The Law Office Management Assistance Service (LOMAS)

THE FLORIDA BAR

Electronic Discovery in Florida State Court: Navigating New Rules for New Issues

COURSE CLASSIFICATION: INTERMEDIATE LEVEL

July 24, 2012
(Recorded in Studio)

Course No. 1540R

THE FLORIDA BAR

1. **What is CLER?**
   CLER, or Continuing Legal Education Requirement, was adopted by the Supreme Court of Florida in 1988 and requires all members of The Florida Bar to continue their legal education.

2. **What is the requirement?**
   Over a 3 year period, each member must complete 30 hours, 5 of which are in the area of ethics, professionalism, substance abuse, or mental illness awareness.

3. **Where may I find information on CLER?**
   Rule 6-10 of the Rules Regulating The Florida Bar sets out the requirement. All the rules may be found at www.floridabar.org to Rules Updates to Rules Regulating The Florida Bar.

4. **Who administers the CLER program?**
   Day-to-day administration is the responsibility of the Legal Specialization and Education Department of The Florida Bar. The program is directly supervised by the Board of Legal Specialization and Education (BLSE) and all policy decisions must ultimately be approved by the Board of Governors.

5. **How often and by when do I need to report compliance?**
   Members are required to report CLE hours earned every three years. Each member is assigned a three year reporting cycle. You may find your reporting date either by going to www.floridabar.org to Member Profile to CLE Status Inquiry or the mailing label of The Florida Bar News.

6. **Will I receive notice advising me that my reporting period is upcoming?**
   Three months prior to the end of your reporting cycle, you will receive either:
   1) a CLER Reporting Affidavit, if you still lack hours; or,
   2) a CLER Notice of Compliance, if you have completed your hours.

7. **What do I do with the Affidavit?**
   You are to update and correct the form, complete any hours you lack, and sign and return the affidavit by your reporting date. Complete instructions appear on the reverse side of the form.

8. **What do I do with the Notice of Compliance?**
   If the information is correct, you need not respond. This document is your confirmation that you have completed the requirement for your current reporting cycle.

9. **What happens if I am late returning my Affidavit or do not complete the required hours?**
   You run the risk of being deemed a delinquent member which prohibits you from engaging in the practice of Florida law.

10. **Will I receive any other information about my reporting cycle?**
    Approximately 45 days prior to the end of your reporting cycle, if you have not yet completed your hours.

11. Are there any exemptions from CLER?

Rule 6-10.3(c) lists all valid exemptions. They are:

1) Active military service
2) Undue hardship (upon approval by the BLSE)
3) Nonresident membership (see rule for details)
4) Full-time federal judiciary
5) Justices of the Supreme Court of Florida and judges of district, circuit and county courts
6) Inactive members of The Florida Bar

12. Other than attending approved CLE courses, how may I earn credit hours?

Credit may be earned by:

1) Lecturing at an approved CLE program
2) Serving as a workshop leader or panel member
3) Writing and publishing in a professional publication or journal
4) Teaching (graduate law or law school courses)
5) University attendance (graduate law or law school courses)

13. How do I submit various activities for credit evaluation?

Applications for credit may be found either on our website, www.floridabar.org, or in the directory issue of The Florida Bar Journal following the listing of Board Certified Lawyers.

14. How are attendance hours posted on my CLER record?

If you registered for a seminar through The Florida Bar Registrations Department, the credit will be posted to your record automatically. If the course is sponsored by a Florida Bar Section or another organization, you can post your credits online.

15. How long does it take for hours to be posted to my CLER record?

When you post your CLE credit online, your record will be automatically updated and you will be able to see your current CLE hours and reporting period.

16. How may I find information on programs sponsored by The Florida Bar?

You may wish to visit our website, www.floridabar.org, or refer to The Florida Bar News. You may also call CLE Registrations at 850/561-5831.

17. If I accumulate more than 30 hours, may I use the excess for my next reporting cycle?

Excess hours may not be carried forward. The standing policies of the BLSE, as approved by the Supreme Court of Florida specifically state in 6.03(b):

... CLER credit may not be counted for more than one reporting period
and may not be carried forward to subsequent reporting periods.

18. Will out-of-state CLE hours count toward CLER?

Courses approved by other state bars are generally acceptable for use toward satisfying CLER.

19. If I have questions, whom do I call?

You may call the Legal Specialization and Education Department of The Florida Bar at 850/561-5842.

While online checking your CLER, don't forget to check your Basic Skills Course Requirement status.

PREFACE

The course materials in this booklet were prepared for use by the registrants attending our Continuing Legal Education course during the lectures and later in their offices.

The Florida Bar is indebted to the members of the Steering Committee, the lecturers and authors for their donations of time and talent, but does not have an official view of their work products.

CLER CREDIT

(Maximum 0.0 hours)

General ..... 3.0 hours Ethics..... 1.0 hours

CERTIFICATION CREDIT

(Maximum 0.0 hours)

Law ..... 0.0 hours

Seminar credit may be applied to satisfy both CLER and Board Certification requirements in the amounts specified above, not to exceed the maximum credit. Refer to Chapter 6, Rules Regulating The Florida Bar, see the CLE link at www.floridabar.org for more information about the CLER and Certification Requirements.

Prior to your CLER reporting date (located on the mailing label of your Florida Bar *News*) you will be sent a Reporting Affidavit (must be returned by your CLER reporting date) or a Notice of Compliance which confirms your completion of the requirement according to Bar records (does not need to be returned). You are encouraged to maintain records of your CLE hours.

CLE CREDIT IS NOT AWARDED FOR THE PURCHASE OF THE COURSE BOOK ONLY.

CLE COMMITTEE MISSION STATEMENT

The mission of the Continuing Legal Education Committee is to assist the members of The Florida Bar in their continuing legal education and to facilitate the production and delivery of quality CLE programs and publications for the benefit of Bar members in coordination with the Sections, Committees and Staff of The Florida Bar and others who participate in the CLE process.

COURSE CLASSIFICATION

The Steering Committee for this course has determined its content to be INTERMEDIATE.

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FACULTY BIOGRAPHIES

RALPH ARTIGLIERE is a writer and legal educator who is retired from the circuit bench in Florida. He currently teaches judges in the Florida Judicial Colleges and lawyers in The Florida Bar Advanced Trial Advocacy Course. Before his appointment to the bench in 2001 by Governor Jeb Bush, Artigliere was a trial lawyer with Holland & Knight (1977-81); Lane, Trohn (1981-91)(managing shareholder); and Anderson & Artigliere (1991-2001), where he tried primarily professional negligence, medical malpractice, and product liability cases and was a certified mediator. As a circuit judge from 2002-08, Artigliere served in the felony, family, probate, and civil trial divisions, and was Administrative Judge of the Circuit's civil and family divisions. He has served in the past or currently serves on Florida Supreme Court and Florida Bar Committees, including the Civil Rules Committee, the Supreme Court Civil Standard Jury Instructions Committee, and the Florida Courts eFiling Committee. Mr. Artigliere is an active member of and lecturer for The Sedona® Conference. As a lawyer, Artigliere was Av® rated by Martindale Hubble and a Florida Board Certified Civil Trial Lawyer. He is a Fellow of the American College of Trial Lawyers. Among his many published works, Artigliere is co-author with William Hamilton of the LexisNexis Practice Guide, Florida e-Discovery and Evidence. Mr. Artigliere graduated from the United States Military Academy, with honors, and from the University of Florida College of Law, with high honors.

WILLIAM HAMILTON is a partner with the law firm of Quarles & Brady LLP and was a founding partner of the firm's Tampa office. Mr. Hamilton is Board Certified in Business Litigation and in Intellectual Property Law by The Florida Bar. For over 25 years Mr. Hamilton has litigated in state and federal courts disputes pertaining to software development and transfers, intellectual property (copyright, trademark, patent and trade secrets law), e-commerce, data security, telecommunications, trade regulation and unfair trade practices. Mr. Hamilton is recognized by Chambers USA, Best Lawyers in America, Florida's Legal Elite, and Florida Super Lawyers, and is a Litigation Counsel of America Fellow. Mr. Hamilton is AV® rated by Martindale Hubble. Mr. Hamilton attended Lehigh University where he earned his Bachelor of Arts degree, Washington University in St. Louis where he earned a Master of Arts degree in philosophy, and the University of Florida Levin College of Law where he wrote for the law review and earned his law degree. Mr. Hamilton is versed in various software programming languages. Mr. Hamilton became involved in electronic discovery in the late 1990 while representing telecommunications companies and retail marketers in class actions involving the review of millions of electronic records. Mr. Hamilton is a member of Working Group 1 of The Sedona Conference and also serves on the Search Committee of the Electronic Discovery Reference Model. He is currently co-chair of Quarles & Brady's electronic discovery practice where he is consulted regularly on electronic discovery matters and writes for Quarles & Brady's e-discovery blog, *E-Discovery Bytes* at http://ediscovery.quarles.com. Mr. Hamilton teaches Electronic Discovery and Digital Evidence as an Adjunct Professor at the University of Florida's Levin College of Law. This course was one of the first full credit law school ediscovery courses in the nation. Mr. Hamilton is also a faculty member of the Florida Advanced Judicial College and the American Arbitration Association University where he teaches electronic discovery and evidence to judges and arbitrators. Mr. Hamilton is co-author with Ralph Artigliere of the LexisNexis Practice® Guide, Florida E-Discovery and Evidence.

KEVIN D. JOHNSON is a shareholder in the firm of Thompson, Sizemore, Gonzalez & Hearing, P.A., in Tampa, Florida. Kevin was born in Gainesville, Florida and graduated from

the University of Florida's College of Law in 1994. He has represented management in the area of labor & employment law for 17 years. Kevin is Board Certified in Labor & Employment Law by The Florida Bar and has been recognized in that field by the publication Best Lawyers in America. He currently serves as Chair of The Florida Bar's Civil Procedure Rules Committee, and was Chair of the Subcommittee on eDiscovery Rules when the new e-Discovery Rules were proposed, argued before the Court, and adopted. Kevin also serves as Treasurer for the Executive Council of The Florida Bar's General Practice, Solo, and Small Firm Section and as Vice President of the Tampa Bay Chapter of the Federal Bar Association.

RALPH LOSEY is an attorney in private practice with the law firm of Jackson Lewis, LLP, where he is a Partner and the firm's National e-Discovery Counsel. Ralph is also an Adjunct Professor at the University of Florida College of Law teaching e-discovery and advanced e-discovery. He is also an active member and lecturer for The Sedona Conference. Ralph is the principle author and publisher of a popular weekly blog on e-discovery, e-Discovery Team Blog, which is generally recognized as the industry's best read and most influential blog on e-discovery news, opinion and analysis. He is a prolific author on e-discovery, writing an average of one article per week for the e-Discovery Team Blog, since 2006. His works include five books and three law review articles in the past four years. Ralph has a long history in commercial litigation in both state and federal court, with an emphasis on technology-related issues, ERISA disputes, and Qui Tam government fraud cases. His experience includes one of the largest e-discovery cases in Central Florida in the 1990s, and several multi-billion dollar cases in the first decade of the 2000s. Ralph was the founder and chair of Akerman Senterfitt's e-discovery practice group from 2006 to April, 2010. Prior to becoming a shareholder at Akerman in 2004, he was a shareholder with Katz Kutter and Subin, Shams, Rosenbluth, Moran, Losey and Brennan, P.A.. At Subin Shams he was in charge of the firm's computer systems for over 15 years. Ralph has unique practical experience as a computer user and amateur programmer going back to 1978. Ralph graduated from Vanderbilt University, 1973, B.A., and the University of Florida College of Law, 1979, J.D. Honors.

