

PUBLICATION

Big Changes to the Florida Rules of Civil Procedure: Here's What You Need To Know

Authors: David Brian Levin, Matthew R. Feluren, Elizabeth C. Sardinas

May 28, 2024

The Florida Supreme Court, on its own motion, amended Florida Rule of Civil Procedure 1.510 (Summary Judgment) and adopted the new Florida Rule of Civil Procedure 1.202 (Conferral Prior to Filing Motions) on Wednesday, May 23, 2024. Amended Rule 1.510 and new Rule 1.202 will go into effect on January 1, 2025, and since the amendments were not published prior to adoption, interested persons will have 75 days from the date of the Court's opinion to file comments with the Court. These changes aim to enhance the efficiency and fairness of civil litigation across the state.

What Does This Mean for You?

The change to Rule 1.510 (Summary Judgment) deals with the timeframe within which a party opposing summary judgment must file its response. Currently, response deadlines are tied to the date for hearing on the movant's motion for summary judgment, with responses due 20 days prior to the scheduled hearing. Under amended Rule 1.510(c)(5), the nonmovant must serve a response that includes the nonmovant's supporting factual position, "no later than 60 days after service of the motion for summary judgment." The Supreme Court's opinion notes that this amendment "will help ensure adherence to the deadlines set forth in the case management orders required under Florida Rules of Civil Procedure," specifically Rules 1.200 and 1.201.

New Rule 1.202 (Conferral Prior to Filing Motions) imposes a duty on a moving party (except for motions 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) to confer with the opposing party in a good-faith effort to resolve the issues raised in the motion prior to setting a hearing on the motion.

Key Takeaways

From a practical perspective, amended Rule 1.510 is a welcome change for practitioners who regularly seek summary judgment. Under the current Rule, a movant has no way to compel the nonmovant to file a response in opposition to summary judgment until a hearing date is scheduled on the motion. Given the scarce availability of hearing dates, and at times, a nonmovant's lack of motivation to promptly set a hearing, a movant could be left waiting months to understand the basis of the nonmovant's opposition, which frustrates the ability to resolve cases through settlement. For a party who regularly defends summary judgments, this amendment is likely not welcomed. Presently, almost without exception, a nonmovant will have more than 60 days from the date of service of a motion for summary judgment to file its opposition. For a nonmovant who has not yet engaged an expert, this new, 60-day window could result in a chaotic race to the finish line to acquire evidence to oppose a motion and obtain executed affidavits from the opposing party. Where inspections or expert reports are required, 60 days is not a substantial amount of time to complete an investigation and produce opposition evidence (although federal court practitioners would disagree, where opposition filings are required in a much shorter timeframe). The amended rule does not impact Rule 1.510(d), which provides a mechanism

for a party who is unable to present facts essential to justify its opposition, to secure an extension. Indeed, it is anticipated that Rule 1.510(d) filings will exponentially increase.

With respect to new Rule 1.202, many judicial circuits in Florida already impose a similar requirement on litigants (see, e.g., [17th Judicial Circuit Local Rule No. 10A](#)), and this new Rule continues a long-developing trend to align Florida jurisprudence with the federal courts (see, e.g., [S.D. Fla. L.R. 7.1\(a\)\(3\)](#)). This is a much-welcomed, and hardly onerous, new rule. Indeed, a good faith conferral prior to filing a motion could save all parties substantial resources, including the courts. As the new rule sets out, no conference is needed on numerous categories of motions, including case dispositive motions. Of course, a party is scarcely likely to agree that the moving party's motion, which could end the case, ought to be granted without opposition. So, from a pragmatic viewpoint, this new rule should reduce the size of uniform motion calendar dockets, alleviate scheduling and coordination burdens among judicial and legal staff, and otherwise promote collegiality and professionalism.

Florida litigants will have several months to prepare for these rule changes, with both set to go into effect on January 1, 2025.

If you have questions about the new and amended rules and how this may affect your company, please reach out to [David B. Levin](#), [Matthew R. Feluren](#), [Elizabeth C. Sardinias](#), or any member of Baker Donelson's [Litigation Group](#).