The First Batch of New Rules of Civil Procedure: The things you need to know Plus Track A vs Track B

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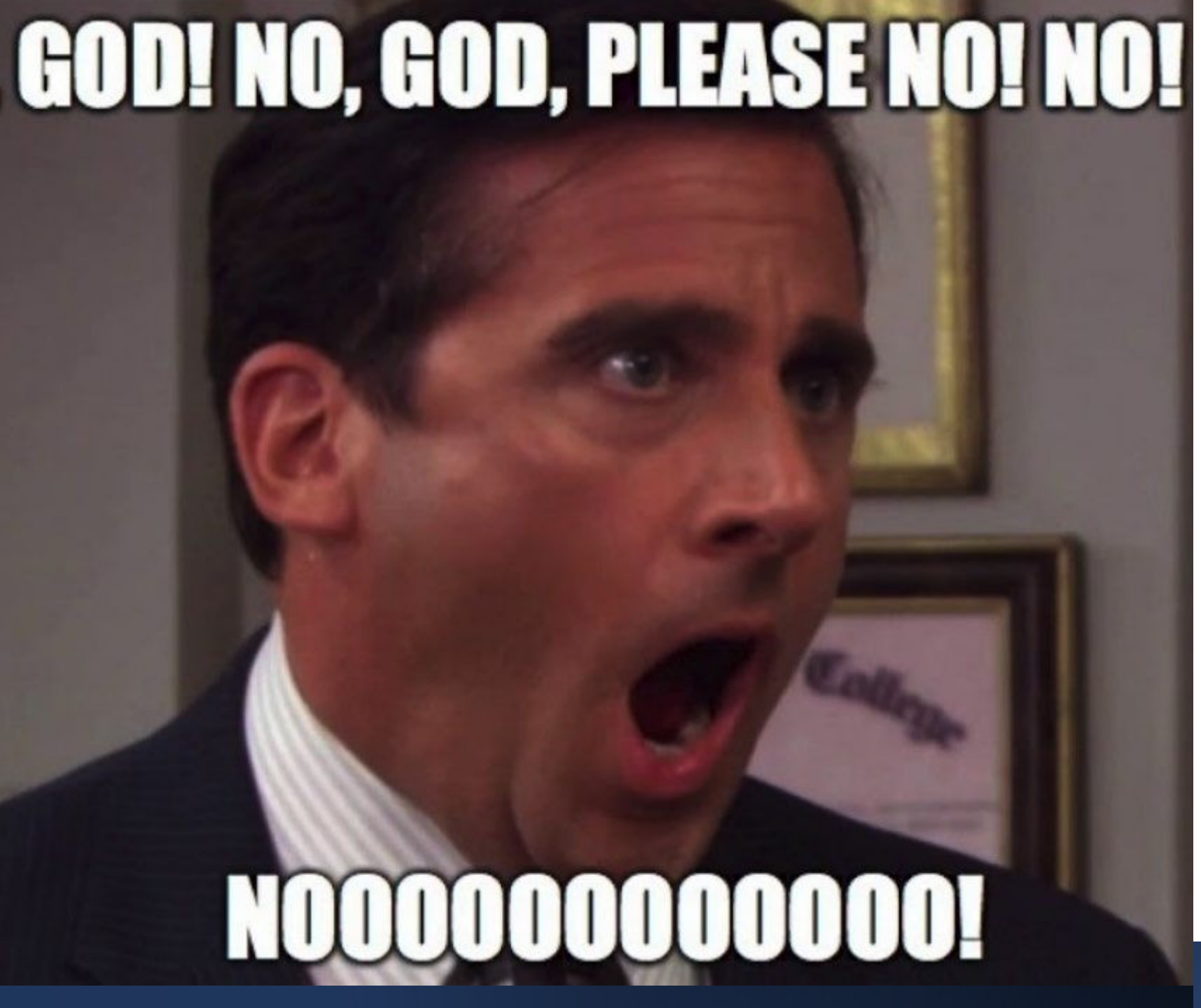
In January 2022, the Workgroup submitted a package to the Supreme Court with 32 proposed rules. Six were brand new. Twenty-six were modifications of current rules.

On this monster package, the Supreme Court received 69 comments.

The Workgroup wanted to implement all of the proposed changes at once.



The commenters, including judges and various Clerks of Court, were unanimous that changing all of these rules all at once would break the system.


THE COURT LISTENED!!

The Court determined that it would revise the rules in batches and send them to the Committee on the Rules of Civil Procedure to do the work.