HANDOUT 1---- Florida Bar e-Discovery Rules Course---- July, 2012

July 5

2012

On July 5, 2012 the Florida Supreme Court adopted the rules addressing discovery of electronically stored information (ESI) proposed by the Florida Bar Civil Rules Committee. The amendments to the Florida Rules of Civil Procedure are effective September 1, 2012, and include amendments to: (1) Fla. R. Civ. P. 1.200 Pretrial Procedure; (2) Fla. R. Civ. P. 1.201 Complex Litigation; (3) Fla. R. Civ. P. 1.280 General Provisions Governing Discovery; (4) Fla. R. Civ. P. 1.340 Interrogatories to Parties; (5) Fla. R. Civ. P. 1.350 Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes; (6) Fla. R. Civ. P. 1.380 Failure to Make Discovery; Sanctions; and (7) Fla. R. Civ. P. 1.410 Subpoena. THE CHART BELOW COMPARES THE AMENDED RULES OF PROCEDURE WITH THE OLD RULES. ALL RULE AMENDMENTS ARE INDICATED IN BOLD & ITALICS.

IN RE: AMENDMENTS TO THE FLORIDA RULES OF CIVIL PROCEDURE—ELECTRONIC DISCOVERY. Case No. SC11-1542

RULE 1.200. PRETRIAL PROCEDURE – NEW RULE	**RULE 1.200. PRETRIAL PROCEDURE – OLD RULE**
(a) Case Management Conference. At any time after responsive pleadings or motions are due, the court may order, or a party by serving a notice may convene, a case management conference. The matter to be considered shall be specified in the order or notice setting the conference. At such a conference the court may: ***[(1) – (4) [No Change]]*** (1) schedule or reschedule the service of motions, pleadings, and other papers; (2) set or reset the time of trials, subject to rule 1.440(c); (3) coordinate the progress of the action if the complex litigation factors contained in rule 1.201(a)(2)(A)-(a)(2)(H) are present; (4) limit, schedule, order, or expedite discovery; ***[Subdivisions (a)(5) to (a)(7) are added to address issues involving electronically stored information.]*** ***(5) consider the possibility of obtaining admissions of fact and voluntary exchange of documents and electronically stored information, and stipulations regarding authenticity of documents and electronically stored information;*** ***(6) consider the need for advance rulings from the court on the admissibility of documents and electronically stored information;*** ***(7) discuss as to electronically stored information, the possibility of agreements from the parties regarding the extent to which such evidence should be preserved, the form in which such evidence should be produced, and whether discovery of such information should be conducted in phases or limited to particular individuals, time periods, or sources;*** ***(8)*** schedule disclosure of expert witnesses and the discovery of facts known and opinions held by such experts; ***(9)*** schedule or hear motions in limine; ***(10)*** pursue the possibilities of settlement; ***(11)*** require filing of preliminary stipulations if issues can be narrowed; ***(12)*** consider referring issues to a magistrate for findings of fact; and ***(13)*** schedule other conferences or determine other matters that may aid in the disposition of the action. ***[(b) – (d) [No Change]]*** (b) Pretrial Conference. --After the action is at issue the court itself may or shall on the timely motion of any party require the parties to appear for a conference to consider and determine:	(a) Case Management Conference. --At any time after responsive pleadings or motions are due, the court may order, or a party, by serving a notice may convene, a case management conference. The matter to be considered shall be specified in the order or notice setting the conference. At such a conference the court may: (1) schedule or reschedule the service of motions, pleadings, and other papers; (2) set or reset the time of trials, subject to rule 1.440(c); (3) coordinate the progress of the action if the complex litigation factors contained in rule 1.201(a)(2)(A)-(a)(2)(H) are present; (4) limit, schedule, order, or expedite discovery; (5) schedule disclosure of expert witnesses and the discovery of facts known and opinions held by such experts; (6) schedule or hear motions in limine; (7) pursue the possibilities of settlement; (8) require filing of preliminary stipulations if issues can be narrowed; (9) consider referring issues to a magistrate for findings of fact; and (10) schedule other conferences or determine other matters that may aid in the disposition of the action. (b) Pretrial Conference. --After the action is at issue the court itself may or shall on the timely motion of any party require the parties to appear for a conference to consider and determine: (1) the simplification of the issues; (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

(1) the simplification of the issues; (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.	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.

RULE 1.201. COMPLEX LITIGATION – NEW	RULE 1.201. COMPLEX LITIGATION - OLD
[(a) [No Change]] (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	(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

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) – (I) [No Change]]*** (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) the possibility of obtaining agreements among the parties regarding the extent to which such electronically stored information should be preserved, the form in which such information should be produced, and whether discovery of such information should be conducted in phases or limited to particular individuals, time periods, or sources;*** ***(K)*** suggestions on the advisability and timing of referring matters to a magistrate, master, other neutral, or mediation; ***(L)*** a preliminary estimate of the time required for trial; ***(M)*** requested date or dates for conferences before trial, a final pretrial conference, and trial; ***(N)*** a description of pertinent documents and a list of	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

fact witnesses the parties believe to be relevant; ***(O)*** number of experts and fields of expertise; and ***(P)*** any other information that might be helpful to the court in setting further conferences and the trial date. ***[(2) – (3) [No Change]]*** (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)(45). 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) – (6) [No Change]]*** (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	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

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) [No Change]]*** (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 nonexpert 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.	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 nonexpert 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 1.280. GENERAL PROVISIONS GOVERNING DISCOVERY - NEW	RULE 1.280. GENERAL PROVISIONS GOVERNING DISCOVERY - OLD
[(a) [No Change]] (a) Discovery Methods. --Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property for inspection and other purposes; physical and mental examinations; and requests for admission. Unless the court orders otherwise and under subdivision (c) of this rule, the frequency of use of these methods is not limited, except as provided in rules 1.200, 1.340, and 1.370. (b) Scope of Discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows: ***[(1) – (2) [No Change]]*** (1) In General. --Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. (2) Indemnity Agreements. --A party may obtain discovery of the existence and contents of any agreement under which any person may be liable to satisfy part or all of a judgment that may be entered in the action or to indemnify or to reimburse a party for payments made to satisfy the judgment. Information concerning the agreement is not admissible in evidence at trial by reason of disclosure. ***(3) Electronically Stored Information. A party may obtain discovery of electronically stored information in accordance with these rules.*** ***(4)*** Trial Preparation: Materials. Subject to the provisions of subdivision (b)(***5***) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that party's representative, including that party's attorney, consultant, surety, indemnitor, insurer, or agent, only upon a showing that the party seeking discovery has	(a) Discovery Methods. --Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property for inspection and other purposes; physical and mental examinations; and requests for admission. Unless the court orders otherwise and under subdivision (c) of this rule, the frequency of use of these methods is not limited, except as provided in rules 1.200, 1.340, and 1.370. (b) Scope of Discovery. --Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows: (1) In General. --Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. (2) Indemnity Agreements. --A party may obtain discovery of the existence and contents of any agreement under which any person may be liable to satisfy part or all of a judgment that may be entered in the action or to indemnify or to reimburse a party for payments made to satisfy the judgment. Information concerning the agreement is not admissible in evidence at trial by reason of disclosure. (3) Trial Preparation: Materials. --Subject to the provisions of subdivision (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that party's representative, including that party's attorney, consultant, surety, indemnitor, insurer, or agent, only upon a showing that the party seeking discovery has need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means.

need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of the materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation. Without the required showing a party may obtain a copy of a statement concerning the action or its subject matter previously made by that party. Upon request without the required showing a person not a party may obtain a copy of a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for an order to obtain a copy. The provisions of rule 1.380(a)(4) apply to the award of expenses incurred as a result of making the motion. For purposes of this paragraph, a statement previously made is a written statement signed or otherwise adopted or approved by the person making it, or a stenographic, mechanical, electrical, or other recording or transcription of it that is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded. ***(5)*** Trial Preparation: Experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows: (A)(i) By interrogatories a party may require any other party to identify each person whom the other party expects to call as an expert witness at trial and to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. (ii) Any person disclosed by interrogatories or otherwise as a person expected to be called as an expert witness at trial may be deposed in accordance with rule 1.390 without motion or order of court. (iii) A party may obtain the following discovery regarding any person disclosed by interrogatories or otherwise as a person expected to be called as an expert witness at trial: 1. The scope of employment in the pending case and the compensation for such service. 2. The expert's general litigation experience, including the percentage of work performed for plaintiffs and defendants. 3. The identity of other cases, within a reasonable time period, in which the expert has testified by deposition or at trial. 4. An approximation of the portion of the expert's involvement as an expert witness, which may be based on the number of hours, percentage of hours, or percentage of earned income derived from serving as	In ordering discovery of the materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation. Without the required showing a party may obtain a copy of a statement concerning the action or its subject matter previously made by that party. Upon request without the required showing a person not a party may obtain a copy of a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for an order to obtain a copy. The provisions of rule 1.380(a)(4) apply to the award of expenses incurred as a result of making the motion. For purposes of this paragraph, a statement previously made is a written statement signed or otherwise adopted or approved by the person making it, or a stenographic, mechanical, electrical, or other recording or transcription of it that is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded. (4) Trial Preparation: Experts. --Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows: (A) (i) By interrogatories a party may require any other party to identify each person whom the other party expects to call as an expert witness at trial and to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. (ii) Any person disclosed by interrogatories or otherwise as a person expected to be called as an expert witness at trial may be deposed in accordance with rule 1.390 without motion or order of court. (iii) A party may obtain the following discovery regarding any person disclosed by interrogatories or otherwise as a person expected to be called as an expert witness at trial: 1. The scope of employment in the pending case and the compensation for such service. 2. The expert's general litigation experience, including the percentage of work performed for plaintiffs and defendants. 3. The identity of other cases, within a reasonable time period, in which the expert has testified by deposition or at trial. 4. An approximation of the portion of the expert's involvement as an expert witness, which may be based on the number of hours, percentage of hours, or percentage of earned income derived from serving as

an expert witness; however, the expert shall not be required to disclose his or her earnings as an expert witness or income derived from other services. An expert may be required to produce financial and business records only under the most unusual or compelling circumstances and may not be compelled to compile or produce nonexistent documents. Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and other provisions pursuant to subdivision (b)(**5**)(C) of this rule concerning fees and expenses as the court may deem appropriate. (B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in rule 1.360(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means. (C) Unless manifest injustice would result, the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions (b)(***5***)(A) and (b)(***5***)(B) of this rule; and concerning discovery from an expert obtained under subdivision (b)(***5***)(A) of this rule the court may require, and concerning discovery obtained under subdivision (b)(***5***)(B) of this rule shall require, the party seeking discovery to pay the other party a fair part of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert. (D) As used in these rules an expert shall be an expert witness as defined in rule 1.390(a). ***(6)*** Claims of Privilege or Protection of Trial Preparation Materials. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection. ***[(c) [No Change]]*** (c) Protective Orders. --Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending may make any order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified	an expert witness; however, the expert shall not be required to disclose his or her earnings as an expert witness or income derived from other services. An expert may be required to produce financial and business records only under the most unusual or compelling circumstances and may not be compelled to compile or produce nonexistent documents. Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and other provisions pursuant to subdivision (b)(4)(C) of this rule concerning fees and expenses as the court may deem appropriate. (B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in rule 1.360(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means. (C) Unless manifest injustice would result, the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions (b)(4)(A) and (b)(4)(B) of this rule; and concerning discovery from an expert obtained under subdivision (b)(4)(A) of this rule the court may require, and concerning discovery obtained under subdivision (b)(4)(B) of this rule shall require, the party seeking discovery to pay the other party a fair part of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert. (D) As used in these rules an expert shall be an expert witness as defined in rule 1.390(a). (5) Claims of Privilege or Protection of Trial Preparation Materials. --When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection. (c) Protective Orders. --Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending may make any order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires, including one or more of the following:

terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; and (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court. If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of rule 1.380(a)(4) apply to the award of expenses incurred in relation to the motion. ***(d) Limitations on Discovery of Electronically Stored Information.*** ***(1) A person may object to discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of burden or cost. On motion to compel discovery or for a protective order, the person from whom discovery is sought must show that the information sought or the format requested is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order the discovery from such sources or in such formats if the requesting party shows good cause. The court may specify conditions of the discovery, including ordering that some or all of the expenses incurred by the person from whom discovery is sought be paid by the party seeking the discovery.*** ***(2) In determining any motion involving discovery of electronically stored information, the court must limit the frequency or extent of discovery otherwise allowed by these rules if it determines that (i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from another source or in another manner that is more convenient, less burdensome, or less expensive; or*** ***(ii) the burden or expense of the discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.***	(1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; and (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court. If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of rule 1.380(a)(4) apply to the award of expenses incurred in relation to the motion. (d) Sequence and Timing of Discovery. --Except as provided in subdivision (b)(4) or unless the court upon motion for the convenience of parties and witnesses and in the interest of justice orders otherwise, methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not delay any other party's discovery. (e) Supplementing of Responses. --A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information thereafter acquired. (f) Court Filing of Documents and Discovery. --Information obtained during discovery shall not be filed with the court until such time as it is filed for good cause. The requirement of good cause is satisfied only where the filing of the information is allowed or required by another applicable rule of procedure or by court order. All filings of discovery documents shall comply with Florida Rule of Judicial Administration 2.425. The court shall have authority to impose sanctions for violation of this rule.

