

Litigating at Light Speed

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In this age of spiraling litigation and chronic court congestion, the concept of light speed litigation might seem oxymoronic to some. Frequently, litigants wait years before achieving a final litigated resolution. And many civil dockets have become legendary for difficulties in getting court time for anything more than a routine procedural hearing. Even in the domain of criminal cases, the constitutional guarantee of a truly speedy trial frequently seems more aberrational than operational.¹

Even though frustrating for the public, snail-paced litigation does minimize the risk of ambush and maximize the potential for thoughtful adjudication while improving prospects for settlement along the way. And yet, the occasion arises when velocity is a necessity and litigants must eject from the comfort zone of painstaking preparation and confront drastic abbreviation of the usual deliberative processes. Ironically enough, the cases that permit minimal time are often not minimal cases. Extreme examples include election controversies, highlighted by the dizzying pace of the trial and appellate proceedings during the 2000 presidential recount litigation. Cases that are less momentous but also urgent for the litigants and their counsel range from trade secret injunctions and prejudgment attachments to emergency child support orders. Further, many trial court events that command instant litigation are followed by correspondingly fast appellate phases, which can, at times, outrace even an expedited trial court proceeding.

This article examines the legal and practical dynamics of litigating at light speed. Beginning with a basic overview of the procedural

framework, this article then turns to examples of judicial accelerations that correspond to the imperatives of quick justice. (Some, but not all, of the practical considerations are reviewed, leaving to lawyers working around the clock the also relevant analysis of espresso coffees and other sleep deprivation strategies.)

The Legal Framework for Faster Tracks

The usual rules for trial court litigation do not, in the usual cases, provide for immediate results. While the federal and Florida rules of procedure proclaim a commitment to the “just, speedy and inexpensive determination of every action,” the word “speedy” is truly a relative concept. In fact, speed is often lost in the thicket of numerous other rules that dictate the ability to file dismissal motions before a case can be answered and the necessity of getting an answer filed, to bringing the case at issue before it can be set for trial.² Once various months of discovery are added, few realistic timelines promise a civil trial within the year a case is filed.

Especially because such unhurried paces can often be protracted further by myriad time extensions and rescheduling, rapid fire methodologies might seem rare.³ But a number of energy sources can fuel the jet engines of certain categories of litigation.

• **Injunctive Relief.** One regular contributor to litigation late nights is the injunction that can be invoked within hours by an ex parte submission citing dire circumstances⁴ based on sworn factual statements⁵ and backed by a healthy bond to secure the opposing party from possible harm.⁶ Even if the ex parte submission is successful, there is usually no rest for the weary counsel. To the contrary, injunction rules guarantee the other party a virtually immediate opportunity to race into

court for an evidentiary hearing, often resulting in a sprint through a mini-trial on core issues of the entire litigated controversy.⁷ Alternatively, if an injunction seeker opts to provide prior notice of hearing to the other side — a prerequisite unless prior notice would undermine the emergency relief being requested — the parties could proceed on an expedited track requiring an evidentiary hearing, sometimes within a few weeks, days, or even hours.

Whether proceeding at the outset through an ex parte application or by providing prior notice to the other side, the emergency injunction scenarios, therefore, require litigants to be prepared to try much of their case at the beginning of litigation rather than at its conclusion.

• **Pretrial Asset Seizure.** Another major source of emergency relief is found in remedies for the seizure of assets prior to the time of trial and final judgment. Even in federal court, these processes follow the procedural steps prescribed by Florida law,⁸ which, based on due process considerations, substantially parallel the mechanisms of preliminary injunctions.⁹

Thus, when ex parte seizures are available, they ordinarily require sworn declarations establishing the legitimacy of the claim as well as a basis for judicial action without prior notice. Due process further requires the right to a very prompt post-seizure hearing with a full opportunity for the opposition to be heard and present its own evidence.¹⁰ Also corresponding to injunction practice,¹¹ the movant for provisional relief such as pre-judgment replevin usually has the option of seeking an adversarial hearing, preceded by notice to the other side, before assets may be attached.¹² As with other pre-judgment seizures, a substantial bond is almost invariably required.¹³

