

## ORDER ESTABLISHING MOTION PRACTICE PROCEDURE

THIS COURT, having determined the need to facilitate an orderly progression of certain civil matters before this Court, finds as follows:

A. Discovery motions and objections, particularly those which repeatedly bring the same issues before the Court, take a substantial amount of this Court's limited hearing time. The Court's experience with these hearings has demonstrated that some attorneys do not make any *bona fide* effort prior to setting the matter for hearing to actually resolve the disputed matters. Additionally, these matters are generally subsequently resolved after the hearing is set, but before the hearing goes forward.

B. Rule 1.380(a)(2), Fla. R. Civ. P. provides that the discovery "motion must include a certification that the movant, in good faith, has conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information without court action."

C. Florida Bar Guidelines for Professional Conduct H(1) provides that "**before** setting a motion for hearing, counsel should make a reasonable effort to resolve the issue." (emphasis added)

Therefore, it is hereby **ORDERED AND ADJUDGED** that all future motions shall be handled in the following manner:

1. **Legal memorandum required.** In making *any* written motion or other application to this Court for the entry of an order of *any* kind, the moving party shall file and serve with such motion or application a legal memorandum with citations to authority in support of the relief requested. A supporting memorandum may be incorporated into the body of the motion but should be clearly titled, "Motion to/for----- and Memorandum of Law."

*Exceptions.* The following motions do not require a memorandum of law:

- (a) Motion for Continuance;
- (b) Motion for Default addressed to the Court;
- (c) Motion for Confirmation of Sale;
- (d) Motion to Withdraw or Substitute Exhibits;
- (e) Motion to Proceed *Informa Pauperis*;
- (f) Motion for Extension of Time in which to complete discovery

providing good cause is set forth in the motion; and,

- (g) Motion to Withdraw or Substitute Counsel.

**2. Timely opposing memoranda.** Each party opposing any written motion or other application shall file and serve, within **ten (10) days** after being served with such motion or application, a legal memorandum with citations to authority in opposition to the relief requested. Failure to respond within the time allowed may be deemed sufficient cause for granting the motion by default. *If a party has no objection to a motion and does not intend to file a responsive memorandum, counsel shall file a written notice with the clerk of the court so indicating.*

**3. Replies.** The moving party may file a reply brief to an opposing party's memorandum **ten (10) days** after being served with the memorandum and shall notify this Court of its intent to reply. Determination of the matter will then be deferred by this Court for up to **ten (10) days** pending preparation and filing of the reply.

**4. Discovery motions accompanied by good faith certification.** Before filing a motion to compel pursuant to the Florida Rules of Civil Procedure 1.380, or a motion for protective order pursuant to Rule 1.180(c), or motions pursuant to Rule 1.140(e) and Rule 1.140(f), counsel shall confer with the counsel for the opposing party in a good faith effort to resolve by agreement the issues raised, and shall certify to the Court at

the time of filing the motion that both parties made a *bona fide* effort to resolve each contested matter, on an item-by-item basis, prior to requesting that the matter be set for hearing.

**5. Request must be in writing.**

a. The subsequent request to set the matter for hearing must be in writing, include the required certification, and further include a specific listing of which items remain to be resolved, as well as a statement **with particularity** describing when and how the *bona fide* effort to resolve was made and what efforts, if any, the non-moving party has made in an attempt to resolve these matters; and,

b. Both parties must exercise diligence and good faith in an effort to resolve these matters, on an item-by-item basis, without Court intervention.

The parties are placed on notice that **both/all parties face sanctions** in the event this Order is not complied with.

**6. Content of discovery motions.** Except for motions grounded upon a complete failure to respond to discovery, **discovery motions shall**: (a) quote in full each interrogatory, question on deposition, request for admission, or request for production to which the motion is addressed; (b) quote in full the objection and grounds given therefore; and, (c) state (with citations to authority) the reasons such objection should be overruled or sustained.

**7. Oral argument.** Motions and other applications will ordinarily be determined by this Court on the basis of motion papers and legal memoranda unless a hearing is required by rule or law. (For example, under the rules, summary judgment motions must be set for hearing.) This would not, however, extinguish the requirement that the motion be accompanied by and responded to with memoranda taking into consideration the time frame under Florida Rule of Civil Procedure 1.510(c), for filing supporting and

opposing affidavits, etc. The Court may permit oral argument upon the written request of any interested party or upon the Court's own motion. Requests for oral argument must accompany the motion or opposing legal memorandum and must estimate the time required for argument. When a request for hearing is granted, counsel for the requesting party will be asked to coordinate the calendars of the Court and counsel.

**Both sides shall appear in person for all oral arguments.**

**8. Page limitation.** Absent prior permission of this Court, no party shall file a legal memorandum in excess of ten (10) pages in length. All replies shall be limited to five (5) pages in length.

**9. Motions to be filed with the clerk.** All original pleadings and papers shall be filed with the Clerk of Court.

**10. Form of motions.** All applications to this Court requesting relief in any form, or citing authorities or presenting argument with respect to any matter awaiting decision, shall be made in writing in accordance with this order and in appropriate form pursuant to the Florida Rules of Civil Procedure, and unless invited or directed by this Court, shall not be addressed or presented to this Court in the form of a letter or the like.

**11. Time calculations.** All time calculations herein shall be subject to Florida Rules of Civil Procedure 1.090.

**12. Pending Hearings.** This Order supersedes any notice of hearing. All pending hearings are hereby canceled and the parties are directed to comply with the terms of this order. Should the Court grant or request oral argument, the parties shall be so informed and the matter shall be set for hearing.

**FAILURE TO COMPLY WITH THE TERMS OF THIS ORDER BY ANY PARTY MAY RESULT IN THE STRIKING OF PLEADINGS, IN WHOLE OR PART, OR STAYING FURTHER PROCEEDINGS UNTIL THIS ORDER IS COMPLIED WITH. FURTHER,**

**THIS COURT, IN ITS SOLE DISCRETION, MAY DISMISS THE ACTION OR RENDER JUDGMENT BY DEFAULT AGAINST THE NON-COMPLIANT PARTY IN ADDITION TO ANY OTHER SANCTION(S) THE COURT DEEMS NECESSARY BASED ON THE CIRCUMSTANCES.**