FLORIDA RULES OF CIVIL PROCEDURE FOR INVOLUNTARY COMMITMENT OF SEXUALLY VIOLENT PREDATORS

CITATIONS TO OPINIONS ADOPTING OR AMENDING RULES

Effective 07-09-2009: 13 So. 3d 1025. Initial adoption of rules.

OTHER OPINIONS

Effective Date	Citation	Description
Effective 10-1-12:	95 So.3d 96.	Amended 4.090.
Effective 10-1-13:	118 So.3d 196.	Amended 4.030, 4.080, 4.100, 4.440.
Effective 7-1-14:	140 So.3d 996.	Amended 4.470.
Effective 10-1-22:	346 So.3d 1164.	Amended 4.310.
Effective 1-1-24:	369 So. 3d 179	Amended 4.010, 4.040, 4.060, 4.070, 4.080, 4.090, 4.100, 4.110, 4.200, 4.220, 4.240, 4.260, 4.280, 4.310, 4.330, 4.380, 4.410, 4.430, 4.431, 4.440, 4.450, 4.460, 4.470.

RULE 4.010. SCOPE AND TITLE OF RULES

These rules apply to all civil actions filed in the circuit courts of the State of Florida pursuant to part V, chapter 394, Florida Statutes. These rules are known as the Florida Rules of Civil Procedure for Involuntary Commitment of Sexually Violent Predators and abbreviated as Fla. R. Civ. P. – S.V.P.

RULE 4.030. NONVERIFICATION OF PLEADINGS

Every pleading or other document of a party represented by an attorney need not be verified or accompanied by an affidavit except when otherwise specifically provided by these rules or an applicable statute.

RULE 4.040. PARTIES

The State of Florida is the petitioner in actions brought under these rules. Any person alleged to be a sexually violent predator is designated as the respondent.

RULE 4.060. VENUE AND TRANSFERS OF ACTIONS

Venue for bringing a petition under Part V, chapter 394, Florida Statutes, must be (1) in the county where the respondent was last charged and convicted of a qualifying offense; (2) if the person has never been convicted of a qualifying offense in this state but has been convicted of such an offense in another state or in federal court, in the county where the person was last convicted of any offense in this state; or (3) if the person is being confined in this state pursuant to interstate compact and has a prior or current conviction for a sexually violent offense, in the county where the person plans to reside upon release or, if no residence in this state is planned, in the county where the facility from which the person to be released is located. If the action is pending in the wrong county, it may be transferred by motion of any party or on motion by the court.

RULE 4.070. PROCESS

(a) Issuance. The clerk of the court must issue a summons, a copy of the petition, any accompanying affidavits, and a copy of the order finding probable cause to the respondent upon receipt of an order finding probable cause signed by a circuit judge. The summons must direct the respondent to file an answer to the petition within ten days after the date of service. The state attorney must serve a copy of the petition and related documents upon the attorney appointed to represent the respondent pursuant to rule 4.080. The finding of probable cause is not effective until the summons is returned served and filed with the clerk of the court.

(b) Service; By Whom Made. The state attorney must electronically transmit a copy of the summons, petition, any accompanying affidavits, and the order finding probable cause to the person in charge of the facility in which the respondent is confined. The person in charge of the facility must serve a printed copy of the summons, the petition, any accompanying affidavits, and order finding probable cause on the respondent within 24 hours after receiving it and before the respondent is transferred to a secure facility. The person in charge of the facility in which the respondent is confined must make a return on the summons within 24 hours after making service, by electronically confirming to the state attorney that service has been made. The state attorney must file a copy of the return with the clerk, along with the summons, on the first business day after receiving it. Additional process may be issued as in other civil actions.

RULE 4.080. SERVICE AND FILING OF PLEADINGS, PAPERS, AND DOCUMENTS

(a) Service; When Required. Unless the court otherwise orders, every pleading subsequent to the initial pleading and every other document filed in the action, except applications for a witness subpoena, must be served on the opposing party.

(b) Service of Subsequent Pleadings Other Than Original Petition; How Made. When service is required or permitted to be made upon a party represented by an attorney, service must be

made upon the attorney unless service upon the party is ordered by the court. Service on the attorney or party must be as required by Fla. R. Gen. Prac. & Jud. Admin. 2.516.

