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

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

“I certify that prior to filing this motion, I discussed the relief requested in this motion by [method of communication and date] with the opposing party and [the opposing party (agrees or disagrees) on the resolution of all or part of the motion] OR [the opposing party did not respond (describing with particularity all of

the efforts undertaken to accomplish dialogue with the opposing party prior to filing the motion)].”

OR

“I certify that conferral prior to filing is not required under rule 1.202.”

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

- (1) for time to extend service of initial process;
- (2) for default;
- (3) for injunctive relief;
- (4) for judgment on the pleadings;
- (5) for summary judgment;
- (6) to dismiss for failure to state a claim on which relief can be granted;
- (7) to permit maintenance of a class action;
- (8) to involuntarily dismiss an action;
- (9) to dismiss for failure to prosecute;
- (10) for directed verdict and motions filed under rule 1.530;
- (11) for garnishment, attachment, or other motions for enforcement of a judgment under rule 1.570;
- (12) for writ of possession under rule 1.580;

(13) filed in actions proceeding under section 51.011, Florida Statutes; and

(14) that do not require notice to the other party under statute or rule.

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

**1.280**

**(d) Public Officers; Death or Separation from Office**

(1) When a public officer is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) When a public officer sues or is sued in an official capacity, the officer may be described as a party by the official title rather than by name but the court may require the officer's name to be added.

**RULE 1.270. CONSOLIDATION; SEPARATE TRIALS**

**(a) Consolidation.** When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

**(b) Separate Trials.** The court in furtherance of convenience or to avoid prejudice may order a separate trial of any claim, crossclaim, counterclaim, or third-party claim or of any separate issue or of any number of claims, crossclaims, counterclaims, third-party claims, or issues.

**RULE 1.280. GENERAL PROVISIONS GOVERNING DISCOVERY**

**(a) Initial Discovery Disclosure.**

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

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

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

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

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

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

(3) *Time for Initial Discovery Disclosures.* A party must make the initial discovery disclosures required by this rule within 60 days after the service of the complaint or joinder, 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.

**(b) Discovery Methods.** Parties may obtain discovery by 1 or more of the following methods: depositions on oral examination or written questions; written interrogatories; production of documents or things or permission to enter on land or other property for inspection and other purposes; physical and mental examinations; and requests for admission. Unless the court orders otherwise and under subdivision (d), the frequency of use of these methods is not limited, except as provided in rules 1.200, 1.340, and 1.370.

**(c) Scope of Discovery.** Unless otherwise limited by court order, the scope of discovery is as follows:

(1) *In General.* 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. Information within this scope of discovery need not be admissible in evidence to be discoverable.

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

(3) *Electronically Stored Information.* A party may obtain discovery of electronically stored information under these rules.

(4) *Trial Preparation; Materials.* Subject to the provisions of subdivision (c)(5), a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (c)(1) 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 on a showing that the party seeking discovery has need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of the materials when the required showing has been made, the court must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation. Without the required showing a party may obtain a copy of a statement concerning the action or its subject matter previously made by that party. On request without the required showing a person not a party may obtain a copy of a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for an order to obtain a copy. The provisions of rule 1.380(a)(4) apply to the award of expenses incurred as a result of making the motion. For purposes of this paragraph, a statement previously made is a written statement signed or otherwise adopted or approved by the person making it, or a stenographic, mechanical, electrical, or other recording or transcription of it that is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(5) *Trial Preparation; Experts.* Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (c)(1) 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 will not be required to disclose the expert's earnings as an expert witness or income derived from other services.

An expert may be required to produce financial and business records only under the most unusual or compelling circumstances and may not be compelled to compile or produce nonexistent documents. On motion, the court may order further discovery by other means, subject to such restrictions as to scope and other

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

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

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

**(d) Protective Orders.** On motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending may make any order to protect a party or person from annoyance, embarrassment,

oppression, or undue burden or expense that justice requires, including 1 or more of the following:

- (1) that the discovery not be had;
- (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place or the allocation of expenses;
- (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
- (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;
- (5) that discovery be conducted with no one present except persons designated by the court;
- (6) that a deposition after being sealed be opened only by order of the court;
- (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; and
- (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of rule 1.380(a)(4) apply to the award of expenses incurred in relation to the motion.

