



June 4, 2013

Via e-mail

Florida Supreme Court
Attn: Clerk's Office
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Tallahassee, FL 32399
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**Comment: In re Amendments to Florida Rule of Civil Procedure 1.490(c)
Case No. SC13-684**

Honorable Justices:

We respectfully submit the following comment in response to the recent amendment of Florida RCP 1.490(c). We are concerned that the new deadline to object to an order of referral to a magistrate handling residential mortgage foreclosures is ambiguous when the order is served within the first 20 days after service of the initial process.

Pursuant to RCP 1.490(c)(1)(A), an objection to a referral to a magistrate must be filed within 10 days after service of the order. RCP 1.490 (c)(1)(C) further provides, "If the order of referral is served within the first 20 days after the service of the initial process, the time to file an objection is extended to the time within which to file a responsive pleading."

In stating that the time to file an objection is extended, RCP 1.490(c)(1)(C) seems intended to ensure that the objection to the referral is not due before a response to the initial pleading is due. As written, however, RCP 1.490(c)(1)(C) is ambiguous because the time in which a responsive pleading is due may not be later than the 10-day deadline to object to the referral pursuant to RCP 1.490(c)(1)(A).

Under RCP 1.140(a)(1) a response to a complaint generally is due 20 days after service of the complaint. Absent RCP(c)(1)(C), if the order of referral is served by hand 20 days after service of the initial process, for example, the objection would be due 10 days later per RCP 1.490(c)(1)(A). This would be 30 days after service of process and 10 days past the deadline to respond to the complaint. Under RCP 1.490 (c)(1)(C), the objection would be due on the day the response to the complaint is due. Since this would not be extending the time to file the objection, RCP 1.490 (c)(1)(C) would not seem to apply, resulting in an ambiguous deadline.

To reduce the potential for confusion, we suggest that RCP 1.490(c)(1)(C) be deleted and RCP 1.490(c)(1)(A) be revised to state, "A written objection to the referral to a magistrate handling residential mortgage foreclosures must be filed within 10 days of the service of the order of referral, or within the time to respond to the initial pleading, whichever is later". In addition, RCP 1.490(c)(2) should be revised to conform to any changes made to RCP 1.490(c)(1).

We also are concerned about an ambiguity in RCP 1.490(c)(1)(B). The “hearing” referred to in this subsection is not specified or readily ascertainable from the context of RCP 1.490 and thus this rule is vague.

Currently, the subsection states, “If the time set for the hearing is less than 10 days after service of the order of referral, the objection must be filed before commencement of the hearing”.

We suggest that the hearing be identified by name, for example, “. . . before commencement of the hearing on an objection to referral to a magistrate”.

Thank you very much for considering our comments.

Sincerely,

/s/

Ellie Bertwell, Esq.
[Not a member of the Florida State Bar]

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Certificate of Service

I certify that a copy of the this Comment letter has been furnished via e-mail to the Honorable Margaret O. Steinbeck, Commission Chair on June 3, 2013.