



March 29, 2022

VIA FEDERAL EXPRESS

Florida Supreme Court
Office of the Clerk
500 South Duval Street
Tallahassee, Florida 32399-1927

Re: Comment re proposed RCP OFC 3-31-22 (CASE NO. SC22-122)

Dear Sir or Madam:

We are writing to comment on the proposed amendments to the Florida Rules out for comment until March 31, 2022 (Case No. SC22-122).

Proposed Rule of Civil Procedure ("RCP") 1.161(b)(1)(B)

Proposed RCP 1.161(b)(1)(B) says:

Where scheduling takes place manually through the judicial office, the scheduling party shall contact that office, which shall offer the parties 3 dates and times. The parties shall accept or reject the dates by e-mail to all parties within 2 business days. If rejected, the rejecting party must identify the conflict and obtain from the judicial office 3 alternative dates and times within 2 business days. [Emphasis added.]

What are the triggering events for these 2-business day deadlines? Is the deadline to accept or reject the dates triggered from the date the dates are offered or by the receipt or service of those dates? Is the deadline to obtain the alternative dates the same 2-business day period as the deadline to accept or reject the initial dates, or is it triggered from the date the initial dates are rejected?

We respectfully request that proposed RCP 1.161(b)(1)(B) be revised to reference the specific triggering events for each of the 2-business day deadlines. For example, "The parties shall accept or reject the dates by e-mail to all parties *within 2 business days of receipt of the dates from the judicial office*" and "If rejected, the rejecting party must identify the conflict and obtain from the judicial office 3 alternative dates and times *within 2 business days from the date the party rejects the initial dates offered by the judicial office.*"

Proposed RCP 1.200(d)(1)

Proposed RCP 1.200(d)(1) is divided into 3 subsections. Section (d)(1)(A) is entitled "Cases in Which a Joint Case Management Report is Required, section (d)(1)(B) is entitled "Cases in Which a Joint Case Management Report is Not Required," and section (d)(1)(C) is entitled "Exception – Complex Cases." Each section discusses the deadline and requirement for a motion to change track assignment. However, the deadline for a responsive memorandum to such motion is included only in the first subsection re cases in which a joint case management report is required. Does the deadline for the responsive memorandum also apply in cases where no joint case management report is required? We request that the Court further amend (d)(1)(B) to affirmatively state whether the responsive deadline in (d)(1)(A) does or does not so apply.

In addition, proposed RCP 1.200(d)(1)(B) says, "When a case management report is not required, parties may seek a change in track assignment by motion filed within 120 days after first filing or 30 days after service on the last defendant, whichever occurs first." [Emphasis added.]

Received, Clerk, Supreme Court

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Although it appears that the “first filing” in RCP 1.200(d)(1)(B) refers to the “first filing in the case,” and that “after service” refers to “service of process,” these terms are somewhat ambiguous as written. To avoid any confusion, we request that the court clarify the triggering events.

Proposed RCP 1.200(e)(3)

Proposed RCP 1.200(e)(3)(A) says, “Parties shall meet and confer within 30 days after service after initial service of the complaint on the first defendant served, unless extended by order of the court.” [Emphasis added.] It appears that the first “after service” in this sentence may be a typo. If it is not a typo, and the deadline to meet and confer is something other than a plain “30 days after the initial service of the complaint on the first defendant served,” we respectfully request that the court revise this section to clarify this deadline.

Also, RCP 1.200(e)(3)(B) says, “If the parties fail to file the joint case management report and proposed case management order by 120 days after filing or 30 days after service on last defendant, whichever occurs first, the court shall issue its own case management order without input from the parties.” [Emphasis added.]

Similar to the language in RCP 1.200(d)(1)(B), discussed above, the words “filing” and “after service” as used in RCP 1.200(e)(3)(B) is ambiguous. Does “filing” refer to “filing of the complaint” or “first filing in the case?” Does “service” refer to “service of process on the defendant?” As written, it is difficult to be certain of the triggering event the Court intends, and may lead to confusion among practitioners.

Thank you for your time and consideration.

Sincerely,



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CERTIFICATE OF SERVICE

I certify that a copy of the comments to the proposed amendments to the Florida Rules (Case No. SC22-122) was furnished to:

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