

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO
FLORIDA RULE OF CIVIL
PROCEDURE 1.510 AND NEW
FLORIDA RULE OF CIVIL PROCEDURE
1.202**

CASE NO.: SC2024-0662

**COMMENT OF THE
CIVIL PROCEDURE RULES COMMITTEE**

Cosme Caballero, Chair of the Civil Procedure Rules Committee, and Joshua E. Doyle, Executive Director of The Florida Bar, file this comment on behalf of the Civil Procedure Rules Committee (“Committee”) under Florida Rule of General Practice and Judicial Administration 2.140. This comment was approved by vote of 22-1-3.

In the opinion issued May 23, 2024, this Court amended Florida Rule of Civil Procedure 1.510 (Summary Judgment) and adopted new rule 1.202 (Conferral Prior to Filing Motions). The Court acted on its own motion in adopting these amendments, which go into effect on January 1, 2025.

RULE 1.510. SUMMARY JUDGMENT

The Committee has significant concerns about this Court’s decision to untether the filing and response deadlines from the date of the hearing on a motion for summary judgment. The Committee feels strongly that the summary judgment rule must include a minimum length of time between the filing of the motion and the hearing on the motion. Without this minimum length of time, the amended rule will allow a hearing to be set on a motion for summary judgment before any response is due or immediately after the response is served. The Committee is concerned that these notices of premature hearings will lead to excessive motion practice and frustrate the principles of judicial efficiency.

For example, as adopted, a hearing on a motion for summary judgment can be set for 30 days after the motion was served, before the response deadline.

The Committee believes the potential for premature summary judgment hearings will trigger a flurry of motions, emergency hearings, and questions. The questions include whether the amended rule:

- allows for hearings to be held before responses are served;
- requires a nonmovant faced with a prematurely noticed hearing to quickly serve a response to the motion for summary judgment;
- requires a nonmovant to serve an emergency motion to strike or defer considering a prematurely noticed hearing;
- allows the nonmovant to simply bring the record materials opposing the motion to the prematurely noticed hearing and present them at the hearing; and
- allows the nonmovant to serve the nonmovant's supporting factual position the day before the prematurely noticed hearing.

The Committee therefore urges the Court to restore the requirement in rule 1.510(b) that motions for summary judgment must be filed at least 40 days before the hearing. If the rule is further amended to require the response to be served within 30 days after service of the motion for summary judgment, the response would be served at least 10 days before the hearing, which would still allow sufficient time for the trial court and the movant to evaluate the response in advance of the hearing.

The Committee suggests the following amendment to address these concerns:

(b) Time to File and Serve a Motion. A party may move for summary judgment at any time after the expiration of

20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party. The movant must serve the motion for summary judgment ~~at least 40 days before the time fixed for the hearing~~ consistent with the deadlines specified in the case management order, but it must be served at least 40 days before the time fixed for the hearing.

(c) Procedures.

(1)–(4) [No Change]

(5) *Timing for Supporting Factual Positions.* At the time of filing a motion for summary judgment, the movant must also serve the movant’s supporting factual position as provided in subdivision ~~(c)(1) above~~. ~~At least 20 days before the time fixed for the hearing. No later than 60 days after service of the motion for summary judgment.~~ Within 30 days after service of the motion for summary judgment, the nonmovant must serve a response that includes the nonmovant’s supporting factual position as provided in subdivision ~~(c)(1) above~~.

These proposed changes will help ensure that trial judges and parties have adequate time to prepare for hearings on motions for summary judgment. This amendment will promote judicial efficiency and economy by reducing motions to prevent premature hearings from occurring less than 40 days after the motion was filed.

The Committee is concerned that there may be other potential unintended consequences from the Court’s amendments to rule 1.510. The Committee is continuing to evaluate these changes and will make every effort to address them (if necessary) at oral argument.

RULE 1.202 CONFERRAL PRIOR TO FILING MOTIONS

The Committee believes the Court should amend the conferral rule in several respects. The Committee reached this conclusion after reviewing local administrative orders requiring conferral in

several circuits and the local rules requiring conferral in the federal district courts in Florida. These local rules and administrative orders are included in the Committee's Appendix A.

As adopted, rule 1.202(a) provides that the conferral rule applies to all motions except a "motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, or to involuntarily dismiss an action." The Committee suggests amending rule 1.202(a) to state the conferral requirement applies to all non-dispositive motions. This change would conform the rule to the Court's language from the May 23, 2024, opinion in this case and bring greater specificity to the rule.

The Committee also recommends amending the rule to expand the list of motions excluded from the rule.

The list of motions excluded from rule 1.202(a) fails to include several important motions which should not require conferral. The Committee suggests excluding motions: for extensions of time to serve initial process; for default; to dismiss for failure to prosecute; to substitute counsel; for garnishment and writs of possession; and for new trial or rehearing under rule 1.530. Most of these motions are exempt from the local conferral rules (state and federal) the Committee reviewed. Specifying the excluded motions helps eliminate confusion about frequently filed motions.

The Committee recommends exempting motions filed in actions brought under summary procedure (section 51.011, Florida Statutes). The short timeframes in summary procedure make conferral difficult. Actions filed under summary procedure are similarly excluded from rule 1.200 and rule 1.440.

