

FLORIDA BAR EXAMINATION
ANSWER KEY TO CIVIL PROCEDURE

- | | | | | |
|------|------|------|-------|-------|
| 1. c | 4. c | 7. a | 10. c | 13. d |
| 2. c | 5. c | 8. d | 11. d | 14. b |
| 3. b | 6. c | 9. c | 12. d | 15. c |

Bonus

26 C

40 B

41 C

17 B

69 A

136 D

FLORIDA BAR EXAMINATION

ANSWERS TO CIVIL PROCEDURE

Answer to Question 1

The correct answer is (c). An answer must generally be served within 20 days after service of the original process and initial pleading upon the defendant. *Fla. R. Civ. P.* 1.140(a)(1). The measuring date is the date of service of the pleadings, not their date of filing.

Answer to Question 2

The correct answer is (c). Florida law provides for pre-suit screening of medical malpractice claims. Fla. Stat. ch. 766.106. One facet is a time requirement for a claimant's service of notice of intent to initiate litigation ("notice") against a prospective defendant. *Fla. R. Civ. P.* 1.650. A claimant cannot file an action against any defendant until at least 90 days after the claimant mailed the notice to that defendant. *Fla. R. Civ. P.* 1.650(d)(2). The action may be filed against any party at any time after the notice was mailed and after the claimant has received a written rejection of the claim from that party. *Id.*

Answer to Question 3

The correct answer is (b). A party must file a motion to disqualify within 20 days from discovering the motion's factual grounds. *Fla. R. Gen. Prac. & Jud. Admin.* 2.330(g). A party must promptly serve the motion on the court for an immediate ruling. *Id.*

Answer to Question 4

The correct answer is (c). A reply to a counterclaim is a responsive pleading. A reply is used to raise defenses in avoidance of affirmative defenses. Padovano, *Civil Practice*, § 7.24. "A reply is necessary to raise an issue amounting to an affirmative defense to the affirmative defense." *Id.* A reply, if required, must be served within 20 days after service of an answer. *Fla. R. Civ. P.* 1.140(a)(1).

Answer to Question 5

The correct answer is (c). One serves a document by an e-mail sent to every address designated by the attorney or party with either (a) a copy of the document in PDF format attached or (b) a link to the document on a clerk-maintained website. *Fla. R. Gen. Prac. & Jud. Admin.* 2.516(b)(1)(F). Among other requirements, when serving a document by e-mail, one must attach the document to an e-mail having a subject line starting with this capitalized phrase -- "SERVICE OF COURT DOCUMENT," followed by the relevant case number and case style of the proceeding. *Fla. R. Gen. Prac. & Jud. Admin.* 2.516(b)(1)(F)(i).

Answer to Question 6

The correct answer is (c). Florida Circuit Courts are courts of general jurisdiction. They possess

exclusive original subject-matter jurisdiction over the following matters:

- all actions at law not cognizable in the county courts;
- probate matters such as wills, trusts, and guardianships;
- cases in equity and all juvenile cases except certain traffic offenses;
- felonies and misdemeanors arising out of concurrently charged felonies;
- cases challenging tax matters including assessments;
- ejectment actions; and
- actions involving the title and boundaries of real property.

Fla. Stat. ch. 26.012(2)(a)-(g).

Answer to Question 7

The correct answer is (a). To request a waiver of personal service, the plaintiff must include with the notice of filing the complaint a written request for a written waiver of personal service from the defendant. *Fla. R. Civ. P.* 1.070(i)(2). The plaintiff must provide an additional copy of the notice and request, including the waiver, with a prepaid means for the defendant to comply in writing by returning the same to plaintiff. *Fla. R. Civ. P.* 1.070(i)(2)(G).

Answer to Question 8

The correct answer is (d). A party against whom a claim, counterclaim, cross claim, or third-party claim is asserted or a declaratory judgment is sought can move for summary judgment at any time, with or without supporting affidavits. *Fla. R. Civ. P.* 1.510(b). A party seeking to recover on a claim, counterclaim, cross claim, or third-party claim or to obtain a declaratory judgment, with or without supporting affidavits, can move for summary judgment any time after 20 days from the commencement of the action or after an adverse party serves a motion for summary judgment. *Fla. R. Civ. P.* 1.510(a).

