

**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. The party entitled to serve motions directed to the last pleading may waive the right to do so by filing a notice for trial at any time after the last pleading is served. The existence of crossclaims among the parties shall not prevent the court from setting the action for trial on the issues raised by the complaint, answer, and any answer to a counterclaim.

**(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. The notice must include an estimate of the time required, indicate whether the trial is to be by a jury or not and whether the trial is on the original action or a subsequent proceeding, and, if applicable, indicate that the court has authorized the participation of prospective jurors or empaneled jurors through audio-video communication technology under rule 1.430(d). The clerk must then submit the notice and the case file to the court.

**(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. Trial shall be set not less than 30 days from the service of the notice for trial. By giving the same notice the court may set an action for trial. In actions in which the damages are not liquidated, the order setting an action for trial shall be served on parties who are in default in accordance with Florida Rule of General Practice and Judicial Administration 2.516.

**(d) Applicability.** This rule does not apply to actions to which chapter 51, Florida Statutes (1967), applies or to cases designated as complex pursuant to rule 1.201.

**Committee Notes**

**1972 Amendment.** All references to the pretrial conference are deleted because these are covered in rule 1.200.

**1980 Amendment.** Subdivision (b) is amended to specify whether the trial will be on the original pleadings or subsequent pleadings under rule 1.110(h).



**1988 Amendment.** Subdivision (c) was amended to clarify a confusion regarding the notice for trial which resulted from a 1968 amendment.

**2012 Amendment.** Subdivision (c) is amended to reflect the relocation of the service rule from rule 1.080 to Fla. R. Jud. Admin. 2.516.

### **Court Commentary**

**1984 Amendment.** Subdivision (a) is amended by adding a sentence to emphasize the authority given in rule 1.270(b) for the severing of issues for trial.

Subdivision (c) is amended to delete the reference to law actions so that the rule will apply to all actions in which unliquidated damages are sought.

