

Proposed changes:

RULE 1.061. CHOICE OF FORUM

(a) **Grounds for Dismissal.** An action may be dismissed on the ground that a satisfactory remedy may be more conveniently sought in a jurisdiction other than Florida when:

(1) the trial court finds that an adequate alternate forum exists which possesses jurisdiction over the whole case, including all of the parties;

(2) the trial court finds that all relevant factors of private interest favor the alternate forum, weighing in the balance a strong presumption against disturbing plaintiffs' initial forum choice;

(3) if the balance of private interests is at or near equipoise, the court further finds that factors of public interest tip the balance in favor of trial in the alternate forum; and

(4) the trial judge ensures that plaintiffs can reinstate their suit in the alternate forum without

Reason for change:

Subdivision (a)(1) is amended to clarify that the alternative forum other than Florida must have jurisdiction over all of the parties for the trial court to grant a dismissal based on forum non conveniens.

undue inconvenience or prejudice.

The decision to grant or deny the motion for dismissal rests in the sound discretion of the trial court, subject to review for abuse of discretion.

(b) **Stipulations in General.** The parties to any action for which a satisfactory remedy may be more conveniently sought in a jurisdiction other than Florida may stipulate to conditions upon which a forum-non-conveniens dismissal shall be based, subject to approval by the trial court. The decision to accept or reject the stipulation rests in the sound discretion of the trial court, subject to review for abuse of discretion.

A forum non conveniens dismissal shall not be granted unless all defendants agree to the stipulations required by subdivision (c) and any additional stipulations required by the court.

(c) (no change)

(d) (no change)

(e) **Waiver of Automatic Stipulations.**

Subdivision (b) is amended to clarify that all of the defendants, not just the moving defendant, must agree to the stipulations required by subdivision (c) as well as any additional stipulations required by the trial court before an action may be dismissed based on forum non conveniens.

Upon unanimous agreement, the parties may waive the conditions provided in subdivisions (c) or (d), or both, only when they demonstrate and the trial court finds a compelling reason for the waiver. The decision to accept or reject the waiver shall not be disturbed on review if supported by competent, substantial evidence.

(f) (no change)

(g) **Time for Moving for Dismissal.** A motion to dismiss based on forum non conveniens shall be served not later than 60 days after service of process on the moving party.

(h) **Retention of Jurisdiction.** The court shall retain jurisdiction after the dismissal to enforce its order of dismissal and any conditions and stipulations in the order.

Subdivision (g) is added to require that a motion to dismiss based on forum non conveniens be served not later than 60 days after service of process on the moving party.

Subdivision (h) is added to require the court to retain jurisdiction over the action after the dismissal for purposes of enforcing its order of dismissal and any conditions and stipulations contained in the order.

Committee Notes

2000 Amendment. Subdivision (a)(1) is amended to clarify that the alternative forum other than Florida must have jurisdiction over all of the parties for the trial court to grant a dismissal based on forum non conveniens.

Subdivision (b) is amended to clarify that all of the defendants, not just the moving defendant, must agree to the stipulations required by subdivision (c) as well as any additional stipulations required by the trial court before an action may be dismissed based on forum non conveniens.

Subdivision (g) is added to require that a motion to dismiss based on forum non conveniens be served not later than 60 days after service of process on the moving party.

Subdivision (h) is added to require the court to retain jurisdiction over the action after the dismissal for purposes of enforcing its order of dismissal and any conditions and stipulations contained in the order.

RULE 1.080. SERVICE OF PLEADINGS AND PAPERS

(a) (no change)

(b) (no change)

(c) (no change)

(d) (no change)

(e) (no change)

(f) **Certificate of Service.** When any attorney shall certify in substance:

“I certify that a copy hereof has been furnished to (here insert name or names) by (delivery) (mail) (fax) this day of _____, 19.....(date).....”

Y2k change.

Attorney”

the certificate shall be taken as prima facie proof of such service in compliance with these rules.

(g) (no change)

(h) (no change)

Comma added after "or third-party claim" for grammatical correction.

RULE 1.110. GENERAL RULES OF PLEADING

(a) (no change)

(b) **Claims for Relief.** A pleading which sets forth a claim for relief, whether an original claim, counterclaim, crossclaim, or third-party claim, must state a cause of action and shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the ultimate facts showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which the pleader deems himself or herself entitled. Relief in the alternative or of several different types may be demanded. Every complaint shall be considered to demand general relief.

(c) (no change)

(d) (no change)

(e) (no change)

(f) (no change)

(g) (no change)

(h) (no change)

Grammatical correction.

RULE 1.140. DEFENSES

Comma added for grammatical correctness.