(e) Sequence and Timing of Discovery. Except as provided in subdivision (b)(**5**) or unless the court upon motion for the convenience of parties and witnesses and in the interest of justice orders otherwise, methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not delay any other party's discovery. ***(f)*** Supplementing of Responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information thereafter acquired. ***(g)*** Court Filing of Documents and Discovery. Information obtained during discovery shall not be filed with the court until such time as it is filed for good cause. The requirement of good cause is satisfied only where the filing of the information is allowed or required by another applicable rule of procedure or by court order. All filings of discovery documents shall comply with Florida Rule of Judicial Administration 2.425. The court shall have the authority to impose sanctions for violation of this rule.	

RULE 1.340. INTERROGATORIES TO PARTIES – NEW RULE *[(a) – (b) [No Change]]*	RULE 1.340. INTERROGATORIES TO PARTIES – OLD RULE
(a) Procedure for Use. --Without leave of court, any party may serve upon any other party written interrogatories to be answered (1) by the party to whom the interrogatories are directed, or (2) if that party is a public or private corporation or partnership or association or governmental agency, by any officer or agent, who shall furnish the information available to that party. Interrogatories may be served on the plaintiff after commencement of the action and on any other party with or after service of the process and initial pleading upon that party. The interrogatories shall not exceed 30, including all subparts, unless the court permits a larger number on motion and notice and for good cause. If the supreme court has approved a form of interrogatories for the type of action, the initial interrogatories on a subject included therein shall be from the form approved by the court. A party may serve fewer than all of the approved interrogatories within a form. Other interrogatories may be added to the approved forms without leave of court, so long as the total of approved and additional interrogatories does not exceed 30. Each interrogatory shall be answered separately and fully in writing under oath unless it is objected to, in which event the grounds for objection shall be stated and signed by the attorney making it. The party to whom the interrogatories are directed shall serve the answers and any objections within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the process and initial pleading upon that defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under rule 1.380(a) on any objection to or other failure to answer an interrogatory. (b) Scope; Use at Trial. --Interrogatories may relate to any matters that can be inquired into under rule 1.280(b), and the answers may be used to the extent permitted by the rules of evidence except as otherwise provided in this subdivision. An interrogatory otherwise proper is not objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or calls for a conclusion or asks for information not within the personal knowledge of the party. A party shall respond to such an interrogatory by giving the information the party has and the source on which the information is based. Such a qualified answer	(a) Procedure for Use. --Without leave of court, any party may serve upon any other party written interrogatories to be answered (1) by the party to whom the interrogatories are directed, or (2) if that party is a public or private corporation or partnership or association or governmental agency, by any officer or agent, who shall furnish the information available to that party. Interrogatories may be served on the plaintiff after commencement of the action and on any other party with or after service of the process and initial pleading upon that party. The interrogatories shall not exceed 30, including all subparts, unless the court permits a larger number on motion and notice and for good cause. If the supreme court has approved a form of interrogatories for the type of action, the initial interrogatories on a subject included therein shall be from the form approved by the court. A party may serve fewer than all of the approved interrogatories within a form. Other interrogatories may be added to the approved forms without leave of court, so long as the total of approved and additional interrogatories does not exceed 30. Each interrogatory shall be answered separately and fully in writing under oath unless it is objected to, in which event the grounds for objection shall be stated and signed by the attorney making it. The party to whom the interrogatories are directed shall serve the answers and any objections within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the process and initial pleading upon that defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under rule 1.380(a) on any objection to or other failure to answer an interrogatory. (b) Scope; Use at Trial. --Interrogatories may relate to any matters that can be inquired into under rule 1.280(b), and the answers may be used to the extent permitted by the rules of evidence except as otherwise provided in this subdivision. An interrogatory otherwise proper is not objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or calls for a conclusion or asks for information not within the personal knowledge of the party. A party shall respond to such an interrogatory by giving the information the party has and the source on which the information is based. Such a qualified answer

may not be used as direct evidence for or impeachment against the party giving the answer unless the court finds it otherwise admissible under the rules of evidence. If a party introduces an answer to an interrogatory, any other party may require that party to introduce any other interrogatory and answer that in fairness ought to be considered with it. (c) Option to Produce Records. When the answer to an interrogatory may be derived or ascertained from the records ***(including electronically stored information)*** of the party to whom the interrogatory is directed or from an examination, audit, or inspection of the records or from a compilation, abstract, or summary based on the records and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party to whom it is directed, an answer to the interrogatory specifying the records from which the answer may be derived or ascertained and offering to give the party serving the interrogatory a reasonable opportunity to examine, audit, or inspect the records and to make copies, compilations, abstracts, or summaries is a sufficient answer. An answer shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party interrogated, the records from which the answer may be derived or ascertained, or shall identify a person or persons representing the interrogated party who will be available to assist the interrogating party in locating and identifying the records at the time they are produced. ***If the records to be produced consist of electronically stored information, the records shall be produced in a form or forms in which they are ordinarily maintained or in a reasonably usable form or forms.*** ***[(d) [No Change]]*** (d) Effect on Co-Party. --Answers made by a party shall not be binding on a co-party. (e) Service and Filing. Interrogatories shall be arranged so that a blank space is provided after each separately numbered interrogatory. The space shall be reasonably sufficient to enable the answering party to insert the answer within the space. If sufficient space is not provided, the answering party may attach additional papers with answers and refer to them in the space provided in the interrogatories. The interrogatories shall be served on the party to whom the interrogatories are directed and copies shall be served on all other parties. A certificate of service of the interrogatories shall be filed, giving the date of service and the name of the party to whom they were directed. The answers to the interrogatories shall be served upon the party originally propounding the interrogatories and a copy shall be served on all other parties by the answering party. The original or any copy of the	may not be used as direct evidence for or impeachment against the party giving the answer unless the court finds it otherwise admissible under the rules of evidence. If a party introduces an answer to an interrogatory, any other party may require that party to introduce any other interrogatory and answer that in fairness ought to be considered with it. (c) Option to Produce Records. --When the answer to an interrogatory may be derived or ascertained from the records of the party to whom the interrogatory is directed or from an examination, audit, or inspection of the records or from a compilation, abstract, or summary based on the records and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party to whom it is directed, an answer to the interrogatory specifying the records from which the answer may be derived or ascertained and offering to give the party serving the interrogatory a reasonable opportunity to examine, audit, or inspect the records and to make copies, compilations, abstracts, or summaries is a sufficient answer. An answer shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party interrogated, the records from which the answer may be derived or ascertained, or shall identify a person or persons representing the interrogated party who will be available to assist the interrogating party in locating and identifying the records at the time they are produced. (d) Effect on Co-Party. --Answers made by a party shall not be binding on a co-party. (e) Service and Filing. --Interrogatories shall be arranged so that a blank space is provided after each separately numbered interrogatory. The space shall be reasonably sufficient to enable the answering party to insert the answer within the space. If sufficient space is not provided, the answering party may attach additional papers with answers and refer to them in the space provided in the interrogatories. The interrogatories shall be served on the party to whom the interrogatories are directed and copies shall be served on all other parties. A certificate of service of the interrogatories shall be filed, giving the date of service and the name of the party to whom they were directed. The answers to the interrogatories shall be served upon the party originally propounding the interrogatories and a copy shall be served on all other parties by the answering party. The original or any copy of the answers to interrogatories may be filed in compliance with Florida Rule of Judicial Administration 2.425 and rule 1.280(f) by any party when the court should consider the answers to interrogatories in determining any matter pending before the court. The court may

answers to interrogatories may be filed in compliance with Florida Rule of Judicial Administration 2.425 and rule 1.280(***g***) by any party when the court should consider the answers to interrogatories in determining any matter pending before the court. The court may order a copy of the answers to interrogatories filed at any time when the court determines that examination of the answers to interrogatories is necessary to determine any matter pending before the court.	order a copy of the answers to interrogatories filed at any time when the court determines that examination of the answers to interrogatories is necessary to determine any matter pending before the court.

RULE 1.350. PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES – NEW	RULE 1.350. PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES – OLD
(a) Request; Scope. Any party may request any other party (1) to produce and permit the party making the request, or someone acting in the requesting party's behalf, to inspect and copy any designated documents, including ***electronically stored information***, writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the party to whom the request is directed through detection devices into reasonably usable form, that constitute or contain matters within the scope of rule 1.280(b) and that are in the possession, custody, or control of the party to whom the request is directed; (2) to inspect and copy, test, or sample any tangible things that constitute or contain matters within the scope of rule 1.280(b) and that are in the possession, custody, or control of the party to whom the request is directed; or (3) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation on it within the scope of rule 1.280(b). (b) Procedure. Without leave of court the request may be served on the plaintiff after commencement of the action and on any other party with or after service of the process and initial pleading on that party. The request shall set forth the items to be inspected, either by individual item or category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection or performing the related acts. The party to whom the request is directed shall serve a written response within 30 days after service of the request, except that a defendant may serve a response within 45 days after service of the process and initial pleading on that defendant. The court may allow a shorter or longer time. For each item or category the response shall state that inspection and related activities will be permitted as requested unless the request is objected to, in which event the reasons for the objection shall be stated. If an objection is made to part of an item or category, the part shall be specified. When producing documents, the producing party shall either produce them as they are kept in the usual	(a) Request; Scope. --Any party may request any other party (1) to produce and permit the party making the request, or someone acting in the requesting party's behalf, to inspect and copy any designated documents, including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the party to whom the request is directed through detection devices into reasonably usable form, that constitute or contain matters within the scope of rule 1.280(b) and that are in the possession, custody, or control of the party to whom the request is directed; (2) to inspect and copy, test, or sample any tangible things that constitute or contain matters within the scope of rule 1.280(b) and that are in the possession, custody, or control of the party to whom the request is directed; or (3) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation on it within the scope of rule 1.280(b). (b) Procedure. --Without leave of court the request may be served on the plaintiff after commencement of the action and on any other party with or after service of the process and initial pleading on that party. The request shall set forth the items to be inspected, either by individual item or category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection or performing the related acts. The party to whom the request is directed shall serve a written response within 30 days after service of the request, except that a defendant may serve a response within 45 days after service of the process and initial pleading on that defendant. The court may allow a shorter or longer time. For each item or category the response shall state that inspection and related activities will be permitted as requested unless the request is objected to, in which event the reasons for the objection shall be stated. If an objection is made to part of an item or category, the part shall be specified. When producing documents, the producing party shall either produce them as they are kept in the usual course of business or shall identify them to correspond

course of business or shall identify them to correspond with the categories in the request. ***A request for electronically stored information may specify the form or forms in which electronically stored information is to be produced. If the responding party objects to a requested form, or if no form is specified in the request, the responding party must state the form or forms it intends to use. If a request for electronically stored information does not specify the form of production, the producing party must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.*** The party submitting the request may move for an order under rule 1.380 concerning any objection, failure to respond to the request, or any part of it, or failure to permit the inspection as requested. ***[(c) [No Change]]*** (d) Filing of Documents. Unless required by the court, a party shall not file any of the documents or things produced with the response. Documents or things may be filed in compliance with Florida Rule of Judicial Administration 2.425 and rule 1.280(***g***) when they should be considered by the court in determining a matter pending before the court.	with the categories in the request. The party submitting the request may move for an order under rule 1.380 concerning any objection, failure to respond to the request, or any part of it, or failure to permit inspection as requested. (c) Persons Not Parties. --This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land. (d) Filing of Documents. --Unless required by the court, a party shall not file any of the documents or things produced with the response. Documents or things may be filed in compliance with Florida Rule of Judicial Administration 2.425 and rule 1.280(f) when they should be considered by the court in determining a matter pending before the court.