• **Declaratory Relief.** Along with preliminary injunctions¹⁴ and statutory pre-judgment remedies, another major fuel for the vehicle of expedited litigation is found in the declaratory relief statute.¹⁵ Both federal law and most state statutes provide that certain controversies requiring a judicial declaration of rights — for example, construing a contract or statute — can be heard on an expedited basis. In most respects, a declaratory relief action is like other civil lawsuits that ordinarily require pleadings, discovery, and the usual components of pretrial and trial procedures.¹⁶ Unlike most other cases, though, declaratory relief can be speeded to a faster conclusion through specific provisions authorizing expedited treatment that fast-moving litigants would typically seek to invoke. Thus, F.S. §86.111, like Federal Rule 57, provides that a “court may order a speedy hearing of an action for declaratory judgment and may advance it on the calendar.”¹⁷ As one authority described this principle, it “is so sensible and appropriate that there is a dearth of decided cases involving that provision.”¹⁸ Significantly, though, there is “no power” to shorten the time in which a defendant may file an answer.¹⁹ Moreover, even for a declaratory relief action, no trial can be conducted until the answer is filed.²⁰ Because the declaratory relief framework does not provide shortcuts during the 20-day period for responding to a complaint or alter the need for a case to be at issue before it can even be set for trial, such actions frequently travel at the pace of ordinary civil litigation.²¹

• **The Initial Filing: Fast and Focused.** Potentially, the initial filing creates a major advantage for the plaintiff. Especially when defendants are not anticipating the litigation, a plaintiff can seize the initiative, telling its side of the story through a detailed and compelling submission, keeping the adversary on the defensive by scheduling hearings with minimal response time. Especially if the court determines that the submission warrants expedited treatment,

plaintiffs can secure tactical momentum from the inception of the case that may endure all the way to a successful conclusion.

A plaintiff needs to demonstrate that it has not been sitting on its rights before effectively demanding that opposing counsel as well as judicial officers drop everything else in order to respond to the plaintiff’s asserted state of emergency. Often embodied in the principle of laches, that principle is a relative concept which does not employ specific timelines. As explained in broad terms, laches is “the principle that equity will not aid a plaintiff whose unexcused delay, if the suit were allowed, would be prejudicial to the defendant.”²² Nor does it always appear as an explicitly articulated factor when judges decline the invitation for an emergency intervention. Nevertheless, any sense that a supposedly urgent application could have been brought much sooner will certainly downgrade chances for fast judicial action and could impair prospects for ultimate success.

Just as importantly, the litigation projectile should consist of a speeding bullet rather than a shotgun blast of alternative theories. After all, court time is a limited resource that will obviously be maximized if the breadth of legal theories is minimized. Moreover, wide-ranging claims suggest an opportunity for protracted defense strategies, since there would be that many more allegations and theories requiring preparation time for a fair response.

The submission should be fast and focused. It should also be compelling. Although the need for relative brevity counsels against detailing the entire life and times of a controversy, in many instances, it is essential to offer more than generalities in order to command judicial alacrity. For example, the complaints filed in the 2000 recount litigation to contest the results of the Florida Presidential election were remarkably concise documents, especially in light of the usual standards for high-profile litigation. The first complaint filed by Vice

President Albert A. Gore seeking to extend the time for recounting votes was a three-page pleading asking for injunctive and declaratory relief in a single count. The complaint to contest the certification in favor of George W. Bush, while lengthier, contained only the five counts that were actually to be tried. In a similar vein in a local election case, the absentee ballots in a major Florida city’s mayoral election were successfully challenged based upon a one count complaint specifying only the single remedy of invalidating all absentee ballots in order to overturn the mayor’s election. Although the complaint was prepared overnight and necessarily included broad terms to encompass future factual developments, the pleading also included such specifics as the name of one particular dead voter whose absentee ballot was counted.

• **Defense Strategies: The Quick Counter-punch and More.** Because of the formidable advantage plaintiffs sometimes enjoy when emergency litigation is filed, the initial defense options are usually transformed and must be conformed to the abruptly imposed timeframe. Especially when a defendant first learns of litigation because a hard-hitting injunction has been issued or important assets have been frozen, the usual suspects of defense strategy may be temporarily preempted by the imperative of immediately submitting a written opposition or attending a hearing with minimal notice. While the defense may have legitimate issues to raise about needing more time, once a court has accorded emergency status to a matter, otherwise plausible efforts to resist the timetable embraced by the court might suggest undue reluctance, even weakness. In such instances, litigants may have little choice but to clear schedules and assemble the legal and management team necessary to give full attention to the necessary tasks in what may equate to crisis conditions.

