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IN THE SUPREME COURT OF FLORIDA
Case No. SC2023-0962

In Re: Amendments to
Florida Rules of Civil Procedure

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COMMENTS FROM THE BUSINESS LAW SECTION OF THE FLORIDA BAR TO THE PROPOSED AMENDMENTS TO FLORIDA RULES OF CIVIL PROCEDURE

The Business Law Section of the Florida Bar (the "Section"), an organization within The Florida Bar, submits its Comment as invited by the Court to address the proposed amendments to Florida Rules of Civil Procedure 1.200, 1.201, 1.280, 1.440, and 1.460 submitted by the Civil Procedure Rules Committee ("CPRC"). Under Standing Board Policy 8.10(c)(4), the Executive Committee of the Florida Bar has consented to The Section filing this Comment. The Section therefore offers this Comment using its separate voluntary resources as a voluntary Bar organization.

Nearly six thousand Florida Bar members make up the Section's constituents. They are lawyers representing plaintiffs and defendants in business litigation for disputes involving varied matters that include contracts, business torts, intellectual property,

and debtor-creditor disputes in Florida's state and federal courts. The Section has provided assistance and comment to the Florida Legislature in drafting statutes affecting public and business interests. The Section also serves the Bar by delivering continuing legal education programs on myriad issues that business law attorneys encounter. From its members' diverse practices, the Section offers a unified comment on the proposed amended rules reflecting the position shared by most practices and views held by its members.

I. Introduction

The CPRC has submitted Rule amendments that will improve "the fair and timely resolution of all cases through effective case management," and the Section applauds the various proposed changes. The CPRC has offered Track A and Track B. **The Section supports Track A** because it best secures efficient case management, judicial economy, and public access to the courts. But the CPRC proposal under both tracks leaves open the opportunity to make four more changes.

First, the CPRC relegates the "at issue" doctrine to the scrap heap but leaves in place vestiges from that rule. In the proposal for

Rule 1.200, the CPRC clings to using a projected trial date as an alternative for setting the trial. Projected trial dates do not focus the parties on trial from the outset.

Second, redefining the scope of discovery to be consistent with the Federal Rules streamlines civil cases by adopting what attorneys and courts have coined as proportionality. The scope of discovery should make discoverable information relevant to the claims and defenses and proportional to the needs of the case. That standard imbues fairness and efficiency into discovery – benefits long ago realized by federal courts under Rule 26.

Third, requiring discovery abate until after the parties exchange initial disclosures avoids unnecessary discovery disputes. The Initial disclosures proposed by the CPRC head off the need for early discovery. Allowing parties to engage in discovery before receiving the initial disclosures undercuts the benefits initial disclosures offer.

Fourth, there is no requirement the parties submit a discovery plan after conferring about discovery issues for the case. Writing down and filing what the parties plan to do with discovery helps to inform courts about how to resolve discovery disputes. The rules

should not abandon parties having to inform the trial court about how they will conduct discovery in the case.

The Section urges the Court to adopt the rule changes proposed by the CPRC, observe the minority positions included with that proposal, and adopt the comments offered by the Section consistent with those minority positions.

II. Track A Comments to Proposed Rule Amendments

The Section does not offer any comments to the proposed amendments to Rule 1.201 because there are no substantive changes proposed.

A. Proposed Rule 1.200. Case Management; Pretrial Procedure.

The Section supports all the changes to proposed Rule 1.200 because they deliver sufficient court oversight while balancing party autonomy. Those changes strike the right balance. But there are two concepts for setting trials under Rule 1.200(c)(2): "projected trial period" and "trial period." By using the phrase projected trial period, the CPRC clings to a vestige from the at issue rule, which the CPRC has proposed to eliminate.

Under the at issue rule, a court cannot set a case for trial until the pleadings have closed. Once the pleadings close, any party can then notify the court that the case is ready for trial. That ready notice triggers a trial order. During the Pandemic, the Court mandated trial courts set trial dates under AOSC21-17. That AO required courts set cases for trial, creating the reference to a "projected" trial date. Some circuits and counties now use the projected trial date to guide the parties as they move the case towards the status of ready for trial. Once ready, the parties notify the court to set the trial date. In practice, the "projected" trial date is just a best guess or fiction, which creates a trial docket filled with cases that are not going to be ready or proceed to trial on the projected trial date.

