2022 AMENDMENTS TO THE FLORIDA RULES OF CIVIL PROCEDURE

Rule 1.442 - No longer can you put any condition on a proposal for settlement OTHER THAN requiring dismissal with prejudice.

> (c)(2)(a) says a proposal shall "exclude nonmonetary terms, with the exceptions of a voluntary dismissal of all claims with prejudice and any other nonmonetary terms permitted by statute;"

Rule 1.530 – AMENDED TWICE

> Added to subsection (a): "To preserve for appeal a challenge to the sufficiency of a trial court's findings in the final judgment, a party must raise that issue in a motion for rehearing under this rule."

The amendment came about to resolve a conflict between DCAs about whether you had to file a motion for rehearing to ask the trial court to clarify (or state) factual findings. Some DCAs held that the failure meant the issue was waived. The new rule is a little vague so it will probably generate a ton of rehearing motions. I envision it being employed primarily in bench trial situations and summary judgment motions.

> Created subsection (h): requiring three things for every additur/remittitur motion

> **(h) Motion for Remittitur or Additur.**
> (1) Not later than 15 days after the return of the verdict in a jury action or the date of filing of the judgment in a non-jury action, any party may serve a motion for remittitur or additur. The motion must state the applicable Florida law under which it is being made, the amount the movant contends the verdict should be, and the specific evidence that supports the amount stated or

a statement of the improper elements of damages included in the damages award.

(2) If a remittitur or additur is granted, the court must state the specific statutory criteria relied on.

(3) Any party adversely affected by the order granting remittitur or additur may reject the award and elect a new trial on the issue of damages only by filing a written election within 15 days after the order granting remittitur or additur is filed.

RULE 1.535 – DELETED

This was the remittitur/additur rule. Now deleted and incorporated into rule 1.530.

TECHNOLOGY AMENDMENTS

The substantially rewritten rule 2.530 defines communication technology and allows a court official to authorize its use upon a party's written motion or at the discretion of the court official.

A party may file an objection in writing within 10 days or within a period directed by the court official. But the court official is required to grant a motion to use communication technology for non-evidentiary proceedings scheduled for 30 minutes or less absent good cause to deny it.

Under the amendments to rule 2.530, a motion to present testimony through communication technology at a hearing or trial is required to set forth good cause and specify whether each party consents to the form requested.

However, only ***audio-video*** communication technology (as opposed to audio communication technology) is authorized for the testimony of a person whose mental capacity or competency is at issue.

The rule also authorizes the oath to be administered through audio-video communication technology by a person not physically present with the witness.

The rule allows prospective jurors to participate through communication technology to determine whether they will be disqualified, be excused, or have their service postponed.

Finally, rule 2.530 allows prospective jurors to participate in voir dire and empaneled jurors to participate in a trial through audio-video communication technology when authorized by another rule of procedure.

Rule 1.310 – Depositions Upon Oral Examination

Gone are the days of insisting on in person depositions. Amended rule 1.310(b)(4) says you can record a deposition "audiovisually" and "without leave of the court or stipulation of the parties" provided that you meet the following requirements:

- the title of your notice of taking depo indicates that it will be "audiovisually" recorded;
- the notice identifies "the method for recording" and, if applicable, "the name and address of the operator of the audiovisual recording equipment."

1.310(b)(4)(B) makes clear that if you record via zoom, you must ***also*** record with a court reporter unless the parties otherwise agree.

1.310(b)(4)(D) says that the party who records the deposition is responsible for safeguarding it and providing a copy, when requested

1.310(b)(5)(D) says the party that wants to record is the party that pays for the recording.

1.310(b)(7) says that depositions can be taken via communication technology (i.e., zoom) if both parties stipulate, the

court orders "on its own motion" or through motion of the party. This subsection also requires that you:

- "identify the specific form of communication technology to be used"; and
- provide instructions for access to the communication technology in the body of the notice.

NOTE: It is unclear what the difference is between identifying the "method for recording" (1.310(b)(4)) and "the specific form of communication technology to be used" (1.310(b)(7)). Use of two different terms was either sloppy draftsmanship or something intentional which I cannot see.

BE AWARE THAT 1.310(c)(2) is new and it says that if you want to use an audio or audiovisual recording at a hearing or at trial, you "must have the testimony transcribed and ***must file a copy of the transcript with the court***." (emphasis added).

Rule 1.410 – Subpoenas for Deposition

You are now required to include the details in 1.310(b)(4) in the subpoena (method of recording, who will record, instructions for access).

Rule 1.430 – Demand for Jury Trial; Waiver

THIS CHANGE IS HUGE

1.430(d) is all new. It is called "Juror Participation Through Audio-Video Communication Technology." It allows prospective jurors to participate in voir dire and empaneled jurors to participate in civil trials through audio-video communication "if stipulated by the parties in writing and authorized by the court." You have to serve a written motion requesting this along with the stipulation "within 60 days after service of a demand [for jury trial] or within such other period as may be directed by the court."

Rule 1.440 – Setting Action for Trial

1.440(b) says your notice for trial must now indicate whether, in jury trial cases, "the court has authorized the participation of prospective jurors or empaneled jurors through audio-video communication technology under rule 1.430(d)."

RULE 1.451 (Taking Testimony) HAS BEEN DELETED. It required a witness testifying at a trial or proceeding to be physically present and for the person administering the oath to be present with the witness.

Rule 1.700 – Rules Common to Mediation and Arbitration

1.700(a) says that, absent a court order stating to the contrary, "mediation or arbitration ***must be conducted in person***, unless the parties stipulate or the court, on its own motion or on motion by a party, otherwise orders that the proceeding be conducted by communication technology or by a combination of communication technology and in-person participation."

(a)(2) says that, if you are using communication technology, you have to notify the parties within 15 days of the selection of the mediator or arbitrator of the instructions for accessing the communication technology.

Rule 1.730 – Completion of Mediation

(b) now makes it unequivocal that signatures to an agreement "may be original, electronic, or facsimile and may be in counterparts."

(c) is new and it says that parties cannot object to the enforceability of an agreement on the ground that communication technology was used "if such use was authorized under rule 1.700(a)." (The scary part is that the Workgroup had to have seen this kind of objection in order to suggest the amendment.)

Rule 1.750 – County Court Actions

(e) and (f) says that you can appear for mediation by communication technology and agreements can be signed electronically and in counterparts. This is wild to me though: there is no provision like in 1.730(c) that a party cannot object to a settlement because the mediation was done via communication technology. That omission, particularly in county court, seems like a mistake.

Rule 1.830 – Voluntary Binding Arbitration

(a)(2) says the parties can agree to do voluntary binding arbitration via communication technology.

Appendix II – Statewide Uniform Guidelines for Taxation of Costs in Civil Actions (effective Jan 1, 2023)

New things that SHOULD be taxed:

- Filings fees and service of process fees

New things that MAY be taxed:

- Costs of court-ordered nonbinding arbitration, including arbitrator fees

- For testifying expert witnesses:
  1. A reasonable fee for conducting examinations, investigations, tests, and research and preparing reports.
  2. A reasonable fee for testimony at court-ordered nonbinding arbitration.
  3. A reasonable fee for preparing for deposition, court-ordered nonbinding arbitration, and/or court testimony.