Unlike a plaintiff’s clear preference for well-focused submissions, a defendant’s response to an alleged emergency should often include, to

the extent that time permits, all of the credible, factual, and legal issues that could establish one or more bases for rejection of the requested relief. The principal issues obviously warrant the most attention. Even so, defense responses frequently include a wide-ranging treatment of the issues to present not only the factual substance of the controversy, but also the procedural, even technical objections that, whenever appropriate, can assure a fuller and more deliberative process. While pleas for more time may not be successful, those issues clearly have to be preserved.

In some instances, if a defendant faces a filing alleging an emergency requiring expedited consideration, but the matter has not yet been judicially accelerated, the defendant should seize the opportunity to demonstrate that the plaintiff's proclamation of imminent peril may be overstated. Additionally, such a response should sufficiently describe the gravity and complexity of the issues, defendant's position on the merits, succinctly identify any needed discovery and further briefing, and realistically project the requirements for the key hearings. In all events, though, the clear message should be the defendant's need for a limited time for truly necessary preparation, rather than an open-ended stratagem for running out the clock.

Expedited Discovery in Expedited Litigation

Whatever may be the procedural context for fast-moving litigation, the general strictures for civil discovery provide that, for cause, the deadlines for responding to discovery can be shortened, often drastically.²³ This broad authority under Florida Rules of Civil Procedure 1.310(a), 1.340(a), 1.350(b), and 1.370(a) as well as Federal Rules of Civil Procedure 32b(d), 32(b), 33(a), and 34(b) have been utilized effectively in injunction cases to secure the essential discovery needed to prepare for hearings that can be virtually case dispositive. "Expedited discovery is particularly appropriate when a plaintiff seeks injunctive

relief because of the expedited nature of injunctive proceedings."²⁴

When seeking judicially imposed acceleration of discovery, lawyers should emphasize the gravity of their crucial application for relief. "Expedited discovery has been ordered where it would 'better enable the court to judge the parties' interests and respective chances for success on the merits' at a preliminary injunction hearing."²⁵ As another court emphasized, "expedited discovery should be granted when some unusual circumstances or conditions exist that would likely prejudice the party if he were required to wait the normal time."²⁶ Even with legitimate emergencies, though, consideration should be given to tailoring discovery requests with a precision that focuses upon what is truly needed rather than all that is wanted. Moreover, to the extent that most evidentiary needs can be met through a combination of a movant's own files and witnesses, discovery motions can be reduced and the ability to achieve a speedy result can be enhanced immeasurably. In all events, litigants who demand expedited discovery should also prepare to respond to the corresponding discovery demands that their adversaries will assuredly file.²⁷

• Scheduling the Hearing.

Investigative groundwork and written submissions are obviously critical, but often the most significant factor for the plaintiff is immediately securing sufficient time for a decisive hearing. In some courts, labeling a matter as an emergency will, by itself, command drastically expedited treatment. Such is not a claim to be made lightly, though, as many a chastened lawyer can attest. In the event that a litigant seeks prehearing rulings to accelerate discovery or to address other preliminary matters, it may be productive to request an immediate status conference to address those concerns. Except for scenarios that require ex parte orders to protect assets and evidence, expedited cases generally benefit from a limited hearing within days of filing the initial pleading, to secure a judicial

roadmap marking out the express lanes as well as the possible traffic jams. "Setting a pretrial hearing and ordering expedited discovery, if necessary, can attenuate any threat to orderly proceedings."²⁸

In all events, after addressing the first issue as to why an application is so urgent, a plaintiff must also speak to the inevitable inquiry about how much time will be required. This latter issue can present a dilemma for a litigant who understandably wants to make a comprehensive presentation in what could amount to a case dispositive motion. And yet the need for dramatic distillation of the claim is paramount. Since getting an early foot in the courthouse door can mean the difference between success and failure, hard tactical decisions must be made concerning the quantum of evidence needed so that the essential presentation can be streamlined and the crucial facts can be underlined.