But without the at issue rule, there is no reason to persist with the projected trial date fiction. It is worth noting that the CPRC submitted a minority position with which the Section agrees. *See* Report at App. I. Setting a trial date or trial period is important because it puts the parties on the path to having their cases ready for trial. Clinging to the projected trial date leaves slack in the process that may lead to delay in setting the case for trial. Everyone agrees that setting trial dates promotes resolving cases, without

having to actually conduct the trial. Federal courts typically set the case for trial and do not use "projected" trial dates.

There is enough flexibility in the proposed Rule 1.200 without having to enable ad hoc processes that vary from county to county relying on ephemeral trial dates. Thus, the Section proposes Rule 1.200(c)(2) read as follows:[1]

> 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:

This change strikes the balance between flexibility and efficiency. For each Circuit Court and the counties within them, including the phrase "consistent with administrative order entered by the chief judge of the circuit" enables the courts to adapt setting a trial period

[1] The strikethrough are changes offered by the Section to the proposed rule drafted by the CPRC. The Section's proposed changes are also reflected in **Appendix A** through **Appendix E**.

based on their unique budgetary constraints, technology, and resources. Having one standard for setting trials creates uniformity in Florida's civil procedures. By doing so, the rule helps avoid procedural traps for practitioners who find themselves appearing in matters throughout Florida.

B. Proposed Rule 1.280. Case Management; Pretrial Procedure.

The broad changes to Rule 1.280 proposed are positions adopted by the CPRC before Covid. If the Court adopted the pre-Covid CPRC position, Rule 1.280 would look much more like Federal Rule of Civil Procedure 26. The Section urges the Court to take the remaining step and embrace all the provisions under Rule 26.

1. The Court Should Adopt the Scope of Discovery under Federal Rule 26(b) to Expressly Require Proportionality at the Outset of Discovery

The Section stands behind the initial disclosures process under the Track A proposal. But requiring parties to share essential discovery about their claims early does little to cure common discovery challenges: abusive, overbroad, and disproportionate discovery. The CPRC has not proposed to change the scope of discovery to reflect proportionality codified under Federal Rule 26 in

direct response to these challenges. There is also a minority position submitted by the CPRC, which the Section adopts and elaborates in this Comment.[2] *See* Report at App. J.

The CPRC missed the opportunity to meet the full promise afforded under Rule 26. Under Rule 26(b) discovery carries a limit up front: "parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case …." Florida's Rule 1.280(c) adheres to the old federal court standard that permits discovery for "any matter, not privileged, that is relevant to the subject matter of the pending action."

The scope under the Florida rule then concludes with the sweeping admonition "it is not ground for objection that the information sought will be inadmissible at the trial if the information

[2] The Court asked the CPRC to propose amendments to Rule 1.280 (general provisions about discovery), but the Court did not reference the scope of discovery. *See* Letter from Supreme Court of Florida to Lance V. Curry, III, Chair, Florida Civil Rules Committee, Jan. 12, 2023, at 1, 3. Some CPRC members voted not to propose an amendment to add proportionality to the scope of discovery under the rule because the Court did not ask for it. But amending the scope of discovery fits with the other changes proposed because proportionality will "secure the just, speedy, and inexpensive determination of every action" under Florida Rule 1.010.

sought appears reasonably calculated to lead to the discovery of admissible evidence." The phrase "reasonably calculated" often swallows any other limits.

There is no dispute that Florida adopted Rule 1.280(b) from the original Rule 26. But since then, several amendments have changed the defined boundaries to limit burgeoning, expansive, and expensive pretrial discovery that threatens to corrupt and overwhelm the system. *See, e.g.*, *Discovery a Better Way: the Need for Effective Civil Litigation Reform*, 60 Duke L. Rev. 547 (2010). Leaving the old scope gives license to pursue unbounded discovery and constrains a trial court's ability to control abuses.[3]

Conjoining discovery with proportionality promotes efficiency, judicial economy, and public access to courts. Other organizations that study discovery have come to the same conclusion. According to the Sedona Conference, "[a]chieving proportionality in civil discovery is critically important to securing the 'just, speedy, and inexpensive resolution of civil disputes' . . . ." *The Sedona Conference,*

[3] *See, e.g.* Philip J. Padovano, *Trawick's Florida Practice & Procedure*, § 18.2, a 282 (2021) ("Courts find it easier to allow the discovery than to analyze the objection and give a precise ruling. This abdication of judicial responsibility is a major problem.").

