

(2) the necessity or desirability of amendments to the pleadings;

(3) the possibility of obtaining admissions of fact and of documents that will avoid unnecessary proof;

(4) the limitation of the number of expert witnesses;

(5) the potential use of juror notebooks; and

(6) any matters permitted under subdivision (a) of this rule.

(c) Notice. Reasonable notice shall be given for a case management conference, and 20 days' notice shall be given for a pretrial conference. On failure of a party to attend a conference, the court may dismiss the action, strike the pleadings, limit proof or witnesses, or take any other appropriate action. Any documents that the court requires for any conference shall be specified in the order. Orders setting pretrial conferences shall be uniform throughout the territorial jurisdiction of the court.

(d) Pretrial Order. The court shall make an order reciting the action taken at a conference and any stipulations made. The order shall control the subsequent course of the action unless modified to prevent injustice.

Committee Notes

1971 Amendment. The 3 paragraphs of the rule are lettered and given subtitles. The present last paragraph is placed second as subdivision (b) because the proceeding required under it is taken before that in the present second paragraph. The time for implementation is changed from settling the issues because the language is erroneous, the purpose of the conference being to settle some and prepare for the trial of other issues. The last 2 sentences of subdivision (b) are added to require uniformity by all judges of the court and to require specification of the documentary requirements for the conference. The last sentence of subdivision (c) is deleted since it is covered by the local rule provisions of rule 1.020(d). The reference to the parties in substitution for attorneys and counsel is one of style because the rules generally impose obligations on the parties except when the attorneys are specifically intended. It should be understood that those parties represented by attorneys will have the attorneys perform for them in the usual manner.

1972 Amendment. Subdivision (a) is amended to require the motion for a pretrial by a party to be timely. This is done to avoid motions for pretrial conferences made a short time before trial and

requests for a continuance of the trial as a result of the pretrial conference order. The subdivision is also amended to require the clerk to send to the judge a copy of the motion by a party for the pretrial conference.

1988 Amendment. The purpose of adding subdivision (a)(5) is to spell out clearly for the bench and bar that case management conferences may be used for scheduling the disclosure of expert witnesses and the discovery of the opinion and factual information held by those experts. Subdivision (5) is not intended to expand discovery.

1992 Amendment. Subdivision (a) is amended to allow a party to set a case management conference in the same manner as a party may set a hearing on a motion. Subdivision (c) is amended to remove the mandatory language and make the notice requirement for a case management conference the same as that for a hearing on a motion; *i.e.*, reasonable notice.

Court Commentary

1984 Amendment. This is a substantial rewording of rule 1.200. Subdivision (a) is added to authorize case management conferences in an effort to give the court more control over the progress of the action. All of the matters that the court can do under the case management conference can be done at the present time under other rules or because of the court's authority otherwise. The new subdivision merely emphasizes the court's authority and arranges an orderly method for the exercise of that authority. Subdivisions (a), (b), and (c) of the existing rule are relettered accordingly. Subdivision (a) of the existing rule is also amended to delete the reference to requiring the attorneys to appear at a pretrial conference by referring to the parties for that purpose. This is consistent with the language used throughout the rules and does not contemplate a change in present procedure. Subdivisions (a)(5) and (a)(6) of the existing rule are deleted since they are now covered adequately under the new subdivision (a). Subdivisions (b) and (c) of the existing rule are amended to accommodate the 2 types of conferences that are now authorized by the rules.

RULE 1.201. COMPLEX LITIGATION

(a) Complex Litigation Defined. At any time after all defendants have been served, and an appearance has been entered in response to the complaint by each party or a default entered, any party, or the court on its own motion, may move to declare an action complex. However, any party may move to designate an action complex before all defendants have been served subject to a showing to the court why service has not been made on all defendants. The court shall convene a hearing to determine whether the action requires the use of complex litigation procedures and enter an order within 10 days of the conclusion of the hearing.

(1) A "complex action" is one that is likely to involve complicated legal or case management issues

and that may require extensive judicial management to expedite the action, keep costs reasonable, or promote judicial efficiency.

