

POLICIES, PROCEDURES AND PREFERENCES FOR CIVIL CASES ASSIGNED TO JUDGE JOSHUA HAWKES

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 cases assigned to Judge Joshua Hawkes.

SECTION 2 – MOTION PRACTICE

2.1 – Form and Content – All motions and responses, unless made orally during a hearing or trial, shall be in writing, state with particularity the grounds therefore and the relief sought, and cite all authorities relied upon or shall be accompanied by a memorandum of law (except those listed in 2.8). Copies of reported cases are not necessary to be filed or forwarded. However, a complete and substantive proposed order shall be included in all motions and responses in opposition. This helps both the parties and the Court to focus on the salient issues presented in the motion.

2.2 – Summary Judgment Motions – Any motion for summary judgment 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. Citation to the documents contained in the appendix should be provided in the statement of undisputed facts. The party opposing a motion for summary judgment shall, likewise, 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 will be deemed to be admitted. It is generally counter productive to either party's position to present the court with a large volume of factual materials. Such a filing suggests to the court that the party has not thoroughly analyzed its case or has thoroughly analyzed its case and determined that its position is not well taken. A focused presentation which establishes the party's position is much more likely to be persuasive to the Court. Example:

Movant's Statement of Facts:

- 1. Green Acres is a vacant property located at 123 Main Street. (App'x at 3)*
- 2. John Smith owns Green Acres. (App'x at 4)*

Respondent's Opposing Statement of Material Facts:

- 1. Green Acres is a vacant property located at 123 Main Street.*

Admitted that Green Acres is located at 123 Main Street. (App'x at 6)

Denied that the property is vacant. (App'x at 9)

2. *John Smith owns Green Acres.*

Denied as phrased. Admitted that the last recorded deed to Green Acres names John Smith. (App'x at 7)

The citation format is not critical, but it should be clear what pages and portions of the page the parties are citing to in their respective appendices.

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 email. Certification that counsel has attempted to confer with opposing counsel is not sufficient. The Court may *sua sponte* deny motions that fail to include a 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, uncontested motions, judgment on the pleadings, summary judgment, or other dispositive motions. If a motion is uncontested or unopposed, reference to that fact should be made in the motion.
- D. A party alleging that a pleading fails to state a cause of action will 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, may be considered and decided by the Court on the pleadings, the court file, and memoranda, without hearing or oral argument.

2.5 – Hearings or Oral Argument on Motions – Any party who seeks oral argument 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. Hearing dates are normally cleared with opposing counsel before being confirmed by the Court. Once a date is cleared with opposing counsel and confirmed with

the Court, it will normally be the movant's responsibility to file a notice of hearing, with a courtesy copy submitted to the Court.

2.6 – Zoom Hearings – Counsel desiring to appear remotely for a Zoom hearing should file a written motion as contemplated by Fla. R. Jud. Admin. 2.530. Zoom hearings are still court appearances and participants should comport themselves accordingly. Participants must name themselves in Zoom appropriately, *e.g.*, “Atty John Smith, for Mary Jones,” “Robert Miller, Observer.” Any person attempting to join the Zoom meeting under a blank or non-descript user-name such as “iPhone4” or anyone using an inappropriate name will not be admitted. Participants shall be muted unless speaking and should be in an area free of distraction and background noise. Failure to follow proper Zoom protocol will lead to removal and treated as a non-appearance.

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 ruling and shall contain only the citation to the authority without argument.

2.8 – Motions Not Requiring Citation to Authority or Memoranda – Citation to authority is allowed but not required with respect to the following motions:

- A. Extensions of time for the performance before the expiration of the period;
- B. To add or substitute parties within the period allowed by the case management order;
- C. To amend the pleadings within the period allowed by the case management order;
- D. To file supplemental pleadings;
- E. For pro hac vice admission of counsel who are not members of The Florida Bar;
- F. To request oral argument; and
- G. Any other motion which, by its nature, does not require authority.

2.9 – 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 as an uncontested motion.

2.10 – Materials to be Provided to the Court – Case copies are not required unless the authority is not available in Westlaw. A courtesy copy of any motion or similar document, should be provided to the judge contemporaneously with its filing. The Court will in most instances review all materials provided to it prior to the hearing. Therefore, it is important that the Court be provided with all relevant materials at least one week prior to any hearing. As noted above, the submission of a large volume of materials to the Court is disfavored and suggests a lack of careful analysis and preparation by the party.

2.11 – Motions to Make Court Records Confidential – Whether documents filed in a case may be filed under seal is a separate issue from whether the parties may agree that produced documents are confidential. Motions to seal court records are disfavored. The Court will permit the parties to file documents under seal only upon a finding of extraordinary circumstances and particularized need as further outlined in Fla. R. Jud. Admin. 2.420(d). A party seeking to have a document sealed must file a motion requesting such action. The parties cannot simply agree to sealing portions of the record. The motion, whether granted or denied, will remain in the public record.

2.12 – Emergency Motions – The Court may consider and determine emergency motions at any time. 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. 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 – 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 judgment, unless otherwise ordered in a scheduling order. 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. 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 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 summarily granted.

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. They are expected to cooperate 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. Responses to discovery requests should be timely, complete, and in good faith. If there are objections, they should be stated specifically and with appropriate factual support. Boilerplate objections are of no effect and will waive the party's objection.

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 to update or supplement any response immediately upon obtaining information that would make the previous response inaccurate, incomplete, or misleading.

3.3 – Special Masters – The Court may, at any time, on its own motion or on the motion of any party, appoint a special master in accordance with Fla. R. Civ. P. 1.490, to assist in the

coordination of discovery and to mediate/arbitrate disputes. Unless otherwise ordered, the parties shall bear equally the cost of a special master, and such fees may be taxed as costs.

3.4 – 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. Motions requesting an extension must set forth good cause and establish due diligence.

SECTION 4 – TRIALS

4.1 – Trial Setting – The initial case management order sets broad deadlines for when a matter should be resolved. The Court will also review the docket and set matters for trial as it deems appropriate. Parties may also move for a trial setting and submit a proposed scheduling order.

4.2 – Trial Schedules – Trials in the civil division are scheduled per the posted trial calendar, normally every other week with jury selection on Fridays. The parties should be prepared to justify their requested number of trial days. Trials cannot be specially set on other weeks, except in very unusual circumstances. 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 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 from the judicial assistant.

4.3 – Exhibits – Exhibits must be publishable electronically (PDF) through the courtroom AV system. All exhibits must be initialed by both parties. Exhibits must be pre-marked with numbers. Hard copies of the exhibits go with the jury during deliberations. A flash drive with all exhibits should be provided to the in-court clerk.

SECTION 5 – MISCELLANEOUS

5.1 – 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.

5.2 – 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.

5.3 – 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.