Commentary on Proportionality in Electronic Discovery, 18 Sedona Conf. J. 141, 147 (2017). The American Bar Association has found 16 other states and the District of Columbia have adopted proportionality. Florida should thus follow the federal rules to foster consistency between the state and federal courts using persuasive and guiding authority decided over many years applying Federal Rule 26.

Proportionality is not only consistent with the goals cited by the CPRC in its proposal, but it bolsters the reasons for amending the Rules. "Chief Justice John Roberts wrote in his [2015] Year-End Report [that amending the rules] 'crystalizes the concept of reasonable limits on discovery through increased reliance on the common-sense concept of proportionality.'" *The Sedona Conference, Commentary on Proportionality in Electronic Discovery*, 18 Sedona Conf. J. 141, 147 (2017). Time and experience have proven that this observation is more accurate with the increasing complexity of e-discovery challenges, burgeoning data sets, and the costs associated with discovery for these challenges. Florida has the same goals and objectives, and the rationale for proportionality is even more pronounced in state court, where subject matter jurisdiction is

broader than federal courts. Florida courts hear cases of all sizes, involving parties with asymmetric resources.

Proportionality also helps with effective case management. A court can tailor discovery cutoffs and other case deadlines based on the more focused discovery defined by the parties under the proportionality standard. When tying the scope of discovery to the needs of the case, courts can set proportional deadlines and streamline oversight.

With more focused discovery, courts can stick to case schedules and move matters toward trial or settlement. In this way, proportionality complements the case management goals sought with the proposed rule amendments by keeping discovery targeted and easing court oversight. Proportionality works well with targeting a speedy and inexpensive resolution.

The CPRC has stated there are proportionality standards already implicit in the proposed rules. But the proportionality referenced by the CPRC only gets triggered after a party propounds discovery. For example, proposed Rule 1.280(e) (Rule 1.280(d) currently), offers a proportionality analysis when considering whether to move for a protective order once a party seeks the

discovery of electronically stored information. Or when a party seeks to depose a high-level government or corporate officer under Rule 1.280(h) (Rule 1.280(j) under the CPRC proposal) then a court will consider the Apex Doctrine. These after-the-fact proportionality analyses govern too late. The bound before propounding discovery still turns on the outdated standard. The responding party then bears the burden to show that the needs of the case do not call for whatever the requesting party has sought.

Opponents to proportionality argue it will increase litigation, create a greater burden on the court system, and delay cases. But proportionality demands parties tailor discovery requests to conserve parties' and courts resources. Proportionality also serves as an extra tool for courts to use in resolving discovery disputes.

Florida adopted the original Rule 26, and it should now modernize Rule 1.280 by adopting all amendments to the scope of discovery in Rule 26. Including proportionality incorporates Rule 26's history rooted in fundamental principles of equity, common-sense, and efficiency. The Section thus proposes the following change to the scope of discovery in civil actions proposed by the CPRC:

Rule 1.280(c) Scope of Discovery. Unless otherwise limited by court order, ~~of the court in accordance with these rules,~~ the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any nonprivileged matter ~~not privileged~~, that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to the relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within the scope of discovery need not be admissible in evidence to be discoverable. ~~the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground or objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.~~

2. Discovery Should Not Proceed until Parties Exchange Initial Disclosures and They Meet and Confer about Discovery.[4]

[4] See Fed. R. Civ. Pro. 16(b), requiring a scheduling order by 60 days from appearance of any defendant, or 90 days from service on any

Initial disclosures are discovery without propounding interrogatories and requests to produce. Requiring parties also respond to discovery before disclosures or at the same time adds cost and expense to the litigation. Discovery before the parties confer about the scope and manner of discovery, and how they should proceed, adds time to conduct discovery motion practice; waste the Court and CPRC want to avoid.[5]

Under Rule 26(f), parties cannot begin discovery until they have served their initial disclosures, which occurs after the parties first meet and confer to discuss the discovery needs proper for the case. Rule 26 requires a Rule 26(f) conference to conclude before parties serve discovery requests. The initial disclosures inform the parties about the discovery each side will seek, where to look for that information, and how to get it. By accounting for initial disclosures

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defendant. The Section does not oppose the timing proposed by the CPRC in its amendments under Track A to Rule 1.200 and Rule 1.280.

[5] The CPRC submitted a minority position with the Report to which the Section's comment conforms. Report at App. J.

before conducting discovery, parties will then be able to tailor discovery requests and avoid unnecessary court intervention.