(c) Filing. All documents that are "court records" as defined in the Florida Rules of General Practice and Judicial Administration must be filed with the clerk in accordance with Fla. R. Gen. Prac. & Jud. Admin. 2.520 and 2.525.

(d) Deposit with the Clerk. Any paper document that is a judgment or required by statute or rule to be sworn to or notarized must be filed and deposited with the clerk immediately thereafter. The clerk must maintain deposited original paper documents in accordance with Fla. R. Gen. Prac. & Jud. Admin. 2.430, unless otherwise ordered by the court.

RULE 4.090. TIME

(a) Computation. Computation of time is governed by Florida Rule of General Practice and Judicial Administration 2.514.

(b) Enlargement. When an act is required or allowed to be done at or within a specified time by order of court, by these rules, or by notice given thereunder, for cause shown, the court at any time in its discretion (1) with or without notice, may order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made and notice after the expiration of the specified period, may permit the act to be done when failure to act was the result of excusable neglect, but it may not extend the time for making a motion for new trial, for rehearing, or to alter or amend a judgment.

RULE 4.100. PLEADINGS AND MOTIONS

(a) Pleadings. There must be a petition and an answer to it. The answer must set forth any affirmative defense to the petition, including the failure of the petition to state a cause of action. No other pleadings are allowed. All pleadings must comply with the

rules governing pleadings in other civil actions. (Rules 1.100 and 1.110, Fla. R. Civ. P.)

(b) Motions. An application to the court for an order must be by motion which must be made in writing unless made during a hearing or trial, must state with particularity the grounds therefor, and must set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion. All notices of hearing must specify each motion or other matter to be heard.

(c) Caption. Every pleading, motion, order, judgment, or other document must have a caption containing the name of the court, the uniform case number, the name of the party on each side, and a designation identifying the party filing it and its nature or the nature of the order, as the case may be. All documents filed in the action must clearly indicate the subject matter and the party requesting or obtaining relief.

RULE 4.110. MOTIONS

(a) Motion for Summary Judgment. After the pleadings and discovery are closed, but within such time as not to delay the trial, any party may move for summary judgment. Summary judgment practice is governed by Fla. R. Civ. P. 1.510.

(b) Motions to Dismiss. Motions directed to the sufficiency of the petition must be contained in the answer as an affirmative defense.

(c) Motion for More Definite Statement. A respondent may file a motion for a more definite statement which must be considered a motion for a statement of particulars in response to the original petition. The motion must disclose the defects in the petition.

RULE 4.200. APPOINTMENT OF COUNSEL

(a) Appointment of Attorney. The presiding judge must appoint an attorney to represent the respondent at the time an

order finding probable cause is entered. The appointment continues until the court determines whether the respondent is not entitled to court appointed counsel, private counsel represents the respondent, or the respondent waives the right to counsel.

(b) Waiver of Counsel. The court must conduct an inquiry as set forth in *Faretta v. California*, 422 U.S. 4806 (1975), in the event the respondent unequivocally requests self-representation, and may consider appointment of stand-by counsel if the respondent proceeds unrepresented.

RULE 4.220. ADVERSARIAL PROBABLE CAUSE HEARING

(a) Time; Waiver. An adversarial probable cause hearing must be held, within 5 days after service of a demand upon the petitioner, if the court determines that the failure to begin a trial in accordance with the time provided in rule 4.240(a) is not the result of any delay caused by the respondent and the time limitation to begin the hearing has not been waived. The respondent may waive the adversarial probable cause hearing in writing or on the record in open court.

(b) If Respondent in Department of Children and Family Services Custody. An adversarial probable cause hearing must be held, within 5 days after service of a demand upon the petitioner, if the respondent's incarcerative sentence has expired and the respondent has been transferred to the custody of the Department of Children and Family Services.

(c) Probable Cause. The court must receive evidence, hear argument of the attorneys, and determine whether probable cause exists to believe that the person is a sexually violent predator at the adversarial probable cause hearing.

(d) Rights of Respondent. At the adversarial probable cause hearing, the respondent has the right to:

(1) be represented by counsel;

(2) present testimony and other evidence;

(3) cross-examine any witnesses who testify against the respondent; and

(4) view and copy all petitions and reports in the court file.