**(e) Limitations on Discovery of Electronically Stored Information.**

- (1) A person may object to discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of burden or cost. On motion to

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

(2) In determining any motion involving discovery of electronically stored information, the court must limit the frequency or extent of discovery otherwise allowed by these rules if it determines that:

(A) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from another source or in another manner that is more convenient, less burdensome, or less expensive; or

(B) the burden or expense of the discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

**(f) Timing and Sequence of Discovery.**

(1) *Timing.* A party may not seek discovery from any source before that party's initial disclosures are served on the other party, except when authorized by stipulation or by court order.

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

**(g) Supplementing of Responses.** A party who has made a disclosure under this rule or who has responded to an

interrogatory, a request for production, or a request for admission must supplement or correct its disclosure or response:

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

(2) as ordered by the court.

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

**(i) Apex Doctrine.** A current or former high-level government or corporate officer may seek an order preventing the officer from being subject to a deposition. The motion, whether by a party or by the person of whom the deposition is sought, must be accompanied by an affidavit or declaration of the officer explaining that the officer lacks unique, personal knowledge of the issues being litigated. If the officer meets this burden of production, the court shall issue an order preventing the deposition, unless the party seeking the deposition demonstrates that it has exhausted other discovery, that such discovery is inadequate, and that the officer has unique, personal knowledge of discoverable information. The court may vacate or modify the order if, after additional discovery, the party seeking the deposition can meet its burden of persuasion under this rule. The burden to persuade the court that the officer is high-level for purposes of this rule lies with the person or party opposing the deposition.

**(j) Form of Responses to Written Discovery Requests.** When responding to requests for production served under rule 1.310(b)(5), written deposition questions served under rule 1.320,

**1.340**

upon 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.

(4) *As to Completion and Return.* Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, or otherwise dealt with by the officer under rules 1.310 and 1.320 are waived unless a motion to suppress the deposition or some part of it is made with reasonable promptness after the defect is, or with due diligence might have been, discovered.

### **Committee Notes**

**1972 Amendment.** Derived from Federal Rule of Civil Procedure 32 as amended in 1970. Subdivisions (a), (b), and (c) are former rules 1.280(d), (f), and (g) respectively. Subdivision (d) is derived from the entire former rule 1.330.

**1998 Amendment.** Subdivision (a)(1) was amended to clarify that, in addition to the uses of depositions prescribed by these rules, depositions may be used for any purpose permitted by the Florida Evidence Code (chapter 90, Fla. Stat.). This amendment is consistent with the 1980 amendment to Rule 32 of the Federal Rules of Civil Procedure.

### **RULE 1.340. INTERROGATORIES TO PARTIES**

#### **(a) Procedure for Use.**

(1) Without leave of court, any party may serve on any other party written interrogatories to be answered:

(A) by the party to whom the interrogatories are directed; or

(B) if that party is a public corporation, private corporation, partnership, association, or governmental agency, by any officer or agent, who must furnish the information available to that party.

(2) Interrogatories may be served on the plaintiff after commencement of the action and on any other party with or after service of the process and initial pleading on that party.

(3) The interrogatories must not exceed 30, including all subparts, unless the court permits a larger number on motion and notice and for good cause.

(4) 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.

(5) A party may serve fewer than all of the approved interrogatories within a form.

(6) 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.

(7) 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.

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

(9) 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.

(10) 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.**

(1) Interrogatories may relate to any matters that can be inquired into under rule 1.280(c), and the answers may be used to the extent permitted by the rules of evidence except as otherwise provided in subdivision (b).

(2) 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.

(3) A party must respond to an otherwise proper interrogatory by giving the information the party has and the source on which the information is based.

(4) 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.

(5) If a party introduces an answer to an interrogatory, any other party may require that party to introduce any other interrogatory and answer that in fairness ought to be considered with it.

