POLICIES, PROCEDURES AND PREFERENCES FOR ALL CIVIL CASES ASSIGNED TO JUDGE KAREN GIEVERS

SECTION 1 - INTRODUCTION

The Rules of Judicial Administration encourage the speedy, just and inexpensive resolution of cases, and impose on the trial court the duty to monitor and manage the docket in order to achieve this goal. The following policies and procedures, which shall apply to all Leon civil division cases assigned to Judge Karen Gievers, are intended to facilitate the just, prompt, and cost effective determination of cases, and to encourage courtesy, civility and professionalism in all participants. These policies and procedures are intended to supplement, not supplant, the Florida Rules of Civil Procedure, which shall control if there is any conflict between the two.

1.2 - Filing through the portal does NOT transmit the motion or response to the Court. A party transmitting case related documents to the Court must do so either by email to Judicial Assistant Underwood (copy to all other parties) or by hand delivery (copy to all other parties).

SECTION 2 - MOTION PRACTICE

- 2.1 Form and Content <u>All</u> motions and responses thereto, unless made orally during a hearing or trial, shall be in writing. All motions shall state with particularity the grounds therefore and the relief sought. All motions and responses thereto, except those listed in 2.8, shall cite in the body thereof all authorities relied upon or shall be accompanied by a memorandum of law.
- 2.2 Summary Judgement Motions Any motion for summary judgement shall contain therein, or by separate statement, a short concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried. The statement shall be supplemented by an appendix which shall contain copies of the appropriate affidavit(s), portions of depositions, specific interrogatories and answers thereto, specific admissions, or other document of record relied upon to establish the material fact.

The party opposing a motion for summary judgement **shall**, file and serve a response containing a short and concise statement of the material facts as to which

it is contended there exists a genuine issue to be tried, with an appendix in the format set forth above. All material facts set forth by the moving party that are not addressed by the statement in opposition may be deemed to be admitted.

- 2.3 Certificate of Good Faith Conference Before filing any motion, except as noted in paragraph C, the moving party shall confer with counsel for the opposing party in a good faith effort to resolve the issues raised by the motion, and the motion shall contain a statement certifying that the moving party has conferred with opposing counsel and that counsel have been unable to agree on the resolution of the motion (the "Certificate").
- A. The term "confer" as used herein, means a substantive conversation either in person or by telephone in a good faith effort to resolve the motion without court action and does not envision an exchange of ultimatums by fax or letter. Certification that counsel has attempted to confer with opposing counsel is not sufficient. The court may *sua sponte* deny motions that fail to include an appropriate and complete certificate under this section.
- B. The certificate shall set forth the date of the conference, the names of the participating attorneys, and the specific results achieved. It shall be the responsibility of counsel for the movant to arrange for the conference. Counsel are expected to respond promptly to inquiries and communication from opposing counsel. Repeated failure or refusal of a party or attorney to so confer should be set out with specificity in the certificate.
- C. No conference, therefore no certificate, is required for appropriate ex-parte motions, judgment on the pleadings, summary judgement, or other dispositive motions.
- D. A party alleging that a pleading fails to state a cause of action shall confer with counsel for the opposing party before moving to dismiss, and, upon request of the other party will stipulate to an order permitting the filing of a curative amended pleading in lieu of filing a motion to dismiss.
- 2.4 Motions Decided on Papers and Memoranda Motions, except those for summary judgment, may be considered and decided by the Court on the

pleadings, the court file, and memoranda, without hearing. Unless otherwise directed by the Court, responses in opposition shall be filed within five days after service of the motion for discovery disputes, ten days for motions directed to the pleadings, and twenty days for motions for summary judgement. A request for additional time shall be made by a motion filed before the date the response is due. If a timely response is not filed, the Court may deem the motion uncontested. Unless otherwise directed by the Court, the movant may file a reply within ten days of service of the response in opposition.

