

# **POLICIES, PROCEDURES AND PREFERENCES FOR ALL CIVIL CASES ASSIGNED TO JUDGE ANGELA C. DEMPSEY**

## **SECTION 1 - INTRODUCTION**

The Rules of General Practice and 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 Angela C. Dempsey, 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.

## **SECTION 2 - COMMUNICATION WITH THE JUDGE'S OFFICE**

**2.1 Communication with Judge Dempsey** - Impartiality is the most basic principle of judicial ethics. This means that all parties to a pending case must be included in all communications with the Court regarding the matter. The Judge is restricted by principles of judicial ethics from communicating about pending cases outside of hearings or documents filed in the court file and served on all parties. These restrictions apply equally to the Judge's Judicial Assistant (JA). The JA cannot deliver messages about substantive matters from a litigant or any other person to the Judge. However, communication with the JA for scheduling purposes is permitted.

**2.2 Communication with Judge Dempsey's Judicial Assistant (JA)** - At the risk of stating the obvious, the JA does not consider arguments or decide legal matters; such is the exclusive province of the Judge. Consequently, the practice of arguing the merits of a case to the JA or including the JA on e-mail exchanges in which disagreements between the parties are aired, serves no purpose and is prohibited. Furthermore, the JA is an extension of the Judge. As such, intemperate communication should be avoided.

## **SECTION 3 - MOTION PRACTICE**

**3.1 - Form and Content** - All 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 3.9, shall cite in the body thereof all authorities relied

upon or shall be accompanied by a memorandum of law. Copies of reported cases should not be filed in the court file.

**3.2 - 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 dispute 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 judgment shall, likewise, file and serve a timely 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.

**3.3 - 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 e-mail, text 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, uncontested motions, judgment on the pleadings, summary judgment, or other dispositive motions.

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.

**3.4 - 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 or oral argument. Unless otherwise directed by the Court, responses in opposition shall be filed within five days after service of the motion for discovery disputes, 10 days for motions directed to the pleadings, and 20 days for motions for summary judgment. 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 10 days of service of the response in opposition.

**3.5 - 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. 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 produce and distribute a notice of hearing. A courtesy copy should be submitted to the court.

**3.6 - Zoom hearings** – Some hearings may be scheduled by Zoom video where the Court will act as the host of the hearing. All participants must conduct themselves as if physically in court. Participants must not have anyone present in the room with them (other than clients with their attorneys). They must ensure there is no ambient noise in their room that would interfere with the hearing, or mute their connection until it's their turn to speak. Participants must wait until it is their turn to speak, must not talk over other participants, and must not interrupt others who are speaking unless making a legal objection. All exhibits for evidentiary hearings and bench trials must be pre-marked for identification purposes and provided to the opposing party and the Judge's Judicial Assistant no later than 72 hours prior to the

start of the hearing or bench trial. Other than witness testimony, no evidence or documents filed or otherwise presented will be considered after this deadline.

**3.7 - 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. The intention to appear telephonically should be stated in the notice of hearing. The party appearing telephonically will call Judge Dempsey at **(850) 606-4322**, 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 Rule 2.530, Fla. R. Gen. Prac. & Jud. Admin. A motion with good cause shown is required for telephonic appearance at a lengthy hearing (more than 30 minutes), a hearing involving the taking of testimony or a pretrial conference.

**3.8 - 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.

**3.9 - Motions Not Requiring Citation to Authority or Memoranda** - Citation to authority in the body of the motion or accompanying memoranda are allowed but not required by either the movant or the opposing party, unless otherwise directed by the court, with respect to the following motions:

- a. Extensions of time for the performance of an act required or allowed to be done, provided that the request is made before the expiration of the period originally prescribed or extended by previous orders;
- b. To continue a pre-trial conference, hearing, or the trial of an action;
- c. To add or substitute parties;
- d. To amend the pleadings (requires attachment of proposed pleading);
- e. To file supplemental pleadings (requires attachment of proposed pleading);
- f. To appoint a next friend or guardian ad litem;
- g. To stay proceedings to enforce judgment;
- h. For pro hac vice admission of counsel who are not members of The Florida Bar;
- i. To request oral argument; and

- j. Any other motion which, by its nature, does not require citation to authority.

**3.10 - 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 or proposed pleading 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.

**3.11 - 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. 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 in MS Word. The parties are free to make any simultaneous written argument that they desire to make. However, further oral argument will be rarely granted.

**3.12 - 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 contemporaneously with its filing with the clerk. Likewise for response and replies to legal memorandum, and all other documents of record, or otherwise, which the party considers necessary for consideration and determination of the motion or other request for judicial action. Alternatively, a party may specifically designate what pleadings or other documents of record in the court file are appropriate for consideration, giving a description of the filing and the date it was filed.

**3.13 - Rulings on Motions** - In most instances, the court will make a ruling on the motion at the end of oral argument. The court does not normally take matters under advisement. In order to accomplish this procedure, 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 in a timely fashion prior to the hearing. Materials should normally be provided at least 7 days prior to the hearing. If materials are filed or otherwise provided within 48 hours of the

hearing, it is likely the Court will not have reviewed them.<sup>1</sup> Although as indicated above in paragraph 3.1, copies of reported cases should not be filed in the court file, it is appropriate to provide the court with courtesy copies of significant cases. Again as noted above, the submission of a large volume of materials to the court is disfavored and suggests a lack of careful analysis by the party. Providing copies of significant cases to the court for the first time during oral argument tends to slow down the process and waste the party's allotted time.

**3.14 - 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 Rule 2.420(d), Fla. R. Gen. Prac. & Jud. Admin. A party seeking to have a document sealed must file a motion requesting such court action. The parties cannot simply agree to this action. The motion, whether granted or denied, will remain in the public record.

**3.15 - 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 postpone 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.

**3.16- 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, 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 4 - DISCOVERY

**4.1 - 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.

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<sup>1</sup> The Court normally cannot access filings until 48 hours or more after they are filed due to the Clerk of Court's filing procedures.

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. Responses 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.

**4.2 - 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.

**4.3 - 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 proceeding before a special master, and such fees may be taxed as costs.

**4.4 - 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(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 5 - CALENDARING OF TRIALS

**5.1 – Mediation** – The Court will likely enter a Mediation Order prior to setting a case for trial. If either or both parties fail to comply with the Mediation Order, the Court will likely issue an Order to Show Cause why sanctions should not be imposed.

**5.2 - Trial Setting** - A case management conference will be required prior to setting any matter for jury trial and for any non-jury trial requiring more than 2 hours. Case managements may be set on the court's own motion or 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 will be provided prior to the case management hearing. 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.

**5.3 - Trial Schedules** - Trials in Civil Division S are scheduled on the first, and third week of each month. 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 8:30 a.m., and pre-trial/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 from the Judicial Assistant. 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 from the judicial assistant.

## 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.

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