**(c) Option to Produce Records.**

(1) When the answer to an interrogatory may be derived or ascertained from the records (including electronically stored information) of the party to whom the interrogatory is directed or from an examination, audit, or inspection of the records or from a compilation, abstract, or summary based on the records and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party to whom it is directed, then an answer to the interrogatory specifying the records from which the answer may be derived or ascertained and offering to give the party serving the interrogatory a reasonable opportunity to examine, audit, or inspect the records and to make

copies, compilations, abstracts, or summaries is a sufficient answer.

(2) An answer must be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party interrogated, the records from which the answer may be derived or ascertained, or must identify a person or persons representing the interrogated party who will be available to assist the interrogating party in locating and identifying the records at the time they are produced.

(3) If the records to be produced consist of electronically stored information, the records must be produced in a form or forms in which they are ordinarily maintained or in a reasonably usable form or forms.

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

**(e) Service and Filing.**

(1) Interrogatories must be served on the party to whom the interrogatories are directed and copies must be served on all other parties.

(2) 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.

(3) 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.

(4) The answers to interrogatories may be filed in compliance with Florida Rule of General Practice Judicial Administration 2.425 and rule 1.280(h) by any party when the court should consider the answers to interrogatories in determining any matter pending before the court.

(5) The court may order that the answers to interrogatories be filed at any time when the court determines that examination of the answers to interrogatories is necessary to determine any matter pending before the court.

### **Committee Notes**

**1972 Amendment.** Subdivisions (a), (b), and (c) are derived from Federal Rule of Civil Procedure 33 as amended in 1970. Changes from the existing rule expand the time for answering, permit interrogatories to be served with the initial pleading or at any time thereafter, and eliminate the requirement of a hearing on objections. If objections are made, the interrogating party has the responsibility of setting a hearing if that party wants an answer. If the interrogatories are not sufficiently important, the interrogating party may let the matter drop. Subdivision (b) covers the same matter as the present rule 1.340(b) except those parts that have been transferred to rule 1.280. It also eliminates the confusion between facts and opinions or contentions by requiring that all be given. Subdivision (c) gives the interrogated party an option to produce business records from which the interrogating party can derive the answers to questions. Subdivision (d) is former subdivision (c) without change. Former subdivision (d) is repealed because it is covered in rule 1.280(e). Subdivision (e) is derived from the New Jersey rules and is intended to place both the interrogatories and the answers to them in a convenient place in the court file so that they can be referred to with less confusion. The requirement for filing a copy before the answers are received is necessary in the event of a dispute concerning what was done or the appropriate times involved.

**1988 Amendment.** The word “initial” in the 1984 amendment to subdivision (a) resulted in some confusion, so it has been deleted. Also the total number of interrogatories which may be propounded without leave of court is enlarged to 30 from 25. Form interrogatories which have been approved by the supreme court must be used; and those so used, with their subparts, are included in the total number permitted. The amendments are not intended to change any other requirement of the rule.

**1.350**

**2011 Amendment.** A reference to Florida Rule of General Practice and Judicial Administration 2.425 and rule 1.280(f) is added to require persons filing discovery materials with the court to make sure that good cause exists prior to filing discovery materials and that certain specific personal information is redacted.

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

### **Court Commentary**

**1984 Amendment.** Subdivision (a) is amended by adding the reference to approved forms of interrogatories. The intent is to eliminate the burden of unnecessary interrogatories.

Subdivision (c) is amended to add the requirement of detail in identifying records when they are produced as an alternative to answering the interrogatory or to designate the persons who will locate the records.

Subdivision (e) is changed to eliminate the requirement of serving an original and a copy of the interrogatories and of the answers in light of the 1981 amendment that no longer permits filing except in special circumstances.

Subdivision (f) is deleted since the Medical Liability Mediation Proceedings have been eliminated.

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

### **RULE 1.350. PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY ON 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(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(c) and that are in the possession, custody, or control of the party to whom the request is directed; or

(3) to permit entry on designated land or other property in the possession or control of the party on 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(c).

**(b) Procedure.**

(1) 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.

