

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
HERNANDO COUNTY, FLORIDA

**ADMINISTRATIVE ORDER ESTABLISHING MOTION PRACTICE
PROCEDURES FOR THE CIVIL JURY AND CIVIL NON JURY DOCKET FOR
THE HONORABLE DONALD E. SCAGLIONE
CIRCUIT CIVIL DIVISION
Effective February 28, 2020**

The Court, having determined the need to facilitate an orderly progression of all civil jury matters scheduled before the Court, and to better assist this Court so that the huge volume of motions may be handled more efficiently and expeditiously, it is

ORDERED AND ADJUDGED that all future motions shall be handled as follows:

1. **Scope and effective date:** That this administrative order shall apply to ALL cases set on Judge Scaglione's and Judge Angeliadis' civil jury and non jury dockets, unless a specific order is provided in writing by the Court requiring a different procedure for the particular case before the Court. The procedures set forth in this administrative order shall be effective immediately upon signing of the above cited administrative order. Obviously, if there is a conflict between this administrative order and any of the Rules enacted by the Florida Supreme Court, those rules control.

2. **Purpose:** The purpose of this administrative order and the motion practice order is to establish a protocol to efficiently, fairly and timely handle a large, complex, and often unduly contentious docket, while remaining consistent with the Florida Rules of Judicial Administration, the Florida Rules of Civil Procedure, the Code of Judicial Conduct, and the highest standards of professional conduct possible.

3. **Reason:** When this "jury civil" division was reformulated effective April 18, 2011, there were over one thousand (1,000) open case filings. At that time the cases were assigned to a one circuit judge division, one judicial assistant, and one staff attorney. There was simply no practical method to provide to everyone that so requested, a hearing or oral argument on every motion or contested matter filed. Accordingly, it was anticipated that by trying to resolve the pleadings filed by methods other than calling for, setting, noticing and holding a hearing or oral argument on every motion, that substantial judicial economy and efficiency will result. Hence, the use of the motion practice order (MPO), The Court deemed that this revision of the current

motion practice order was necessary because the increase in phone calls requesting that motions be set for a hearing or oral argument had begun to hamper the orderly flow of the civil docket, and indicated some confusion or misunderstanding of the current motion practice order.

Effective January 2019, the Civil Division will consist of two judges having all Circuit Civil Jury and Non-Jury inclusive of Foreclosures and Eminent Domain. Please review each judge's particular requirements before contacting the Court.

4. **DEFINITIONS:** As used in this order, the following definitions shall apply:

a) **Hearing:** Time requested from the court for counsel to personally present contested matters because such time is required by the law of Florida based on a rule, a statute, or case law (such as is required for a motion for summary judgement); or as necessary for an evidentiary hearing required by law (such as to determine the amount of attorney fees).

b) **Oral Argument:** Time given to the litigants, (purely at the discretion of the Court, and not required by law in Florida) that the Court believes is necessary or appropriate to more fully understand and develop the litigants' arguments and positions on the issue before the Court. Oral argument will rarely be granted by the Court because it should not generally be necessary.

5) **PROCEDURE ANTICIPATED:**

a. First, contact the opposing counsel and see if they will stipulate to the relief requested, or at least stand mute, so that an "agreed Order" may be prepared. If so, promptly send the court the stipulation and order or "agreed order" with the appropriate cover letter, copy to each side. Stipulations or other matters agreed to will not require a memorandum.

b. If the other side, for any reason, cannot or will not stipulate or agree to the relief requested, then, as further set forth in this order, counsel shall succinctly and cogently, subject to the page limitation of paragraph #13 below, set forth in their motion the relief they are requesting and the reasons they believe that they are entitled to such relief, supported by concise legal memorandum containing their legal authority.

SEE ADMINISTRATIVE ORDER AS TO "MEET AND CONFER"

c. If a hearing is required by law, please succinctly so state in a prominent location in your initial motion directed to that issue, and cogently provide the legal authority for your belief that a hearing on this subject is required by Florida law.

6) **Legal memoranda required.** Except as specifically excepted in paragraph 5 (a) above and 7 below, in making any written motion or other application to the 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 of authority, in support of the relief requested. This legal memorandum may be incorporated into the body of the motion as a speaking motion, but should be clearly titled, "MOTION to/for ----- and Memorandum of Law."

