

SELECTED FLORIDA RULES OF CIVIL PROCEDURE

RULE 1.050. When Action Commenced

Every action of a civil nature shall be deemed commenced when the complaint or petition is filed except that ancillary proceedings shall be deemed commenced when the writ is issued or the pleading setting forth the claim of the party initiating the action is filed.

RULE 1.070. Process

(a) Summons; Issuance. On the commencement of the action, summons or other process authorized by law must be issued forthwith by the clerk or judge under the clerk's or the judge's signature and the seal of the court and delivered for service without praecipe.

(b) Service; By Whom Made. Service of process may be made by an officer authorized by law to serve process, but the court may appoint any competent person not interested in the action to serve the process. When so appointed, the person serving process must make proof of service by affidavit promptly and in any event within the time during which the person served must respond to the process. Failure to make proof of service will not affect the validity of the service. When any process is returned not executed or returned improperly executed for any defendant, the party causing its issuance must be entitled to such additional process against the unserved party as is required to effect service.

(c) Service; Numerous Defendants. If there is more than 1 defendant, the clerk or judge must issue as many writs of process against the several defendants as may be directed by the plaintiff or the plaintiff's attorney.

(d) Service by Publication or Any Other Means. Service of process by publication or any other means may be made as provided by statute.

(e) Copies of Initial Pleading for Persons Served. At the time of personal service of process a copy of the initial pleading must be delivered to the party upon whom service is made. The date and hour of service must be endorsed on the original process and all copies of it by the person making the service. The party seeking to effect personal service must furnish the person making service with the necessary copies. When the service is made by publication, copies of the initial pleadings must be furnished to the clerk and mailed by the clerk with the notice of action to all parties whose addresses are stated in the initial pleading or sworn statement.

(f) Service of Orders. If personal service of a court order is to be made, the original order shall be filed with the clerk, who shall certify or verify a copy of it without charge. The person making service shall use the certified copy instead of the original order in the same manner as original process in making service.

(g) Fees; Service of Pleadings. The statutory compensation for making service will not be increased by the simultaneous delivery or mailing of the copy of the initial pleading in conformity with this rule.

(h) Pleading Basis. When service of process is to be made under statutes authorizing service on nonresidents of Florida, it is sufficient to plead the basis for service in the language of the statute without pleading the facts supporting service.

(i) Service of Process by Mail. A defendant may accept service of process by mail.

(1) Acceptance of service of a complaint by mail does not thereby waive any objection to the venue or to the jurisdiction of the court over the person of the defendant.

(2) A plaintiff may notify any defendant of the commencement of the action and request that the defendant waive service of a summons. The notice and request must:

(A) be in writing and be addressed directly to the defendant, if an individual, or to an officer or managing or general agent of the defendant or other agent authorized by appointment or law to receive service of process;

(B) be dispatched by certified mail, return receipt requested;

(C) be accompanied by a copy of the complaint and must identify the court in which it has been filed;

- (D) inform the defendant of the consequences of compliance and of failure to comply with the request;
 - (E) state the date on which the request is sent;
 - (F) allow the defendant 20 days from the date on which the request is received to return the waiver, or, if the address of the defendant is outside of the United States, 30 days from the date on which it is received to return the waiver; and
 - (G) provide the defendant with an extra copy of the notice and request, including the waiver, as well as a prepaid means of compliance in writing.
- (3) If a defendant fails to comply with a request for waiver within the time provided herein, the court must impose the costs subsequently incurred in effecting service on the defendant unless good cause for the failure is shown.
- (4) A defendant who, before being served with process, timely returns a waiver so requested is not required to respond to the complaint until 60 days after the date the defendant received the request for waiver of service. For purposes of computing any time prescribed or allowed by these rules, service of process will be deemed effected 20 days before the time required to respond to the complaint.
- (5) When the plaintiff files a waiver of service with the court, the action must proceed, except as provided in subdivision (4) above, as if a summons and complaint had been served at the time of filing the waiver, and no further proof of service shall be required.