A remarkable example of a dramatically abbreviated and intensely focused case is the plaintiff's presentation in the Gore-Bush election contest trial during early December 2000. Despite the historic dimensions of the case, the petitioners presented, along with the disputed ballots and relatively few other documents, only two live witnesses. That extraordinarily concise case prompted an almost equally brief defense. As a result, the Democratic petitioners were able to complete the trial at warp speed, allowing sufficient time for their contentions to be fully considered by the Florida Supreme Court as well as the U.S. Supreme Court.

Appealing at Light Speed

Because trial court proceedings that lend themselves to rapid fire judicial action — such as injunctions — often encompass immediate rights of appeal, a common reality is a two-course sprint that may even accelerate during the appellate process. Because the factual record is already crystallized and the issues presumably narrowed, many appellate courts have no hesitancy in responding to such emergencies with a timetable of days for matters which might, in other settings, entail

months or even years to finalize.²⁹ Certainly, the dramatic ordeal of a death penalty case, including a succession of emergency stay requests that may be granted or denied within hours, is among the most vivid illustrations of these appellate roller coaster rides. Injunction cases, including election cases, may also implicate briefing schedules that leave no rest for those already weary from a dizzying pace at the trial court level. Even in cases that lack historical drama³⁰ or the intensity of life and death issues, appellate courts have resolved cases with finality within days of the filing of the notice of appeal.³¹

Although the pace of appeals can be excruciating, the compensating element is that the issues are identifiable and quantifiable. Trial court litigants anticipating an appeal can prepare portions of a brief in advance of the ruling so that a running head start can be obtained even before the appeal is commenced. Moreover, in the event that a trial court litigant is consigned to the status of an appellant, the notice of appeal can be filed alongside a motion to expedite the appeal that addresses matters ranging from securing an accelerated briefing schedule to modifying some of the appellate requirements that would otherwise add significant time and labor to the preparation of the briefs.

Practical Considerations

One of the most remarkable battlefields for light speed litigation was the tragic and multi-faceted case of Terri Schiavo. As the entire nation would learn, she was the center of a heartbreaking controversy between her husband and parents concerning the question of whether nutrition and hydration should be withdrawn due to the limited brain functions resulting from heart failure 15 years earlier. Following the state trial judge's decision to remove feeding tubes on March 18, 2005, trails were blazed through state and federal courts at trial and appellate levels, lasting until Terri Schiavo's death on March 31, 2005.³²

The case was litigated by both sides with great ability and a remarkable capacity to respond effectively to some of the most abbreviated and intense deadlines imaginable. Attorney George Felos represented Michael Schiavo, while David Gibbs represented her parents, Bob and Mary Schindler. As a result of interviews³³ of the two men who battled in the eye of the storm for weeks, some valuable insights were developed that are instructive for any who step upon a litigation race track.

A starting point for confronting any such challenge is recognition that there "has to be a team," a premise emphasized by both attorneys. As Gibbs observed, it is not humanly possible for one person to properly perform all the tasks that must be addressed. A group of colleagues available to share the workload is an absolute prerequisite. Also essential is an intimate familiarity with the subject area of law. As explained, because things can move quickly and unpredictably, there is no opportunity for on-the-job training. For Felos, the case centered on issues at the core of his existing expertise. For many of the rest of us, when we are stepping out of the comfort zone of our day jobs, there is an urgent need to enlist experts.

Due to the realities of lawyering at a breakneck pace, it is important to have a clear chain of command so that timely decisions can be made without a protracted process for deliberation. Gibbs observed that this kind of litigating "can't be done by committee" and the team members have to adhere to a rapid and decisive process for finalizing submissions and resolving strategy questions. Because there may be multiple facets requiring attention and action on an hourly basis, there has to be a person assigned to carry out each area of responsibility.