(a) (no change)

(b) (no change)

(c) (no change)

(d) (no change)

(e) (no change)

(f) (no change)

(g) (no change)

(h) **Waiver of Defenses.**

(1) A party waives all defenses and objections that the party does not present either by motion under subdivisions (b), (e), or (f) of this rule or, if the party has made no motion, in a responsive pleading except as provided in subdivision (h)(2).

(2) The defenses of failure to state a

cause of action or a legal defense or to join an indispensable party may be raised by motion for judgment on the pleadings or at the trial on the merits in addition to being raised ~~in~~ either in a motion under subdivision (b) or in the answer or reply. The defense of lack of jurisdiction of the subject matter may be raised at any time.

RULE 1.200. 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 shall 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 papers;

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

(3) coordinate the progress of the action if complex litigation factors are present;

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

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

(6) schedule or hear motions in limine;

(7) pursue the possibilities of settlement;

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

(9) consider referring issues to a master for findings of fact; and

(10) schedule other conferences or determine other matters that may aid in the disposition of the action.

(b) (no change)

(c) (no change)

(d) (no change)

A court commentary rather than a committee note is suggested to clarify this subdivision (see the suggested court commentary below).

**RULE 1.280. GENERAL PROVISIONS
GOVERNING DISCOVERY**

(a) (no change)

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

(1) (no change)

(2) (no change)

(3) (no change)

(4) **Trial Preparation: Experts.**

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

(A) (i) (no change)

(ii) (no change)

(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.

Suggested court commentary

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)(4)(C) of this rule concerning fees and expenses as the court may deem appropriate.

(B) (no change)

(C) (no change)

(D) (no change)

(5) (no change)

(c) (no change)

(d) (no change)

(e) (no change)

Court Commentary

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

For consistency with rules style.

For consistency with rules style.

RULE 1.310. DEPOSITIONS UPON ORAL EXAMINATION

(a) (no change)

(b) (no change)

(c) (no change)

(d) (no change)

(e) (no change)

(f) (no change)

(g) (no change)

(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 upon 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.

For consistency with rules style.

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

For consistency with rules

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

(1) (no change)

(2) (no change)

(3) (no change)

(4) **Award of Expenses of Motion.** 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 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 justified or that other circumstances make an award of expenses unjust. If the motion is denied and after opportunity for hearing, the court shall 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. 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.

For consistency with rules style.

(1) (no change)

(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:

For consistency with rules style.

(A) (no change)

(B) (no change)

(C) (no change)

(D) (no change)

(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.

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 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

For consistency with rules style.

the genuineness of the document or the truth of the matter, the requesting party may apply to the court 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 make the order 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),

This subdivision is renamed to reflect more specifically its content. Subdivision (f) also deals with time requirements.

and (C) of subdivision (b)(2) of this rule. 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 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).

For consistency with rules style.

To establish the time for acceptance of proposals for

**RULE 1.442. P R O P O S A L S F O R
SETTLEMENT**

(a) (no change)

(b) **~~Time Requirements~~Service of Proposal.**

A proposal to a defendant shall be served no earlier than 90 days after service of process on that defendant; a proposal to a plaintiff shall be served no earlier than 90 days after the action has been commenced. No proposal shall be served later than 45 days before the date set for trial or the first day of the docket on which the case is set for trial, whichever is earlier.

(c) **Form and Content of Proposal for Settlement.**

(1) (no change)

(2) A proposal shall:

(A) (no change)

(B) (no change)

settlement in class actions.

To conform with new rule 1.525.

For consistency with rules style.

For consistency with rules style.

(C) (no change)

(D) (no change)

(E) (no change)

(F) state whether the proposal includes attorneys' fees and whether attorneys' fees are part of the legal claim; and

(G) (no change)

(3) (no change)

(d) (no change)

(e) (no change)

(f) **Acceptance and Rejection.**

(1) A proposal shall be deemed rejected unless accepted by delivery of a written notice of acceptance within 30 days after service of the proposal. The provisions of rule 1.090(e) do not apply to this subdivision. No oral communications shall constitute

an acceptance, rejection, or counteroffer under the provisions of this rule.

(2) In any case in which the existence of a class is alleged, the time for acceptance of a proposal for settlement is extended to 30 days after the date the order granting or denying certification is filed.

(g) **Sanctions.** Any party seeking sanctions pursuant to applicable Florida law, based on the failure of the proposal's recipient to accept a proposal, shall do so by ~~service of an appropriate~~servin~~g a motion within 30 days after the entry of judgment in a nonjury action, the return of the verdict in a jury action, or the entry of a voluntary or involuntary dismissal~~in accordance with rule 1.525.

(h) **Costs and Fees.**

(1) If a party is entitled to costs and fees pursuant to applicable Florida law, the court may, in its discretion, determine that a proposal was not made in good faith. In such case, the court may disallow an award of costs and attorneys' fees.