(e) If No Probable Cause. The court must issue an Order of No Probable Cause and release the respondent from custody if the evidence does not establish probable cause to believe the respondent is a sexually violent predator.

RULE 4.240. TRIAL PROCEEDINGS AFTER FINDING OF PROBABLE CAUSE

(a) 5 Day Status Hearing; Time for Trial; Waiver of Time. The court must conduct a status hearing within 5 days after the summons is served. At the hearing, the court must determine if the respondent is entitled to court appointed counsel and must appoint counsel if the respondent qualifies for and requests counsel. The respondent must be given a reasonable time to obtain private counsel if time is requested for that purpose. A *Faretta* inquiry must be conducted if the respondent unequivocally elects self-representation. The trial to determine if the respondent is a sexually violent predator must be commenced within 30 days after the summons has been returned served and filed with the clerk of the court, unless the respondent waives the 30-day time period in writing, with a copy to the assigned judge, or on the record in open court. The court must set a trial date not less than 90 days after the date of the waiver of the 30-day period. Further continuances will be allowed only on good cause shown. A future trial date must be set if a further continuance is allowed.

(b) Non-Jury or Jury Trial. The trial will be a non-jury trial unless either party files a demand for jury trial in accordance with rule 4.430.

(c) Burden of Persuasion. The burden of proof to determine if the respondent is a sexually violent predator is clear and convincing evidence.

(d) Unanimity. The court must enter final judgment for the petitioner if a jury unanimously finds the respondent to be a sexually violent predator.

(e) Hung Jury; Time for Re-Trial. The court must declare a mistrial if the jury cannot reach a unanimous verdict. The court must poll the jury before it is discharged to determine if at least four jurors would have found the respondent to be a sexually violent predator.

(1) A re-trial must be scheduled if at least four jurors would have found the respondent to be a sexually violent predator. The re-trial on the petition must commence within 90 days after the date of the mistrial, unless the case is continued at the request of the respondent for good cause. The court must enter final judgment for the respondent if the re-trial is not commenced within 90 days from the date of the mistrial unless the respondent has waived the time limit by receiving a continuance.

(2) If three or more jurors do not find the respondent is a sexually violent predator, the court must enter a final judgment in favor of the respondent.

RULE 4.260. CONTINUANCE OF TRIAL

A motion for continuance by either party must be in writing unless made in a hearing in open court and must be signed by the party or attorney requesting the continuance. The motion must state the facts that the movant contends entitles the movant to a continuance. If a continuance is sought on the ground of non-availability of a witness, the motion must state when the witness will be available. The trial may be continued once upon the request of either party for not more than 120 days upon a showing of good cause, or by the court on its own motion in the interests of justice, when neither party will be substantially prejudiced. No additional continuances may be granted unless the court finds that a manifest injustice would otherwise occur. Continuances should be ordered only upon a showing of good cause. A motion for continuance on behalf of the respondent must state the respondent has been

advised of all consequences of the request and of any rights waived by the motion.

RULE 4.280. GENERAL PROVISIONS GOVERNING DISCOVERY

(a) Discovery methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination; production of documents or things for inspection and other purposes; and physical and mental examinations.

(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, 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) *Trial Preparation: Materials*. Subject to the provisions of subdivision (b)(1) 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 for trial 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. In ordering discovery of the materials when the required showing has been made, the court must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

(3) *Trial Preparation*.

(A) (i) The state attorney bringing the action must disclose the names and addresses of all witnesses to be called by the petitioner to testify at trial at the time of the filing of the petition. The respondent must disclose the names and addresses of all witnesses to be called by the respondent at trial at the time of filing the answer to the petition. The list of witnesses may be amended without leave of court until ten days prior to trial. Thereafter, the witness lists may be amended by leave of court.

(ii) The witness list must include the names and addresses of expert witnesses. A copy of all reports made by experts must be disclosed as soon as they are received. 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)(1) of this rule concerning fees and expenses as the court may deem appropriate.