In addition to clearly defined relations within the legal team, it is essential to maintain good relationships and close communication with court personnel. In the Schiavo matter, Felos emphasized such practical concerns including, at the outset,

exchanging phone numbers and e-mails with court staff and providing maximum advance notice to judicial assistants and others with responsibility for receiving papers and scheduling hearings. In the Schiavo litigation, both Felos and Gibbs gave extremely high marks to the myriad of court staff members involved at the numerous phases and levels of those proceedings. They also emphasized that, without constant communication with judicial offices on logistical issues, the required velocity for such processes would simply not be possible.

As with any legal representation, effective client communication is an imperative. With fast moving cases, however, the need to be in sync with the client is all the more important. As Gibbs emphasized, there is no time for internal dissension. As a result, the attorney needs to know, up front, the scope of issues entrusted to the attorney's judgment. Not every issue can justify a client conference when only hours, or even minutes, are available for deciding matters that may be significant.

Because the events can move so quickly, Felos observed that "flexibility and fluidity" are crucial components in meeting the light speed challenge. Although lawyers seek to pursue a logical course of action, an abrupt torrent of variables may require not only an instantaneous adjustment to the challenges of the hour, but also a realistic recognition that you have to do your best under the circumstances. Perfection cannot be valued over effectiveness and responsiveness.

To the extent possible, contingencies should be planned for and, if possible, contingent work product should be generated. Of course, the ordeal of meeting the excruciating deadlines of the day often limit any ability to draft papers for whatever might or might not happen tomorrow. Yet, at times, advance work is possible and can certainly be essential in meeting deadlines that are right around the corner. For example, as was widely reported

that during the 2004 general election, attorneys for both parties prepared numerous drafts for potential litigation prior to Election Day, anticipating a broad array of possibilities.³⁴ In such matters — although the particular scenario may be unknowable — the need for immediacy is a certainty. Advance planning can also apply to appeals. Major portions of briefs can be drafted even before receiving the trial court decision and later revised quickly to conform to the specifics of the trial court ruling.

Among other truths about 24/7 lawyering that Felos and Gibbs emphasize repeatedly are the extraordinary human demands on health and stamina. Gibbs spoke of the “absolutely unbelievable physical, emotional, and mental pressures” confronted in the Schiavo litigation. Correspondingly, in his efforts to meet those challenges, Felos underscored the value of being in good condition before entering a no-sleep zone, where fatigue can be a constant companion even as adversities intensify and magnify.³⁵

Conclusion

The extraordinary and excruciating demands of the Schiavo case and others are rare, but many of its lessons apply across the spectrum of accelerated litigation. When attorneys step onto these roller coasters, they need not only the legal tools, but also the logistical resources and physical stamina for a remarkable ride that often requires advocacy at its best, even from lawyers at their weariest.

1 The focus of this article is general civil litigation, in which fast-track cases are not commonplace. For practitioners in criminal and family law, expedited hearings are a way of life. See Fla. R. Crim. P. 3.13(b) (unless the state seeks pretrial detention, the court is to consider release at defendant’s first appearance in light of factors such as “risk of physical harm,” risk of flight, and integrity of judicial process); Fla. R. Crim. P. 3.131(d) (defendant’s motion to modify bail “shall be determined promptly”). *Trespalacios v. Trespalacios*, 978 So. 2d 858, 860-62 (Fla. 2d D.C.A. 2008) (expedited determination concerning temporary alimony subject to revision at final hearing).

2 Fed. R. Civ. P. 1. Most would say that “inexpensive” is yet another elusive concept.

3 In truly extreme scenarios of delay, appellate courts can grant mandamus to require an expedited decision by the trial court. *McTaggart v. State*, 906 So. 2d 332 (Fla. 3d D.C.A. 2005) (trial court “shall entertain no further delays” concerning application for post-conviction relief).

4 Fla. R. Civ. P. 1.610(a) (1) (A) (“immediate and irreparable injury, loss or damage will result before the adverse party can be heard in opposition”). Fed. R. Civ. P. 65(b) (“irreparable injury will result...before the adverse party or that party’s attorney can be heard in opposition....”).

5 Fla. R. Civ. P. 1.610(a) (1) (A) (“specific facts shown by affidavit or by verified pleading”); and Fed. R. Civ. P. 65(b) (“by affidavit or by the verified complaint....”).