(2) The request must set forth the items to be inspected, either by individual item or category, and describe each item and category with reasonable particularity.

(3) The request must specify a reasonable time, place, and manner of making the inspection or performing the related acts. The party to whom the request is directed must 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.

(4) For each item or category the response must state that inspection and related activities will be permitted as requested or state with specificity the grounds for objecting to the request, including the reasons.

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

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

(7) When producing documents, the producing party must either produce them as they are kept in the usual course of business or must identify them to correspond with the categories in the request.

(8) 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.

(9) The party submitting the request may move for an order under rule 1.380 concerning any objection, failure to respond to the request, or any part of it, or failure to permit the inspection as requested.

**(c) Persons Not Parties.** This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter on land.

**(d) Filing of Documents.** Unless required by the court, a party must 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(h) when they should be considered by the court in determining a matter pending before the court.

### **Committee Notes**

**1972 Amendment.** Derived from Federal Rule of Civil Procedure 34 as amended in 1970. The new rule eliminates the good cause requirement of the former rule, changes the time for making the request and responding to it, and changes the procedure for the response. If no objection to the discovery is made, inspection is had without a court order. While the good cause requirement has been eliminated, the change is not intended to overrule cases limiting discovery under this rule to the scope of ordinary discovery, nor is it intended to overrule cases limiting unreasonable requests such as those reviewed in *Van Devere v. Holmes*, 156 So. 2d 899 (Fla. 3d DCA 1963); *IBM v. Elder*, 187 So. 2d 82 (Fla. 3d DCA 1966); and *Miami v. Florida Public Service Commission*, 226 So. 2d 217 (Fla. 1969). It is intended that the court review each objection and weigh the need for discovery and the likely results of it against the right of privacy of the party or witness or custodian.

**1980 Amendment.** Subdivision (b) is amended to require production of documents as they are kept in the usual course of business or in accordance with the categories in the request.

**2011 Amendment.** A reference to Florida Rule of Judicial Administration 2.425 and rule 1.280(f) is added to require persons filing discovery materials with the court to make sure that good cause exists prior to filing discovery materials and that certain specific personal information is redacted.

**2012 Amendment.** Subdivision (a) is amended to address the production of electronically stored information. Subdivision (b) is amended to set out a procedure for determining the form to be used in producing electronically stored information.

**1.380**

withdrawal or amendment of the admission. Subject to rule 1.200 governing amendment of a pretrial order, 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.

### **Committee Notes**

**1972 Amendment.** Derived from Federal Rule of Civil Procedure 36 as amended in 1970. The rule is changed to eliminate distinctions between questions of opinion, fact, and mixed questions. The time sequences are changed in accordance with the other discovery rules, and case law is incorporated by providing for amendment and withdrawal of the answers and for judicial scrutiny to determine the sufficiency of the answers.

**2003 Amendment.** The total number of requests for admission that may be served without leave of court is limited to 30, including all subparts.

### **RULE 1.380. FAILURE TO MAKE DISCOVERY; SANCTIONS**

**(a) Motion for Order Compelling Discovery.** On reasonable notice to other parties and all persons affected, a party may apply for an order compelling discovery as follows:

(1) *Appropriate Court.* An application for an order to a party may be made to the court in which the action is pending or in accordance with rule 1.310(d). An application for an order to a deponent who is not a party must be made to the circuit court where the deposition is being taken.

(2) *Motion.*

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

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

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

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

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

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

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

(i) in response to a request for examination of a person submitted under rule 1.360(a) objects to the examination;

(ii) fails to respond that the examination will be permitted as requested;

(iii) fails to submit to examination; or

(iv) fails to produce a person in that party's custody or legal control for examination

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

(G) When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

(H) If the court denies the motion in whole or in part, it may make the protective order as it would have been empowered to make on a motion made under rule 1.280(d).

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

(4) *Award of Expenses of Motion.*

(A) If the motion is granted and after opportunity for hearing, the court must require the party or deponent whose conduct necessitated the motion, or the party or counsel advising the conduct, to pay to the moving party the reasonable expenses incurred in obtaining the order that may include attorneys' fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

(B) If the motion is denied and after opportunity for hearing, the court must require the moving party to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion that may include 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, the court may apportion the reasonable expenses incurred as a result of making the motion among the parties and persons.

