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SETTING A CAUSE FOR TRIAL
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Fla. R. Civ. P. 1.440 provides

“Rule 1.440 Setting Action for Trial

(a) **When at Issue.** An action is at issue after any motions directed to the last pleading served have been disposed of or, if no such motions are served, 20 days after service of the last pleading. . . .

(b) **Notice for Trial.** Thereafter any party may file and serve a notice that the action is at issue and ready to be set for trial. . . .

(c) **Setting for Trial.** If the Court finds the action ready to be set for trial, it shall enter an order fixing a date for trial. . . .”

Circuit Courts around the State have interpreted Paragraph (c) to mean that the Court has discretion as to whether or not to set a case for trial even though the pleadings are settled. There have now been at least three reported cases which make it clear that once the requirements of Rule 1.440(a) are met, a trial judge does not have the discretion to refuse to set a case for trial for any reason. Trial judges in some circuits insist that all discovery must be completed before a trial will be set. The problem with that thinking is that after discovery is finally concluded there will necessarily be a substantial amount of “dead time” between the time discovery is concluded and the time of the actual trial. The Courts have made it clear that such a practice is not permitted under the Rules.

In Garcia v. Linnicare, Inc., 906 So. 2d 1268 (Fla. 5th DCA 2005), the plaintiff sought a writ of mandamus to compel the trial court to set a case for trial.

Despite the fact that several notices for trial had informed the Judge of its readiness under Rule 1.440, the Judge refused to set the case because discovery had not yet been completed. In granting the petition and issuing a writ of mandamus, the Fifth District held:

“In this medical malpractice case, Petitioner filed several notices for trial after the closure of the pleadings. In response, Respondents filed various objections claiming that the case is not ready for trial because of trial conflicts and outstanding discovery. On each occasion, the trial court sustained the objections, concluding that it would not set the case for trial until discovery had been completed. We think the trial court’s conclusion misapprehends the applicable rule. Procedural readiness for trial differs from actual readiness for trial. It is the former, coupled with a properly filed “Notice for Trial,” that imposes upon the court the mandatory duty to set a trial date. *Kubera v. Fisher*, 483 So. 2d 836 (Fla. 2d DCA 1986).”

In *Rolle v. Birken*, 33 Fla. L. Weekly D194 (Fla. 3d DCA, Jan. 9, 2008), the same question arose. There the trial judge refused to set a case for trial even though it was at issue under Rule 1.440 because of internal operating procedures adopted by the Circuit which required the completion of a certificate of readiness for trial by all parties. Obviously, there is often disagreement between plaintiff and defense counsel as to when they are ready for trial. It is not necessarily advantageous to the defense to have an early trial date and one could assume there would be great difficulty in getting an agreement on such a certificate of readiness. In granting the writ of mandamus, the Third District held:

“Once a case is procedurally at issue and upon

the filing of a proper notice for trial, the court must act upon the notice within a reasonable time and give the parties a trial date. Fla. R. Civ. P. 1.440(a); *Garcia v. Lincare, Inc.*, 906 So. 2d 1268, 1269 (Fla. 5th DCA 2005); *Ivans v. Greenbaum*, 613 So. 2d 130 (Fla. 3d DCA 1993); *Kubera v. Fisher*, 483 So. 2d 836, 838 (Fla. 2d DCA 1986). Accordingly, the application for writ of mandamus is granted. *See id.* Internal operating procedures of the court must give way to the rules of procedure promulgated by the Florida Supreme Court.”

In the Fourth District, the case of *Little v. Brave*, 870 So. 2d 966 (Fla. 4th DCA 2004) stands for the same proposition. In that case, a trial judge here in Palm Beach County refused to set a case for trial which was at issue under the Rules. Once again, a petition for writ of mandamus was requested and issued by the Fourth District. In that case at page 966, the Court held:

“Because setting a cause for trial in accordance with Florida Rule of Civil Procedure 1.440 is a mandatory duty, we grant the petition and require that the case be set for trial. *See Pate v. Sawaya*, 663 So. 2d 679, 679-80 (Fla. 5th DCA 1995); *Ivans v. Greenbaum*, 613 So. 2d 130, 130 (Fla. 3d DCA 1993); *Globe Life & Accident Ins. Co. v. Preferred Risk Mut. Ins. Co.*, 539 So. 2d 1192, 1193 (Fla. 1st DCA 1989).

It is apparent that a trial judge does not have discretion as to whether or not to set a case for trial once it is at issue under the Rules. The trial judge, of course, may take into consideration whether or not discovery is completed or any other factor with regard to the date on which the case should be set and, where appropriate, motions for continuance can be granted when justified. The Court

cannot, however, refuse to set the case for trial once it is at issue. To do so violates the Rules of Procedure which govern our Courts.

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