7) **Exceptions to memoranda requirement:** The following listed motions shall be exempt from this requirement and shall not require supporting written memoranda unless specifically requested by the Court:

- a. Motion for Default, addressed to the Court.
- b. Motion for continuance (provided that specific reasons demonstrating "good cause" are set forth in the motion).
- c. Motion to withdraw; or motion to substitute counsel (need written consent of client).
- d. Motion for confirmation of sale.
- e. Motion for enforcement of settlement (provided adequate explanation and basis is provided in the motion),
- f. Motion to withdraw/substitute exhibits.
- g. Motion for leave to proceed in *forma pauperis*,
- h. Motion for extension of time in which to complete discovery (provided that the good cause supporting the request is set forth in the motion).
- i. Motion to deposit funds with the Court.
- j. Motion to compel (provided that the moving party submits a written statement that a good faith attempt has been made to resolve the matter, and follows the other provisions of this order pertinent thereto, e.g. paragraphs 10 and 11 below).
- k. Motion to appear *pro hac vice*. See *Rules of Judicial Administration 2.510*. See *paragraph 19 herein as to the procedures to be utilized for these exceptions.*

8) **Timely opposing memoranda.** Each party opposing any written motion or other application shall file with the Clerk of Court and serve all opposing counsel AND THIS JUDGE, within ten (10) days after being served with such motion or application, a legal memorandum

with citations of 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 of same with the clerk of the court, and provide a copy to the office of the judge, so indicating.*

The Fla.R.Civ.P. also controls the timing and presentation of required matters regarding motions for summary judgment.

9) **Replies.** If, upon receipt of an opposing memorandum, counsel determines further argument of his client's position on the initial motion is required, counsel must immediately notify the office of the judge that he/she intends to file and serve a reply memoranda. In such case, determination of the matter will be deferred by the court for up to five (5) days pending receipt of the reply memorandum by the court. (The preferred method of notification is by email to the appropriate Judicial Assistant for each judge)

MOTIONS CONTESTING DISCOVERY

10) **Discovery motions accompanied by good faith certification.** Before filing a motion to compel pursuant to Rule 1.380, or a motion for protective order pursuant to Rule 1.180(c), Florida Rules of Civil Procedure, counsel shall confer with counsel for the opposing party in a good faith effort to resolve by agreement the issues raised, and shall certify to the court (in writing) at the time of filing the motion that he/she has conferred with opposing counsel and has been unable to resolve the dispute.

11) 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; and
- 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.

12) HEARINGS AND ORAL ARGUMENT.

a. **Hearings: and Requests for Summary Judgment:** Motions and other applications will ordinarily be determined by the 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, generally extinguish the requirement that the motion be accompanied by and responded to with memoranda. Such memorandum requirements are extremely helpful and **required** for motions for summary judgment, and the time frame under Rule 1.510(c), Florida Rules of Civil Procedure controls for filing supporting and opposing affidavits, etc. If counsel files a motion for summary judgment, the party must contact the Court via its website at the Calendar Request link to request hearing dates and times to set the hearing and/or coordinate with opposing counsel. It is the party's responsibility to set hearings on their motions. For other types of required hearings, see paragraph 4 (a) and 5 (c) of this order.

b. **Oral argument:** The Court may (but rarely) 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 hearing date and time with the calendars of the court and counsel.

THE COURT RESERVES THE RIGHT TO STRICTLY ENFORCE THE TIME LIMITATIONS IMPOSED FOR EACH HEARING OR ORAL ARGUMENT.

13) **Page limitation:** Absent prior permission of the court, which will rarely be granted, no party shall file a legal memorandum in excess often (10) pages in length (12 point font, double spaced) on any motion or request of the court.

14) **Motions to be filed with the clerk and a courtesy copy sent to the assigned Judge:** All original pleadings and papers shall be filed (e-filed) with the clerk of the court and a courtesy copy **shall** be provided to opposing counsel **as well as directly to the judge's office** contemporaneous with said filing. **(The judge's copy may be sent by United States mail or e-mailed to the courtesy copy link on the webpage).**

15) **Form of motions:** All applications to the 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 the court, shall not be addressed or presented to the court in the form of a letter or the like.

16) **Time calculations:** All time calculations herein shall be subject to Rule 1.090, Florida Rules of Civil Procedure.

17) **Motions in limine:** Unless hearing time or oral argument has been requested and granted by the court, *in limine* motions will be resolved before pretrial, as set forth in the other standard orders of this court specifically regarding same. If the Court has not announced its ruling on such contested motions by pretrial, counsel should immediately advise the Court. The more specific Motion in Limine Order takes precedence over and controls such motions.

18) **Emergency motions:** Motions of an emergency nature may be considered and determined by the court at any time in its discretion. Such motion must **first** be filed in writing with the court (courtesy copy directly to the Court) and copies e-mailed to all opposing counsel, before such motion will be considered, and must clearly and concisely explain why the court should deem this motion an emergency.