(2) When determining the reasonableness of the amount of an award of attorneys' fees pursuant to this section, the court shall consider, along with all other relevant criteria, the following factors:

(A) (no change)

(B) (no change)

(C) (no change)

(D) (no change)

(E) (no change)

(F) (no change)

(i) (no change)

(j) (no change)

The Supreme Court asked the committee to propose a rule on motions for attorneys' fees. This rule is added to provide a time requirement for serving motions for costs and attorneys' fees.

Committee Notes

1996 Amendment. This rule was amended to

reconcile, where possible, sections 44.102(6) (formerly 44.102(5)(b)), 45.061, 73.032, and 768.79, Florida Statutes, and the decisions of the Florida Supreme Court in *Knealing v. Puleo*, 675 So. 2d 593 (Fla. 1996), *TGI Friday's, Inc. v. Dvorak*, 663 So. 2d 606 (Fla. 1995), and *Timmons v. Combs*, 608 So. 2d 1 (Fla. 1992). This rule replaces former rule 1.442, which was repealed by the *Timmons* decision, and supersedes those sections of the Florida Statutes and the prior decisions of the court, where reconciliation is impossible, in order to provide a workable structure for proposing settlements in civil actions. The provision which requires that a joint proposal state the amount and terms attributable to each party is in order to conform with *Fabre v. Marin*, 623 So. 2d 1182 (Fla. 1993).

2000 Amendment. Subdivision (f)(2) was added to establish the time for acceptance of proposals for settlement in class actions. "Filing" is defined in rule 1.080(e). Subdivision (g) is amended to conform with new rule 1.525.

RULE 1.525. MOTIONS FOR COSTS AND ATTORNEYS' FEES

Any party seeking a judgment taxing costs, attorneys' fees, or both shall serve a motion within 30 days after filing of the judgment, including a judgment of dismissal, or the service of a notice of voluntary dismissal.

Committee Notes

2000 Adoption. This rule is intended to establish a time requirement to serve motions for costs and attorneys' fees.

Subdivisions (b)–(e) were added and patterned after Florida Small Claims Rule 7.221(a) and Form 7.343. Although the judgment creditor is entitled to broad discovery into the judgment debtor's finances (Fla. R. Civ. P. 1.280(b); *Jim Appley's Tru-Arc, Inc. v. Liquid Extraction Systems*, 526 So. 2d 177, 179 (Fla. 2d DCA 1988)), inquiry into the individual assets of the judgment debtor's spouse may be limited until a proper predicate has been shown. (*Tru-Arc, Inc.* 526 So. 2d at 179; *Rose Printing Co. v. D'Amato*, 338 So. 2d 120 (Fla. 4th DCA 1975).)

Failure to complete form 1.977 as ordered may be considered contempt of court.

RULE 1.560. DISCOVERY IN AID OF EXECUTION

(a) **In General.** In aid of a judgment, decree, or execution the judgment creditor or the successor in interest, when the interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules.

(b) **Fact Information Sheet.** In addition to any other discovery available to a judgment creditor under this rule, the court, at the request of the judgment creditor, shall order the judgment debtor or debtors to complete form 1.977, including all required attachments, within 45 days of the order or such other reasonable time as determined by the court. Failure to obey the order may be considered contempt of court.

(c) **Final Judgment Enforcement Paragraph.** In any final judgment, the judge shall include the following enforcement paragraph if requested by the prevailing party or attorney:

"It is further ordered and adjudged

that the judgment debtor(s) shall complete under oath Florida Rule of Civil Procedure Form 1.977 (Fact Information Sheet), including all required attachments, and serve it on the judgment creditor's attorney, or the judgment creditor if the judgment creditor is not represented by an attorney, within 45 days from the date of this final judgment, unless the final judgment is satisfied or post-judgment discovery is stayed.

Jurisdiction of this case is retained to enter further orders that are proper to compel the judgment debtor(s) to complete form 1.977, including all required attachments, and serve it on the judgment creditor's attorney, or the judgment creditor if the judgment creditor is not represented by an attorney."

(d) Information Regarding Assets of Judgment Debtor's Spouse. In any final judgment, if requested by the judgment creditor, the court shall include the additional Spouse Related Portion of the

fact information sheet upon a showing that a proper predicate exists for discovery of separate income and assets of the judgment debtor's spouse.

(e) **Notice of Compliance.** The judgment debtor shall file with the clerk of court a notice of compliance with the order to complete form 1.977, and serve a copy of the notice of compliance on the judgment creditor or the judgment creditor's attorney.

