

IN THE SUPREME COURT OF FLORIDA
Case No. SC22-122

IN RE: REPORT AND RECOMMENDATIONS
OF THE WORKGROUP ON IMPROVED
RESOLUTION OF CIVIL CASES

APPENDIX A TO
THE BUSINESS LITIGATION PRACTICE GROUP OF
GUNSTER YOAKLEY & STEWART P.A.’S COMMENTS TO THE
WORKGROUP ON IMPROVED RESOLUTION OF CIVIL CASES

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The Workgroup’s Proposed Rule 1.200(b)	Gunster’s Proposed Rule 1.200(b)(1)
<p>(b) Applicability; Exemptions. The requirements of this rule apply to all civil actions except:</p> <ul style="list-style-type: none"> (1) actions required to proceed under section 51.011, Florida Statutes; (2) actions proceeding under section 45.075, Florida Statutes; (3) actions subject to the Florida Small Claims Rules, unless the court pursuant to rule 7.020(c) has ordered the action to proceed under one or more of the Florida Rules of Civil Procedure and the deadline for the trial date specified in rule 7.090(d) no longer applies; (4) an action for review on an administrative record; (5) a forfeiture action in rem arising from a state statute; (6) a petition for habeas corpus or any other proceeding to challenge a criminal conviction or sentence; (7) an action brought without an attorney by a person in the custody of the United States, a state, or a state subdivision; (8) an action to enforce or quash an administrative summons or subpoena; 	<p>(b)(1) Applicability; Exemptions. The requirements of this rule apply to all civil actions except:</p> <ul style="list-style-type: none"> (4A) actions required to proceed under section 51.011, Florida Statutes; (2B) actions proceeding under section 45.075, Florida Statutes; (3C) actions subject to the Florida Small Claims Rules, unless the court pursuant to rule 7.020(c) has ordered the action to proceed under one or more of the Florida Rules of Civil Procedure and the deadline for the trial date specified in rule 7.090(d) no longer applies; (4D) an action for review on an administrative record; (5E) a forfeiture action in rem arising from a state statute; (6F) a petition for habeas corpus or any other proceeding to challenge a criminal conviction or sentence; (7G) an action brought without an attorney by a person in the custody of the United States, a state, or a state subdivision;

<p>(9) a proceeding ancillary to a proceeding in another court;</p> <p>(10) an action to enforce an arbitration award;</p> <p>(11) an action involving an extraordinary writ or remedy pursuant to rule 1.630;</p> <p>(12) actions to confirm or enforce foreign judgments;</p> <p>(13) a claim requiring expedited or priority resolution under an applicable statute or rule; and</p> <p>(14) a civil action pending in a special division of the court established by local administrative order or local rule (e.g., a complex business division or a complex civil division) that manages cases consistent with the objectives of subdivision (a) and enters case management orders with timelines, schedules, and deadlines for key events in the case.</p>	<p>(8H) an action to enforce or quash an administrative summons or subpoena;</p> <p>(9I) a proceeding ancillary to a proceeding in another court;</p> <p>(10J) an action to enforce an arbitration award;</p> <p>(11K) an action involving an extraordinary writ or remedy pursuant to rule 1.630;</p> <p>(12L) actions to confirm or enforce foreign judgments;</p> <p><u>(M) an action proceeding under Chapter 73 and 74, Florida Statutes;</u></p> <p>(13N) a claim requiring expedited or priority resolution under an applicable statute or rule; and</p> <p>(14O) a civil action pending in a special division of the court established by local administrative order or local rule (e.g., a complex business division or a complex civil division) that manages cases consistent with the objectives of subdivision (a) and enters case management orders with timelines, schedules, and deadlines for key events in the case.</p>
<p>Under the Workgroup’s Proposed Rules a motion to compel arbitration or a motion to dismiss will not stay case management or initial disclosure protocols.</p>	<p>Gunster’s Proposed Rule 1.200(b)(2)</p> <p><u>(b)(2) The requirements of this rule shall be automatically stayed upon the filing and until the resolution of a (A) a motion to compel arbitration, (B) a motion to dismiss for lack of jurisdiction or improper venue, or (C) a motion to dismiss based on statutes of limitation, statutes of repose, or a contractual release</u></p>

<p>The Workgroup’s Proposed Rule 1.200(e)(3)(A)(ii)</p> <p>(3)General Cases. (A)Meet and Confer. 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. The parties should discuss and identify deadlines for: (ii) their anticipated disclosures of documents, including any issues already known to them concerning electronically stored information;</p>	<p>Gunster’s Proposed Rule 1.200(e)(3)(A)(ii)</p> <p>(3)General Cases. (A)Meet and Confer. 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. The parties should discuss and identify deadlines for: (ii) their anticipated <u>initial</u> disclosures, of documents, including any issues already known to them concerning <u>the preservation of</u> electronically stored information, <u>and development of a discovery plan</u>;</p>
<p>The Workgroup’s Proposed Rule 1.200(e)(3)(C)(ix)</p> <p>(C) Content of Joint Case Management Report. The joint case management report shall include the following as applicable to the case: (ix) any issues associated with electronically stored information;</p>	<p>Gunster’s Proposed Rule 1.200(e)(3)(C)(ix)</p> <p>(C) Content of Joint Case Management Report. The joint case management report shall include the following as applicable to the case: (ix) <u>the parties’ plan for electronically stored information and</u> any issues associated with electronically stored information;</p>
<p>The Workgroup’s Proposed Rule 1.200(f)(2)</p> <p>(2)Individual Deadlines. Parties may not extend deadlines by agreement if the extension affects their ability to comply with the remaining dates on the schedule. Any motion for extension of time to comply with a deadline must specify the reason for noncompliance and the specific date by which the activity can be completed, including confirming availability and cooperation of any required participant such as a third-party witness or expert, and must otherwise comply with rule 1.460(a). Motions for extension of time shall not be granted if</p>	<p>Gunster’s Proposed Rule 1.200(f)(2)</p> <p>(2)Individual Deadlines. Parties may not extend deadlines by agreement if the extension affects their ability to comply with the remaining dates on the schedule. Any motion for extension of time to comply with a deadline must specify the reason for noncompliance and the specific date by which the activity can be completed, including confirming availability and cooperation of any required participant such as a third-party witness or expert, and must otherwise comply with rule 1.460(a). Motions for extension of time shall not be granted if</p>

