

**IN THE SUPREME COURT OF FLORIDA**

**IN RE: AMENDMENTS TO  
FLORIDA RULES OF CIVIL PROCEDURE**

**SC2022-1719**

**CIVIL PROCEDURE RULES COMMITTEE'S  
RESPONSE TO COMMENT**

Landis V. Curry III, Chair of the Civil Procedure Rules Committee and Joshua E. Doyle, Executive Director of The Florida Bar file this response to comment.

The Committee's proposed amendments to Florida Rules of Civil Procedure 1.110 (General Rules of Pleading), 1.820 (Hearing Procedure for Non-Binding Arbitration), Form 1.923(a) (Eviction Summons/~~—~~Residential), Form 1.923(b) (Summons Action for Back Rent or Other Damages), and Form 1.947(b) (Answer—Residential Eviction) were published for comment.

The Supreme Court Committee on Alternative Dispute Resolution Rules and Policy ("ADRRP") proposes additional amendments to Rule 1.820. Comments also were received on Rule 1.820 from the Executive Counsel of the Alternate Dispute Resolution Section of The Florida Bar ("ADR Section") and from former member of both the ADR Section and ADRRP Meah Rothman Tell.

Comments on Forms 1.923(a) and 1.947(b) were received from the Honorable Lisa Ann Allen. Comments were received on Forms 1.923(a), 1.923(b), and 1.947(b) were received from the Florida Housing Umbrella Group ("HUG").

In response to the comments, the Committee voted 27-1-0 to approve additional amendments to Florida Rules of Civil Procedure 1.110 (General Rules of Pleading), 1.820 (Hearing Procedure for Non-Binding Arbitration), Form 1.923(a) (Eviction Summons/~~—~~Residential), and Form 1.947(b) (Answer—Residential Eviction). The Executive Committee of the Board of Governors of The Florida Bar voted 8-0-0 to recommend acceptance of these additional amendments.

## **RULE 1.110. GENERAL RULES OF PLEADING**

After further review, the Committee proposes additional amendments to conform to the Court’s administrative order *In Re: Guidelines for Rules Submissions*, AOSC22-78 (Fla. 2022). In subdivision (b), the committee proposes replacing “himself or herself” with “the pleader” to comply with the *Guidelines* and to include entities. In subdivision (c), the Committee proposes the addition of commas after “in the answer” and “must so state.” The Committee also proposes breaking up the last sentence in subdivision (c) by replacing the comma after “expressly admits” with a period and deleting “but.”

In the first sentence of subdivision (d), the Committee proposes adding a comma after “preceding pleading” and a colon after “affirmatively.” In the last sentence of subdivision (d), the Committee proposes replacing the semicolon after “1.140(b)” with a comma. The Committee also proposes breaking up the first sentence of subdivision (f) by replacing the commas after “numbered paragraphs” with a period. The Committee proposes rephrasing the second part of the first sentence from “... the contents of each of which must be limited...” to “The contents of each paragraph must be limited.” In the first sentence of subdivision (h), the Committee proposes adding a commas after “final judgment.”

## **RULE 1.820. HEARING PROCEDURES FOR NON-BINDING ARBITRATION**

The ADRRP proposes a “non-exclusive list of 7 factors the presiding judge should consider when deciding whether to refer a contested civil action to non-binding arbitration” as an addition to subdivision (b)(1) of Florida Rule of Civil Procedure 1.820 (Hearing Procedure for Non-Binding Arbitration). ADRRP Comment at 3.

While the proposed factors to be considered are not mandatory, the Committee objects to these proposed additional changes as they venture far beyond the concerns expressed in the original request for amendment, which was fully resolved by the

proposed rule amendments from the Committee. To the extent the ADRRP believes that inclusion of factors to be considered by a judge in referring a case to non-binding arbitration will be a material benefit, the Committee suggests that those proposed changes be referred to the Committee as a separate request for amendment, apart from the pending rule change. This will give the Committee a chance to review the proposed rule changes, which would no doubt involve input from the ADRRP.

ADRRP also proposes additional amendments to add to subdivision (b)(2) a series of mandatory minimum requirements that a referral to non-binding arbitration must include in the way the non-binding arbitration is conducted.

The Committee objects to these proposed additional changes as they venture far beyond the concerns expressed in the original request for amendment, which was fully resolved by the proposed rule amendments from the Committee. Moreover, these changes establish mandatory requirements for the conduct of non-binding arbitration, and as such they are a substantial change from the current rule. Such a substantial change would benefit from full consideration by the Committee—not just a responsive comment. The Committee suggests that this proposed change be rejected and would suggest it be referred to the Committee for separate, additional review.

The Committee proposes 2 additional substantive amendments to Florida Rule of Civil Procedure 1.820 (Hearing Procedure for Non-Binding Arbitration) based on the comments received as well as additional amendments to conform to the Court’s administrative order *In Re: Guidelines for Rules Submissions*, AOSC22-78 (Fla. 2022).