**(b) 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.

(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:

(A) An order that the matters regarding which the questions were asked or any other designated facts will be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order.

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence.

(C) An order striking out pleadings or parts of them or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part of it, or rendering a judgment by default against the disobedient party.

(D) 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 orders except an order to submit to an examination made under rule 1.360(a)(1)(B) or subdivision (a)(2) of this rule.

(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 subdivisions (b)(2)(A), (b)(2)(B), (b)(2)(C), and (b)(2)(D) of this rule, unless the party failing to comply shows the inability to produce the person for examination.

(3) Instead of any of the foregoing orders or in addition to them, the court must 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.

**(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 must issue the order at the time a party requesting the admissions proves the genuineness of the document or the truth of the matter, on motion by the requesting party, unless it finds that:

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

- (1) may order payment of the reasonable expenses, including attorneys' fees, caused by the failure;
- (2) may inform the jury of the party's failure; and
- (3) may impose other appropriate sanctions, including any of the orders listed in rule 1.380(b)(2)(A)–(b)(2)(D).

**(e) Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection.**

(1) The court in which the action is pending may take any action authorized under subdivisions (b)(2)(A)–(b)(2)(C) of this rule 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:

(A) to appear before the officer who is to take the deposition after being served with a proper notice;

(B) to serve answers or objections to interrogatories submitted under rule 1.340 after proper service of the interrogatories; or

(C) to serve a written response to a request for inspection submitted under rule 1.350 after proper service of the request.

(2) Instead of any order or in addition to it, the court must 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.

(3) 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(d).

**(f) Failure to Preserve Electronically Stored Information.**

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

(2) only on a 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.

### **Committee Notes**

**1972 Amendment.** Derived from Federal Rule of Civil Procedure 37 as amended in 1970. Subdivision (a)(3) is new and makes it clear that an evasive or incomplete answer is a failure to answer under the rule. Other clarifying changes have been made within the general scope of the rule to ensure that complete coverage of all discovery failures is afforded.

**2003 Amendment.** Subdivision (c) is amended to require a court to make a ruling on a request for reimbursement at the time of the hearing on the requesting party's motion for entitlement to such relief. The court may, in its discretion, defer ruling on the amount of the costs or fees in order to hold an evidentiary hearing whenever convenient to the court and counsel.

**2005 Amendment.** Following the example of Federal Rule of Civil Procedure 37 as amended in 1993, language is included in subdivision (a)(2) that requires litigants to seek to resolve discovery disputes by informal means before filing a motion with the court. This requirement is based on successful experience with the federal rule as well as similar local rules of state trial courts. Subdivision (a)(4) is revised to provide that a party should not be awarded its expenses for filing a motion that might have been avoided by

**1.460**

testimony must be in open court in the presence of all parties. In its discretion, the court may respond in writing to a request for readback or playback of testimony without having the jury brought before the court, provided that the parties have received the opportunity to place objections on the record and both the request and response are made part of the record.

**(b) Request for Transcripts.** If any juror requests to have a transcript of trial testimony, the court must inform the jury that transcripts are not available but that they can request a readback or playback of testimony, which request may or may not be granted at the court's discretion. If a juror makes only a general request for transcripts, as opposed to identifying any particular witness's testimony that they wish to review, the court must also instruct the jury that, if they request a readback or playback, they must specify the particular trial testimony they wish to have read or played back. If, after being properly instructed in accordance with this subdivision, the jury requests a readback or playback of any trial testimony, the court must follow the procedures set forth in subdivision (a).

#### **RULE 1.455. JUROR NOTEBOOKS**

In its discretion, the court may authorize documents and exhibits to be included in notebooks for use by the jurors during trial to aid them in performing their duties.

#### **RULE 1.460. MOTIONS TO CONTINUE TRIAL**

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

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

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

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

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

(2) whether the motion is opposed;

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

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

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

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

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

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