6 Fla. R. Civ. P. 1.610(b); Fed. R. Civ. P. 65(c).

7 Fla. R. Civ. P. 1.610(d) (motion to dissolve a temporary injunction “shall be heard within [five] days after the movant applies for a hearing on the motion”); Fed. R. Civ. P. 65(b) (motion to dissolve injunction shall be heard and determined “as expeditiously as the ends of justice require”).

8 Fed. R. Civ. P. 64. Such remedies include “arrest, attachment, garnishment, replevin, sequestration and other corresponding or equivalent remedies.”

9 Florida’s statutory prejudgment remedies provide, whenever a seizure is conducted without prior notice to the defendant, for a rapid-fire hearing on the defendant’s motion to dissolve the seizure. See Fla. Stat. §76.24(1) (2008) (attachment) (“[t]he court shall set down such motion for an immediate hearing”); Fla. Stat. §77.07(1) (2008) (garnishment) (“The court shall set down such motion for an immediate hearing”); and Fla. Stat. §78.068(b) (2008) (replevin) (“for an immediate hearing”). Although rarely used, Fla. Stat. §68.03 (2008) provides, in narrowly defined circumstances, that a non-resident’s assets in Florida may be subjected to pre-judgment seizure through sequestration.

10 These statutes embody the constitutional principle that a “full and immediate” hearing is required by due process “before one is finally deprived of his property.” *Mitchell v. W.T. Grant Co.*, 416 U.S. 600, 611 (1974). See also *JB Intern., Inc. v. Mega Flight, Inc.*, 840 So. 2d 1147, 1148 (Fla. 5th D.C.A. 2003) (“right to an immediate hearing given by the statute is essential to satisfy the constitutional due process requirements”); *Frasher v. Fox Distributing of S.W. Florida, Inc.*, 813 So. 2d 1017, 1020 (Fla. 2d D.C.A. 2002) (error to deprive defendant the right of an immediate hearing to contest attachment).

11 Motions for the appointment of a receiver to take possession of and protect property at issue in litigation follow many of the procedures that govern injunction. Fla. R. Civ. P. 1.620(b); *Overseas Development, Inc. v. Krause*, 323 So. 2d 678, 680 (Fla. 3d D.C.A. 1975). See also *Lakeview Townhomes of California Club, Inc. v. Coral Gables Federal Savings and Loan*

Ass'n, 656 So. 2d 240 (Fla. 3d D.C.A. 1995); *Boyd v. Banc One Mortgage Corp.*, 509 So. 2d 966 (Fla. 3d D.C.A. 1987); *Colley v. First Fed. S & L Ass'n of Panama City*, 516 So. 2d 344 (Fla. 1st D.C.A. 1987).

12 Fla. Stat. §§78.065(2) and 78.067 (2008).

13 The requirement of a substantial bond can be a major obstacle for plaintiffs seeking an immediate order, and it implicates procedural requirements as well as the obvious financial concerns. In *ADT, Inc. v. Hampshire Mgt. Co.*, 653 So. 2d 476 (Fla. 3d D.C.A. 1995), the lower court, to expedite entry of the injunction "as an accommodation" to plaintiff, set a million dollar injunction bond. *Id.* at 478. Because the lower court failed to conduct a hearing in which both sides could present evidence as to the appropriate amount, the appeals court remanded for a proper determination of the bond amount. *Id.* at 479.

14 Although preliminary injunctions clearly pave the way for a fast-track decision on key issues, they often leave important questions unanswered, and by definition do not constitute a final resolution of the controversy. The parties can and often should consider stipulating to treat a preliminary injunction hearing as the final trial of the issues. As one prominent jurist explained: "If the department truly wants to expedite final resolution, the parties should devote their immediate energies to preparing for an expeditious permanent injunction hearing. This would permit this Court...to consider any actual alleged error from resolution of the actual merits." *Florida Dep't of Agriculture and Consumer Services v. Haire*, 824 So. 2d 167, 168 (Fla. 2002) (Pariente, J. concurring).

Beyond the context of court actions, many administrative procedures include provisions for expedited hearings in matters such as license revocations. *State v. Dep't of Banking & Finance*, 584 So. 2d 112, 114-15 (Fla. 5th D.C.A. 1991) (aggrieved person can request hearing to be set "at earliest time practicable"), citing Fla. Stat. §120.60(8) (1991). See also Fla. Stat. §120.574 (2008).