Answer to Question 9

The correct answer is (c). An attorney of record must sign every pleading and paper of a party represented by the attorney. *Fla. R. Gen. Prac. & Jud. Admin.* 2.515(a). The signed pleading or paper must state the attorney's address, phone number, email address, and bar number. *Id.*

Answer to Question 10

The correct answer is (c). A defending party's permissive counterclaim can state any claim that the party has against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim. *Fla. R. Civ. P.* 1.170(b). This counterclaim usually does not require filing with the defending party's initial pleading if it is filed in a separate action. If evidence indicates that the joinder of a claim and counterclaim could cause prejudice or inconvenience, then they are severable and subject to separate trials. *Fla. R. Civ. P.* 1.270(b); *Travelers Express v. Acosta*, 397 So. 2d 733 (Fla. Dist. Ct. App. 3 1981).

Answer to Question 11

The correct answer is (d). A party seeking to recover on a claim, counterclaim, cross claim, or third-party claim or to obtain a declaratory judgment, with or without supporting affidavits, can move for summary judgment any time after 20 days from the commencement of the action or after an adverse party serves a motion for summary judgment. *Fla. R. Civ. P.* 1.510(a). A party against whom a claim, counterclaim, cross claim, or third-party claim is asserted or a declaratory judgment is sought can move for summary judgment at any time, with or without supporting affidavits. *Fla. R. Civ. P.* 1.510(b).

Answer to Question 12

The correct answer is (d). The following are valid means of personal service in Florida:

- hand delivery to a defendant (*Fla. Stat.* ch. 48.031(1)(a));
- hand delivery at: (1) a defendant's usual place of abode; (2) by leaving the summons and complaint with a person over 15 years of age who resides there; and (3) informing the person of the process's contents (*Id.*); or
- leaving the summons and complaint at defendant's usual place of abode if a person residing there who meets the above stated qualifications to receive service has evaded service by an officer or process server. Padovano, *Civil Practice*, § 8.3.

Answers (a) and (b) are incorrect because they contain erroneous legal reasoning. Answer (c) is incorrect because there is no requirement that the defendant must have avoided service in order for hand delivery at the defendant's usual place of abode to occur as stated above.

Answer to Question 13

The correct answer is (d). If the initial process (i.e., summons) and initial pleading (i.e., complaint) is not served on a defendant within 120 days after filing of the complaint, a Florida court must, on its own initiative after notice or on motion: (1) direct that the service be made within a specified time; (2) dismiss the action without prejudice; or (3) drop the defendant as a party. *Fla. R. Civ. P.* 1.070(j). The court, however, must extend the time for service for an appropriate period if the plaintiff shows good cause or excusable neglect for failing to comply with this rule. *Id.*

Answer to Question 14

The correct answer is (b). County courts lack jurisdiction over actions at law with an amount in controversy that exceeds a specific amount. The amount depends upon the date that the case commenced. The jurisdiction extends to cases in which the matter in controversy does not exceed, exclusive of interest, costs, and attorney fees:

1. If filed on or before December 31, 2019, the sum of \$15,000.
2. If filed on or after January 1, 2020, the sum of \$30,000.
3. If filed on or after January 1, 2023, the sum of \$50,000.

This sum is measured by the amount claimed instead of the amount that is recovered.

Answer to Question 15

The correct answer is (c). Pursuant to the Florida pleading standard, the causes of action and sufficient ultimate facts supporting them must be alleged in the complaint or other pleading asserting a claim for relief. *Fla. R. Civ. P.* 1.110(b)(2). The reason for the rule is to apprise the other party of the facts supporting the cause of action, and to enable the court to decide whether they are sufficient. *Id.* Among other requirements, the complaint must contain a short and plain statement of the ultimate facts showing that a pleader is entitled to relief. *Id.*

Answer to Question 26

The correct answer is (c). Florida Circuit Courts are courts of general jurisdiction. They possess exclusive original subject-matter jurisdiction over the following matters:

- all actions at law not cognizable in the county courts;
- probate matters such as wills, trusts, and guardianships;
- cases in equity and all juvenile cases except certain traffic offenses;
- felonies and misdemeanors arising out of concurrently charged felonies;
- cases challenging tax matters including assessments;
- ejectment actions; and
- actions involving the title and boundaries of real property.

Fla. Stat. ch. 26.012(2)(a)-(g).