(iii) The state attorney must provide the respondent with copies of case reports, depositions, witness statements and other records regarding the respondent's prior criminal history and confinement, and any other document or material reviewed and relied upon by the multidisciplinary team in evaluating the respondent, within ten days after the summons has been returned served and filed with the clerk of the court.

(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 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) Expert witnesses must be paid a reasonable fee for time spent responding to discovery under subdivision (b)(3)(A) and (b)(3)(B) of this rule unless a manifest injustice would

result. Respondents who are not indigent may be required to pay for discovery obtained under (b)(3)(A) and must be responsible for discovery obtained under (b)(3)(B). The state attorney and indigent respondents must apply for compensation for experts in the manner prescribed by law.

(4) *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 must make the claim expressly and must 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. Attorney work product claims and preparation for trial privilege claims must be allowed.

(c) Protective Orders. Upon motion by a party, or by the person from whom discovery is sought, and for good cause shown, the court 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) the discovery not be had;

(2) the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(5) the discovery be conducted with no one present except persons designated by the court;

(6) a deposition after being sealed be opened only by order of the court; and

(7) 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.

(d) Sequence and Timing of Discovery. Except as provided in subdivision (b)(1) 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, must 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 a continuing duty to supplement the response to include information thereafter acquired. This provision applies to the reciprocal discovery obligation of the petitioner and the respondent to reveal witnesses' names and addresses on a continuing basis. The court must inquire into all claims of failure to disclose and rule appropriately as to duties to disclose and as to sanctions.

RULE 4.310. DEPOSITIONS UPON ORAL EXAMINATION

(a) When Depositions May Be Taken. Any party may take the testimony of any person, including the respondent, by deposition upon oral examination after the action is commenced. The attendance of witnesses may be compelled by subpoena as provided in Fla. R. Civ. P. 1.410. Unless a provision of this rule conflicts with the Florida Rules of Civil Procedure, the procedure for taking the deposition is the same as that provided in the Florida Rules of Civil Procedure. The deposition of a person in custody, except the respondent, may be taken only by leave of court on such terms as the court prescribes.

(b) Notice; Court Orders; Visual Recording and Photographs at Depositions; Telephonic Depositions.

(1) A party desiring to take the deposition of any person upon oral examination must give reasonable notice in writing to every party to the action. The notice must state the time and place for taking the deposition and the name and address of each person to be examined. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced under the subpoena must be attached to or included in the notice.

(2) To protect deponents and the rights of the parties and to ensure compliance with statutes, the court may enter orders, including but not limited to the orders allowed by rule 4.280(c) and rule 4.310(d), upon motion of a party, the deponent, or on its own motion, for good cause shown.

(3) For deponents 18 years of age or older, a discovery deposition must not be visually recorded unless ordered by the court for good cause shown or upon the consent of the parties and the deponent. For deponents less than 18 years of age, a discovery deposition must be audio-visually recorded unless otherwise ordered by the court. No deponent may be photographed during a discovery deposition.

(4) On motion, the court may order that the testimony at a deposition be taken by telephone. The order may prescribe the manner in which the deposition will be taken. A party may also arrange for a stenographic transcription at that party's own initial expense.

(c) Examination and Cross-Examination; Record of Examination; Oath; Objections. Examination and cross-examination of witnesses may proceed as permitted at trial. The officer before whom the deposition is to be taken must put the witness on oath and must personally, or by someone acting under the officer's direction, and in the officer's presence, record the testimony of the witness, except that when a deposition is taken by telephone, the witness must be sworn by a person present with the witness who is qualified to administer the oath in that location. The testimony must be taken stenographically or recorded by any

means ordered in accordance with subdivision (b). If requested by one of the parties, the testimony must be transcribed at the initial cost of the requesting party and prompt notice of the request must be given to all other parties. All objections made at the time of the examination to the qualifications of the officer taking the deposition, the manner of taking it, the evidence presented, or the conduct of any party, and any other objection to the proceedings must be noted by the officer upon the deposition. Any objection during a deposition must be stated concisely and in a non-argumentative and non-suggestive manner. A party may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the court, or to present a motion under subdivision (d). Otherwise, evidence objected to must be taken subject to the objections.

