What To Know About Major Fla. Civil Procedure Rule Changes

By **Brian Briz, Benjamin Tyler and Yarenis Cruz** (August 22, 2024)

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On May 23, the Florida Supreme Court issued amendments to the Florida Rules of Civil Procedure that will have a significant impact on lawyers and the judiciary alike.

The amendments, which take effect on Jan. 1, 2025, touch on everything including pretrial procedure, discovery, motion practice and trial.

While the amendments are intended to streamline civil cases, the breadth of the changes may initially present some growing pains to litigants, lawyers and judges.

As will be further discussed below, given that Florida state court judges carry incredibly heavy caseloads that often limit the kind of active case management that we see in federal court, the onus will fall on lawyers to comply with the amendments to ensure that they achieve their stated goals.

Before discussing the implications of the amendments in general, it is important to understand what the amendments actually do. Below is an overview of the amendments separated by topic.

Case Management

The first tranche of changes is related to case administration.

Whereas circuits previously had discretion to decide whether cases should be assigned a case management track, the amendment to Rule 1.200 now requires that every case be assigned to one of three case management tracks within 120 days.

The three tracks are complex, general or streamlined, and the chief judge of each circuit is required to enter a standing order addressing specific case management requirements related to each track. Thus, it will be important for practitioners to be aware of the standing case management order in the circuit where the case is filed to ensure compliance.

For general and streamlined cases, courts are now required to issue a case management order that specifies the projected trial period, including at least eight specified deadlines, which "must be strictly enforced unless changed by court order."

While parties can still submit an agreed order to extend a deadline, the requested change must not affect other deadlines and courts may be less inclined to grant agreed extensions than they have traditionally been.

Importantly, the amendment to Rule 1.200 requires that if a party requests a case management conference, the notice must identify specific issues to be addressed and list all pending motions. With reasonable notice to the parties, courts can address any pending

motions, except for motions for summary judgment or those requiring evidentiary hearings, at the case management conference.

Consequently, practitioners should be prepared to argue pending motions if they ask for a case management conference.

Additionally, the amendment to Rule 1.440 eliminates the previous "at issue" requirement to set a case for trial and requires courts to enter an order fixing the trial period 45 days before any projected trial period in a case management order.

To that end, under the amendment to Rule 1.460, motions to continue trial are now expressly disfavored under the rules which will now provide that such motions "should rarely be granted and then only upon good cause shown."

Discovery

The amendments also alter the contours of discoverable information and align the rules more closely with the Federal Rules of Civil Procedure, as amended in 2015.

For example, the Amendment to Rule 1.280 removes the phrase "reasonably calculated to lead to the discovery of admissible evidence" and in its place adds the proportionality language of Rule 26(b)(1) of the Federal Rules of Civil Procedure.

Whereas parties could previously obtain discovery on "any matter, not privileged, that is relevant to the subject matter of the pending action," parties will now have to show that such discovery is "proportional to the needs of the case." This change puts an important limit on discoverable information and gives objecting parties a new avenue to limit broad discovery requests.

Moreover, the rules will now require initial disclosures similar to those in the Federal Rules of Civil Procedure. Within 60 days of service of the complaint or joinder, without awaiting a discovery request, parties must disclose:

- The name and contact information 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;

- A copy or description of all documents or information 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 — that it may use to support its claims or defenses;

- A computation for each category of damages claimed by the disclosing party and a copy of the documents or other evidentiary material on which each computation is based — unless those documents are privileged or otherwise protected from disclosure; and

- A copy of any insurance policy or agreement that may satisfy all or part of a possible judgment in the action.

This requirement applies to all cases except those listed in Rule 1.200(a) and should, if complied with, streamline the discovery process.

However, given its breadth and potential significance to many cases, it is easy to anticipate confusion or noncompliance with this new requirement.

To stave off unnecessary delays, the amendments expressly state that 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" and that 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."

Hopefully, this will provide litigants with the support they need to adequately — and quickly — enforce the rules.

Another important change is that, under the amendments, parties must, on their own accord, supplement or correct their discovery disclosures and responses in a timely manner if they learn that a response was materially incomplete or incorrect.

Thus, all discovery requests will now be considered "continuing," and a fact discovered after a discovery response has been served must now be disclosed immediately.

Motion Practice

Continuing with the pattern of aligning the rules with federal practice, the amendments create a new rule — Rule 1.202, which establishes a conferral requirement for filings of nondispositive motions.

Parties will be expected to confer and attempt to resolve the issues raised in a motion before reserving hearing time. Similar to what is required in many federal courts, the movant must include a certificate with the motion stating that the parties have conferred and whether the parties agreed or disagreed on the resolution of the motion.

A certification stating that the opposing party was unavailable for a conference before filing the motion should describe all efforts undertaken to accomplish dialogue with the opposing party, prior to filing the motion.

In theory, this should decrease the volume of motions that a court must spend time on. Practitioners should ensure to document their attempts to confer and include them in their certification. As federal practitioners will be well aware, courts will not take kindly to conferrals in name only.

Finally, the amendment to Rule 1.510 alters the deadline for responding to a motion for summary judgment. Whereas the nonmoving party must currently respond to a motion for summary judgment at least 20 days before the hearing, parties must now respond 60 days after being served with the motion, regardless of the hearing date.

The response must include their supporting factual positions, similar to what is required by the Federal Rules of Civil Procedures. This change is incredibly impactful given the importance of motions for summary judgment.

Practitioners should take note not to wait for a hearing to be set and likely should begin preparing their response promptly after being served with a motion for summary judgment.

Where To Go From Here

The upcoming changes to the rules aim to improve the efficiency, fairness and quality of civil litigation in Florida courts.

As previously mentioned, Florida state court judges carry incredibly heavy caseloads that often limit the kind of active case management that we see in federal court. In some respects, the ability of federal courts to move cases quickly hinges on their ability to actively manage the cases on their docket by enforcing the rules.

Federal judges are afforded resources, such as law clerks, who assist with, inter alia, research and drafting orders, and magistrate judges who exercise jurisdiction over certain matters assigned by statute or delegated by the federal judges.

Most state court judges, on the other hand, do not have these luxuries. With thousands of cases and no individually assigned law clerks or magistrate judges, overburdened state court judges are often unable to dedicate the time needed to actively manage all of their cases, let alone to ensure that every rule is being properly — and timely — complied with.

Unfortunately, the amendments — which add requirements while limiting judge's abilities to manage their dockets — will likely make their job even more challenging.

As it is, it is challenging for state court practitioners to obtain timely hearing dates on pending motions, and it is even more challenging to have substantive or case-dispositive motions argued and decided before trial.

Consequently, the onus will fall on lawyers to comply with the amendments to ensure that they achieve their stated goals. This means being proactive, staying organized, diligently managing deadlines and limiting gamesmanship.

The amendments have the potential to make life easier on litigants, lawyers and judges. Whether they can accomplish that will depend on all of us doing our part.

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