

DON'T MISS YOUR DEADLINE!

**CHANGES TO FLORIDA SUMMARY JUDGMENT RULE
COULD CATCH LAWYERS OFF GUARD**

By: Chene' M. Thompson, Esq.

As most people know, settlement is the #1 way that lawsuits get resolved. Perhaps the second most frequent way to resolve a case, in the civil context, is by a Motion for Summary Judgment.

A summary judgment motion may be brought by either the Plaintiff or the Defendant, and is designed to avoid the time and expense of a trial when a party feels there are no significant facts at issue, and he or she is entitled to win by law. Instead of calling witnesses and submitting evidence, a party moving for summary judgment will make legal argument and submit affidavits in support. Florida Rules of Civil Procedure 1.510 governs when and how a party to a lawsuit can move for summary judgment. For years, the standard remained unchanged. However, recently the Florida Supreme Court made significant amendments to the Rule and adopted the Federal Summary Judgment Standard outlined in Rule 56 of the Federal Rules of Civil Procedure almost wholesale. The Supreme Court also changed the timing of when a motion and response in opposition must be filed. For many, this part of the Rule transformation was a surprise.

In advance of this change, the Supreme Court welcomed comments from the Rules of Civil Procedure Committee and members of the public. These comments echoed the sentiment of lawyers that Florida courts apply an unnecessarily expansive definition of “no genuine issue as to any material fact” for purposes of Rule 1.510. In the opinion of most, this wide net prevented many cases from being concluded at summary judgment. There was debate about how Florida courts continuously have declined to limit the legal inquiries on summary judgment to those appropriate for directed verdict, even though they are the same standard. Despite this dialogue, the anticipated changes to the deadlines went largely under the radar. This change in timing could potentially go unnoticed by many practitioners with less than desirable consequences.

Prior to May 1, 2021, Rule 1.510 allowed a moving party to file and serve a motion for summary judgment with 20 days' notice to the opposing party before the hearing. Also, the party opposing the motion had up to 2 days before the hearing to serve any evidence in opposition to the motion. Now, the motion for summary judgment must be filed 40 days before the hearing, and the opposing party's evidence in response 20 days before the hearing.

The second portion of the new Rule 1.510 is going to catch some lawyers off guard. Due to the judicial backlog it is not unusual to file a motion for summary judgment and have the hearing a month or two later, so the longer term of 40 days is not going to be a cause for concern. However, any litigator who waits until 2 days before the hearing to file affidavits in opposition, could find him or herself in an unfortunate position of having to explain to the Judge (and a client) how this new deadline was missed. Last, and most importantly, because the motion for summary judgment is a frequently used method of resolving a lawsuit, the entire case could get resolved at summary judgment without the Judge being able to consider an opposing party's evidence due to a missed deadline.

A note to the reader: This article is intended to provide general information and is not intended to be a substitute for competent legal advice. If you have questions regarding compliance with the law, you should consult competent legal counsel.

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