(d) Motion to Terminate or Limit Examination. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, or that objection and instruction to a deponent not to answer are being made in violation of rule 4.310(c), the court in which the action is pending or the circuit court where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition or may limit the scope and manner of the taking of the deposition under rule 4.280(c). If the order terminates the examination, it must be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of any party or the deponent, the taking of the deposition must be suspended for the time necessary to make a motion for an order.

(e) Witness Review. A transcript of the testimony must be furnished to the witness for examination and must be read to or by the witness unless the witness cannot be found or the examination and reading are waived by the witness and the parties. Any changes in form or substance that the witness wants to make must be listed in writing by the officer with a statement of the reasons given by the witness for making the changes. The changes must be attached to

the transcript. It must then be signed by the witness unless the parties waived the signing or the witness refuses to sign. Transcripts that are not signed by the witness after being made available for a reasonable time must be signed by the officer, who must state on the transcript the reason why the witness did not sign it, such as waiver, illness, absence, or refusal to sign. The deposition may then be used as fully as though signed unless a motion to suppress the deposition, or part of it, is made with reasonable promptness after the defect is, or with due diligence might have been, discovered and the court holds that the reasons given for the refusal to sign require rejection of the deposition wholly or partly.

(f) Filing; Exhibits.

(1) If the deposition is transcribed, the officer must certify on each copy of the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. Documents and things produced for inspection during the deposition must be marked for identification and annexed to and returned with the deposition upon the request of a party and may be inspected and copied by any party except that the person producing the materials may substitute copies to be marked for identification if that person affords to all parties fair opportunity to verify the copies by comparison with the originals. If the person producing the materials requests their return, the officer must mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them and the materials may then be used in the same manner as if annexed to and returned with the deposition.

(2) The officer must furnish a copy of the deposition to any party, or to the deponent, upon payment of reasonable charges. The cost of transcripts ordered by the state attorney or an indigent respondent must be paid in the manner prescribed by law.

(3) A copy of a deposition may be filed only under the following circumstances:

(A) It may be filed by a party or the witness when the contents of the deposition must be considered by the court on any matter pending before the court. Prompt notice of the filing on the deposition must be given to all parties unless notice is waived. A party filing the deposition must furnish a copy of the deposition or the part being filed to other parties unless the party already has a copy.

(B) The court may order a copy of the deposition be filed by any party if the deposition is necessary to decide a matter pending before the court.

(g) Obtaining Copies. A party or witness who does not have a copy of the deposition may obtain it from the officer taking the deposition unless the court orders otherwise. If the deposition is obtained from a person other than the officer, the reasonable cost of reproducing the copies must be paid to the person by the requesting party or witness.

RULE 4.330. USE OF DEPOSITION IN COURT PROCEEDINGS

(a) Use of Depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice of it so far as admissible under the rules of evidence applied as though the witness were then present and testifying in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness or for any purpose permitted by the Florida Evidence Code.

(2) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds:

(A) the witness is dead;

(B) the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the state, unless it appears that the absence of the witness was procured by the party offering the deposition;

(C) the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment;

(D) the party offering the deposition has been unable to procure the attendance of the witness by subpoena;

(E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used; or

(F) the witness is an expert or skilled witness.

(3) If only part of a deposition is offered in evidence by a party, an adverse party may require the party to introduce any other part that in fairness ought to be considered with the part introduced, and any party may introduce any other parts.

(b) Objections to Admissibility. Subject to the provisions of rule 4.310(c), objection may be made at the trial or hearing to receiving in evidence any deposition or part of it for any reason that would require the exclusion of the evidence if the witness were then present and testifying.

(c) Effect of Taking or Using Depositions. A party does not make a person the party's own witness for any purpose by taking the person's deposition. The introduction in evidence of the deposition or any part of it for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this does not apply to the use by an adverse party of a deposition under subdivision (a) of this rule. At the trial or hearing, any party may rebut any relevant evidence contained in a deposition whether introduced by that party or by any other party.

(d) Effect of Errors and Irregularities.

(1) *As to Notice*. All errors and irregularities in the notice for taking deposition are waived unless a written objection is promptly served upon the party giving the notice.