RULE 1.380. FAILURE TO MAKE DISCOVERY; SANCTIONS – NEW RULE *[(a) – (d) [No Change]]*	RULE 1.380. FAILURE TO MAKE DISCOVERY; SANCTIONS – OLD RULE
(a) Motion for Order Compelling Discovery. --Upon reasonable notice to other parties and all persons affected, a party may apply for an order compelling discovery as follows: (1) Appropriate Court. --An application for an order to a party may be made to the court in which the action is pending or in accordance with rule 1.310(d). An application for an order to a deponent who is not a party shall be made to the circuit court where the deposition is being taken. (2) Motion. --If a deponent fails to answer a question propounded or submitted under rule 1.310 or 1.320, or a corporation or other entity fails to make a designation under rule 1.310(b)(6) or 1.320(a), or a party fails to answer an interrogatory submitted under rule 1.340, or if a party in response to a request for inspection submitted under rule 1.350 fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, or if a party in response to a request for examination of a person submitted under rule 1.360(a) objects to the examination, fails to respond that the examination will be permitted as requested, or fails to submit to or to produce a person in that party's custody or legal control for examination, the discovering party may move for an order compelling an answer, or a designation or an order compelling inspection, or an order compelling an examination in accordance with the request. The motion must include a certification that the movant, in good faith, has conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order. If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to rule 1.280(c). (3) Evasive or Incomplete Answer. --For purposes of this subdivision an evasive or incomplete answer shall be treated as a failure to answer. (4) Award of Expenses of Motion. --If the motion is granted and after opportunity for hearing, the court shall require the party or deponent whose conduct necessitated the motion or the party or counsel advising the conduct to pay to the moving party the reasonable expenses incurred in obtaining the order	(a) Motion for Order Compelling Discovery. --Upon reasonable notice to other parties and all persons affected, a party may apply for an order compelling discovery as follows: (1) Appropriate Court. --An application for an order to a party may be made to the court in which the action is pending or in accordance with rule 1.310(d). An application for an order to a deponent who is not a party shall be made to the circuit court where the deposition is being taken. (2) Motion. --If a deponent fails to answer a question propounded or submitted under rule 1.310 or 1.320, or a corporation or other entity fails to make a designation under rule 1.310(b)(6) or 1.320(a), or a party fails to answer an interrogatory submitted under rule 1.340, or if a party in response to a request for inspection submitted under rule 1.350 fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, or if a party in response to a request for examination of a person submitted under rule 1.360(a) objects to the examination, fails to respond that the examination will be permitted as requested, or fails to submit to or to produce a person in that party's custody or legal control for examination, the discovering party may move for an order compelling an answer, or a designation or an order compelling inspection, or an order compelling an examination in accordance with the request. The motion must include a certification that the movant, in good faith, has conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order. If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to rule 1.280(c). (3) Evasive or Incomplete Answer. --For purposes of this subdivision an evasive or incomplete answer shall be treated as a failure to answer. (4) Award of Expenses of Motion. --If the motion is granted and after opportunity for hearing, the court shall require the party or deponent whose conduct necessitated the motion or the party or counsel advising the conduct to pay to the moving party the reasonable expenses incurred in obtaining the order

that may include attorneys' fees, unless the court finds that the movant failed to certify in the motion that a good faith effort was made to obtain the discovery without court action, that the opposition to the motion was justified, or that other circumstances make an award of expenses unjust. If the motion is denied and after opportunity for hearing, the court shall require the moving party to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion that may include attorneys' fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust. If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred as a result of making the motion among the parties and persons. (b) Failure to Comply with Order. (1) If a deponent fails to be sworn or to answer a question after being directed to do so by the court, the failure may be considered a contempt of the court. (2) If a party or an officer, director, or managing agent of a party or a person designated under rule 1.310(b)(6) or 1.320(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or rule 1.360, the court in which the action is pending may make any of the following orders: (A) An order that the matters regarding which the questions were asked or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order. (B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence. (C) An order striking out pleadings or parts of them or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part of it, or rendering a judgment by default against the disobedient party. (D) Instead of any of the foregoing orders or in addition to them, an order treating as a contempt of court the failure to obey any orders except an order to submit to an examination made pursuant to rule 1.360(a)(1)(B) or subdivision (a)(2) of this rule. (E) When a party has failed to comply with an order under rule 1.360(a)(1)(B) requiring that party to produce another for examination, the orders listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply shows the inability to produce the person for examination.	that may include attorneys' fees, unless the court finds that the movant failed to certify in the motion that a good faith effort was made to obtain the discovery without court action, that the opposition to the motion was justified, or that other circumstances make an award of expenses unjust. If the motion is denied and after opportunity for hearing, the court shall require the moving party to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion that may include attorneys' fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust. If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred as a result of making the motion among the parties and persons. (b) Failure to Comply with Order. (1) If a deponent fails to be sworn or to answer a question after being directed to do so by the court, the failure may be considered a contempt of the court. (2) If a party or an officer, director, or managing agent of a party or a person designated under rule 1.310(b)(6) or 1.320(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or rule 1.360, the court in which the action is pending may make any of the following orders: (A) An order that the matters regarding which the questions were asked or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order. (B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence. (C) An order striking out pleadings or parts of them or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part of it, or rendering a judgment by default against the disobedient party. (D) Instead of any of the foregoing orders or in addition to them, an order treating as a contempt of court the failure to obey any orders except an order to submit to an examination made pursuant to rule 1.360(a)(1)(B) or subdivision (a)(2) of this rule. (E) When a party has failed to comply with an order under rule 1.360(a)(1)(B) requiring that party to produce another for examination, the orders listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply shows the inability to produce the person for examination.

Instead of any of the foregoing orders or in addition to them, the court shall require the party failing to obey the order to pay the reasonable expenses caused by the failure, which may include attorneys' fees, unless the court finds that the failure was justified or that other circumstances make an award of expenses unjust. (c) Expenses on Failure to Admit. --If a party fails to admit the genuineness of any document or the truth of any matter as requested under rule 1.370 and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may file a motion for an order requiring the other party to pay the requesting party the reasonable expenses incurred in making that proof, which may include attorneys' fees. The court shall issue such an order at the time a party requesting the admissions proves the genuineness of the document or the truth of the matter, upon motion by the requesting party, unless it finds that (1) the request was held objectionable pursuant to rule 1.370(a), (2) the admission sought was of no substantial importance, or (3) there was other good reason for the failure to admit. (d) Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection. --If a party or an officer, director, or managing agent of a party or a person designated under rule 1.310(b)(6) or 1.320(a) to testify on behalf of a party fails (1) to appear before the officer who is to take the deposition after being served with a proper notice, (2) to serve answers or objections to interrogatories submitted under rule 1.340 after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under rule 1.350 after proper service of the request, the court in which the action is pending may take any action authorized under paragraphs (A), (B), and (C) of subdivision (b)(2) of this rule. Any motion specifying a failure under clause (2) or (3) of this subdivision shall include a certification that the movant, in good faith, has conferred or attempted to confer with the party failing to answer or respond in an effort to obtain such answer or response without court action. Instead of any order or in addition to it, the court shall require the party failing to act to pay the reasonable expenses caused by the failure, which may include attorneys' fees, unless the court finds that the failure was justified or that other circumstances make an award of expenses unjust. The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by rule 1.280(c). ***(e) Electronically Stored Information; Sanctions for***	Instead of any of the foregoing orders or in addition to them, the court shall require the party failing to obey the order to pay the reasonable expenses caused by the failure, which may include attorneys' fees, unless the court finds that the failure was justified or that other circumstances make an award of expenses unjust. (c) Expenses on Failure to Admit. --If a party fails to admit the genuineness of any document or the truth of any matter as requested under rule 1.370 and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may file a motion for an order requiring the other party to pay the requesting party the reasonable expenses incurred in making that proof, which may include attorneys' fees. The court shall issue such an order at the time a party requesting the admissions proves the genuineness of the document or the truth of the matter, upon motion by the requesting party, unless it finds that (1) the request was held objectionable pursuant to rule 1.370(a), (2) the admission sought was of no substantial importance, or (3) there was other good reason for the failure to admit. (d) Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection. --If a party or an officer, director, or managing agent of a party or a person designated under rule 1.310(b)(6) or 1.320(a) to testify on behalf of a party fails (1) to appear before the officer who is to take the deposition after being served with a proper notice, (2) to serve answers or objections to interrogatories submitted under rule 1.340 after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under rule 1.350 after proper service of the request, the court in which the action is pending may take any action authorized under paragraphs (A), (B), and (C) of subdivision (b)(2) of this rule. Any motion specifying a failure under clause (2) or (3) of this subdivision shall include a certification that the movant, in good faith, has conferred or attempted to confer with the party failing to answer or respond in an effort to obtain such answer or response without court action. Instead of any order or in addition to it, the court shall require the party failing to act to pay the reasonable expenses caused by the failure, which may include attorneys' fees, unless the court finds that the failure was justified or that other circumstances make an award of expenses unjust. The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by rule 1.280(c).

Failure to Preserve. Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good faith operation of an electronic information system.	

RULE 1.410. SUBPOENA – NEW RULE *((a) – (b) [No Change]]*	RULE 1.410. SUBPOENA – OLD RULE
(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 ***(including electronically stored information),*** 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. ***If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. A person responding to a subpoena may object to discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue costs or burden. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought or the form requested is not reasonably accessible because of undue costs or burden. If that showing is made, the court may nonetheless order discovery from such sources or in such forms if the requesting party shows***	(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 except as applicable under rule 1.351(c) for the production of documents and things by a nonparty without deposition, if not served by an officer

good cause, considering the limitations set out in rule 1.280(d)(2). The court may specify conditions of the discovery, including ordering that some or all of the expenses of the discovery be paid by the party seeking the discovery. A party seeking a 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. Such notice shall have the same effect and be subject to the same limitations as a subpoena served on the party. ***[(d) – (h) [No Change]]*** (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 except as applicable under rule 1.351(c) for the production of documents and things by a nonparty without deposition, 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 shall state the method for recording the testimony. 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	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 shall state the method for recording the testimony. 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

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.	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.