- 2.5 Hearings on Motions Any party who seeks a hearing on a motion shall contact the judge's office to schedule a hearing. No hearings will be set until after a motion is filed with the Clerk of Court, **and** a copy of the motion has been submitted via email to the JA. All hearing dates will have to be cleared with opposing counsel before being confirmed with the Court. Once a date is cleared with opposing counsel and confirmed with the Court, it will be the movant's responsibility to timely produce and distribute a notice of hearing. A courtesy copy should be promptly submitted to the Court.
- 2.6 Telephone hearings -Any attorney desiring to attend a hearing by phone should consult with opposing counsel. [If there is no opposition, no motion is required for phone appearance at a routine hearing but the intention to appear telephonically must be stated in the notice of hearing]. The party appearing telephonically will call Judge Gievers at (850) 606-4312, shortly before the appointed time. [If more than one person is appearing telephonically, a conference call must be initiated by the party requesting the hearing before calling in for the hearing].

If there is opposition to counsel's telephonic appearance, counsel shall file a written motion as contemplated by Fla. R. Jud. Admin. 2.530.

A motion with good cause shown is necessary for telephonic appearance at a lengthy hearing (more than one hour), a hearing involving the taking of testimony or a pretrial conference.

2.7 - Suggestion of Subsequently Decided Authority - A suggestion of controlling or persuasive authority that was decided after the filing of the last memorandum may be filed at any time prior to the court's ruling and shall contain only the citation to the authority relied upon, if published, or a copy of the

authority if it is unpublished, and shall not contain argument.

- 2.8 Failure to File and Serve Motion Materials The failure to cite authority in the body of the motion, or to file a memorandum within the time specified may constitute a waiver of the right thereafter to file such memorandum, except upon showing of excusable neglect. A motion not containing citation to authority or unaccompanied by a required memorandum may, in the discretion of the Court, be summarily denied. Failure to timely file a response to the motion may result in the pending motion being considered and decided as an uncontested motion.
- 2.9 Preparation of Orders In matters in which the Court does not prepare its own orders, the Court will direct the prevailing party to prepare an order in accordance with its ruling. Multiple copies and addressed stamped envelopes sufficient for all parties shall be submitted with the proposed order or if there are no pro se parties, counsel shall submit the proposed order to the Judge's office (via email to the JA) in MSWord. The party proffering such an order must represent that he or she has provided copies to the opposing parties in advance and that they have no objection to the form of the order. If agreement among the parties cannot be reached on the form of a proposed order, the Court should be so advised with appropriate alternative proposed orders provided.
- 2.10 Materials to be Provided to the Court A courtesy copy of any motion or similar document seeking or contemplating judicial action, should be provided to the judge (via email to the JA) no sooner than with its filing with the clerk, and no later than two days before the hearing. [Likewise, for response and replies to legal memorandum, and all other documents, which the party considers necessary for consideration and determination of the motion or other request for judicial action].
- 2.11 Rulings on Motions In most instances, the Court will make a ruling on the motion at the end of the hearing; the Court does not normally take matters under advisement. To accomplish this, the Court will in most instances review all materials provided prior to the hearing. Therefore, it is important that the Court be provided with all relevant materials in a timely fashion <u>prior</u> to the hearing. Although copies of reported cases should not be filed in the court file, it is appropriate to provide the Court with courtesy copies of <u>significant</u> cases.

Providing copies of significant cases to the Court for the first time during a hearing tends to slow down the process and waste the party's allotted time.

- 2.12 Emergency Motions The Court may consider and determine emergency motions at any time. Counsel should be aware that the designation "emergency" may cause a judge to abandon other pending matters in order to immediately address the emergency. Such motion shall state with particularity the reason the matter constitutes an emergency, including the irreparable harm that will likely result if the matter is not considered in the normal course of events in accordance with the procedures outlined herein. Lack of due diligence by a party or counsel does not constitute an emergency. The Court may sanction a party who designates a motion as an emergency under circumstances that is not deemed by the Court to be an emergency.
- 2.13 Time The parties should be aware that due to the volume of motion hearings, scheduled starting times and time limits are strictly enforced. If a movant does not appear or call in, as the case may be, at least by the scheduled time, the motion may be deemed abandoned and summarily denied. Similarly, if the opposing party does not timely appear the motion may be granted without further proceeding.