(2) In deciding whether an action is complex, the court must consider whether the action is likely to involve:

(A) numerous pretrial motions raising difficult or novel legal issues or legal issues that are inextricably intertwined that will be time-consuming to resolve;

(B) management of a large number of separately represented parties;

(C) coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court;

(D) pretrial management of a large number of witnesses or a substantial amount of documentary evidence;

(E) substantial time required to complete the trial;

(F) management at trial of a large number of experts, witnesses, attorneys, or exhibits;

(G) substantial post-judgment judicial supervision; and

(H) any other analytical factors identified by the court or a party that tend to complicate comparable actions and which are likely to arise in the context of the instant action.

(3) If all of the parties, pro se or through counsel, sign and file with the clerk of the court a written stipulation to the fact that an action is complex and identifying the factors in (2)(A) through (2)(H) above that apply, the court shall enter an order designating the action as complex without a hearing.

(b) Initial Case Management Report and Conference. The court shall hold an initial case management conference within 60 days from the date of the order declaring the action complex.

(1) At least 20 days prior to the date of the initial case management conference, attorneys for the parties as well as any parties appearing pro se shall confer and prepare a joint statement, which shall be filed with the clerk of the court no later than 14 days before the conference, outlining a discovery plan and stating:

(A) a brief factual statement of the action, which includes the claims and defenses;

(B) a brief statement on the theory of damages by any party seeking affirmative relief;

(C) the likelihood of settlement;

(D) the likelihood of appearance in the action of additional parties and identification of any non-parties to whom any of the parties will seek to allocate fault;

(E) the proposed limits on the time: (i) to join other parties and to amend the pleadings, (ii) to file and hear motions, (iii) to identify any non-parties whose identity is known, or otherwise describe as specifically as practicable any non-parties whose identity is not known, (iv) to disclose expert witnesses, and (v) to complete discovery;

(F) the names of the attorneys responsible for handling the action;

(G) the necessity for a protective order to facilitate discovery;

(H) proposals for the formulation and simplification of issues, including the elimination of frivolous claims or defenses, and the number and timing of motions for summary judgment or partial summary judgment;

(I) the possibility of obtaining admissions of fact and voluntary exchange of documents and electronically stored information, stipulations regarding authenticity of documents, electronically stored information, and the need for advance rulings from the court on admissibility of evidence;

(J) suggestions on the advisability and timing of referring matters to a magistrate, master, other neutral, or mediation;

(K) a preliminary estimate of the time required for trial;

(L) requested date or dates for conferences before trial, a final pretrial conference, and trial;

(M) a description of pertinent documents and a list of fact witnesses the parties believe to be relevant;

(N) number of experts and fields of expertise; and

(O) any other information that might be helpful to the court in setting further conferences and the trial date.

(2) Lead trial counsel and a client representative shall attend the initial case management conference.

(3) Notwithstanding rule 1.440, at the initial case management conference, the court will set the trial date or dates no sooner than 6 months and no later than 24 months from the date of the conference unless good cause is shown for an earlier or later setting. The trial date or dates shall be on a docket having sufficient time within which to try the action and, when feasible, for a date or dates certain. The trial date shall be set after consultation with counsel and in the presence of all clients or authorized client representatives. The court shall, no later than 2 months prior to the date scheduled for jury selection, arrange for a sufficient number of available jurors. Continuance of the trial of a complex action should rarely be granted and then only upon good cause shown.

(c) The Case Management Order. The case management order shall address each matter set forth under rule 1.200(a) and set the action for a pretrial conference and trial. The case management order also shall specify the following:

(1) Dates by which all parties shall name their expert witnesses and provide the expert information required by rule 1.280(b)(4). If a party has named an expert witness in a field in which any other parties have not identified experts, the other parties may name experts in that field within 30 days thereafter. No

additional experts may be named unless good cause is shown.

(2) Not more than 10 days after the date set for naming experts, the parties shall meet and schedule dates for deposition of experts and all other witnesses not yet deposed. At the time of the meeting each party is responsible for having secured three confirmed dates for its expert witnesses. In the event the parties cannot agree on a discovery deposition schedule, the court, upon motion, shall set the schedule. Any party may file the completed discovery deposition schedule agreed upon or entered by the court. Once filed, the deposition dates in the schedule shall not be altered without consent of all parties or upon order of the court. Failure to comply with the discovery schedule may result in sanctions in accordance with rule 1.380.