Some argue that waiting to conduct discovery adds time to the case, despite the contrary experience in federal courts. Placing initial disclosures and the meet and confer up front and center focuses factual and legal issues, thus speeding up the case. It is pragmatic to require parties to serve initial disclosures to quicken the case. It is therefore also pragmatic to wait for the parties to make initial disclosures to decide what other discovery to conduct. Waiting to conduct other discovery until after initial disclosures and a meet and confer will save time and money.

Based on these comments, the Section proposes the following change to include delaying discovery in civil actions until the parties exchange initial disclosures and complete the meet and confer required under proposed Rule 1.280(h):

> (f) (1) Sequence and Timing of Discovery. Except as provided in subdivision ~~(b)~~(c)(5) or unless the court ~~upon motion for the convenience of parties and witnesses and in the interest of justice~~ orders otherwise, methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, ~~shall~~ must not delay any other party's discovery.

(2) Timing. A party may not seek discovery from any source before the parties have conferred as required by Rule 1.280(h), except in a proceeding exempted from initial disclosure under Rule 1.280(a), or when authorized by these rules, by stipulation, or by court order. Any discovery served earlier shall be deemed served as of the date of the initial discovery conference held pursuant to Rule 1.280(h). The parties may seek relief from this stay upon application to the court.

3. The Initial Discovery Conference under Proposed Rule 1.280(h) Should Require the Parties Submit a Discovery Plan.

The Section concurs with including a requirement under proposed Rule 1.280(h) that the parties hold an initial discovery conference early in the case. From that conference, Rule 26(f) requires the parties submit a plan to the court that addresses specific discovery issues, including the following:

> (1) any changes to the timing, form or requirement for the initial discovery disclosures;
>
> (2) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to focused or particular issues;
>
> (3) any issues about disclosure, discovery, or preservation of electronically stored

information, including the form or forms in which it should be produced;

(4) any issues about claims of privilege or protection as trial-preparation materials, including if the parties agree on a procedure to address those claims after production and whether to ask the court to include in their agreement an order under Federal Rule of Evidence 502;

(5) any changes in the limitations on discovery imposed under the federal or local rules, and what other limitations should be imposed; and

(6) any other orders that the court should issue under Rule 26(c) or under Rule 16(b) and (c).

The CPRC proposal omits the discovery plan. Omitting the requirement to give a detailed discovery plan that includes describing any agreements reached and setting forth remaining disputed issues, risks abandoning benefits available from the early discovery conference. The Section agrees with the minority position the CPRC submitted addressing discovery plans (*see* Report at App. J) and expands on the reasoning to include the requirement under the Rules.

The Court should thus include having parties submit a discovery plan under proposed Rule 1.280(h). Discovery conferences

have become "the foundation of discovery practice in federal litigation." *See Ebony S. Morris, Four Tips for Productive Rule 26(f) Conferences*, American Bar Association (Dec. 31, 2019).[6] The conference under proposed Rule 1.280(h) is especially important due to the increasing significance of electronic discovery in recent years and the value of early consideration by the parties of such issues as preservation protocols, the form or forms of production for electronically stored information, locations or custodians necessary to be searched, the timing of productions (including whether discovery will proceed in phases), disclosure and preservation of privileged or confidential information.[7]

The CPRC has said that, where it is proper to adopt a particular federal rule into the Florida Rules of Civil Procedure, the Florida rule

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[6] www.americanbar.org/groups/litigation/committees/ pretrial - practice-discovery/practice/2019/four-tips-for-productive-rule-26f-conferences/.

[7] Although there is no express counterpart to Federal Rule of Evidence 502(d) in Florida, the parties may stipulate to the circumstances under which disclosure of privileged or confidential information court will not waive the privilege or protection and request court approval of their stipulation. *See 2021 Florida Handbook on Civil Discovery Practice*, Trial Lawyers Section of the Florida Bar, p. 20, n. 87.

should follow the federal with "only the fewest and smallest deviations, and only to address a specific substantive issue particular to Florida as the base of deviating." (CPRC Letter, at 3). But then the CPRC ignored its admonition and stated its reason for rejecting the discovery plan requirement was that a majority of its members "felt that requiring the discovery plan was an unnecessary burden on the parties." Report at 8. Discovery plans are not an unnecessary burden:

> It is axiomatic to suggest that effective case management begins with a meaningful Rule 26(f) conference. FRCP 26(f) directs parties to develop a "proposed discovery plan" before the court schedules a case management conference or issues a scheduling order. This effectively requires counsel to confer on a variety of discovery matters and then either reach agreement on how to address them or submit those issues to the court for its resolution. . . .