SECTION 3 - DISCOVERY

- 3.1 Duty of Good Faith and Due Diligence The Court expects counsel and the parties to conduct discovery timely, in good faith, and with due diligence, consistent with that the rule that all relevant information is generally discoverable. They are expected to cooperate and be courteous in all phases of the discovery process with a goal of fairly and efficiently exchanging information about the case so that it may be resolved in a timely, just and cost effective manner. Response to requests for discovery should be timely, complete and in good faith. If there are objections, they should be stated specifically and with appropriate factual support.
- 3.2 Duty to Update and Supplement It is expected that all responses to discovery will be accurate and complete when given. Each party shall have a duty, however, to update or supplement any response immediately upon obtaining information that would make the previous response inaccurate, incomplete or misleading.
 - 3.3 Completion of Discovery The requirement that discovery be

completed within a specified time mandates that adequate provisions must be made for interrogatories and requests for admission to be answered, for documents to be produced, and for depositions to be held within the discovery period. The court does not anticipate entertaining motions relating to discovery conducted after the close of the discovery period as set forth in the Court's Case Management Order(s). Motions requesting an extension of the discovery period must be made prior to the stated date for completion of discovery. This motion must set forth good cause and establish due diligence.

SECTION 4 - CALENDARING OF TRIALS

- 4.1 Trial Setting A case management conference will be held to set any matter for trial. Case managements may be set on the court's own motion after a party has filed a notice of matter ready for trial or upon the good faith request of either party. Form orders for setting trial have been attached to this document. Counsel should be prepared to advise the court of all information necessary to complete the order during the conference. As noted in the order, mediation will be required.
- 4.2 Trial Schedules Trials in the Gievers civil division are scheduled on the second and fourth weeks of each month. Months containing a fifth week will generally be used to handle trials that cannot be concluded in five (5) days. Because of limited courtroom availability and other resources, trials cannot be specially set on other weeks, except in very unusual circumstances. Unless otherwise ordered, jury selection is conducted the Friday before the trial period, beginning at 9:00 a.m., and docket sounding for all trials scheduled for the trial period is conducted at 9:00 a.m. on the Thursday two weeks before jury selection. Motions will not be considered at docket sounding unless cleared with the judge's office in advance and properly noticed. A specific list of available trial periods and the corresponding dates for jury selection and docket sounding may be obtained either from the judicial assistant or on the web site at http://2ndcircuit.leoncountyfl.gov/. Trials are stacked during each trial period. Trials are not specifically set during any given trial period for particular dates. The parties must be prepared to try the case on any day(s) during the trial period. The Court will, however, attempt to accommodate the scheduling needs of the parties, counsel or witnesses, and information as to the trials scheduled for any given trial period can be obtained either from the judicial assistant or on the above web site.

5.1 - Customary and Traditional Conduct and Decorum in the Circuit Court.

- (A) The purpose of this addendum is to state for the guidance of those heretofore unfamiliar with the tradition of the Second Judicial Circuit Court certain basic principles concerning courtroom conduct and decorum. These standards are minimal and not all-inclusive. They are intended to emphasize and supplement, not supplant or limit, the ethical obligations of counsel under the Code of Professional Responsibility or the time honored customs of experienced trial counsel.
- (B) When appearing in this Court, all counsel and all persons at counsel table should conduct themselves in the following customary and traditional manner:
 - 1. Stand as court is opened, recessed or adjourned.
 - 2. Stand when the jury enters or retires from the courtroom.
 - 3. Stand when addressing, or being addressed by, the Court.
 - 4. Address all remarks to the Court, not to opposing counsel.
 - 5. Avoid disparaging personal remarks or acrimony toward opposing counsel and remain wholly detached from any ill feeling between the litigants or witnesses.
 - 6. Refer to all adult persons, including witnesses, other counsel and the parties, by their surnames and not by their first names.
 - 7. Counsel should request permission before approaching the bench or the witness.
 - 8. Unless opposing counsel has previously been shown exhibits, any exhibit offered in evidence should, at the time of such offer, be handed to opposing counsel.
 - 9. In making objections, counsel should state only the legal grounds for the objection and should withhold all further comment or argument unless elaboration is requested by the Court. If counsel believes further explanation is imperative, counsel should ask to go "side bar."
 - 10. In examining a witness, counsel shall not repeat or echo the answer given by the witness.
 - 11. Offers of, or requests for, a stipulation should be made privately, not within the hearing of the jury.
 - 12. In opening statements and in arguments to the jury, counsel shall not express personal knowledge or opinions concerning any matter in issue, shall not read or purport to read from deposition or trial

transcripts, and shall not suggest to the jury, directly or indirectly, that it may or should request transcripts or the reading of any testimony by the reporter.