15 See generally Fla. Stat. §§86.011, et seq., (2008). Representing manifest public interest concerns, several of the statutory actions that provide for an immediate hearing on the merits include election contests, Fla. Stat. §102.168(7), (2008) (contesting plaintiff "is entitled to an immediate hearing") and Fla. Stat. §119.11(1) (2008) ("immediate hearing") (actions to enforce the Public Records Act). In *Salvador v. Fennelly*, 593 So. 2d 1091 (Fla. 4th D.C.A. 1992), the court issued a writ of mandamus to compel compliance by the trial court in a Public Records Act case without addressing specifically whether such actions must be noticed for trial in accordance with Fla. R. Civ. P. 1.440. *Id.* at 1095 (Farmer, J., dissenting).

16 As explained in one leading treatise: "Any doubt or difficulty about the procedure in actions for a declaratory judgment disappear if the action is regarded as an ordinary civil action, as Rule 57 clearly intends. The incidents of pleading, process, discovery, trial, and judgment are the same." *Wright & Miller*, 10B Fed. Prac. & Proc. Civ. 3d §2768 (2004 Supp.).

17 Fla. Stat. §86.111 (2008); Fed. R. Civ. P. 57.

18 *Wright & Miller*, 10B Fed. Prac. & Proc. Civ. 3d §2768 (2004 Supp.), citing *Temp-Resisto Corp. v. Glott*, 18 F.R.D. 148 (D.N.J. 1955); *Harvey Aluminum v. American Cyanide, Co.*, 15 F.R.D. 14 (S.D.N.Y. 1953). See also *Newell v. Ignatius*, 407 F.2d 715, 717 (D.C. Civ. 1969) ("in light of time factors we order that the case be set for accelerated briefing and hearing"). Florida decisions concerning procedure have traditionally accorded great respect to their federal counterparts. *Orlando Sports Stadium, Inc. v. Sentinel Star Co.*, 316 So. 2d 607, 611 (Fla. 4th D.C.A. 1975) ("[I]t has been the practice of Florida courts closely to examine and analyze the federal decisions and commentaries under the federal rules in interpreting ours.").

19 *Drinan v. Nixon*, 364 F. Supp. 853, 854 (D. Mass.), *aff'd*, 502 F. 2d 1158 (1st Cir. 1973).

20 *Id.* at 854 ("implicit in such provision is the assumption that prior to such order for speedy hearing, the matter will have been joined by the filing of a responsive pleading"). Although declaratory relief actions have no procedural features that actually accomplish the acceleration aspired to in §86.111, the Supreme Court of Florida has suggested the rules should be developed to expedite review of appeals in declaratory actions concerning insurance coverage. *Canal Ins. Co. v. Reed*, 666 So. 2d 888, 892 (Fla. 1996).

21 To be "at issue" and ready for trial, Fla. R. Civ. P. 1.440(a) requires that "any motions directed to the last pleading have been disposed of or, if no such motions are served, 20 days after service of the last pleading." *Id.* A party may then serve a notice for trial, Fla. R. Civ. P. 1.440(b), but trial cannot be scheduled until at least 30 days after the notice is served. Fla. R. Civ. P. 1.440(c). These provisions are strictly enforced. *Genuine Parts Co. v. Parsons*, 917 So. 2d 419, 421-23 (Fla. 4th D.C.A. 2006) (plaintiff's motion to expedite trial failed to comply with the "mandatory terms of Fla. R. Civ. P. 1.440(c)"). Accordingly, Florida does not allow the trial of a declaratory relief action to bypass any of these time-consuming strictures.

22 *Russell v. Todd*, 309 U.S. 280, 287 (1940).