Philip Favro, *Navigating the Discovery Chess Match Through Effective Case Management*, 53 Akron L. Rev. 1, 40 (2019). The discovery plan thus provides the framework for discovery throughout the case. Parties prepare their initial disclosures relying on the discovery plan and later serve their discovery requests consistent with it.[8] As the

[8] Not all issues listed in Rule 26(f)(3) are relevant in every case. The parties may agree that some issues, including those relating to

case progresses, parties may amend the discovery plan to conform to the needs presented in the case and as circumstances change.

A cogent discovery plan saves courts and parties time and money, avoiding multiple hearings for disputed issues resolved in the discovery plan and delays waiting for hearings to decide matters otherwise addressed in the discovery plan. Without a written discovery plan, the initial discovery conference may devolve into a perfunctory email exchange between counsel that fails to make any meaningful contribution to expedite discovery and the resolution of the case.

The Section therefore submits that proposed Rule 1.280(h) should include language substantially similar to Federal Rule 26(f)(3) requiring the parties to submit a discovery plan that addresses critical issues relating to 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.

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electronic discovery, may not apply. When there is agreement, the parties would note it in the discovery plan.

(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 and develop a proposed discovery plan. The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging the conference for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 7 days after the conference a written report outlining the plan. The court may order the parties or attorneys to attend the conference in person.

(3) *Discovery Plan.* A discovery plan must state the parties' views and proposals on:

(A) what changes should be made in the timing, form, or requirement for disclosures under Rule 1.280(a)(1), including a statement of when initial disclosures were made or will be made;

(B) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues;

(C) any issues about disclosure, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced;

(D) any issues about claims of privilege or of protection as trial-preparation materials, including the advisability of any claw back agreements and any procedures to assert these claims after production;

(E) what changes should be made in the limitations on discovery imposed under these rules or by standing order or local rule of the circuit, and what other limitations should be imposed; and

(F) confidentiality, protective orders, or other orders that the court should issue under Rule 1.280((d).

C. Proposed Rule 1.440. Case Management; Pretrial Procedure.

The proposed changes remove the at issue doctrine first construed by courts under Rule 1.440(a). The Section supports the changes, except for including the vestige from the at issue rule requiring a motion for trial (formerly the notice for trial discussed in Part II A, *supra*). The modified Rule 1.200 created two methods to set a trial: (i) setting a projected trial period, or (ii) setting a trial period. To account for the process needed for courts that decide to set a projected trial period, proposed Rule 1.440(b) creates another motion the parties must file to get the case set for trial: "when there is a projected trial period, but no actual trial date has been set."

To avoid the two-step process for setting a trial, the Court should drop it from the rules. It is easy to excise from the proposed Rule 1.440(b) the final clause in that sentence and move the word "or" as follows:

> (b) Motion for Trial. For any case not subject to rule 1.200 or rule 1.201, or 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 that the action to set the action for trial.

III. Track B Comments to Proposed Rule Amendments

The Section supports Track A subject to its comments, and notes that Track B is the minority position held by the CPRC. But the core differences between Track A and Track B lies within the proposal for Rules 1.200 and 1.201. The differences between 1.280 under Track A and Track B exist because there is a different focus on the early conferences: Track A places that burden on the parties under Rule 1.280, while Track B places that burden on the courts under Rule 1.200 and 1.201. While the Section support Track A, it also addresses Track B as that track addresses proposed Rules 1.200 and 1.201.

A. Proposed Rule 1.200. Case Management and Pretrial Procedures

The Section supports early and frequent case management by trial courts to help move cases through the judicial system fairly and without unnecessary delay. Track A specifies the case management procedures that are sufficient to keep cases moving toward trial. Track B uses the case management process submitted by the

Workgroup and keeps an intricate, and sometimes inflexible, process that spawns difficult challenges for administering already burdened judicial resources and increased motion practice. All the while not addressing the common challenge to meet the deadlines established early in the case because courts have little time to hear disputed issues.