1.200 Committee Notes
2012 Amendment. Subdivisions (a)(5) to (a)(7) are added to address issues involving electronically stored information.

1.201 Committee Notes
2012 Amendment. Subdivision (b)(1)(J) is added to address issues involving electronically stored information.

1.280 Committee Notes
2012 Amendment. Subdivisions (b)(3) and (d) are added to address discovery of electronically stored information. The parties should consider conferring with one another at the earliest practical opportunity to discuss the reasonable scope of preservation and production of electronically stored information. These issues may also be addressed by means of a rule 1.200 or rule 1.201 case management conference.
Under the good cause test in subdivision (d)(1), the court should balance the costs and burden of the requested discovery, including the potential for disruption of operations or corruption of the electronic devices or systems from which discovery is sought, against the relevance of the information and the requesting party's need for that information. Under the proportionality and reasonableness - 13 -

factors set out in subdivision (d)(2), the court must limit the frequency or extent of discovery if it determines that the discovery sought is excessive in relation to the factors listed. In evaluating the good cause or proportionality tests, the court may find its task complicated if the parties know little about what information the sources at issue contain, whether the information sought is relevant, or how valuable it may be to the litigation. If appropriate, the court may direct the parties to develop the record further by engaging in focused discovery, including sampling of the sources, to learn more about what electronically stored information may be contained in those sources, what costs and burdens are involved in retrieving, reviewing, and producing the information, and how valuable the information sought may be to the litigation in light of the availability of information from other sources or methods of discovery, and in light of the parties' resources and the issues at stake in the litigation.

1.340 Committee Notes
2012 Amendment. Subdivision (c) is amended to provide for the production of electronically stored information in answer to interrogatories and to set out a procedure for determining the form in which to produce electronically stored information.

1.350 Committee Notes
2012 Amendment. Subdivision (a) is amended to address the production of electronically stored information. Subdivision (b) is amended to set out a procedure for determining the form to be used in producing electronically stored information.

1.380 Committee Notes
2012 Amendment. Subdivision (e) is added to make clear that a party should not be sanctioned for the loss of electronic evidence due to the good-faith operation of an electronic information system; the language mirrors that of Federal Rule of Civil Procedure 37(e). Nevertheless, the good-faith requirement contained in subdivision (e) should prevent a party from exploiting the routine operation of an information system to thwart discovery obligations by allowing that operation to destroy information that party is required to preserve or produce. In determining good faith, the court may consider any steps taken by the party to comply with court orders, party agreements, or requests to preserve such information.

1.410 Committee Notes
2012 Amendment. Subdivision (c) is amended to address the production of electronically stored information pursuant to a subpoena. The procedures for dealing with disputes concerning the accessibility of the information sought or the form for its production are intended to correspond to those set out in Rule 1.280(d).

Written and organized by experts Honorable Ralph Artigliere (ret.) and William Hamilton, *Florida e-Discovery and Evidence* brings clarity to this complex area of law.

This comprehensive resource includes:

- helpful guidance on how Florida civil procedure rules apply to e-discovery and a complete guide to the Florida e-discovery rules
- in-depth coverage of e-discovery from A-Z: records management through admissibility at trial
- key cost saving junctions in e-discovery and guidelines and hot tips for cost management
- ethical traps and pitfalls as well as direction on how to stay out of time consuming discovery disputes
- checklists and guides for every e-discovery task and requirements
- Florida case law on e-discovery in both state and Federal courts and key national cases
- helpful forms and practice tips

This one volume treatise offers valuable perspectives and time-savings strategies on e-discovery management and e-discovery advocacy for the Florida practitioner.

CITATIONS AND RESOURCES

New E-Discovery Rules Case:

IN RE: AMENDMENTS TO THE FLORIDA RULES OF CIVIL PROCEDURE—ELECTRONIC DISCOVERY, ____ So.3d ____, 2012 Fla. LEXIS 1318 (Fla. July 5, 2012).

Preservation/Spoliation:

Omulski v. Oldsmar Fine Wine, Inc., ____ So. 3d ____, 2012 Fla. App. LEXIS 10586 (Fla. 2d DCA 2012)

Gayer v. Fine Line Constr. & Elec., Inc., 970 So. 2d 424, 426 (Fla. 4th DCA 2007).

Scope of Discovery:

Holland v. Barfield, 35 So. 3d 953 (Fla. 5th DCA 2010).

Proportionality:

Chrysler Corp. v. Miller, 450 So. 2d 330, 331 (Fla. 4th DCA 1984)

Alvarez, v. Cooper Tire & Rubber Company, 75 So. 3d 789, 795 (Fla. 4th DCA 2011)

Mancia v. Mayflower Textile Services Co, 253 F.R.D. 354 (D. Md. Oct. 15, 2008).

Sanctions/Form of Production:

Bray I - *Bray & Gillespie Mgmt. LLC v. Lexington Ins. Co,* 2009 U.S. Dist. LEXIS 21250, 2009 WL 546429 (M.D. Fla. Mar. 4, 2009).

Bray II - *Bray & Gillespie Mgmt. LLC v. Lexington Ins. Co,* 2009 U.S. Dist. LEXIS 122196, 2009 WL 2407754 (M.D. Fla. August 3, 2009)

Bray III - *Bray & Gillespie Mgmt. LLC v. Lexington Ins. Co,* 2010 U.S. Dist. LEXIS 400, 2010 WL 55595 (M.D. Fla. Jan. 5, 2010)

Florida Rules of Professional Conduct

Fla. R. Prof. Conduct 4-1.1 (To maintain the requisite knowledge and skill [for competent representation], a lawyer should engage in continuing study and education.

Fla. R. Prof. Conduct 4-1.6 (protection of client's confidential information).

Fla. R. Prof. Conduct 4-4.4(b) ("[a] lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.")

Florida Professional Ethics Opinions

PROFESSIONAL ETHICS OF THE FLORIDA BAR, OPINION 06-2 (obligations of sending and receiving lawyers re metadata)

PROFESSIONAL ETHICS OF THE FLORIDA BAR, OPINION 00-4 (providing legal services over the internet)

PROFESSIONAL ETHICS OF THE FLORIDA BAR, OPINION 10-2 (technology in law practice and required competence re technology: If a lawyer chooses to use Devices that contain Storage Media, the lawyer has a duty to keep abreast of changes in technology to the extent that the lawyer can identify potential threats to maintaining confidentiality. "Devices" include: "[a]n increasing number of devices such as computers, printers, copiers, scanners, cellular phones, personal digital assistants ("PDA's"), flash drives, memory sticks, facsimile machines and other electronic or digital devices.")

PROFESSIONAL ETHICS OF THE FLORIDA BAR, OPINION 93-3 (an attorney who receives confidential documents of an adversary as a result of an inadvertent release is ethically obligated to promptly notify the sender of the attorney's receipt of the documents)

Florida JEAC Opinions (Judicial Ethics Advisory Committee)

JEAC Case 2009-19 (judge may endorse Sedona Conference Cooperation Proclamation)

Service by E-Mail Case:

IN RE: AMENDMENTS TO THE FLORIDA RULES OF JUDICIAL ADMINISTRATION, THE FLORIDA RULES OF CIVIL PROCEDURE, THE FLORIDA RULES OF CRIMINAL PROCEDURE, THE FLORIDA PROBATE RULES, THE FLORIDA RULES OF TRAFFIC COURT, THE FLORIDA SMALL CLAIMS RULES, THE FLORIDA RULES OF JUVENILE PROCEDURE, THE FLORIDA RULES OF APPELLATE PROCEDURE, AND THE FLORIDA FAMILY LAW RULES OF PROCEDURE—E-MAIL SERVICE RULE, ____ So. 3d ____, No. SC10-2101 (Fla. June 21, 2012)

E-Filing Case:

IN RE: AMENDMENTS TO THE FLORIDA RULES OF CIVIL PROCEDURE, THE FLORIDA RULES OF JUDICIAL ADMINISTRATION, THE FLORIDA RULES OF CRIMINAL PROCEDURE, THE FLORIDA PROBATE RULES, THE FLORIDA SMALL CLAIMS RULES, THE FLORIDA RULES OF JUVENILE PROCEDURE, THE FLORIDA RULES OF APPELLATE PROCEDURE, AND THE FLORIDA FAMILY LAW RULES OF PROCEDURE— ELECTRONIC FILING, ____ So. 3d ____, No. SC11-399 (Fla. June 21, 2012)

Enlargement of Time for Response Case:

IN RE: AMENDMENTS TO THE FLORIDA RULES OF JUDICIAL ADMINISTRATION, THE FLORIDA RULES OF CIVIL PROCEDURE, THE FLORIDA RULES OF CRIMINAL PROCEDURE, THE FLORIDA RULES OF CIVIL PROCEDURE FOR INVOLUNTARY COMMITMENT OF SEXUALLY VIOLENT PREDATORS, THE FLORIDA PROBATE RULES, THE FLORIDA RULES OF TRAFFIC COURT, THE FLORIDA RULES OF JUVENILE PROCEDURE, THE FLORIDA RULES OF APPELLATE PROCEDURE, AND THE FLORIDA FAMILY LAW RULES OF PROCEDURE — COMPUTATION OF TIME, ____ So.3d ____, SC10-2299 (Fla. Jul. 12, 2012)

E-Discovery Resources Mentioned in Course

LexisNexis Practice Guide, Florida E-Discovery and Evidence by Ralph Artigliere and William Hamilton available from *LexisNexis* or *The Florida Bar*: Comprehensive book *focusing on Florida state law of e-Discovery* available in loose leaf form, e-book, or through electronic subscription that is updated to include the 2012 rules amendments and cases through July 1, 2012.

The Sedona Conference, https://thesedonaconference.org/: The Sedona Conference® is a nonprofit, 501(c)(3) research and educational institute dedicated to the advanced study of law and policy in the areas of antitrust law, complex litigation, and intellectual property rights. The Sedona Conference® website provides a myriad of useful and authoritative guidelines, checklists, policy documents, commentaries, and more on electronic discovery.

EDRM (Electronic Discovery Reference Model), http://www.edrm.net/: Useful guidelines, standards and resources for electronic discovery.

E-Discovery Bytes (Bill Hamilton Blog on e-discovery, http://ediscovery.quarles.com/: Timely information on e-discovery developments in Florida and federal courts.

E-Discovery Team (Ralph Losey Blog on e-discovery, http://e-discoveryteam.com/: Blog by Ralph Losey on the team approach to e-discovery, combining the talents of law, IT, and science.

Craig Ball- "Ball in Your Court", http://craigball.com/: Resources and information on helping lawyers master technology.

GLOSSARY OF TERMS USED IN THIS PROGRAM

Brief definitions of terms and issue descriptions as applied to the context of e-Discovery that were used in the 2012 Florida Bar CLE on the e-Discovery Rules of Civil Procedure adopted on July 7, 2012 effective September 1, 2012.

Definitions and descriptions are derived from:

1. The Sedona Conference® Glossary: E-Discovery & Digital Information Management (Third Edition) (2010) (hereafter "Sedona® Glossary")(copyrighted work)
2. Artigliere & Hamilton, LexisNexis Practice Guide: Florida e-Discovery and Evidence, Ch.1, Appendix 2, Glossary of Technical Terms Encountered in E-Discovery LexisNexis Matthew Bender 2012 (hereafter "Artigliere & Hamilton Glossary")(copyrighted work)
3. Other sources as cited below.