(2) *As to Disqualification of Officer*. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless the objection is made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

RULE 4.380. FAILURE TO MAKE DISCOVERY; SANCTIONS

(a) Motion for Order Compelling Discovery. A party may apply for an order compelling discovery upon reasonable notice to the other party and all persons affected, as follows:

(1) *Motion*. If a deponent fails to answer a question propounded or submitted under rule 4.310, 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 4.280(c).

(2) *Evasive or Incomplete Answer*. For purposes of this subdivision, an evasive or incomplete answer must be treated as a failure to answer.

(b) Failure to Comply with Order.

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, or, if the deponent is a party, the court may enter any of the following orders:

(1) an order that the matters regarding which of 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;

(2) 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;

(3) 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;

(4) 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 4.360(b)(2); or

(5) an order imposing the sanctions listed in paragraph (1), (2), or (3) of this subdivision if the respondent fails to submit to an examination as ordered.

RULE 4.390. DEPOSITIONS OF EXPERT WITNESSES

(a) Definition. The term “expert witness” as used herein applies exclusively to a person duly and regularly engaged in the practice of a profession who holds a professional degree from a university or college and has had special professional training and experience, or one possessed of special knowledge or skill about the subject upon which called to testify.

(b) Procedure. The testimony of an expert or skilled witness may be taken at any time before the trial in accordance with the rules for taking depositions and may be used at trial, regardless of

the place of residence of the witness or whether the witness is within the distance prescribed by rule 4.330(a)(2)(B). No special form of notice need be given that the deposition will be used for trial.

(c) Fee. An expert or skilled witness whose deposition is taken is allowed a witness fee in such reasonable amount as the court may determine. The court must also determine a reasonable time within which payment must be made, if the deponent and party cannot agree. All parties and the deponent must be served with notice of any hearing to determine the fee.

(d) Applicability. Nothing in this rule prevents the taking of any deposition as otherwise provided by law.

RULE 4.410. SUBPOENA

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

(b) Subpoena for Testimony before the Court. Every subpoena for testimony before the court must be issued by an attorney of record in an action or by the clerk under the seal of the court and must state the name of the court and the title of the action and must command each person to whom it is directed to attend and give testimony at a time and place specified in it. On oral request of an attorney or party and without praecipe, the clerk must 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 must 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 4.070(b). Such notice has the same effect and is 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 must be made as provided by law. Proof of such service must be made by affidavit of the person making service if not served by an officer authorized by law to do so.

(e) Subpoena for Taking Depositions.

(1) Filing a notice to take a deposition as provided in rule 4.310(b) with a certificate of service on it showing service on all parties to the action constitutes an authorization for the issuance of subpoenas for the persons named or described in the notice by the clerk of the court in which the action is pending or by an attorney of record in the action. The subpoena may command the person to whom it is directed to produce designated books, papers, documents, or tangible things that constitute or contain evidence relating to any of the matters within the scope of the examination permitted by rule 4.280(b), but in that event the subpoena will be subject to the provisions of rule 4.280(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 is not 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 contempt of the court from which the subpoena issued.

(g) Subpoena of Minor. Any minor subpoenaed for testimony has 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.

RULE 4.430. DEMAND FOR JURY TRIAL; WAIVER

(a) Right Preserved. The right of trial by jury as declared by the constitution or by statute must be preserved to the parties inviolate.

(b) Waiver of Jury Trial; Demand. The trial must be before the court without a jury unless the petitioner files a demand for jury trial with the petition or the respondent files such a demand with the answer.

(c) Late Demand for Jury Trial. If waived, a jury trial may not be granted without the consent of the parties, but the court

may allow an amendment in the proceedings to demand a trial by jury or order a trial by jury on its own motion.

RULE 4.431. TRIAL BY JURY

(a) Number of Jurors.

(1) The jury must be composed of six persons.

(2) The court may direct that 1 or more jurors be impaneled to sit as alternate jurors in addition to the regular panel. Alternate jurors must replace jurors who have become unable or disqualified to perform their duties, in the order in which they are called before the jury retires to consider its verdict. Alternate jurors must be drawn in the same manner, have the same qualifications, be subject to the same examination, take the same oath, and have the same functions, powers, facilities, and privileges as principal jurors. An alternate juror who does not replace a principal juror must be discharged when the jury retires to consider the verdict.