Committee Notes

2000 Amendment. Subdivisions (b)–(e) were added and patterned after Florida Small Claims Rule 7.221(a) and Form 7.343. Although the judgment creditor is entitled to broad discovery into the judgment debtor's finances (Fla. R. Civ. P. 1.280(b); *Jim Appley's Tru-Arc, Inc. v. Liquid Extraction Systems*, 526 So. 2d 177, 179 (Fla. 2d DCA 1988)), inquiry into the individual assets of the judgment debtor's spouse may be limited until a proper predicate has been shown. (*Tru-Arc, Inc.* 526 So. 2d at 179; *Rose Printing Co. v. D'Amato*, 338 So. 2d 120 (Fla. 4th DCA 1975).)

Failure to complete form 1.977 as ordered may be considered contempt of court.

Subdivision (a)(1)(B) and(a)(1)(C) are merged because the existing paragraph separation does not make grammatical sense.

RULE 1.610. INJUNCTIONS

(a) Temporary Injunction.

(1) A temporary injunction may be granted without written or oral notice to the adverse party only if:

(A) it appears from the specific facts shown by affidavit or verified pleading that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the movant's attorney certifies in writing any efforts that have been made to give notice; and

~~_____ (C) —~~ the reasons why notice should not be required.

(2) No evidence other than the affidavit or verified pleading shall be used to support the application for a temporary injunction unless the adverse party appears at the hearing or has received

reasonable notice of the hearing. Every temporary injunction granted without notice shall be endorsed with the date and hour of entry and shall be filed forthwith in the clerk's office and shall define the injury, state findings by the court why the injury may be irreparable, and give the reasons why the order was granted without notice if notice was not given. The temporary injunction shall remain in effect until the further order of the court.

(b) (no change)

(c) (no change)

(d) (no change)

**RULE 1.650. MEDICAL MALPRACTICE
PRESUIT SCREENING RULE**

Editing correction.

(a) (no change)

(b) (no change)

(c) **Discovery.**

(1) (no change)

(2) **Procedures for Conducting.**

(A) (no change)

(B) (no change)

(C) **Physical ~~e~~Examinations.**

Upon receipt by a party of a notice of intent to initiate litigation and within the presuit screening period, a party may require a claimant to submit to a physical examination. The party shall give reasonable notice in writing to all parties of the time and place of the examination. Unless otherwise impractical, a claimant shall be required to submit to only one examination on

behalf of all parties. The practicality of a single examination shall be determined by the nature of the claimant's condition as it relates to the potential liability of each party. The report of examination shall be made available to all parties upon payment of the reasonable cost of reproduction. The report shall not be provided to any person not a party at any time. The report shall only be used for the purpose of presuit screening and the examining physician may not testify concerning the examination in any subsequent civil action. All requests for physical examinations or notices of unsworn statements shall be in writing and a copy served upon all parties. The requests or notices shall bear a certificate of service identifying the name and address of the person upon whom the request or notice is served, the date of the request or notice, and the manner of service.

(3) (no change)

(d) **Time Requirements.**

(1) (no change)

(2) (no change)

The reference to the statute of repose was added to subdivision (d)(3) pursuant to *Musculoskeletal Institute Chartered v. Parham*, 745 So.2d 946 (Fla. 1999).

(3) To avoid being barred by the applicable statute of limitations or statute of repose, an action must be filed within 60 days or within the remainder of the time of the statute of limitations after the notice of intent to initiate litigation was received, whichever is longer, after the earliest of the following:

(A) The expiration of 90 days after the date of receipt of the notice of intent to initiate litigation.

(B) The expiration of 180 days after mailing of the notice of intent to initiate litigation if the claim is controlled by section 768.28(6)(a), Florida Statutes.

(C) Receipt by claimant of a written rejection of the claim.

(D) The expiration of any extension of the 90-day presuit screening period stipulated to by the parties in accordance with section 768.57(4), Florida Statutes.

Committee Notes

2000 Amendment. The reference to the statute of repose was added to subdivision (d)(3) pursuant to *Musculoskeletal Institute Chartered v. Parham*, 745 So.2d 946 (Fla. 1999).

1988 Editor's Note: This rule was added in In re: Medical Malpractice Presuit Screening Rules — Civil Rules of Procedure, 531 So. 2d 958 (Fla. 1988), revised 536 So. 2d 193.

1992 Editor's Note: Some of the cites to Florida Statutes are not current; e.g., section 768.57 is now 766.106, and section 768.495 is now 766.104.

For consistency with rules style.

**RULE 1.730. C O M P L E T I O N O F
MEDIATION**

(a) (no change)

(b) (no change)

(c) **Imposition of Sanctions.** In the event of any breach or failure to perform under the agreement, the court upon motion may impose sanctions, including costs, attorneys' fees, or other appropriate remedies including entry of judgment on the agreement.