In subdivision (a), the Committee proposes amending the second part of the first sentence by replacing “such duties as are prescribed by” with “duties under.” In subdivision (g)(1), the Committee proposes rephrasing the second sentence from “No extensions of time will be for a period exceeding 60 days from the

date...” to “Extensions of time must not exceed 60 days from the date....”

The ADR Section and Meah Rothman Tell shared concerns that “[i]mposing upon arbitrators new custodial duties for maintaining sealed public records, in lieu of the clerks of the court (i.e., arbitrators being required to hold the original decision and original transcripts of the proceedings), [ ] are not in the best interest of the parties, the public, and the courts.” ADR Comment at 8–9.

The Committee’s proposed amendment to subdivision (g)(3) required that the written decision be served on the parties, but not filed in the case, was to avoid the implications of filing a document under seal. Currently, any document filed “under seal” is entirely available to the judge in the case.

The Florida Supreme Court’s Standards for Access to Electronic Court Records and the associated Access Security Matrix governs access to court records. The Access Security Matrix is broken down by case types, user roles, and access level. Under the Access Security Matrix, user “role 1” includes “Judges and authorized court and clerk’s office personnel, including personnel of The Florida Bar....” Users in “role 1” have “A” level access for all cases except those cases that are “expunged.” “A” level access allows the user to see “All but expunged, or sealed under Ch[apter] 943, [Florida Statutes].” Chapter 943 is the “Department of Law Enforcement Act” and it provides for “sealing” of certain criminal histories.

Plainly, when a judge accesses a court file, the judge will be able to see all court documents, except those that are expunged or sealed under chapter 943, Florida Statutes. If the objective is to ensure a judge does not have access to, and will not inadvertently examine, a document in review of the court file, then simply “sealing” the document by rule or by court order will not be effective.

Accordingly, the Committee declines to propose additional amendments proposed by the commenters to subdivision (g)(3) concerning service of the written decision on the parties and the filing of a notice of completion by the arbitrator.

Additionally, the ADR Section and Meah Rothman Tell raise concerns that the Committee's proposed amendments will place an undue burden on court-appointed arbitrators by making them serve as custodians of original transcripts and original exhibits. ADR Section Comment at 1-2; Tell Comment at 2.

The Committee's proposed amendments required that all evidence and transcripts be retained by the arbitrator unless otherwise directed by the court or agreed to by the parties. This was to avoid the difficulty for the arbitrator and clerk in filing often voluminous and sensitive material under seal. The Committee specifically noted that the parties typically retain their own materials (whether by order of the arbitrator, the presiding judge, or stipulation of the parties), and the Committee expects that this rule change will permit that practice to continue. In other words, it would be the extremely rare case where the parties could not agree and there was no order on the issue, thus requiring the arbitrator to be the one to retain the exhibits and transcripts until the end of the case.

However, to alleviate these concerns, the Committee proposes amending subdivision (g)(4) to require that each party retain its own transcripts or exhibits, unless otherwise ordered by the courts or agreed by the parties. Specifically, the Committee proposes amending subdivision (g)(4) to read as follows:

Any transcripts or exhibits used in the arbitration must, unless otherwise ordered by the court or agreed by the parties, be retained by the party who introduced the transcripts or exhibits until the conclusion of the case, or until otherwise ordered by the court.

Ms. Tell raises a third concern that Rule 1.820(g)(5) does not "delineate the exact form of the request for trial de novo, and the

application of court-created exceptions or doctrines which do not require the filing of an actual request for a trial de novo [ ].” Tell Comment at 3.

The Committee agrees that its proposed amendments are not specific enough and proposes additional amendments. Section 44.103, Florida Statutes, states that “[a]n arbitration decision shall be final if a request for a trial de novo is not filed within the time provided by rules promulgated by the Supreme Court.” Accordingly, an arbitration award is rejected by filing a motion for trial, otherwise, through inaction a party accepts the arbitration award. In *De Acosta v. Naples Community Hospital, Inc.*, 300 So.3d 264 (Fla. 2d DCA 2019) the lawyer filed nothing within the time allowed, but prepared for trial, and the district court concluded that the lawyer was impliedly requesting a trial. Currently, the rule states that the arbitration award becomes final unless a trial is requested—largely tracking the statute. The Committee’s proposed rule change seeks to clarify the *De Acosta* precedent which would allow amorphous, implied actions to be interpreted as a request for a trial and replace it with a defined affirmative act that both tracks the statute and requires an affirmative filing that expressly rejects the arbitration award.