The first batch was:

1.200 – case management rule for streamlined and general cases
1.201 – case management rule for complex cases
1.280 – discovery rule
1.440 – at issue rule
1.460 – continuance rule

A funny thing happened when the Rules of Civil Procedure subcommittees sat down to write…

We couldn’t agree on whether we were supposed to start from scratch in writing rule 1.200 or whether we were limited to trying to edit what the Workgroup wrote.

We called the Supreme Court and they said (literally, couldn't believe I found this image):

And that is how Track A and Track B were born.

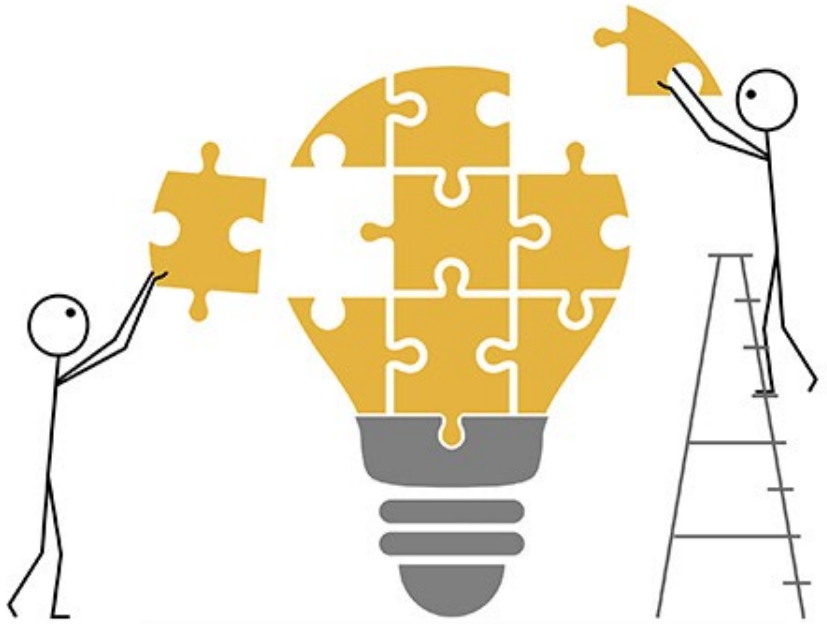
We thought the Court would pick one and submit it for comment.

They didn’t.

They are offering BOTH for comment and asking members of the Bar to submit comments about ***what they want***.

This is a HUGE opportunity!


YOUR VOTE
IS YOUR
VOICE.
BE HEARD.
BALLOT
BEN SARGENT



The point of today's exercise is to:

1. Make you aware of the changes that are coming (whether you are a judge or a lawyer, it'll be an adjustment!); and

2. Educate you so that you can voice an educated opinion about what you want the rules governing our practice to look like!


LET'S DO THIS!
peacock

Rule 1.200 - CASE MANAGEMENT; PRETRIAL PROCEDURE

Subsection (a) is a list of the kinds of cases that ARE NOT subject to rule 1.200.

Subsection (a) is identical in Track A and Track B.

This list was expanded from the Workgroup's versions because folks submitted comments. **So, if you think something else belongs on this list, say so!**

(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 chapter 73, Florida Statutes. Eminent domain actions proceeding under chapter 74, Florida Statutes, are excluded until 20 days after the order granting quick take;

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

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

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

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

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

(12) an action to enforce an arbitration award;

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

(14) actions to confirm or enforce foreign judgments;

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

(16) a civil action pending in a special division of the court established by local 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;

(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.

Let’s play a comparison game!

TRACK A ON THIS SIDE **TRACK B ON THIS SIDE**

(Naturally, the two rules don’t line up provisions perfectly. We will go through Track A in order and pull Track B provisions out of place so you can see the comparison)

Rule 1.200(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 does not reflect on the financial value of the case but rather the amount of judicial attention required for resolution.

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

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

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

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

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

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

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

The case management order provision (sub c in Track A; sub d in Track B)

(c) Case Management Order.

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

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

(A) service of complaints;

(B) service under extensions;

(C) adding new parties;

(D) completion of fact and expert discovery;

(E) resolution of all objections to pleadings;

(F) resolution of all pretrial motions; and

(G) completion of mediation.

(d) Issuance of Case Management Order.

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

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

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

Deadline enforcement/changes

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

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

(f) Extensions of Time; Modification of Deadlines.

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

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

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

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

(B) whether the motion is opposed;

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

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

When a case management order must be entered:

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

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

***remember, under (d)(2), the court must enter the case management order “as soon as practicable” after the parties file their proposal

Changes to track assignment:

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

(c) Changes in Track Assignment.