<p>the effect is to delay the case or if the extension affects the remaining deadlines, in the absence of extraordinary unforeseen circumstances. If the problem affects a subsequent date or dates, parties must seek an amendment of the case management order as opposed to an individual motion for extension.</p>	<p>the effect is to delay the case or if the extension affects the remaining deadlines, in the absence of extraordinary unforeseen circumstances. If the problem affects a subsequent date or dates, parties must seek an amendment of the case management order as opposed to an individual motion for extension. <u>The parties may, by mutual written agreement, modify any individual deadline that is not provided in the case management order, will not affect a subsequent deadline in the case management order, and is not governed by Rule 1.460. For good cause shown and provided the movant(s) affirm that the extended deadline will not affect the parties' ability to comply with the remaining deadlines in the case management order, the parties may move to modify a deadline established in a case management order. If extending an individual deadline may affect a subsequent deadline in the case management order, parties must seek an amendment of the case management order.</u></p>
<p>The Workgroup's Proposed Rule 1.280(a)(1)(B)</p> <p>(a) Initial Discovery Disclosure. (1) In General. Except as exempted by subdivision (2) or as ordered by the court, a party must, without awaiting a discovery request, provide to the other parties the following initial discovery disclosures unless privileged or protected from disclosure: (B) a copy of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control (or, if not in the disclosing party's possession, custody, or control, a</p>	<p>Gunster's Proposed Rule 1.280(a)(1)(B)</p> <p>(a) Initial Discovery Disclosure. (1) In General. Except as exempted by subdivision (2) or as ordered by the court, a party must, without awaiting a discovery request, provide to the other parties the following initial discovery disclosures unless privileged or protected from disclosure: (B) a copy — <u>or a description by category and location</u> — of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control (or, if not in the</p>

<p>description by category and location of such information) and that are relevant to the subject matter of the action, unless the use would be solely for impeachment;</p>	<p>disclosing party's possession, custody, or control, a description by category and location of such information) and that are relevant to the subject matter of the action <u>may use to support its claims or defenses</u>, unless the use would be solely for impeachment;</p>
<p>The Workgroup's Proposed Rule 1.280(a)(2)</p> <p>(2)Proceedings Exempt from Initial Discovery Disclosure. Unless ordered by the court, actions and claims listed in rule 1.200(b) are exempt from initial discovery disclosure.</p>	<p>Gunster's Proposed Rule 1.200(b)</p> <p>(2)Proceedings Exempt from Initial Discovery Disclosure. Unless ordered by the court, actions and claims listed in rule 1.200(b)(1) are exempt from initial discovery disclosure.</p>
<p>The Workgroup's Proposed Rule 1.280(a)(3)</p> <p>(3)Time for Initial Discovery Disclosures. A party must make the initial discovery disclosures required by this rule within 45 days after the service of the complaint unless a different time is set by court order.</p>	<p>Gunster's Proposed Rule 1.280(a)(3)</p> <p>(3)Time for Initial Discovery Disclosures. A <u>Unless stayed under Rule 1.200(b)(2), a</u> party must make the initial discovery disclosures required by this rule within 45 days after the service of the complaint <u>on such party</u> unless a different time is set by court order.</p> <p>Gunster's Proposed Rule 1.280(a)(3), if Rule 1.280(a)(1)(B) is not aligned with Fed. R. Civ. P. 26(a)(1)(A)(ii)</p> <p>(3)Time for Initial Discovery Disclosures. A <u>Unless stayed under Rule 1.200(b)(2), a</u> party must make the initial discovery disclosures required by this rule within 45 days after the service of the complaint <u>party serves its first pleading in the action</u> unless a different time is set by court order.</p>

The Workgroup proposes no change to Rule 1.280(b)(1), Florida Rules of Civil Procedure, but renumbers it Proposed Rule 1.280(c)(1).

(b) Scope of Discovery. Unless otherwise limited by 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 matter, not privileged, that is relevant to 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 for 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.

Gunster proposes Rule 1.280(b)(1), Florida Rules of Civil Procedure, be aligned with Fed. R. Civ. P. 26(b)(1)

(b) Scope of Discovery. Unless otherwise limited by 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 matter, not privileged, that is relevant to 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 for 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.~~ **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, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to 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 this scope of discovery need not be admissible in evidence to be discoverable.**

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