Accessibility or "Reasonably Accessible": Not all electronic information exists in a form and location that allows it to be discoverable without undue burden. For example, active data may be more accessible than stored or archived data. Some stored data may be in a location or form that requires outmoded or legacy or specialized software to access, collect, or search. In federal courts, Fed. R. Civ. P. 26 (b)(2)(B) generally limits initial discovery of ESI to "reasonably accessible" ESI. In Florida, the provisions for limiting the amount of or conditioning methods of discovery because based on accessibility and **proportionality** are set out in Fla. R. Civ. P. 1.280(d) with more specificity than the federal counterpart. But fundamentally, accessibility is measured on a case-by-case based on undue burden or cost. *See* Fla. R. Civ. P. 1.280(d)(1).

Cooperation: "[O]pen and forthright information sharing, dialogue (internal and external), training, and the development of practical tools to facilitate cooperative, collaborative, transparent discovery."… . "While they are retained to be zealous advocates for their clients, [lawyers] bear a professional obligation to conduct discovery in a diligent and candid manner. Their combined duty is to strive in the best interests of their clients to achieve the best results at a reasonable cost, with integrity and candor as officers of the court. Cooperation does not conflict with the advancement of their clients' interests - it enhances it. Only when lawyers confuse *advocacy* with *adversarial conduct* are these twin duties in conflict." (The Sedona Conference® Cooperation Proclamation (2008))(copyrighted work)

E-filing: In Florida, e-filing is the process of filing pleadings, motions, and other papers in the court file through an electronic process designated by the Florida Rules of Judicial Administration and various Florida Rules of Procedure. *See* IN RE: AMENDMENTS TO THE FLORIDA RULES OF CIVIL PROCEDURE, THE FLORIDA RULES OF JUDICIAL ADMINISTRATION, THE FLORIDA RULES OF CRIMINAL PROCEDURE, THE FLORIDA PROBATE RULES, THE FLORIDA SMALL CLAIMS RULES, THE FLORIDA RULES OF JUVENILE PROCEDURE, THE FLORIDA RULES OF APPELLATE PROCEDURE, AND THE FLORIDA FAMILY LAW RULES OF PROCEDURE— ELECTRONIC FILING, ____ So. 3d ____, No. SC11-399 (Fla. June 21, 2012).

Electronic Discovery ("E-Discovery"): "The process of identifying, preserving, collecting, preparing, reviewing, and producing electronically stored information ("ESI") in the context of the legal process." (Sedona® Glossary)

Electronically Stored Information (ESI): 1. “Files or other data that are stored on computers, file servers, disks, tape or other devices or media.” (Artigliere & Hamilton Glossary); 2. “[I]nformation that is stored electronically, regardless of the media or whether it is in the original format in which it was created, as opposed to stored in hard copy (i.e., on paper).” (Sedona® Glossary)

Federal e-Discovery rules

Form of Production: 1. “The manner in which requested documents are produced. Used to refer both to file format (for example, native vs. imaged format) and the media on which the documents are produced (paper vs. electronic).” (Artigliere & Hamilton Glossary) 2. “The specifications for the exchange of documents and/or data between parties during a legal dispute. Used to refer both to file format (e.g., native vs. imaged format with agreed-upon metadata and extracted text in a load file) and the media on which the documents are produced (paper vs. electronic). It should be noted that not all ESI may be conducive to production in either the native format or imaged format, and some other form of production may be necessary. Databases, for example, present such issues.” (Sedona® Glossary)

Inadvertent Disclosure of Privileged or Trade Secret Information

Litigation hold: “The process at the outset of a matter required to halt records retention or other destruction of information relevant to an ongoing or potential litigation or investigation. The process usually requires identifying, notifying, and counseling of relevant key players and document custodians to ensure timely preservation of all relevant information. Creation of a litigation hold is not a simple process and usually involves a client team working with retained counsel to determine the content of the litigation hold and the

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recipients. Litigation holds must be monitored for compliance and adjustments during the course of the litigation hold period.” (Artigliere & Hamilton Glossary)

Meet and confer: “In federal court, the rules of procedure mandate that counsel discuss many specific issues relating to electronic evidence in an effort to attempt to agree on as many as many of the issues as possible early in discovery. While Florida procedure rules do not require a formal “meet and confer” specific to electronic document discovery, the concept is a sound strategy for counsel in an effort to efficiently conduct discovery and to identify any issues that may require alternative discovery strategies or court intervention. Like many discovery practices that have gained traction in the context of electronic evidence, “meet and confer” has been a standard method for efficient and economical resolution of various discovery issues in the past and is encouraged by judges and professionalism guidelines everywhere.” (Artigliere & Hamilton Glossary)

{ XE "para:N162C8" **}Metadata:** “Frequently referred to as ‘data about data,’ metadata is electronically-stored evidence that describes the history, tracking, or management of an electronic document, and can include the ‘hidden text, formatting codes, formulae, and other information associated’ with an electronic document. The Sedona Principles—Second Edition: Best Practices, Recommendations and Principles for Addressing Electronic Document Production Cmt. 12a (Sedona Conference Working Group

Series 2007), at http://www.thesedonaconference.org/content/misc.607.pdf ('Sedona Principles 2d'). Metadata is information that a computer operating system creates to store, track, and access a particular computer file. Think of index cards in a library card catalogue holding basic information on the book so a person can identify it among the other books (title, author, publisher, blurb). Then the card lists where to find this particular book on the library shelves. Metadata tracks this kind of basic information on particular electronic files—when it was created, who created it, when it was last modified, where it stored, etc. The particular metadata fields available are different for different kind of files. For example, the metadata for an e-mail will list the date and time it was sent. A Microsoft Excel® file is not sent, so the OS doesn't have 'Sent' data for this kind of file. For e-mails, metadata can include: BCC, date received, opened status, undeliverable, etc. Metadata is of interest because it can be useful to understanding more about a particular document and its relevance to the case. Metadata has sometimes been divided into categories that allow legal distinctions for purposes of decisions on privilege, relevance, and discoverability:

> **{** XE "blockquote-para:N162D4" **}*Substantive metadata*** is 'created as a function of the application software used to create the document or file' and reflects modifications to a document, such as edits or editorial comments, and includes data that instructs the computer how to display the fonts and spacing in a document. Substantive metadata is embedded in the document it describes and remains with the document when it is moved or copied. *Sedona® Principles 2d* Cmt. 12a.
>
> **{** XE "blockquote-para:N162E6" **}*System metadata*** 'reflects information created by the user or by the organization's information management system.' *Sedona® Principles 2d* Cmt. 12a. System metadata may include such data as the author, date and time of creation, and the date a document was modified and by whom it was modified. Author and modification information is usually machine or log-in specific, so if John creates a document on Sally's computer, for example, the metadata will reflect that Sally created the document. Notwithstanding credibility issues, system metadata may be relevant to determine foundational issues such as authenticity of a document or when a document was received by someone. System metadata makes electronic documents more manageable by improving a party's ability to access, search, and sort large numbers of documents efficiently.
>
> **{** XE "blockquote-para:N162F4" **}*Embedded metadata*** consists of 'text, numbers, content, data, or other information that is directly or indirectly inputted into a native file by a user and which is not typically visible to the user viewing the output display' of the native file. *See* United States District Court for the District of Maryland, *Suggested Procotol for Discovery of Electronically Stored Information* 26, at http://www.mdd.uscourts.gov ("Md. Protocol"). Embedded metadata may include spreadsheet formulas, hidden columns, externally or internally linked files, hyperlinks, and database information. Embedded metadata (for example, the formulas underlying the output in each cell of a spreadsheet) may be crucial to understanding an electronic document, and therefore, the Maryland working group concluded that embedded metadata is 'generally discoverable' and 'should be produced as a matter of course.' *Md. Protocol* 27–28." (Artigliere & Hamilton Glossary)

Mirror Image: "A copy made by forensic methods, usually of a hard drive, which duplicates all of the data on the drive, including "free" space so as to allow for possible forensic restoration of deleted files." (Artigliere & Hamilton Glossary)

Native format: "A data file/document in the format of the original application used to create the file. Software applications generally maintain their data in proprietary formats that are commonly referred to as "native file formats." Such files normally are identified by a three or four letter file extension following the name of the file and a period, such as .doc for a Microsoft® Word file or .docx for a Microsoft® Word 2007 file or .pdf for an Adobe® Acrobat file. The proprietary file formats determine the type or types of software that can read, search, or modify the documents, including its metadata." (Artigliere & Hamilton Glossary)

{ XE "para:N16333" **}Native production:** "A datafile/document produced in the format in which it was originally created. For purposes of electronic discovery, unless the parties stipulate otherwise, a production in native format normally includes the entire file (including metadata), which is usually a reason for a request for production in native format." (Artigliere & Hamilton Glossary)

PDF: "Portable Document Format. A proprietary format of Adobe Corporation, it has become a de facto standard for transmitting documents that the sender does not want to be altered and for transmitting documents to commercial printers and to the Web for online publishing. PDF captures formatting information from a variety of desktop publishing applications, making it possible to send formatted documents and have them appear on the recipient's monitor or printer as they were intended. Viewing requires Adobe Acrobat Reader®, a free application distributed by Adobe Systems. Word processing documents, spreadsheets, e-mail, and graphics can all be converted to PDF. There are different types of PDF documents with differing characteristics. The PDF "Image only" format is in essence an electronic picture of the paper document that cannot be searched, unless the image is subsequently converted by optical character recognition (OCR). The PDF "image format with searchable text" is an electronic image of the document with background "hidden" text that can be word searched using Adobe Acrobat Reader® software." (Artigliere & Hamilton Glossary)

Predictive Coding: "Predictive coding is a sophisticated method of computer assisted search. An excellent descriptive definition is provided by *The Rand Corporation*: 'Predictive coding assigns a rating (or proximity score) to each document in a document set to reflect how close it is to the concepts and terms found in examples of documents attorneys have already determined to be relevant, responsive, or privileged. This assignment becomes increasingly accurate as the software continues to learn from human reviewers about what is, and what is not, of interest.' Various methods may be employed to identify and refine the initial 'seed set' of documents from which the proximity score will be determined, including but not limited to iterative expert human review. (Artigliere & Hamilton Glossary)

Proportionality: A component of "undue burden" in discovery, proportionality is the concept of considering the value of the case in determining the scope and modes of discovery under Fla. R. Civ. P. 1.280(d)(2)(ii): "*the burden or expense of the discovery outweighs its likely benefit, considering the needs*

of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues."

Preservation: "The process of retaining documents and ESI, including document metadata, for legal purposes and should include suspension of normal document destruction policies and procedures. See also Spoliation." (Sedona® Glossary)

> **Scope of preservation:** One of the most prominent issues faced by counsel in a case involving the discovery of ESI is advising a client as to the amount or scope of preservation required such that the client preserves relevant information while not imposing excessive and unnecessary constraints on systems or cost burdens for the client.

Safe harbor for preservation: Under Florida and federal rules of civil procedure, "[a]bsent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good faith operation of an electronic information system." *See* Fla. R. Civ. P. 1.380(e).

Spoliation: The loss, destruction, or significant alteration of evidence or relevant information, including electronic evidence. Within the context of litigation discovery and the duty of ***preservation***, spoliation includes the deliberate or inadvertent modification, loss, or destruction of evidence by a party who knew or should have known of a duty to preserve, but has failed to take appropriate steps to preserve the potentially relevant evidence in their custody or control. (Artigliere & Hamilton Glossary); 2. "Spoliation is the destruction of records or properties, such as metadata, that may be relevant to ongoing or anticipated litigation, government investigation, or audit. Courts differ in their interpretation of the level of intent required before sanctions may be warranted." (Sedona® Glossary)

Undue burden: Undue burden is a case-specific legal determination relating to the cost or encumbrance sustained by the producing party in making discovery. The trial judge's determination is given great weight and will not be disturbed absent an abuse of discretion. The judge's determination, however, must be based on findings that are supported by the record. Case law may assist in describing the circumstances in which a burden is excessive in relation to a given case. Undue burden under Florida rules regarding ESI is related to **accessibility**. *See* Fla. R. Civ. P. 1.280(d)(1). With regard to discovery of ESI, undue burden analysis includes the issue of **proportionality**. *See* Fla. R. Civ. P. 1.280(d)(2). *See* Proportionality.