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

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

Notices of unavailability (identical except for cross references to how to file a motion to change a deadline)

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

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

NEW PROVISION!!! Identical in both rules!
"Inability to meet case management deadlines"

This was born out of frustration that when things like motions to compel cannot be heard, the case gets stalled. Some folks wanted it to be mandatory that the parties notify the court that they can't get hearing time, so the case is in a holding pattern. Others were worried such a requirement could cause more problems than it solved. This was the compromise:

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

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

Track B has a meet and confer requirement that is not present in Track A.

In Track A, the court issues the case management order, and it contains 7 deadlines.

In Track B, the parties must meet and confer about deadlines. And there are 15 of them.

In jurisdictions that have automatic case management orders (like Hillsborough), there is no meet and confer requirement. You'll still get the automatic order.

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

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

(2) *In General.* In jurisdictions that do not have uniform case management orders, after the parties meet and confer, the parties must file a proposed case management order and submit the order for the court's signature. Proposed orders that do not comply with the Florida Rules of General Practice and Judicial Administration deadline for case resolution timeframes will be rejected. *[The lawyers can't go agreeing to deadlines in a general case that will make the case triable in three years.]*

(3) *Good-Faith Effort Required.* The attorneys of record and all self-represented litigants who have appeared in the action are jointly responsible for conferring in good faith to agree on a proposed case management order. The joint case management order must certify that the parties conferred in good faith, either in person or remotely. Self-represented litigants must be included in this process unless they fail to participate. Any failure to participate by an attorney or self-represented litigant must be reflected in the proposed case management order. *[The idea being that people who don't participate should find themselves in hot water with the court…]*

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

The idea is to lighten the court's load, not increase it. If parties don't timely submit orders, they should be getting in trouble.

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

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

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

(A) service of complaints;

(B) service under extensions;

(C) adding new parties;

(D) completion of fact and expert discovery;

(E) resolution of all objections to pleadings;

(F) resolution of all pretrial motions; and

(G) completion of mediation.

(i) adding parties;

(ii) amending the pleadings;

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

(iv) completing fact discovery;

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

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

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

(viii) completing expert discovery;

(ix) filing dispositive motions;

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

(xi) final supplementation of all discovery and disclosures;

(xii) filing motions in limine;

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

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

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

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

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

(ii) the anticipated number of days for trial.

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

**that certification requirement is redundant (it is also in (e)(3))

Both rules allow for forms to be created by the chief judges of each circuit

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

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

Case Management Conferences – big differences

(e) Case Management Conferences.

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

(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.

They look different, but the content is very similar—***with the exception that*** Track B is much clearer that the court can hear pending motions

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

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

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

(B) address pending matters in the case; and

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

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

This is where Track A micromanages, and Track B goes with the chill approach:

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

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

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

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

(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.

**Blue is Track B's effort not to micromanage. Written broadly on purpose. **Yellow is for the judges. They get frustrated when they see a motion to dismiss or a discovery motion that is sitting there with no notice of hearing. If you want a case management conference, you need to be ready for judges who are watching the dockets to clean house.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Track A's laundry list of case mgmt. conf topics

The miscellaneous provisions that only appear in their respective tracks:

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

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

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

Identical provisions

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

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

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

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

Substantive conferences just before trial (largely similar; differences are highlighted):

(f) Pretrial Conference. After the action has been set for an actual trial date and the deadlines in the case management order have expired, the court itself may, or must on the timely motion of any party, require the parties to appear for a conference to consider and determine:

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

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

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

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

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

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

(7) finalize jury instructions and verdict forms; and

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

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

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

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

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

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

(5) finalization of jury instructions and verdict forms;

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

(7) any other matters the court considers appropriate.

NEW PROVISION!! Appears only in Track B.

This provision was created at the suggestion of a judge who noticed that her cases tend to settle when she orders the parties to get down to brass tacks about how they are going to try the case.

The provision is called “Trial Statement.”

It is what the judges on the subcommittee agreed they require the parties to put in a pretrial statement.

(l) Trial Statement. According to the deadline set by the court, the parties must file a joint trial statement. The joint trial statement must include the following information:

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

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

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

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

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

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

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

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

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

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

Last provision (identical)

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

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

**No more guessing whether the pleadings are closed or if parties can do things like add new experts. The parties and the court must discuss those issues and include it in the order resetting the trial.

The big differences:

- The court issues a case management order on its own
- The case management order contains 7 dates
- File a motion to change case management deadlines or request a case management conference
- The case management conference provision is SUPER detailed

- The parties meet and confer and submit a proposed order, which the Court then enters (because it blesses the parties' proposal or changes it)
- The case management order contains 15 dates
- Motions to change case management deadlines must meet specific criteria
- There is a trial statement requirement not present in Track A

Does your head hurt yet?

