

Supreme Court of Florida

No. SC20-1240

**IN RE: AMENDMENTS TO FLORIDA RULE OF
CIVIL PROCEDURE 1.260.**

April 8, 2021

PER CURIAM.

Before the Court is the report of The Florida Bar's Civil Procedure Rules Committee (Committee) proposing amendments to Florida Rule of Civil Procedure 1.260 (Survivor; Substitution of Parties). *See Fla. R. Gen. Prac. & Jud. Admin. 2.140(b)(1)*. We have jurisdiction. *See art. V, § 2(a), Fla. Const.*

The Committee proposes to amend rule 1.260 to delete archaic language and to clarify that a statement noting the death of a party must be filed and served on all parties.

The Committee and the Board of Governors of The Florida Bar unanimously approved the proposed amendments. The proposals

were published by both the Committee and the Court. No comments were received following either publication.

Having considered the proposed amendments, the Court hereby amends Florida Rule of Civil Procedure 1.260 as proposed by the Committee, with minor revisions.¹ In subdivision (a)(1), the words “filed and” are added for greater specification. Furthermore, the phrase “the death is suggested upon the record by service of a statement of the fact of the death . . .” is replaced with “a statement noting the death is filed and served on all parties as provided in Rule of General Practice and Judicial Administration 2.516.” In subdivision (a)(2), the phrase “The death shall be suggested upon the record” is replaced with “A statement noting the death shall be filed and served on all parties as provided in Rule of General Practice and Judicial Administration 2.516.” Finally, in subdivision (b), the words “filed and” are added for consistency with subdivision (a)(1).

1. References to the Florida Rules of Judicial Administration have been updated to reflect the new title of that body of rules, Florida Rules of General Practice and Judicial Administration. See *In re Amendments to Florida Rules of Judicial Administration–2020 Regular-Cycle Report*, 310 So. 3d 374 (Fla. 2021).

Accordingly, the Florida Rules of Civil Procedure are amended as set forth in the appendix to this opinion. New language is indicated by underscoring; deletions are indicated by struck-through type. The amendments shall become effective immediately upon the release of this opinion.

It is so ordered.

CANADY, C.J., and POLSTON, LABARGA, LAWSON, MUÑIZ, COURIEL, and GROSSHANS, JJ., concur.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE AMENDMENTS.

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Ceci Culpepper Berman, Chair, Civil Procedure Rules Committee, Tampa, Florida; and Joshua E. Doyle, Executive Director, and Mikalla Andies Davis, Staff Liaison, The Florida Bar, Tallahassee, Florida,

for Petitioner

Appendix

RULE 1.260. SURVIVOR; SUBSTITUTION OF PARTIES

(a) Death.

(1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be filed and served on all parties as provided in Florida Rule of General Practice and Judicial Administration 2.516 and upon persons not parties in the manner provided for the service of a summons. Unless the motion for substitution is made within 90 days after ~~the death is suggested upon the record by service of a statement of the fact of noting~~ the death in the manner provided for the service of the motion is filed and served on all parties as provided in Rule of General Practice and Judicial Administration 2.516, the action shall be dismissed as to the deceased party.

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action shall not abate. ~~The death shall be suggested upon the record~~ A statement noting the death shall be filed and served on all parties as provided in Rule of General Practice and Judicial Administration 2.516 and the action shall proceed in favor of or against the surviving parties.

(b) Incompetency. If a party becomes incompetent, the court, upon motion filed and served as provided in subdivision (a) of this rule, may allow the action to be continued by or against that person's representative.

(c)-(d) [NO CHANGE]