Specifically, the Committee proposes renaming the subdivision from “Time for Filing Motion for Trial” to “Notice of Rejection of the Arbitration Decision and Request for Trial.” Further, the Committee proposes additional amendments to make it clear that the notice of rejection of the arbitration decision and request for trial should be filed in the same document. If amended as proposed by the Committee, the first 3 sentences of subdivision (g)(5) would read:

To reject the arbitration decision, within 20 days of service of the arbitrator(s) written decision, any party must file a notice of rejection of the arbitration decision and request for trial in the same document. No action or inaction by any party, other than the filing of the notice, will be deemed a rejection of the arbitration decision.

## **FORM 1.923(a).      EVICTION SUMMONS/—RESIDENTIAL**

The Committee proposes additional amendments to Form 1.923(a) (Eviction Summons/—Residential) for consistency within the rule. The Committee proposes replacing the “/” in the rules title with an m-dash for consistency within the rules set. In the 4th paragraph, the Committee proposed making “Saturday” and “Sunday” plural for consistency.

The Honorable Lisa Ann Allen commented on the amendments to Form 1.923(a), subdivision (3). Judge Allen suggested that using the word “give” is confusing in the context of giving rent to the clerk of court and that “pay” would be clearer to the reader. The Committee agreed and proposes that additional amendment. Further, Judge Allen suggests that the court does not “pay” the landlord, but instead “releases” collected funds to the landlord.

The Committee agrees and proposes the following additional amendments. In subdivision (3), the Committee proposes replacing “[g]ive” with “[p]ay” in the first sentence. In the third sentence, the Committee proposes replacing “pay” with “release.” In the bracketed sentence, the Committee proposes replacing “deposit” with “pay.” In subdivision (4), the Committee proposes replacing “give” with “pay.”

In its comment, HUG says that the “revised Form 1.923(a) and the proposed Form 1.923(b) (the Summons Forms) are significant improvements over the existing Form 1.923 commons. The Summons Forms use improved language that is more straightforward and has greater readability than the existing summons form.” HUG Comment at 4.

HUG requests that Form 1.923(a) be translated into Spanish and Haitian Creole/French. It is the Committee’s intent to have the summons translated after finalizing the English version.

Next HUG asks that Form 1.923(a) provide information on lawyer referral services and free legal services. The Committee edited down HUG’s proposed language to the following:

You may want to call a lawyer right away. If you do not know a lawyer, you can contact the Lawyer Referral Service on The Florida Bar’s website. If you cannot afford a lawyer, you may be eligible for free legal aid. You can locate legal aid programs by searching for “pro bono” on The Florida Bar’s website.

The Committee agrees that the information could be helpful and proposes placing this information above the ADA paragraph within the Form.

**FORM 1.947(b). ANSWER—RESIDENTIAL EVICTION**

The Honorable Lisa Ann Allen expressed concerns with the “checkbox” jury option proposed in new Form 1.947(b) (Answer—Residential Eviction), recounting the objections of the Conference of County Court Judges in SC20-261. The Committee previously considered these comments in that case. In its opinion in *In Re: Amendments to the Florida Rules of Civil Procedure—Eviction*, 2021 WL 1165806 (Fla. 2021), the Court stated:

The Court therefore asks that the Committee revisit the jury trial disclosure and selection issue in form 1.947(b), as well as in the other two proposed forms if necessary, and that it file a new report containing its revised proposals. Possible solutions may include either removing the checkbox from the form and adding a disclosure regarding the right to a jury trial in eviction proceedings or retaining the checkbox and adding a succinct disclosure on the potential ramifications of selecting a jury trial.

In response to the Court’s opinion, the Committee voted on the current proposal and the Committee proposes moving forward with the current proposal, which has been vigorously debated by the full Committee.

In its comment, HUG suggested that the waiver language was overly complex and difficult to read. The Committee agreed and proposes breaking the paragraph up into smaller numbered

paragraphs and moving the information to the beginning of the Form.

HUG noted that the information on constitutional rights and waiver followed the check boxes on trial by jury or trial by judge. HUG suggested reversing the order of the subdivisions. The Committee agrees and proposes reordering the subdivisions accordingly.

In the note to Form 1.947(b), the Committee proposes an additional amendment to conform to the Court's *Guidelines for Rules Submissions*, AOSC22-78 (Fla. 2022) by replacing "his, her, or its" with "the defendant's."

The Civil Procedure Rules Committee respectfully requests that the Court amend Rules 1.110, 1.820, Form 1.923(a) and 1.947(b) as detailed in this response to comment and Form 1.923(b) as detailed in the Committee's December 15, 2022, report.

Respectfully submitted on May 26, 2023.

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### **CERTIFICATE OF COMPLIANCE**

I certify that these rules were read against *Thomson Reuters' Florida Rules of Court—State* (2022 Rev. Edition). I certify that this response was prepared in compliance with the font requirements of Florida Rule of Appellate Procedure 9.045 and the requirements in *In re: Guidelines for Rules Submissions*, AOSC22-78 (Fla. 2022).

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