Florida Supreme Court Juices Up E-Discovery Requirements

Posted on July 11, 2012 by William Hamilton

On July 5, 2012, the Florida Supreme Court adopted seven amendments to the Florida Rules of Civil Procedure ("Fla. R. Civ. P. ___"). *See In re Amendments to the Florida Rules of Civil Procedure -- Electronic Discovery*, ____ So.3d ____, 2012 Fla. LEXIS 1318 (Fla. July 5, 2012). These amendments are largely modeled on the 2006 Amendments to the Federal Rules of Civil Procedure (namely, Rules 16, 26, 33, 34, 37 and 45), and are designed to encourage harmonization with federal decisions. Specifically, the seven amended rules consist of Fla. R. Civ. P. 1.200 (Pretrial Procedure); 1.201 (Complex Litigation); 1.280 (General Provisions Governing Discovery); 1.340 (Interrogatories to Parties); 1.350 (Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes); 1.380 (Failure to Make Discovery; Sanctions); and 1.410 (Subpoena).

However, while the amendments parallel the changes to Federal Rules, some contain subtle variances from their federal counterparts, that **arguably operate to make the Florida rules broader and more malleable than their federal counterparts.**

Some of the important provisions, and a comparison to their federal counterparts, can be summarized as follows:

1. No requirement to "meet and confer" in Florida. The "meet and confer" provisions of Fed.R.Civ.P. 26(f) are not adopted by the Florida rules. While this development might be seen as a surprising omission, Florida Rule 1.200, applicable to all Florida court divisions, provides for the a Case Management Conference to be convened by order of the Court or by a party merely serving a notice setting the conference. More importantly Rule 1.2000 specifically sets out electronic discovery matters to be discussed at the Case Management Conference, telling the parties to:

- "consider the possibility of obtaining *admissions of fact and voluntary exchange* of documents and electronically stored information, and stipulations regarding authenticity of documents and electronically stored information;"
- "consider the need for *advance rulings from the court on the admissibility* of documents and electronically stored information;"
- "discuss as to electronically stored information, the possibility of *agreements from the parties* regarding the extent to which such evidence should be preserved, the form in which such evidence should be produced, and whether discovery of such information should be conducted in phases or limited to particular individuals, time periods, or sources;"

Additionally in cases deemed Complex Litigation, Florida Rule 1.201 has been amended to specifically require discussion during the Case Management Conference of "the possibility of obtaining agreements among the parties regarding the extent to which such electronically stored information should be preserved, the form in which such information should be produced, and whether discovery of such information should be conducted in phases or limited to particular individuals, time periods, or sources[.]"

Florida's approach thus provides flexibility to accommodate the wide variety of cases in Florida courts of general jurisdiction while providing greater guidance than found in Fed. R. Civ. P. 26(g) and Fed.R.Civ.P. 16.

2. Pre-litigation duty to preserve remains in question. Rule 1.380 adopts, verbatim, the well-known (though seldom used by courts) Fed.R.Civ.P. 37(e) safe harbor, under which sanctions cannot be awarded against a party who failed to produce ESI lost as a result of "good faith operation." The Florida Committee Note also obliquely references the duty to preserve . . . however, it does so *without resolving whether there is actually a pre-litigation duty in Florida*. Under federal law, a duty to preserve arises when there is "reasonable anticipation" of litigation, though the exact scope of this phrase remains to be tied down. The Florida Committee is silent as to whether any duty exists, and has left the issue to the courts to determine on a case by case basis rather than drawing any hard lines. Chances are, Florida courts will come down in line with the federal "reasonable anticipation" standard. But there is current Florida law that appears to hold that a duty to preserve arises only by statute, contract, or a request for production. Regardless of what happens on this front, however, the intentional destruction of evidence to thwart the administration of justice (either before or during litigation) does give rises to spoliation claims under Florida law.

3. ESI to be produced as "ordinarily maintained" or "reasonably usable form." Rule 1.280 further authorizes discovery of ESI, and Rule 1.350 treats ESI as a type of document whose production must be in the form ordinarily maintained, or else in a reasonable form. The important change in Rule 1.350 is that the *producing party must specify before production and in the written response to the request for production what production format will be used*. The requesting party can specify a format, and if the producing party objects or a format is not specified, the producing party must state the format of production it intends to use.

The great utility of this structure is that disputes as to format will surface early for judicial resolution. While the amendment does not define "reasonably usable," this will vary from case to case depending on cost and utility issues. The amended Rule 1.350 does, however, make clear that the producing party may produce as "ordinarily maintained" -- it need not take any extraordinary steps to enhance the utility of the production form by (for example) converting paper into searchable OCR text. But note that because the amended Rule does not require production in "native," only in a "reasonably usable," format, native production may or may not be the right format for the case.

4. Motions to compel inaccessible ESI permitted. Fed.R.Civ.P. 26(b)(2)(B) contains a presumptive exclusion of ESI production from inaccessible materials such as backup tapes. Amended Rule 1.280(d)(1) authorizes objections to the discovery of ESI from such inaccessible

sources, requiring the objecting party to demonstrate "undue burden and cost." Even upon a showing of undue burden and cost, however, the Court may still order production on a showing of good cause, although it must consider appropriate conditions and limitations on such discovery including cost shifting.

The amended Rule 1.280(d)(2) also specifically makes proportional considerations applicable "in determining any motion involving discovery of electronically stored information." The proportionality factors courts should consider (such as the expense, the time commitment, and potential usefulness the material, and so on) are helpfully listed in Rule 1.280(d)(2) as well. These factors track Fed. R. Civ. P. 26(b)(2)(C).

5. ESI can be used to answer interrogatories. Rule 1.340 authorizes producing ESI in lieu of interrogatory answers. In doing so it spells out the form of production instead of leaving it open, as does Fed.R.Civ.P. 33.

6. Litigation holds are not mentioned. The Florida Committee Note does not mention litigation holds, but states that in determining "good faith" the court may consider any steps taken to comply with preservation obligations. Cf. W. Hamilton, *Florida Moving to Adopt Federally-Inspired E-discovery Rules* (Sept. 20, 2011) (arguing that "traditional Florida spoliation remedies are in play when a party intentionally destroys relevant information to thwart the judicial process – whether before or during litigation"); Michael D. Starks, *Deconstructing Damages for Destruction of Evidence*, 80-AUG Fla. B. J. 36 (July/August 2006) (noting that both sanctions and tort damages are available under Florida law, although "the first-party spoliation tort" has since been destroyed).

7. Inadvertent production. Effective January 2011, Florida adopted Rule 1.285 to govern the responsibilities of parties upon post-production claims of inadvertent production of privileged material. This rule is analogous to Fed.R.Civ.P. 26(b)(5)(B)'s "claw-back" provision, but broader and more comprehensive. Like the federal version, however, Florida leaves the issue of waiver to a separate proceeding.

In sum, Florida has enacted a nuanced and powerful set of e-discovery rules that provide excellent direction and authority for the management of e-discovery. The new Florida amendments are to take effect in September 2012.

***Bray & Gillespie* Saga**

Ralph C. Losey[*]
Jackson Lewis, LLP

Bray I - *Bray & Gillespie Mgmt. LLC v. Lexington Ins. Co.* 2009 WL 546429 (M.D. Fla. Mar. 4, 2009)

- Converted Live native to 200,000 Flat unsearchable Tiff files
- 2 Evidentiary Hearings on 26(f) conference
- Metadata Stripping violated the "reasonably usable" requirements of new Federal Rule 34(b)(2)(E)
  - State Rule 1.350(b)
  - *If a request for electronically stored information does not specify the form of production, the producing party must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.*
- Sanctioned Attorneys and Law Firm
- Federal judiciary is fed up with e-discovery blunders and gamesmanship
- Wake-up call to Law Firm management to get their litigators under control and educated about e-discovery, or face the imposition of monetary sanctions (and embarrassment) against your firm.

Bray II - 2009 WL 2407754 (M.D. Fla. August 3, 2009)

- Adverse inference and additional fee sanctions entered against defendant and attorney for late, incomplete production of hotel guest attendance records
- Claimed these MS SQL database records could only be printed out
- Recommendation that case be dismissed for intentional, bad faith withholding of evidence
- Analogy of Plato's case and paper lawyers who only see the shadows, the print-outs of the original native files.

Bray III - 2010 WL 55595 (M.D. Fla. Jan. 5, 2010)

- Replacement counsel found the missing electronic hotel records with a single phone call to the software vendor and since problem solved, asks for sanctions to be denied and trial continuance
- Judge Scriven dismisses one of three counts as sanction
- Plus $70,000 fee sanction against plaintiff, not attorneys

Ralph C. Losey is a partner of Jackson Lewis, LLP, Orlando office, where he lead's the firm's electronic discovery practice group with 49 offices around the country. Ralph was closely involved with the wording and adoption of the new Florida rules. He is the author of four books on electronic discovery and the popular weekly blog e-DiscoveryTeam.com. Ralph is available to serve as a special master on complex e-discovery related issues.

New Florida Rules of Civil Procedure on e-Discovery

Excerpts compiled by
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Jackson Lewis, LLP

Summary of the Florida Rules of Civil Procedure amended in 2012 to address e-discovery issues with references to the Federal Rules of Civil Procedure from which the new rules were generally derived.

RULE 1.200. PRETRIAL PROCEDURE (FRCP Rules 16 and 26f)
(a) Case Management Conference.

RULE 1.201. COMPLEX LITIGATION (Rules 6 and 26f)
(b) Initial Case Management Report and Conference.

RULE 1.280. GENERAL PROVISIONS GOVERNING DISCOVERY (Rule 26)
(b) Scope of Discovery.
(d) Limitations on Discovery of Electronically Stored Information. (Rules 26b2B and 26b2C)

RULE 1.340. INTERROGATORIES TO PARTIES (Rule 33)
(c) Option to Produce Records.

RULE 1.350. PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES (Rule 34)
(a) Request; Scope.
(b) Procedure.

RULE 1.380. FAILURE TO MAKE DISCOVERY; SANCTIONS (Rule 37e (exact))
(e) Electronically Stored Information; Sanctions for Failure to Preserve

RULE 1.410. SUBPOENA (Rule 45)
(c) For Production of Documentary Evidence.

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Full Text of New Rules.
The *italicized portions* of the Florida Rule excerpts below represent the 2012 Amendments for e-discovery in their entirety.

RULE 1.200. PRETRIAL PROCEDURE

(a) **Case Management Conference.** At any time after responsive pleadings or motions are due, the court may order, or a party by serving a notice may convene, a case management conference. The matter to be considered shall be specified in the order or notice setting the conference. At such a conference the court may:

(5) consider the possibility of obtaining admissions of fact and voluntary exchange of documents *and electronically stored information,* and stipulations regarding authenticity of documents *and electronically stored information*;
(6) consider the need for advance rulings from the court on the admissibility of documents *and electronically stored information*;
(7) *discuss as to electronically stored information, the possibility of agreements from the parties regarding the extent to which such evidence should be preserved, the form in which such evidence should be produced, and whether discovery of such information should be conducted in phases or limited to particular individuals, time periods, or sources;*

RULE 1.201. COMPLEX LITIGATION

(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:

(J) the possibility of obtaining agreements among the parties regarding the extent to which such electronically stored information should be preserved, the form in which such information should be produced, and whether discovery of such information should be conducted in phases or limited to particular individuals, time periods, or sources;

RULE 1.280. GENERAL PROVISIONS GOVERNING DISCOVERY

(b) Scope of Discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(3) Electronically Stored Information. *A party may obtain discovery of electronically stored information in accordance with these rules.*

(d) Limitations on Discovery of Electronically Stored Information.

