

Proposed rule amendments from the Civil Procedure Rules Committee

The Civil Rules Committee invites comments on the proposed rule amendment anticipated to be included in a report to the Court regarding Rule 1.530 (Motions for New Trial and Rehearing; Amendments of Judgments; Remittitur; or Additur) and deletion of Rule 1.535 (Remittitur and Additur). The full text of the proposal can be found on The Florida Bar’s website at www.floridabar.org/rules/ctproc/.

Interested persons have until May 30, 2021, to submit any comments, electronically, to Ceci Berman, Chair of the Civil Rules Committee, at cberman@bhappeals.com, and to the Bar staff liaison Mikalla Davis at midavis@floridabar.org.

<p>Rule 1.530 (Motions for New Trial and Rehearing; Amendments of Judgments; Remittitur; or Additur)</p>	<p>38-0-0</p>	<p>In subdivision (b) and (c), replaces “shall” with “must” for clarity for the reader.</p> <p>In subdivision (d), replaces “entry of” with “date of filing of the” for clarity for the reader.</p> <p>In the title of subdivision (e), replaces “Case” with “Action” for clarity for the reader.</p> <p>In the first sentence of subdivision (e), replaces “When an action has been tried by the court without a jury” with “In a non-jury action” for clarity for the reader.</p> <p>In subdivision (f), replaces “shall specify” with “must state” for greater clarity for the reader.</p>
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		In subdivision (g), replaces “entry of” with “date of filing of the” for clarity for the reader. Adds a new subdivision (h) that relocates Rule 1.535 to Rule 1.530 for clarity for the reader.
Rule 1.535	38-0-0	Relocates to Rule 1.530 for clarity for the reader.

**RULE 1.530. MOTIONS FOR NEW TRIAL AND REHEARING;
AMENDMENTS OF JUDGMENTS; REMITTITUR OR
ADDITUR**

(a) Jury and Non-Jury Actions. A new trial may be granted to all or any of the parties and on all or a part of the issues. On a motion for a rehearing of matters heard without a jury, including summary judgments, the court may open the judgment if one has been entered, take additional testimony, and enter a new judgment.

(b) Time for Motion. A motion for new trial or for rehearing ~~shall~~must be served not later than 15 days after the return of the verdict in a jury action or the date of filing of the judgment in a non-jury action. A timely motion may be amended to state new grounds in the discretion of the court at any time before the motion is determined.

(c) Time for Serving Affidavits. When a motion for a new trial is based on affidavits, the affidavits ~~shall~~must be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

(d) On Initiative of Court. Not later than 15 days after ~~entry of the~~ date of filing of the judgment or within the time of ruling on a timely motion for a rehearing or a new trial made by a party, the court of its own initiative may order a rehearing or a new trial for any reason for which it might have granted a rehearing or a new trial on motion of a party.

(e) When Motion Is Unnecessary; Non-Jury Case Action. ~~When an action has been tried by the court without a jury~~In a non-jury action, the sufficiency of the evidence to support the judgment may be raised on appeal whether or not the party raising the question has made any objection thereto in the trial court or made a motion for rehearing, for new trial, or to alter or amend the judgment.

(f) Order Granting to Specify Grounds. All orders granting a new trial ~~shall specify~~must state the specific grounds therefor. If such an order is appealed and does not state the specific grounds, the appellate court shall relinquish its jurisdiction to the trial court for entry of an order specifying the grounds for granting the new trial.

(g) Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment shall be served not later than 15 days after ~~entry of~~the date of filing of the judgment, except that this rule does not affect the remedies in rule 1.540(b).

(h) Motion for Remittitur or Additur.

(1) Not later than 15 days after the return of the verdict in a jury action or the date of filing of the judgment in a non-jury action, any party may serve a motion for remittitur or additur. The motion must state the applicable Florida law under which it is being made, the amount the movant contends the verdict should be, and the specific evidence that supports the amount stated or a statement of the improper elements of damages included in the damages award.

(2) If a remittitur or additur is granted, the court must state the specific statutory criteria relied on.

(3) Any party adversely affected by the order granting remittitur or additur may reject the award and elect a new trial on the issue of damages only by filing a written election with 15 days after the order granting remittitur or additur is filed.

Committee Notes

1992 Amendment. In subdivision (e), the reference to assignments of error is eliminated to conform to amendments to the Florida Rules of Appellate Procedure.

2013 Amendment. Subdivisions (b) and (g) are amended to change the deadlines for service of certain motions from 10 to 15 days after the specified event. Subdivision (d) is amended to change the deadline for a court to act of its own initiative.

Court Commentary

1984 Amendment. Subdivision (b): This clarifies the time in which a motion for rehearing may be served. It specifies that the date of filing as shown on the face of the judgment in a non-jury action is the date from which the time for serving a motion for rehearing is calculated.

There is no change in the time for serving a motion for new trial in a jury action, except the motion may be served before the rendition of the judgment.

~~RULE 1.535 — REMITTITUR AND ADDITUR~~

~~(a) Within the time provided in rule 1.530 (b), any party may serve a motion for remittitur or additur. The motion shall state the applicable Florida law under which it is being made, the amount the movant contends the verdict should be, and the specific evidence that supports the amount stated or a statement of the improper elements of damages included in the damages award.~~

~~(b) If a remittitur or additur is granted, the court must state the specific statutory criteria relied on.~~

~~(c) Any party adversely affected by the order granting remittitur or additur may reject the award and elect a new trial on the issue of damages only by filing a written election within 15 days after the order granting remittitur or additur is filed.~~

~~Committee Notes~~

~~**2019 Adoption.** Subdivision (a) defines a “proper motion” as referenced in section 768.74, Florida Statutes. A motion that does not provide for an amount that the movant believes was proven by the evidence at trial is not a proper motion. *Hendry v. Zelaya*, 841 So. 2d 572 (Fla. 3d DCA 2003).~~

~~Subdivision (b) is to assist the appellate court in its review of the order granting remittitur or additur. *Moore v. Perry*, 944 So. 2d 1115 (Fla. 5th DCA 2006) (finding the order deficient for lack of specific reasons for granting the order, but finding sufficient support in comments by the court at the hearing). See also *Kovacs v. Venetian Sedan Service, Inc.*, 108 So. 2d 611 (Fla. 3d DCA 1959) (indicating that an order granting remittitur must state the specific reasons for remittitur because it will convert to an order granting new trial if not accepted); *Adams v. Saavedra*, 65 So. 3d 1185 (Fla. 4th DCA 2011).~~

~~Subdivision (c) provides for a time limit to exercise the right to elect a new trial established in *Waste Management, Inc. v. Mora*, 940 So. 2d 1105 (Fla. 2006).~~