19) **Procedures for motions that are exceptions to the motion practice procedure:**
Upon receipt of a motion or request that is facially excepted from the motion practice requirements contained herein per paragraph 5 (a) and 7, the Court may proceed in any one of or a combination of the following methods:

a. Grant or deny the relief requested without a hearing. Unless the matter is stipulated to in writing by all interested parties, or is a matter that otherwise requires no response, or is otherwise clearly indicated to be uncontested, the Court may wait ten (10) business days to see if any further objections, pleadings or responses directed to the issue are received. **IT IS INCUMBENT ON ANYONE OBJECTING TO ANY PROPOSED RELIEF TO NOTIFY THE COURT IMMEDIATELY AND IN WRITING WITHIN THE TEN (10) BUSINESS DAY PERIOD.** The parties may fax their objection to (352)754-4273 or emailed to courtesy copy link (see website) but it shall always follow up by hard copy, with the original to the Clerk of the Circuit Court and copies to all parties of record, pursuant to the Rules of Civil Procedure.

b. If the motion is stipulated to, or otherwise uncontested, it may be signed immediately at the discretion of the Court, or all parties will otherwise be notified in writing by the Court as to what action the Court is taking and/or what action is expected of counsel.

c. Upon receipt of a timely objection, or otherwise at the discretion of the Court, the Court will determine how it will proceed, and the parties will be notified in writing. Possible

courses of conduct at this point include, but are not limited to, any one or a combination of the following:

- i) Rule without further pleading, oral argument or hearing.
- ii) Require a more formal response, including resorting to formal "motion practice"

as further set forth in this Administrative Order.

- iii) Set the cause for hearing or oral argument without further pleading.

20) OTHER IMPORTANT REQUIREMENTS /CONSIDERATIONS:

A. Requests for relief from court must be e-filed with the Clerk and then a courtesy copy sent to the Presiding Judge by mail (the clerk does not send the judges any e-filed motions or requests for relief.) **THIS COURT WILL NOT BE AWARE OF YOUR MOTION, AND THUS CANNOT ACT ON IT, UNLESS YOU SEND THE COURT A COPY.** (See Administrative Order regarding courtesy copies)

B. Proposed orders and envelopes: All requests for relief (courtesy copy) should be sent with proposed orders and with stamped, pre-addressed envelopes for pro se and unrepresented parties. All others will be notified by E-filed Order.

C. Follow-up by email: If you have properly followed all of the instructions in this Motion Practice Order and have not heard from the court within **approximately forty-five (45) days**, it is appropriate to contact the Presiding Judge's judicial assistant via email and politely make sure the motion/request has been received. (We try to rule on all matters **within sixty (60) days**, as required, but due to the huge volume of paperwork and the several persons that may be handling such matters, we are always concerned of overlooking or misplacing some request.)

All parties are directed to become familiar with the Circuit Civil Division's Administrative Orders found on our Website (www.circuit5.org, see Judge Donald Scaglione link)

Especially:

1. **Order Regarding Courtesy Copies.**
2. **Order as to E-filing/Paperless Court.**
3. **Order as to Circuit Civil Guidelines.**
4. **Order as to "Meet and Confer".**
5. **Motion in Limine Order.**

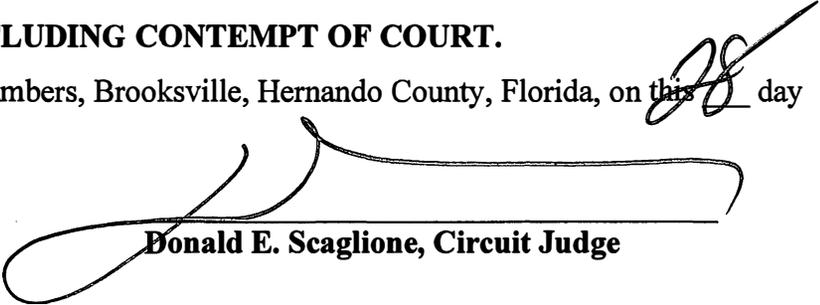
CAVEAT: Please do not email or call the Judge's judicial assistant to request time from the court unless such time for hearing or oral argument:

a) is clearly required by Florida law; or

b) has been previously granted by this court under the terms of this motion practice order and you are emailing to obtain dates and time for same.

FAILURE TO COMPLY WITH THE TERMS OF THIS ORDER BY ANY PARTY MAY RESULT IN THE STRIKING OF PLEADINGS OR PARTS OF THEM, OR STAYING FURTHER PROCEEDINGS UNTIL THIS ORDER IS OBEYED, OR DISMISSING THE ACTION, OR RENDERING JUDGMENT BY DEFAULT AGAINST THE DISOBEDIENT PARTY, OR ANY OTHER APPROPRIATE SANCTION AUTHORIZED BY LAW, INCLUDING CONTEMPT OF COURT.

IS SO ORDERED in chambers, Brooksville, Hernando County, Florida, on this 28 day of February, 2020.


Donald E. Scaglione, Circuit Judge