Answer to Question 40

The correct answer is (b). A challenge for cause exists where a person selected from bystanders or the body of the county, and not from a lawfully selected list of potential jurors, has served as a juror in the same court within one year. *Fla. R. Civ. P.* 1.431(c)(2).

Answer to Question 41

The correct answer is (c). A defending party's permissive counterclaim can state any claim that the party has against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim. *Fla. R. Civ. P.* 1.170(b). This counterclaim usually does not require filing with the defending party's initial pleading if it is filed in a separate action. If evidence indicates that the joinder of a claim and counterclaim could cause prejudice or inconvenience, then they are severable and subject to separate trials. *Fla. R. Civ. P.* 1.270(b); *Travelers Express v. Acosta*, 397 So. 2d 733 (Fla. Dist. Ct. App. 3 1981).

Answer to Question 69

The correct answer is (a). Testing the existence of personal jurisdiction is generally a two-step approach. First, one must examine whether personal jurisdiction exists under the jurisdiction's *Long-Arm Statute*. Second, one must examine whether jurisdiction satisfies constitutional requirements (most often minimum contacts).* *Venetian Salami Co. v. Parthenais*, 554 So. 2d 499 (Fla. 1989). Florida residents and non-residents are subject to Florida's Long-Arm Statute. *Fla. Stat.* ch. 48.193(1). The Long-Arm Statute lists the types of conduct giving rise to specific jurisdiction over a person. *Fla. Stat.* ch. 48.193(1). This conduct includes breaching a contract in Florida by its nonperformance there. *Fla. Stat.* ch. 48.193(1)(a)7. *Note, this question focuses on Florida's Long-Arm Statute, not the constitutional requirements.

Answer to Question 136

The correct answer is (d) because choices (a), (b), and (c) accurately identify permissible topics for the conference.

Answer to Question 17

The correct answer is (b). When the plaintiff files a completed waiver of service with the court, the action must proceed as if a summons and complaint had been served at the time of filing the waiver. *Fla. R. Civ. P.* 1.070(i)(5). However, it does not preclude the defendant from subsequently objecting to the court's personal jurisdiction or venue. *Fla. R. Civ. P.* 1.070(i)(1). Answer (a) is an incorrect statement of law. Answers (c) and (d) are incorrect because they ignore the above rule.

**FLORIDA BAR EXAMINATION
ANSWER KEY TO CRIMINAL PROCEDURE**

1. c

6. c

11. c

2. a

7. b

12. b

3. a

8. d

13. b

4. c

9. d

14. c

5. c

10. d

15. c

Bonus

44 C

53 D

48 D

36 B

66 B

39 A

131 D

FLORIDA BAR EXAMINATION ANSWERS TO CRIMINAL PROCEDURE

Answer to Question 1

The correct answer is (c). At the first appearance, the State can file a motion seeking pretrial detention of a defendant. *Fla. R. Crim. P. 3.132(a)*. The motion must set forth with particularity the legal grounds and facts on which pretrial detention is requested. *Id.* The motion must certify that the State has received testimony under oath supporting the grounds of, and essential facts alleged in, the motion. *Id.*

Answer to Question 2

The correct answer is (a). An adversarial preliminary hearing is available as a matter of right to a defendant that the State fails to charge in an information or indictment within 21 days from the date of arrest or service of a capias on him or her if a felony is pending against the defendant. *Fla. R. Crim. P. 3.133b(1)*. The subsequent filing of an information or indictment will not eliminate a defendant's entitlement to this proceeding. *Id.*

Answer to Question 3

The correct answer is (a). The *Florida Constitution* provides that "the qualifications and the number of jurors, not fewer than six, shall be fixed by law." *Fla. Const. art. I, § 22*.

The Rules provide for two different numbers of jurors.

- a) Capital Cases: 12
- b) All Other Cases: 6

Fla. R. Crim. P. 3.270.

Answer to Question 4

The correct answer is (c). Six peremptory challenges are allowed if the offense charged is a felony not punishable by death or life imprisonment. *Fla. R. Crim. P. 3.350(a)(2)*. If codefendants are jointly tried, they each will receive the number of peremptory challenges specified. *Fla. R. Crim. P. 3.350(b)*. The State will be allowed the same number of peremptory challenges as all codefendants combined will receive. *Id.*

In this case, because Ben and Jerry are each entitled to six peremptory challenges, for a total of 12 peremptory challenges, the prosecutor is allowed a total of 12 peremptory challenges.