(1) A person may object to discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of burden or cost. On motion to compel discovery or for a protective order, the person from whom discovery is sought must show that the information sought or the format requested is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order the discovery from such sources or in such formats if the requesting party shows good cause. The court may specify conditions of the discovery, including ordering that some or all of the expenses incurred by the person from whom discovery is sought be paid by the party seeking the discovery.

(2) In determining any motion involving discovery of electronically stored information, the court must limit the frequency or extent of discovery otherwise allowed by these rules if it determines that

(i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from another source or in another manner that is more convenient, less burdensome, or less expensive; or

(ii) the burden or expense of the discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

Committee Notes

2012 Amendment. Subdivisions (b)(3) and (d) are added to address discovery of electronically stored information.

The parties should consider conferring with one another at the earliest practical opportunity to discuss the reasonable scope of preservation and production of electronically stored information. These issues may also be addressed by means of a rule 1.200 or rule 1.201 case management conference.

Under the good cause test in subdivision (d)(1), the court should balance the costs and burden of the requested discovery, including the potential for disruption of operations or corruption of the electronic devices or systems from which discovery is sought, against the relevance of the information and the requesting party's need for that information. Under the proportionality and reasonableness factors set out in subdivision (d)(2), the court must limit the frequency or extent of discovery if it determines that the discovery sought is excessive in relation to the factors listed.

In evaluating the good cause or proportionality tests, the court may find its task complicated if the parties know little about what information the sources at issue

contain, whether the information sought is relevant, or how valuable it may be to the litigation. If appropriate, the court may direct the parties to develop the record further by engaging in focused discovery, including sampling of the sources, to learn more about what electronically stored information may be contained in those sources, what costs and burdens are involved in retrieving, reviewing, and producing the information, and how valuable the information sought may be to the litigation in light of the availability of information from other sources or methods of discovery, and in light of the parties' resources and the issues at stake in the litigation.

RULE 1.340. INTERROGATORIES TO PARTIES

> **(c) Option to Produce Records.** When the answer to an interrogatory may be derived or ascertained from the records *(including electronically stored information) … If the records to be produced consist of electronically stored information, the records shall be produced in a form or forms in which they are ordinarily maintained or in a reasonably usable form or forms.*

RULE 1.350. PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES

(a) Request; Scope. Any party may request any other party (1) to produce and permit the party making the request, or someone acting in the requesting party's behalf, to inspect and copy any designated documents, *including electronically stored information*, writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the party to whom the request is directed through detection devices into reasonably usable form, that constitute or contain matters within the scope of rule 1.280(b) and that are in the possession, custody, or control of the party to whom the request is directed; (2) to inspect and copy, test, or sample any tangible things that constitute or contain matters within the scope of rule 1.280(b) and that are in the possession, custody, or control of the party to whom the request is directed; or (3) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation on it within the scope of rule 1.280(b).

(b) Procedure. …

… A request for electronically stored information may specify the form or forms in which electronically stored information is to be produced. If the responding party objects to a requested form, or if no form is specified in the request, the responding

party must state the form or forms it intends to use. If a request for electronically stored information does not specify the form of production, the producing party must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. The party submitting the request may move for an order under rule 1.380 concerning any objection, failure to respond to the request, or any part of it, or failure to permit the inspection as requested.

RULE 1.380. FAILURE TO MAKE DISCOVERY; SANCTIONS

(e) Electronically Stored Information; Sanctions for Failure to Preserve. *Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good faith operation of an electronic information system.*

Committee Notes

2012 Amendment. *Subdivision (e) is added to make clear that a party should not be sanctioned for the loss of electronic evidence due to the good-faith operation of an electronic information system; the language mirrors that of Federal Rule of Civil Procedure 37(e). Nevertheless, the good-faith requirement contained in subdivision (e) should prevent a party from exploiting the routine operation of an information system to thwart discovery obligations by allowing that operation to destroy information that party is required to preserve or produce. In determining good faith, the court may consider any steps taken by the party to comply with court orders, party agreements, or requests to preserve such information.*

RULE 1.410. SUBPOENA

(c) For Production of Documentary Evidence. A subpoena may also command the person to whom it is directed to produce the books, papers, documents (*including electronically stored information*), …

If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. A person responding to a subpoena may object to discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue costs or burden. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought or the form requested is not reasonably accessible because of undue costs or burden. If that showing is made, the court may nonetheless order discovery from such sources or in such forms if the requesting party shows good cause, considering the limitations set out in rule 1.280(d)(2). The court

may specify conditions of the discovery, including ordering that some or all of the expenses of the discovery be paid by the party seeking the discovery.

Committee Notes

2012 Amendment. *Subdivision (c) is amended to address the production of electronically stored information pursuant to a subpoena. The procedures for dealing with disputes concerning the accessibility of the information sought or the form for its production are intended to correspond to those set out in Rule 1.280(d).*

Public Records Request for ESI

Dear [Records Custodian]:

This is a request (the "Request") to [name public entity] (the "Agency") for certain records pursuant to the Public Records Act, Chapter 119 of the Florida Statutes. The records requested (the "Records") are: [specifically describe records in as much detail as possible, including form of production, and requested metadata]

Electronically stored digital data on computers and computer devices are public records under Section 119.0119(12).

The Records should be provided in the least expensive mode possible that achieves full compliance with this Request. [Consider adding: I specifically request, if available, that the records be made available by remote electronic means pursuant to Sections 119.01(2)(e) and 119.07(2)(a).] Pursuant to Section 119.01(2)(f), the Agency must provide a copy of the Records in the medium or format requested above if the Agency maintains the Records in that medium or format. If the Records are not maintained in the medium or format requested in the Request, please advise the undersigned and provide a written description of the medium or format of the Records.

If the Records are stored electronically, I agree to pay the actual cost of the media that will contain the electronic copy of the produced Records pursuant to Section 119.07(4). However, if the nature or volume of the Records requested to be inspected or copied pursuant to this request is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or both, pursuant to Section 119.07(4)(d), please provide a written estimate and justification before proceeding.

If this request seeks production in a form or medium not routinely used by the agency, or if it elects to compile information not routinely developed or maintained by the agency, or if you contend the response requires a substantial amount of manipulation or programming, as described in Section 119.07(1)(f), please advise the undersigned in writing of the amount of any fee necessary for production before incurring such cost.

If you claim an exemption as to any of this information, please advise me in writing and indicate the statutory citation to the applicable exemption as required by Section 119.07(1)(e) and the specific reasons for your decision as required by Section119.07(1)(f). If the exemption you are claiming only applies to a portion of the Records, please redact that portion of the Record to which an exemption has been asserted and validly applies and produce the remainder of such Record for inspection and copying according to Section 119.07(1)(d) unless you assert that section 119.07(4)(d) is applicable, and if so please provide a written estimate and justification before proceeding.

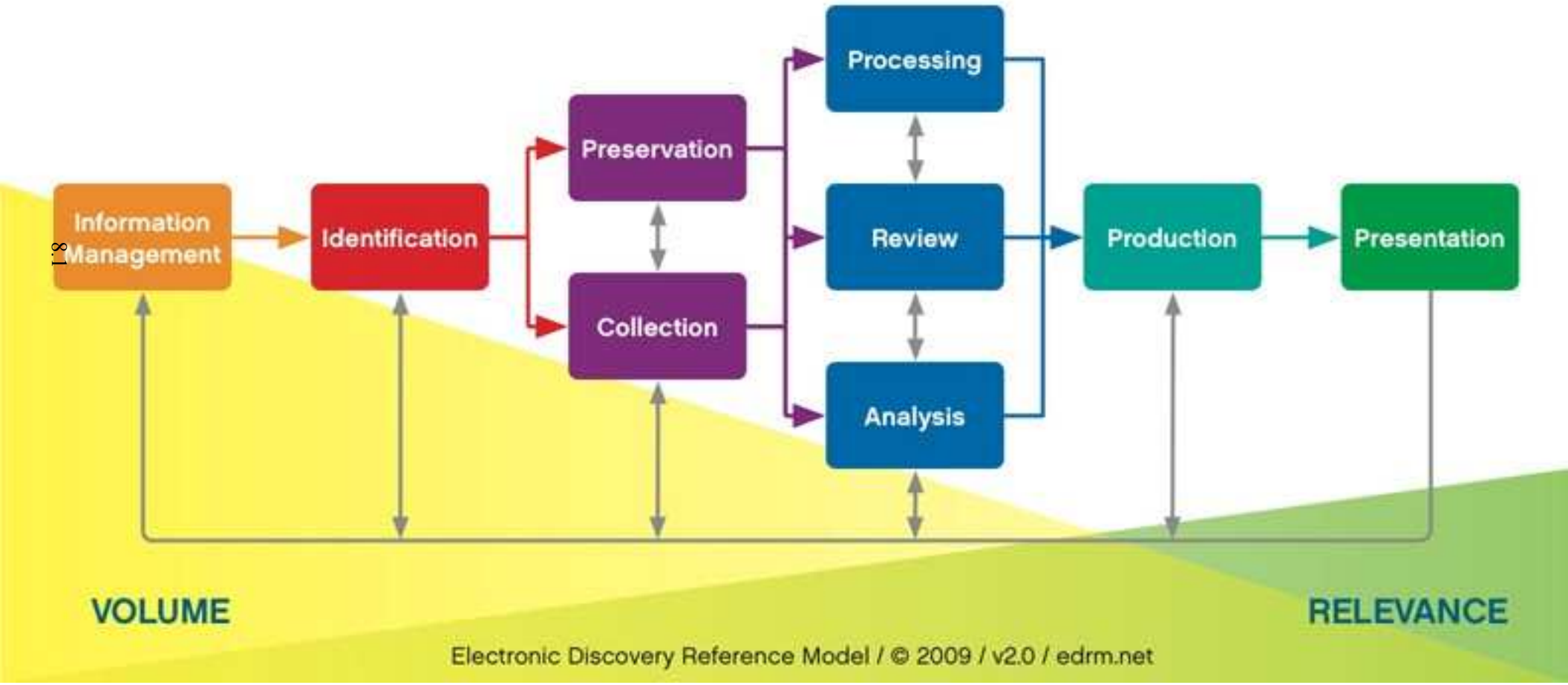
I will contact your office within [select time frame; e.g. 2 weeks] to discuss when the Records will be produced and to determine any statutorily prescribed fees that the Agency deems necessary to fulfill the request. If you have any questions or need more information in order to expedite this request, please call me at [insert phone number].

Sincerely,

[Name][Address][email][telephone number]

- **Form extracted from *LexisNexis Practice Guide Florida e-Discovery and Evidence.*©2012 LexisNexis Matthew Bender**

Electronic Discovery Reference Model



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Hon. Ralph Artigliere (ret.) **is a writer and legal educator who is retired from the circuit bench in Florida. He teaches judges and lawyers nationally and is a member of the faculties of the FL Judicial College, FL College of Advanced Judicial Studies & FL Conference of Cir. Judges. He brings over 30 years of trial experience and was AV® rated by Martindale Hubble and a FL Board Certified Civil Trial Lawyer. He is a Fellow of the American College of Trial Lawyers. He graduated from the United States Military Academy, with honors, and the University of Florida College of Law, with high honors.**

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