PSA about Frankensteining what you've seen

WHEN you submit a comment with your vote, don't forget that you don't have to vote straight Track A or straight Track B. If you liked Track B better except for one provision, then say that.

You don't need to write a novel. The Court would probably prefer short and sweet!

"I prefer Track B except that I do not like the Trial Statement provision (subsection k). [Insert your why, if you can articulate it]. My vote is to implement Track B with subdivision k deleted."

OR

"I prefer Track A except that I do not like its case management conference provision. I believe it is unnecessarily complicated. My vote is for Track A but delete subdivision (c) and put the case management conference provision from Track B in its place (subdivision (j) from Track B)."

THE POINT IS THAT YOU HAVE BEEN GIVEN A RARE OPPORTUNITY TO GIVE INPUT. THE COURT IS LISTENING. IF YOU WANT TO FRANKENSTEIN A BETTER RULE, PLEASE DO!

Rule 1.201 – Complex Litigation

GOOD NEWS!!! This one is MUCH EASIER!!

(Track A and Track B both largely adopt what the Workgroup proposed)

Because so much in Track A and Track B of rule 1.201 are identical, I'm only going to cover the provisions that are different.

Identical save for the last sentence.

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

(a) Complex Litigation Defined. At any time after all defendants have been served, and an appearance has been entered in response to the complaint by each party or a default entered, any party, or the court on its own motion, may move to declare an action complex. However, any party may move to designate an action complex before all defendants have been served subject to a showing to the court why service has not been made on all defendants.

Track A allows the parties to designate a as matter complex without court involvement. Track B requires a court order:

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

(a)(3) A case will be designated or redesignated as complex in accordance with rule 1.200.

Identical save for the last sentence:

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

(b)(3) At the initial case management conference, the court will set the trial date or dates no sooner than 6 months and no later than 24 months from the date of the conference unless good cause is shown for an earlier or later setting. The trial date or dates must be on a docket having sufficient time within which to try the action and, when feasible, for a date or dates certain. The trial date shall be set after consultation with counsel and in the presence of all clients or authorized client representatives. The court must, no later than 2 months before the date scheduled for jury selection, arrange for a sufficient number of available jurors. Continuance of the trial of a complex action should rarely be granted and then only upon good cause shown. Any motion for continuance will be governed by rule 1.460.

Ok. This one is a big difference:

(c) The Case Management Order. The case management order must address each matter set forth under rule 1.200(c)(2) and set the action for a pretrial conference and trial. The case management order also must specify the following:

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

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

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

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

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

(6) A deadline for conducting alternative dispute resolution.

(c) The Case Management Order. Within 10 days after completion of the initial case management conference, the court must enter a case management order. The case management order must address each matter set forth in rule 1.200(e) and set the action for a pretrial conference and trial. The case management order may also specify a briefing schedule setting forth a time period within which to file briefs or memoranda, responses, and reply briefs or memoranda, before the court considering such matters.

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

The differences on rule 1.201

- The court is required to convene a hearing to decide if a case should be converted to complex
- The parties can stipulate that a case is complex, and it shall be so
- The items to include in the case management order are listed in rule 1.201
- The court must preschedule hearing time for case management conferences

- No hearing is necessary for a court to deem a case to complex
- The items to include in the case management order are the ones in rule 1.200(e)
- The rule is clear that continuance motions on complex trial dates are governed by rule 1.460
- The court may preschedule hearing time for case management conferences

Rule 1.280 – the discovery rule

The Workgroup proposed a seismic shift in this rule—making it more like federal court.

When the Supreme Court referred the rule to the Civil Rules Committee, our marching orders were to:

> Propose amendments to rule 1.280 that will require a party in a civil case to make certain initial discovery disclosures without awaiting a discovery request and to timely supplement any discovery that is made in the case. The proposed amendments should be modeled after the relevant aspects of Federal Rules of Civil Procedure 26(a) and 26(e)(1) and be consistent with the Committee's proposed amendments to rules 1.200 and 1.201 pertaining to differentiated case management.

Lots is the same in both tracks, but there is an important difference…

And a new provision that is present in both tracks…

Initial Disclosures – identical in both Tracks (but a big change)

(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.

The timing is where things get different:

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

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

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

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

WHAT DOES THIS MEAN?

That rule 1.280(h) conference requires you to confer within 60 days after the first defendant is served. You have to serve initial disclosures 14 days later.

The rule 1.200(e) conference has to take place within 50 days after the first defendant is served. You have to serve initial disclosures 14 days later.