(j) Summons; Time Limit. If service of the initial process and initial pleading is not made upon a defendant within **120 days after filing of the initial pleading** directed to that defendant the court, on its own initiative after notice or on motion, must direct that service be effected within a specified time or must dismiss the action without prejudice or drop that defendant as a party; provided that if the plaintiff shows good cause or excusable neglect for the failure, the court must extend the time for service for an appropriate period. When a motion for leave to amend with the attached proposed amended complaint is filed, the 120-day period for service of amended complaints on the new party or parties will begin upon the entry of an order granting leave to amend. A dismissal under this subdivision will not be considered a voluntary dismissal or operate as an adjudication on the merits under rule 1.420(a)(1).

RULE 1.410. Subpoena

(a) Subpoena Generally. Subpoenas for testimony before the court, subpoenas for production of tangible evidence, and subpoenas for taking depositions may be issued by the clerk of court or by any attorney of record in an action.

(b) Subpoena for Testimony before the Court.

(1) Every subpoena for testimony before the court shall be issued by an attorney of record in an action or by the clerk under the seal of the court and shall state the name of the court and the title of the action and shall command each person to whom it is directed to attend and give testimony at a time and place specified in it.

(2) On oral request of an attorney or party and without praecipe, the clerk shall issue a subpoena for testimony before the court or a subpoena for the production of documentary evidence before the court signed and sealed but otherwise in blank, both as to the title of the action and the name of the person to whom it is directed, and the subpoena shall be filled in before service by the attorney or party.

(c) For Production of Documentary Evidence. A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein, but the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable and oppressive, or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things. A party

seeking production of evidence at trial which would be subject to a subpoena may compel such production by serving a notice to produce such evidence on an adverse party as provided in rule 1.080(b). Such notice shall have the same effect and be subject to the same limitations as a subpoena served on the party.

(d) Service. A subpoena may be served by any person authorized by law to serve process or by any other person who is not a party and who is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made as provided by law. Proof of such service shall be made by affidavit of the person making service if not served by an officer authorized by law to do so.

(e) Subpoena for Taking Depositions.

(1) Filing a notice to take a deposition as provided in rule 1.310(b) or 1.320(a) with a certificate of service on it showing service on all parties to the action constitutes an authorization for the issuance of subpoenas for the persons named or described in the notice by the clerk of the court in which the action is pending or by an attorney of record in the action. The subpoena may command the person to whom it is directed to produce designated books, papers, documents, or tangible things that constitute or contain evidence relating to any of the matters within the scope of the examination permitted by rule 1.280(b), but in that event the subpoena will be subject to the provisions of rule 1.280(c) and subdivision (c) of this rule. Within 10 days after its service, or on or before the time specified in the subpoena for compliance if the time is less than 10 days after service, the person to whom the subpoena is directed may serve written objection to inspection or copying of any of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the court from which the subpoena was issued. If objection has been made, the party serving the subpoena may move for an order at any time before or during the taking of the deposition upon notice to the deponent.

(2) A person may be required to attend an examination only in the county wherein the person resides or is employed or transacts business in person or at such other convenient place as may be fixed by an order of court.

(f) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued.

(g) Depositions before Commissioners Appointed in this State by Courts of Other States; Subpoena Powers; etc. When any person authorized by the laws of Florida to administer oaths is appointed by a court of record of any other state, jurisdiction, or government as commissioner to take the testimony of any named witness within this state, that witness may be compelled to attend and testify before that commissioner by witness subpoena issued by the clerk of any circuit court at the instance of that commissioner or by other process or proceedings in the same manner as if that commissioner had been appointed by a court of this state; provided that no document or paper writing shall be compulsorily annexed as an exhibit to such deposition or otherwise permanently removed from the possession of the witness producing it, but in lieu thereof a photostatic copy may be annexed to and transmitted with such executed commission to the court of issuance.

(h) Subpoena of Minor. Any minor subpoenaed for testimony shall have the right to be accompanied by a parent or guardian at all times during the taking of testimony notwithstanding the invocation of the rule of sequestration of section 90.616, Florida Statutes, except upon a showing that the presence of a parent or guardian is likely to have a material, negative impact on the credibility or accuracy of the minor's testimony, or that the interests of the parent or guardian are in actual or potential conflict with the interests of the minor.

Disclaimer:

The selected sections of the Florida Rules of Civil Procedure have been included as they relate to service of process. Refer to the Florida Rules of Civil Procedure available at www.floridabar.org to view the entire document. FAPPS assumes no responsibility for changes and/or omissions to the above information as it relates to its use.