(3) Dates by which all parties are to complete all other discovery.

(4) The court shall schedule periodic case management conferences and hearings on lengthy motions at reasonable intervals based on the particular needs of the action. The attorneys for the parties as well as any parties appearing pro se shall confer no later than 15 days prior to each case management conference or hearing. They shall notify the court at least 10 days prior to any case management conference or hearing if the parties stipulate that a case management conference or hearing time is unnecessary. Failure to timely notify the court that a case management conference or hearing time is unnecessary may result in sanctions.

(5) The case management order may include a briefing schedule setting forth a time period within which to file briefs or memoranda, responses, and reply briefs or memoranda, prior to the court considering such matters.

(6) A deadline for conducting alternative dispute resolution.

(d) Final Case Management Conference. The court shall schedule a final case management conference not less than 90 days prior to the date the case is set for trial. At least 10 days prior to the final case

management conference the parties shall confer to prepare a case status report, which shall be filed with the clerk of the court either prior to or at the time of the final case management conference. The status report shall contain in separately numbered paragraphs:

(1) A list of all pending motions requiring action by the court and the date those motions are set for hearing.

(2) Any change regarding the estimated trial time.

(3) The names of the attorneys who will try the case.

(4) A list of the names and addresses of all non-expert witnesses (including impeachment and rebuttal witnesses) intended to be called at trial. However, impeachment or rebuttal witnesses not identified in the case status report may be allowed to testify if the need for their testimony could not have been reasonably foreseen at the time the case status report was prepared.

(5) A list of all exhibits intended to be offered at trial.

(6) Certification that copies of witness and exhibit lists will be filed with the clerk of the court at least 48 hours prior to the date and time of the final case management conference.

(7) A deadline for the filing of amended lists of witnesses and exhibits, which amendments shall be allowed only upon motion and for good cause shown.

(8) Any other matters which could impact the timely and effective trial of the action.

RULE 1.210. PARTIES

(a) **Parties Generally.** Every action may be prosecuted in the name of the real party in interest, but a personal representative, administrator, guardian, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party expressly authorized by statute may sue in that person's own name without joining the

party for whose benefit the action is brought. All persons having an interest in the subject of the action and in obtaining the relief demanded may join as plaintiffs and any person may be made a defendant who has or claims an interest adverse to the plaintiff. Any person may at any time be made a party if that person's presence is necessary or proper to a complete determination of the cause. Persons having a united interest may be joined on the same side as plaintiffs or defendants, and anyone who refuses to join may for such reason be made a defendant.

(b) **Minors or Incompetent Persons.** When a minor or incompetent person has a representative, such as a guardian or other like fiduciary, the representative may sue or defend on behalf of the minor or incompetent person. A minor or incompetent person who does not have a duly appointed representative may sue by next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for a minor or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the minor or incompetent person.

Committee Notes

1980 Amendment. Subdivisions (c) and (d) are deleted. Both are obsolete. They were continued in effect earlier because the committee was uncertain about the need for them at the time. Subdivision (c) has been supplanted by section 737.402(2)(z), Florida Statutes (1979), that gives trustees the power to prosecute and defend actions, regardless of the conditions specified in the subdivision. The adoption of section 733.212, Florida Statutes (1979), eliminates the need for subdivision (d) because it provides an easier and less expensive method of eliminating the interests of an heir at law who is not a beneficiary under the will. To the extent that an heir at law is an indispensable party to a proceeding concerning a testamentary trust, due process requires notice and an opportunity to defend, so the rule would be unconstitutionally applied.

2003 Amendment. In subdivision (a), "an executor" is changed to "a personal representative" to conform to statutory language. See § 731.201(25), Fla. Stat. (2002).

RULE 1.220. CLASS ACTIONS

(a) **Prerequisites to Class Representation.** Before any claim or defense may be maintained on behalf of a class by one party or more suing or being sued as the representative of all the members of a class, the court shall first conclude that (1) the members of the class are so numerous that separate joinder of each member