The Section urges the Court to instead adopt Track A, which adheres more closely to Federal Rule of Civil Procedure 26(f). The Court has said that "the objective in promulgating the Florida rules has been to harmonize our rules with the federal rules to the extent possible." *Gleneagle Ship Mgmt. Co. v. Leondakos*, 602 So. 2d 1282, 1283-84 (1992) (*quoting Miami Transit Co. v. Ford*, 155 So. 2d 360, 362 (Fla. 1963)). As with Track A, the rules should provide a roadmap for the parties and their counsel to shepherd a case through the system with a court's help, as may be necessary to resolve disputes and ensure the case progresses. Especially early in the case, counsel for the parties have the knowledge about the unique factual and legal elements and issues. While intensive court involvement in all aspects of the case may help certain cases, in others it may cause unnecessary labor for the court, added work for parties, and added

expense. The unintended effect may hinder rather than promote the just and inexpensive resolution of cases and curtail access to the courts.

B. Proposed Rules 1.201. Complex Litigation

Like the changes proposed for Track B to proposed Rule 1.200, the changes to proposed Rule 1.201 add a trial court focus to case management. But for complex cases, the parties should carry the laboring oar for managing the cases, seeking court assistance when disputes arise. Having the case management order entered to guide the parties, and with the new mandates under Rule 1.280 addressing initial disclosures and discovery, further oversight should be unnecessary. But the rule should not impose burdensome court oversight that consumes the scarce court availability that now prioritizes trials.

IV. Conclusion

The Section supports the goals announced by this Court and proposal submitted by the CPRC, but it has concerns with the rule changes proposed. But those concerns are that the CPRC did not go far enough. The Section asks the Court to take a few more steps as described in this Comment.

Respectfully submitted on behalf of,

THE BUSINESS LAW SECTION OF THE FLORIDA BAR

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Dated: October 2, 2023

CERTIFICATE OF COMPLIANCE

I hereby certify that document was prepared in Bookman Old Style, 14-point font, in compliance with Rule 9.045(b) of the Florida Rules of Appellate Procedure, and does not exceed 13,000 words, in compliance with Rule 9.210(a)(2)(B).

s/*Russell Landy*
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CERTIFICATE OF SERVICE

I certify that on October 2, 2023, a copy of the foregoing was E-filed with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, with a copy provided to:

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Appendix A

RULE 1.200. CASE MANAGEMENT; PRETRIAL PROCEDURE

(c) Case Management Order.

* * *

(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 …

Appendix B

RULE 1.280. GENERAL PROVISIONS GOVERNING DISCOVERY

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

(1) In General. Parties may obtain discovery regarding any nonprivileged matter ~~not privileged~~, that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to the relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within the scope of discovery need not be admissible in evidence to be discoverable. ~~the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground or objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.~~

Appendix C

RULE 1.280. GENERAL PROVISIONS GOVERNING DISCOVERY

(f) (1) Sequence and Timing of Discovery. Except as provided in subdivision ~~(b)~~(c)(5) or unless the court ~~upon motion for the convenience of parties and witnesses and in the interest of justice~~ orders otherwise, methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, ~~shall~~ must not delay any other party's discovery.

(2) Timing. A party may not seek discovery from any source before the parties have conferred as required by Rule 1.280(h), except in a proceeding exempted from initial disclosure under Rule 1.280(a), or when authorized by these rules, by stipulation, or by court order. Any discovery served earlier shall be deemed served as of the date of the initial discovery conference held pursuant to Rule 1.280(h). The parties may seek relief from this stay upon application to the court.

Appendix D

RULE 1.280. GENERAL PROVISIONS GOVERNING 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 and develop a proposed discovery plan. The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging the conference for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 7 days after the conference a written report outlining the plan. The court may order the parties or attorneys to attend the conference in person.

(3) *Discovery Plan.* A discovery plan must state the parties' views and proposals on:

(A) what changes should be made in the timing, form, or requirement for disclosures under Rule 1.280(a)(1), including a statement of when initial disclosures were made or will be made;

(B) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues;

(C) any issues about disclosure, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced;

(D) any issues about claims of privilege or of protection as trial-preparation materials, including the advisability of any claw back agreements and any procedures to assert these claims after production;

(E) what changes should be made in the limitations on discovery imposed under these rules or by standing order or local rule of the circuit, and what other limitations should be imposed; and

(F) confidentiality, protective orders, or other orders that the court should issue under Rule 1.280((d).

Appendix E

RULE 1.440. SETTING ACTION FOR TRIAL

(**b) ~~Notice~~Motion for Trial**. For any case not subject to rule 1.200 or rule 1.201, or 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 that the action to set the action for trial.