These two provisions are the same in both rules:

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

(g) Supplementing of Responses. ~~A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information thereafter acquired.~~ A party who has made a disclosure under this rule or who has responded to an interrogatory, a request for production, or a request for admission must supplement or correct its disclosure or response:

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

(2) as ordered by the court.

NEW PROVISION!! Appears only in Track A. A meet and confer for discovery:

(h) Conference of the Parties.

(1) *Conference Timing.* Except in a proceeding exempted from initial disclosure under rule 1.200(a), or when the court orders otherwise, the parties must confer as soon as practicable—and, in any event, no more than 60 days after the first defendant is served.

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

NEW PROVISION!! It is identical in Track A(l) AND Track B(h)

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

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

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

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

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

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

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


OK, I CAN SEE WHERE THIS IS GOING.

If you send a discovery request, that is “unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation,” your bar card could be in trouble (not to mention exposing you to sanctions).

Same thing goes if you object to discovery “to cause unnecessary delay or needless increase in the cost of litigation.”

The judges are going to be getting all kinds of pressure to sanction unreasonable positions.


YOU
HAVE
BEEN
WARNED

EASY RULE NEXT!!

IDENTICAL IN BOTH TRACKS!!

And it's SHORT!!!

RULE 1.440. SETTING ACTION FOR TRIAL

(a) Setting Trial. The failure of the pleadings to be closed will not preclude the court from setting a case for trial.

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

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

(d) Service on Defaulted Parties. In actions in which the damages are not liquidated and when otherwise required by rule 1.500(e), the order setting an action for trial must be served on parties against whom a default has been entered under Florida Rule of General Practice and Judicial Administration 2.516.

(e) Applicability. This rule does not apply to actions under chapter 51, Florida Statutes.


IT'S THE HOME STRETCH!
YOU CAN DO IT!!!

Last rule!!!

This one is identical in both tracks too!!

Rule 1.460 – the continuance rule

The Supreme Court's marching orders on this one were:

> to provide that trial continuances should rarely be granted and then only upon good cause shown. The Committee's proposal must provide that lack of preparation is not grounds to continue the case and that successive continuances are highly disfavored.

(a) Generally. Motions to continue trial are disfavored and should rarely be granted except for good cause shown. Successive continuances are highly disfavored. Lack of due diligence in preparing for trial is not grounds to continue the case. *[This one provision is way better than the laundry list the Workgroup proposed.]*

(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. *[Don't be waiting until a pretrial conference to bring these up!]*

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

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

(2) whether the motion is opposed;

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

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

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

The judges on this subcommittee said that they don't always grant continuance motions. Both sides can agree and that is no guarantee.

The judges also said they would like to have basic information up front (before the hearing).

To make sure that both sides get the memo about the importance of conferring, if one side is wanting to have a conference so they can file the motion and the other side is uncooperative, the uncooperative party is subject to sanctions.

BUT, the party seeking the conference has to explain what efforts they made to get the conference. For example, three emails in one day ain't gonna cut it.

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

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

(g) Dilatory Conduct. If a continuance is granted based on the dilatory conduct of an attorney or named party, the court may impose sanctions on the attorney, the party, or both. [What about when a pro se party is the bad actor?]

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


YOU DID IT!
Congratulations!

Please, I beg you, SUBMIT A COMMENT!!!! Tell the Court which Track you prefer. Frankenstein parts if you want.

But please, please COMMENT!!

There are more rules coming. I worry that the Court will feel like folks don't care and make unilateral decisions.

We have been given a privilege. **USE IT!!!**

The DEADLINE IS OCTOBER 2.

All you have to do is file it in the e-portal, Florida Supreme Court Case No. SC23-0962 (*In Re: Amendments to Florida Rules of Civil Procedure*)

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE FLORIDA
RULES OF CIVIL PROCEDURE (RULES 1.200, 1.201, 1.280, 1.440, AND 1.460)

CASE NO.:SC23-0962

Comment of John Doe, Esq.

My name is John Doe. I practice in the area of _____. I have reviewed the proposed amendments to rules 1.200, 1.201, 1.280, 1.440 and 1.460.

[I prefer Track A/B.]

[I prefer the detail and flexibility of Track B except that I do not like the Trial Statement provision (subsection k). [I believe it is unnecessary because trial judges create their own and that system is working well. My vote is to implement Track B with subdivision k deleted.]

[I prefer Track A except that I do not like its case management conference provision. I believe it is unnecessarily complicated. Subdivision (j) from Track B accomplishes the same goals in a more simplistic, flexible way. My vote is for Track A but replace subdivision (c) in Track A with subdivision (j) from Track B.]

Certificate of Service


GO
VOTE