

Supreme Court of Florida

No. SC2022-0802

IN RE: AMENDMENTS TO FLORIDA RULE OF CIVIL PROCEDURE 1.351.

August 24, 2023

PER CURIAM.

The Florida Bar’s Civil Procedure Rules Committee proposes amending Florida Rule of Civil Procedure 1.351 (Production of Documents and Things Without Deposition) to extend the period of time to object to a subpoena to 45 days when a notice of non-party production is served simultaneously with a complaint.¹

The proposed amendments were approved by the Board of Governors of The Florida Bar. We published the Committee’s proposal for comment and received a joint comment from attorneys Gregory P. Borgognoni and Robert Fast proposing revisions to the Committee’s proposal. The Committee filed a response to the

1. We have jurisdiction. See art. V, § 2(a), Fla. Const.; Fla. R. Gen. Prac. & Jud. Admin. 2.140(b)(1).

comment, declining to revise its proposal as suggested in the comment. Having considered the proposed amendments, the comment filed, and the Committee's response, we amend Florida Rule of Civil Procedure 1.351 as proposed by the Committee.

Subdivision (b) (Procedure) is amended to require that in cases where a notice of non-party production is served with the original process, the subpoena may not issue earlier than 45 days after service on the last-served party. Furthermore, the first and last sentences of subdivision (b) are amended to allow for an additional five-day mailing time and to clarify that a subpoena for the production of documents may not be issued until 10 days after the notice if service is by delivery or e-mail or 15 days if notice is by U.S. mail service.

Accordingly, the Florida Rules of Civil Procedure are amended as set forth in the appendix to this opinion. New language is indicated by underscoring; deletions are indicated by struck-through type. The amendments shall become effective January 1, 2024, at 12:01 a.m.

It is so ordered.

MUÑIZ, C.J., and CANADY, LABARGA, COURIEL, GROSSHANS, FRANCIS, and SASSO, JJ., concur.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE AMENDMENTS.

Original Proceeding – Florida Rules of Civil Procedure

Judson Lee Cohen, Chair, Civil Procedure Rules Committee, Miami Lakes, Florida, Landis V. Curry III, Immediate Past Chair, Civil Procedure Rules Committee, Tampa, Florida, Jason Paul Stearns, Past Chair, Civil Procedure Rules Committee, Tampa, Florida, Joshua E. Doyle, Executive Director, The Florida Bar, Tallahassee, Florida, and Heather Savage Telfer, Bar Liaison, The Florida Bar, Tallahassee, Florida,

for Petitioner

Gregory P. Borgognoni of Borgognoni Law, P.L., Coral Gables, Florida; and Robert Fast of The Fast Law Firm, Fort Lauderdale, Florida,

Responding with comments

APPENDIX

RULE 1.351. PRODUCTION OF DOCUMENTS AND THINGS WITHOUT DEPOSITION

(a) [No Change]

(b) Procedure. A party desiring production under this rule shall ~~serve notice as provided in Florida Rule of General Practice and Judicial Administration 2.516 on every other party of the intent to serve a subpoena under this rule at least 10 days before the subpoena is issued if service is by delivery or e-mail and 15 days before the subpoena is issued if the service is by mail~~may not cause a subpoena to be issued until 10 days after notice by delivery or e-mail service (15 days after notice by mail service) on every other party of the intent to serve a subpoena. If the notice is served with original process, the subpoena shall not issue earlier than 45 days after service on the last-served party. The proposed subpoena shall be attached to the notice and shall state the time, place, and method for production of the documents or things, and the name and address of the person who is to produce the documents or things, if known, and if not known, a general description sufficient to identify the person or the particular class or group to which the person belongs; shall include a designation of the items to be produced; and shall state that the person who will be asked to produce the documents or things has the right to object to the production under this rule and that the person will not be required to surrender the documents or things. A copy of the notice and proposed subpoena shall not be furnished to the person upon whom the subpoena is to be served. If any party serves an objection to production under this rule within 10 days of service by delivery or e-mail of the notice (15 days if service by U.S. mail), or within 45 days of service of process if the notice is served with original process, the documents or things shall not be produced pending resolution of the objection in accordance with subdivision (d).

(c)-(f) [No Change]

Committee Notes

[No Change]