(3) If alternate jurors are called, each party is entitled to one peremptory challenge in the selection of each alternate juror. Additional peremptory challenges allowed pursuant to this subdivision may be used only against the alternate jurors.

(b) Examination by Parties. The parties have the right to examine jurors orally on their voir dire. The order in which the parties may examine each juror is determined by the court. The court may ask such questions of the jurors as it deems necessary, but the right of the parties to conduct a reasonable examination of each juror orally must be preserved.

(c) Juror List. Upon request, any party must be furnished by the clerk of the court with a list containing names and addresses of prospective jurors summoned to try the case together with copies of any jury questionnaires returned by the prospective jurors.

(d) Challenge to the Panel. Both parties may challenge the panel. A challenge to the panel may be made only on the ground that the prospective jurors were not selected or drawn according to

law. Challenges to the panel must be made and decided before any individual juror is examined, unless otherwise ordered by the court. A challenge to the panel must be in writing and must specify the facts constituting the ground of the challenge. Challenges to the panel must be tried by the court. Upon the trial of a challenge to the panel, the witnesses may be examined on oath by the court and may be so examined by either party. If the challenge to the panel is sustained, the court must discharge the panel. If the challenge is not sustained, the individual jurors must be called.

(e) Oath for Voir Dire. The prospective jurors must be sworn collectively or individually, as the court may decide. The form of oath must be as follows:

> "Do your solemnly swear (or affirm) that you will answer truthfully all questions asked of you as prospective jurors, so help you God?"

If any prospective juror affirms, the clause "so help you God" must be omitted.

(f) Examination. The court may then examine each prospective juror individually or may examine the prospective jurors collectively. Counsel for both the state and the respondent have the right to examine jurors orally on their voir dire. The order in which the parties may examine each juror must be determined by the court.

(g) Prospective Jurors Excused. If, after the examination of any prospective juror, the court is of the opinion that the juror is not qualified to serve as a trial juror, the court must excuse the juror from the trial. If, however, the court does not excuse the juror, either party may then challenge the juror, as provided by law or by these rules.

(h) Time for Challenge. Both parties may challenge an individual prospective juror before the juror is sworn to try the cause; except that the court may, for good cause, permit a challenge to be made after the juror is sworn, but before any evidence is presented.

(i) Exercise of Challenge. On the motion of any party, all challenges must be addressed to the court outside the hearing of the jury panel in a manner selected by the court so that the jury panel is not aware of the nature of the challenge, the party making the challenge, or the basis of the court's ruling on the challenge, if for cause.

(j) Manner of Challenge. A challenge to an individual juror may be oral. When a juror is challenged for cause the ground of the challenge must be stated.

(k) Determination of Challenge for Cause. The court must determine the validity of a challenge of an individual juror for cause. In making such determination, the juror challenged and any other material witnesses, produced by the parties, may be examined on oath by either party. The court may consider any other evidence material to such challenge.

(*l*) Number of Challenges. Each party must be allowed three peremptory challenges.

(m) Alternate Jurors. If 1 or 2 alternate jurors are called, each party is entitled to 1 peremptory challenge, in addition to those otherwise allowed by law, for each alternate juror so called. The additional peremptory challenge may be used only against the alternate juror and the other peremptory challenges allowed by law must not be used against the alternate juror.

(n) Additional Challenges. The trial judge may exercise discretion to allow additional peremptory challenges when appropriate.

(*o*) Oath of Trial Jurors. The following oath must be administered to the jurors:

> "Do you solemnly swear (or affirm) that you will well and truly try the issues between the State of Florida and the respondent and render a true verdict according to the law and the evidence, so help you God?"

If any juror affirms, the clause "so help you God" must be omitted.

(p) Interview of a Juror. A party who believes that grounds for legal challenge to a verdict exist may move for an order permitting an interview of a juror or jurors to determine whether the verdict is subject to the challenge. The motion must be served within 10 days after rendition of the verdict unless good cause is shown for the failure to make the motion within that time. The motion must state the name and address of each juror to be interviewed and the grounds for challenge that the party believes may exist. After notice and hearing, the trial judge must enter an order denying the motion or permitting the interview. If the interview is permitted, the court may prescribe the place, manner, conditions, and scope of the interview.