Answer to Question 5

The correct answer is (c). The state must file formal charges against a defendant in custody by information, indictment, or other documents within 30 days from when either the defendant was arrested or a capias was served upon him or her. *Fla. R. Crim. P. 3.134*. If that does not happen

by the 30th day, a Florida court must, with notice to the State, either 1) order the defendant's immediate release on his or her own recognizance on the 33rd day unless the State files formal charges by then; or 2) if the State shows good cause, order the defendant's automatic release on his or her own recognizance on the 40th day unless the State files formal charges by then.

Fla. R. Crim. P. 3.134(1)-(2). The defendant cannot be kept in custody over 40 days unless he or she is formally charged. *Fla. R. Crim. P. 3.134(2)*.

Answer to Question 6

The correct answer is (c). The general rules for a speedy trial without demand are that a defendant charged with a misdemeanor must be brought to trial within 90 days after arrest. *Fla. R. Crim. P. 3.191(a)*.

Answer to Question 7

The correct answer is (b). Within 15 days after a defendant receives the prosecutor's Discovery Exhibit, the defendant must furnish a written list of all witnesses' names and addresses. *Fla. R. Crim. P. 3.220(d)(1)(a)*. Within 15 days after a defendant receives the prosecutor's Discovery Exhibit, the defendant must serve a written Discovery Exhibit disclosing to the prosecutor and allowing the prosecutor to inspect, copy, test, and photograph certain material in the defendant's possession. *Fla. R. Crim. P. 3.220(d)(1)(b)*. Examples of such material include:

- Statements of witnesses other than defendant. *Fla. R. Crim. P. 3.220(d)(1)(b)(i)*.
- Reports or statements of experts made regarding the case. *Fla. R. Crim. P. 3.220(d)(1)(b)(ii)*.
- Tangible papers or objects that defendant intends to use at a hearing or trial. *Fla. R. Crim. P. 3.220(d)(1)(b)(iii)*.

Answer to Question 8

The correct answer is (d). At the defendant's first appearance, a Florida judge must consider all available relevant factors to decide what type of release is necessary to assure the defendant's appearance. *Fla. R. Crim. P. 3.131(b)(2)*. The judge must determine the amount of monetary bail, if any. *Id.* The circumstances that a Florida judge can consider when deciding if a defendant should be released on bail or under other conditions, and what those conditions might be, include:

- nature and circumstances of the offense and the penalty imposed;
- weight of the evidence against the defendant;
- defendant's family ties;
- defendant's length of residence in the community;
- defendant's employment history;
- defendant's financial resources;
- defendant's mental condition;
- defendant's past and present conduct respecting other court dates;
- danger to community posed by defendant's release;

- source of funds for posting bail;
- if defendant is on release pending the resolution of other proceedings; and
- if defendant is on probation, parole, or other release of sentence.

Fla. R. Crim. P. 3.131(b)(3).

Answer to Question 9

The correct answer is (d). A defendant is “indigent” if the defendant cannot pay for an attorney’s services, including investigation costs, without substantial hardship to the defendant or the defendant’s family. *Fla. R. Crim. P. 3.111(b)(4).*

Answer to Question 10

The correct answer is (d). Regardless of a defendant’s legal skills or the complexity of the case, a Florida court cannot deny the defendant’s unequivocal request to represent himself or herself if the court makes a finding on the record that the defendant knowingly and intelligently waived the right to counsel. *Fla. R. Crim. P. 3.111(d)(3).* A waiver made in court must be of record. *Fla. R. Crim. P. 3.111(d)(4).*

Answer to Question 11

The correct answer is (c). A grand jury can indict for any offense. *Fla. R. Crim. P. 3.140(a)(2).*

If a grand jury returns an indictment for an offense not triable in the circuit court, the circuit judge must either 1) issue a summons returnable in the county court; or 2) bail the accused for trial in the county court. The judge, or the circuit court clerk at the judge’s direction, must certify the indictment and file it in the county court. *Id.*

Answer to Question 12

The correct answer is (b). Two exceptions to the constitutional right to pre-trial release apply when a defendant is charged with either a capital offense (i.e., one subject to a death penalty) or an offense punishable by life in prison and: 1) the proof of guilt is evident; or 2) the presumption is great. *Fla. R. Crim. P. 3.131(a).*

Answer to Question 13

The correct answer is (b). After an arrested defendant is taken to police headquarters, a booking officer can issue notice to appear if the officer finds a likelihood that the accused will appear as directed, pursuant to a reasonable investigation of the accused’s:

- residence and length of residence in the community;
- family ties in the community;
- employment record;
- character and mental condition;

- past record of convictions; or
- past history of appearance at court proceedings.