23 *Jacobs v. Seminole Co. Canvassing Bd.*, No. 00-CA-2203-16-L, 2000 WL 1720698 at *1 (Fla. Cir. Ct. Nov. 20, 2000) (In absentee ballot challenge during 2000 presidential litigation, court granted expedited discovery ordering on November 20, that “all parties and named deponents are ordered to cooperate fully with depositions before the hearing set in this matter on November 27, 2000.”). Especially when parties have already retained counsel in anticipation of litigation, courts may be more inclined to allow accelerated discovery once the case actually begins. *United States v. Agnew*, 80 F.R.D. 506, 507 (S.D. Fla. 1978) (noting that the purpose of deferring depositions under Fed. R. Civ. P. 30(a) is to allow counsel to be retained and prepared; that concern is eliminated when counsel has already been retained).

24 *Ellsworth Assocs. v. U.S.*, 917 F. Supp. 841, 844 (D.D.C. 1996) (ordering expedited discovery where it would expedite resolution of plaintiffs’ claim for injunctive relief) (citation omitted).

25 *Philadelphia Newspapers, Inc. v. Gannett Satellite Information Network, Inc.*, No. CIV. A. 98-cv-2782 at *4 (E.D. Pa. July 15, 1998).

26 *Fimab-Finanziaria Maglifico Biellese Fratelli Fila S.P.A. v. Hello Import/Export, Inc.*, 601 F. Supp. 1, 6 (S.D. Fla. 1983).

27 In *Thomas v. Feinberg*, 754 So. 2d 500 (Fla. 3d D.C.A. 1999), the mother’s counsel in a probate matter had originally assured the court that he could comply with “unusually short deadlines for medical discovery” when expedited discovery was granted. *Id.* at 501. When counsel failed to meet those deadlines, the mother’s pleadings were stricken as a sanction for noncompliance. The Third District Court of Appeal overruled the sanction as overly severe, but the case nonetheless underscores the need to exercise care when agreeing to accelerated deadlines.

28 *Palm Springs General Hosp. v. Cabrera*, 698 So. 2d 1352, 1355 (Fla. 1st D.C.A. 1997) (workers’ compensation case).

29 *Storer Communications, Inc. v. State of Florida Dep’t of Legal Affairs*, 591 So. 2d 238, 239 (Fla. 4th D.C.A. 1991) (treating motion for emergency relief as motion to expedite the appeal).

30 The election contest filed by Vice President Gore on November 27, 2000, was tried to conclusion within a week, then decided by the Florida Supreme Court days later on December 8, and then reversed by the U.S. Supreme Court on December 12, 2000. *Bush v. Gore*, 531 U.S. 98 (2000), reversing *Gore v. Harris*, 772 So. 2d 1243 (2000).

31 Florida has a longstanding tradition of hearing appeals in election cases with alacrity and velocity. *Lalor v. Dade County*, 258 So. 2d 843, 844 (Fla. 3d D.C.A. 1972) (after injunction denied concerning recall election, and notice of appeal filed on February 24, 1972, appellate decision on the merits rendered 15 days later). See also *In re The Matter of the Protest of Election Returns and Absentee Ballots*, 707 So. 2d 1170 (Fla. 3d D.C.A. 1998), *rev. den.*, 725 So. 2d 1108 (Fla. 1998) (appeal fully decided one week after trial court’s decision). *Marina v. Leahy*, 578 So. 2d 382, 384 (Fla. 3d D.C.A. 1991) (court granted emergency motion to expedite appeal in challenge to candidate’s residency).

32 See *Schiavo ex rel. Schindler v. Schiavo*, 357 F. Supp. 2d 1378 (M.D. Fla. March 22, 2005), *aff’d*, 403 F.3d 1223 (11th Cir. March 23, 2005) (as corrected March 25, 2005).

33 Telephone interviews with George Felos and David Gibbs (June 2005).

34 David Halbfinger, *Campaign 2004: Balloting; Kerry Building Legal Network for Fights*, *The New York Times*, July 19, 2004; Ann Gearan, *Party Lawyers Prepare for Post Election Day Trauma*, *USA Today*, Sept. 20, 2004; Major Garrett, *Fraud File: Lawyers Gearing Up*, *FOX News*, Oct. 21, 2004.

35 In addition to the reality of the attorneys who are being physically drained, it is important to recognize the physical ordeals that confront clients. I can still recall the utter exhaustion that engulfed Elian’s family, including Lazaro Gonzalez, his great uncle, and Marisleyis Gonzalez, his cousin and mother/surrogate who, for weeks, barely got three hours of sleep each night.