RULE 4.440. RULES OF PROCEDURE AND EVIDENCE

(a) Applicable Law. In all commitment proceedings initiated under part V, chapter 394, Florida Statutes and this rule, the following applies:

(1) The Florida Rules of Civil Procedure, Florida Rules of Evidence, and Florida Rules of General Practice and Judicial Administration apply unless otherwise superseded by these rules.

(2) Habeas corpus proceedings brought under rule 4.460 are governed by Fla. R. Crim. P. 3.850.

(3) The psychotherapist-patient privilege under section 90.503, Florida Statutes, does not apply to any communication relevant to an issue pertaining to an involuntary civil commitment proceeding.

(4) Evidence of prior behavior by the person subject to the proceedings, if relevant to prove the person is a sexually violent predator, may be considered by the judge or jury.

(5) Hearsay evidence, including reports of the multidisciplinary team or reports prepared on behalf of the multidisciplinary team, is admissible unless the trial judge finds

that the evidence is not reliable. However, hearsay evidence may not serve as the sole basis for the involuntary civil commitment of a person subject to the proceedings.

(b) Department of Children and Family Services Rules. No rule adopted by the Department of Children and Family Services pursuant to section 394.930, Florida Statutes, constitutes (1) an evidentiary predicate for the admission of any testimony of physical evidence; (2) a basis for excluding or limiting the presentation of any testimony or physical evidence; or (3) elements of the cause of action the state must allege or prove, in any proceeding initiated under part V, chapter 394 Florida Statutes, and these rules.

(c) Non-compliance with Rules. The failure of either party to comply with these rules does not constitute a defense in any proceedings initiated under part V, chapter 394, Florida Statutes.

RULE 4.450. APPEAL

(a) Rule. An appeal to review a final judgment must be pursuant to Fla. R. App. P. 9.110.

(b) Appeal for an Indigent. An indigent respondent who requests the appointment of counsel for appeal must file an affidavit to establish entitlement to the appointment. The public defender of the circuit in which the respondent was determined to be a sexually violent predator must be appointed to represent an indigent respondent on appeal. The public defender may request the public defender who handles criminal appeals to represent a respondent as provided in section 27.51(4), Florida Statutes.

RULE 4.460. POST JUDGMENT HABEAS CORPUS

The respondent may file a petition for habeas corpus alleging ineffective assistance of counsel in the county in which the judgment was rendered within two years after the judgment becomes final. All other habeas corpus petitions, including petitions filed pursuant to section 394.9215(1)(a), Florida Statutes, must be filed in the county where the facility in which the petitioner is confined is located.

RULE 4.470. POST COMMITMENT PROCEEDINGS

(a) Examination. A respondent committed after a trial is entitled to examination of his or her mental condition at least one time each year. Examinations may be ordered more frequently at the discretion of the court.

(b) Expert. The respondent may retain, or if indigent, the court may appoint, a qualified professional to conduct the examination. The examiner must be given access to all records concerning the respondent.

(c) Court Review. The report stating the result of any examination conducted pursuant to paragraph (a) or (b) must be provided to the court for review.

(d) Probable cause review. A respondent who receives written notice of the examination, and waives his or her rights to confidentiality of the result, and who petitions the court over the objection of the director of the facility where the respondent is housed, has the right to a hearing limited to determining whether probable cause exists to believe the respondent's condition has so changed, that it is safe for the respondent to be at large, and that the respondent will not engage in acts of sexual violence if discharged. Both parties may present evidence. The respondent has the right to be represented by counsel and the right to be present at the hearing.

(e) Non-jury trial. If it is determined that there is sufficient probable cause to believe it is safe to release the person, the court must set the petition for a non-jury trial.

(f) State Experts. The state has the right to have the person examined by professionals chosen by the state prior to the trial.

(g) Burden of persuasion. The burden is on the state to prove, by clear and convincing evidence, that it is not safe for the person to be at large and that, if released, the person is likely to engage in acts of sexual violence.

(h) Appeal. At the conclusion of any trial conducted under this rule, the judge must enter an appropriate final judgment which is appealable pursuant to the applicable Rules of Appellate Procedure.