- 13. Counsel shall admonish and discourage all persons at counsel table from making gestures, facial expressions, audible comments, or the like, as manifestations of approval or disapproval during the testimony of witnesses, or at any other time.
- 14. Smoking is prohibited in the courtroom at any time. Water may be allowed at counsel table with permission of the Court, as may items needed for health reasons.
- 15. Counsel should remain at the podium when addressing jurors during opening statement and closing arguments and when questioning witnesses, unless leave to approach the witness has been given.
- 5.2 During voir dire, counsel should only read a list of potential witnesses and other names that may come up during the trial.
- 5.3 Asking hypothetical questions based on the facts of the case during voir dire is legally impermissible. Counsel should expect the Court to interrupt should this occur.
- 5.4 Trials start at 9:00 a.m., unless otherwise set. All witnesses that are present should be in the courtroom (not out in the hallway). [Counsel does have discretion to have <u>reliable</u> witnesses arrive at a later time. However, if counsel exercises this discretion, trials will not be continued, recessed or mistried because a witness does not show up as scheduled or the attorney misjudges the pace of the trial]. Any issues with the scheduling of witnesses should be raised with the Court <u>before</u> the trial starts, not part way through the trial. If in doubt, raise the issue with the Court.
- 5.5 The parties shall provide the Court with a list of probable witnesses at the beginning of the trial, preferably in the order of likely appearance. [The list does not need to be in pleading form and may be handwritten if circumstances so dictate].
- 5.6 The parties shall provide the Court and opposing counsel with a probable evidence list at the beginning of the trial. All exhibits should be marked and numbered as listed, and should be shown to opposing counsel after they are

marked, before the trial starts. It is opposing counsel's obligation to carefully examine the evidence before the trial begins. Opposing counsel may rely on this numbering, and therefore, it is unnecessary to further present evidence to opposing counsel before offering the item in evidence. Upon request, the Court will allow a brief recess to get all evidence marked if evidence custodians do not arrive with the evidence early enough to get evidence marked before court starts. However, this does not relieve the parties of the responsibility to have an evidence <u>list</u> before 8:30 a.m.

- 5.7 During the trial, it is counsel's obligation to have the next witness <u>in</u> the courtroom when court resumes from a break. It is not the bailiff's job to go find your witness. Nor is it acceptable to start looking for your witness <u>after</u> court resumes.
- 5.8 Counsel should speak only from the podium and should use the microphone so all can hear.
- 5.9 There will generally be one mid-morning and one mid-afternoon break in addition to the lunch recess.
- 5.10 The attorneys and parties are expected to be respectful of the Jurors and their time, and shall act accordingly.

SECTION 6 - MISCELLANEOUS

- 6.1 Settlement Any time a matter is scheduled for trial or hearing and the parties have resolved the matter, all parties have the responsibility of notifying the Court as soon as possible of the settlement, and advising the Court of the party who will prepare and present the appropriate judgment, dismissal, stipulation or other order.
- 6.2 Transmittal or cover letter All materials delivered to the Court should be accompanied by a transmittal or cover letter advising the Court of the circumstances or reason for the transmittal. For example, a cover letter with a proposed order should indicate if it is pursuant to a ruling on a certain date, is agreed to by all parties, or is submitted under other circumstances.
- 6.3 Copies to counsel or parties All materials, including transmittal letters, submitted to the Court must be copied to all other counsel or unrepresented

parties unless otherwise permitted by law.

KAREN GIEVERS Circuit Judge Second Judicial Circuit