Fla. R. Crim. P. 3.125(c)(1)-(6).

Answer to Question 14

The correct answer is (c).

Answer to Question 15

The correct answer is (c) because here the formal charging of Defendant constituted the earliest time at which counsel could have been appointed. Counsel should be appointed at the earliest of either that event, custodial restraint, or the first appearance. Thus the other answers are incorrect. (a) is an incorrect statement of the law.

Answer to Question 44

The correct answer is (d). Generally a Florida trial judge should, to determine the voluntariness of a defendant's plea, place the defendant under oath, personally address him or her, and ascertain if the defendant understands several rights and other considerations including, but not limited, to the following:

- the nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law;
- if the defendant is not represented by an attorney, that the defendant has the right to be represented by an attorney at every stage of the proceeding and, if necessary, one will be appointed to represent him or her;
- the defendant is entitled to:
 - plead not guilty or to persist in that plea if it has already been made;
 - be tried by a jury;
 - assistance of counsel at trial;
 - compel the attendance of witnesses at trial;
 - confront and cross-examine witnesses at trial; and
 - not be compelled to incriminate himself or herself at trial.
- that if the defendant pleads guilty or *nolo contendere* without express reservation of the right to appeal, the defendant gives up the right to appeal; and
- that by pleading guilty or *nolo contendere* the defendant waives the right to a trial.

Fla. R. Crim. P. 3.172c)(1)-(5).

Answer to Question 53

The correct answer is (d). A defendant is "indigent" if the defendant cannot pay for an attorney's services, including investigation costs, without substantial hardship to the defendant or the

defendant's family. *Fla. R. Crim. P.* 3.111(b)(4).

Answer to Question 48

The correct answer is (d). At the defendant's first appearance, a Florida judge must consider all available relevant factors to decide what type of release is necessary to assure the defendant's appearance. *Fla. R. Crim. P.* 3.131(b)(2). The judge must determine the amount of monetary bail, if any. *Id.* The circumstances that a Florida judge can consider when deciding if a defendant should be released on bail or under other conditions, and what those conditions might be, include:

- nature and circumstances of the offense and the penalty imposed;
- weight of the evidence against the defendant;
- defendant's family ties;
- defendant's length of residence in the community;
- defendant's employment history;
- defendant's financial resources;
- defendant's mental condition;
- defendant's past and present conduct respecting other court dates;
- danger to community posed by defendant's release;
- source of funds for posting bail;
- if defendant is on release pending the resolution of other proceedings; and
- if defendant is on probation, parole, or other release of sentence.

Fla. R. Crim. P. 3.131(b)(3).

Answer to Question 36

The correct answer is (b). Prosecutions for misdemeanors, municipal ordinances, and county ordinances may be by notice to appear. *Fla. R. Crim. P.* 3.140a)(2).

Answer to Question 39

The correct answer is (a). A discharge exonerates a defendant from the prosecution's charges. A discharge from a crime under the speedy trial rule operates to bar prosecution on the crimes charged and of all other crimes on which trial has not commenced nor conviction obtained nor adjudication withheld and that were or might have been charged as a result of the same conduct or criminal episode as a lesser degree or lesser included offense. *Fla. R. Crim. P.* 3.191(n).

Answer to Question 66

The correct answer is (b). At least two defendants can be charged in the same indictment or information if:

- each defendant is charged with accountability for each offense charged;
- each defendant is charged with conspiracy and some of the defendants are also charged with one or more offenses that were allegedly committed in furtherance of the

- conspiracy; or
- even in the absence of conspiracy charges and when all defendants are not charged in each count, it is alleged that the several offenses charged were part of a common scheme or plan.

Fla. R. Crim. P. 3.150(b)(1)-(3).

Defendants in this situation can be charged in one or more counts together or separately, and they do not all need to be charged in each count. *Id.*

Answer to Question 131

Answer (d) is the correct answer because (a), (b), and (c) describe the Speedy Trial Rule.