The Committee recognizes that the Florida Rules of Civil Procedure encompass a broad range of actions and types of cases. There could be other types of actions that should be exempt from the conferral rule. The Committee also acknowledges that it is difficult, if not impossible, to identify every type of motion that should be excluded from the conferral rule.

As a matter of format, the Committee recommends moving all the exemptions from the conferral rule to a new subdivision, rule 1.202(c). This would be consistent with the Court's recent amendment to rule 1.200 (Case Management; Pretrial Procedure). The case management rule uses a separate subdivision, rule 1.200(a), to list all the exemptions in an enumerated list. The Committee followed this format and put all the exemptions to the conferral rule in a separate subdivision, rule 1.202(c). This numbered list of exemptions will be easier to read and consistent with this Court's Style Guide *In re: Guidelines for Rules Submissions*, Fla. Admin. Order No. AOSC22-78 (Fla. Oct. 23, 2022).

The Committee believes this Court should exempt unrepresented litigants from the conferral rule when they are the movant. In the Southern District of Florida and the Fifteenth Circuit Court, pro se movants are exempt from conferral requirements. The Committee fears unrepresented litigants will have a difficult time understanding conferral requirements. As a result, the conferral requirements will create a procedural hurdle for unrepresented litigants. Under the Committee's proposal, an attorney filing a motion would be required to confer with an unrepresented party.

The Committee recommends amending the certificate of conferral in rule 1.202(b). As adopted, rule 1.202(b) addresses certificates of conferral in 2 scenarios: the parties either discussed the issues or the nonmoving party failed to respond. There could be many other circumstances where the moving party cannot reasonably confer. The Committee proposes amending the certificate of conferral to allow parties to certify they "made reasonable efforts to confer with all parties," and spell out those efforts. This proposed amendment is based on local rule 7.1(a)(3) in the Southern District of Florida.

The Committee points out the certificate of conferral in rule 1.202 differs from the certification required by rule 1.380:

The motion must include a certification that the movant, in good faith, has conferred or attempted to confer with the

person or party failing to make the discovery in an effort to secure the information or material without court action.

The Committee will review the conferral requirement in rule 1.380(a)(2) that currently applies when a party is moving to compel discovery, and determine whether the certification should be removed in light of the Court's final opinion in this case.

The Committee suggests the following amendments to address the concerns discussed above:

RULE 1.202. CONFERRAL PRIOR TO BEFORE FILING MOTIONS

(a) Duty. ~~Before filing a non-dispositive motion, except for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, or to involuntarily dismiss an action, the movant must confer with the opposing party in a good faith effort to resolve the issues raised in the motion~~ the attorney for the movant must confer with the nonmovant in a good faith effort to resolve by agreement the issues to be raised in the motion.

(b) Certificate of Conferral. ~~When conferral is required, the movant must file with the motion a certificate of conferral that must be substantially in the following form:~~

~~"I certify that prior to filing this motion, I discussed the relief requested in this motion by [method of communication and date] with the opposing party and [the opposing party (agrees or disagrees) on the resolution of all or part of the motion] OR [the opposing party did not respond (describing with particularity all of the efforts undertaken to accomplish dialogue with the opposing party prior to filing the motion)]."~~

At the end of the motion, and above the signature block, the movant must certify:

(1) that the movant has conferred with all parties or nonparties who may be affected by the relief sought in the motion in a good faith effort to resolve the issues raised in the motion and has been unable to do so; if certain issues have been resolved by agreement, the certification must specify the issues resolved and the issues that remain unresolved;

(2) that the movant has made reasonable efforts to confer with all parties or nonparties who may be affected by the relief sought in the motion, which efforts must be identified with specificity in the statement (including the date, time, and manner of each effort), but has been unable to do so; or

(3) that conferral is not required under this rule.

(c) Applicability; Exemptions. The requirements of this rule do not apply to the following motions:

(1) for time to extend service of initial process;

(2) for default;

(3) for injunctive relief;

(4) for judgment on the pleadings;

(5) for summary judgment;

(6) to dismiss for failure to state a claim on which relief can be granted;

(7) to permit maintenance of a class action;

(8) to involuntarily dismiss an action;

(9) to dismiss for failure to prosecute;

(10) for directed verdict and motions filed under rule 1.530;

(11) for garnishment, attachment, or other motions for

enforcement of a judgment under rule 1.570;

(12) for writ of possession under rule 1.580;

(13) to substitute counsel;

(14) filed in actions proceeding under section 51.011, Florida Statutes;

(15) filed when the moving party is unrepresented by counsel; and

(16) that do not require notice to the other party under statute or rule.

CONCLUSION

The Committee recommends that this Court adopt additional amendments to Florida Rules of Civil Procedure 1.510 and 1.202 as detailed above.

Respectfully submitted July 30, 2024.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was furnished by e-mail, via the Florida Courts E-filing Portal, on July 30, 2024, to:

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CERTIFICATE OF COMPLIANCE

I certify that this document was prepared in compliance with the font requirements of Florida Rule of Appellate Procedure 9.045 and the requirements within *In Re: Guidelines for Rules Submissions*, Fla. Admin. Order No. AOSC 22-78 (Fla. Oct. 23, 2022).

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