

IN THE COUNTY COURT IN AND FOR
PALM BEACH COUNTY, FLORIDA

**RE: STANDING DISCOVERY ORDER FOR
DIVISION RF**

_____ /

The following procedures are designed to help the parties and the Court work together to accomplish civil discovery without undue delay and unnecessary expense.

I. GENERAL DISCOVERY PRINCIPLES

A. Rule 1.280

An objection that a discovery request is not reasonably calculated to lead to admissible evidence will be overruled by this Court unless the objection states its basis.

B. Rule 1.280 - Protective Orders

This Rule of Civil Procedure permits the Court to enter a protective order "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." A motion seeking relief under this Rule must include a specific explanation, supported by facts, demonstrating how complying with the discovery request would cause annoyance, embarrassment, oppression, or undue burden or cost.

C. Non-Waiver

Discovery is a dynamic process. What is relevant or proportionate or cumulative or unduly burdensome can change as a case moves forward. The Court recognizes that a party may be unwilling to compromise its position on a particular discovery request because of concern that the concession will be deemed to waive a future objection or a future demand for related discovery. To eliminate this concern, the Court evaluates all discovery requests and responses

individually. Therefore, by responding, in whole or in part, to a discovery request, a party does not waive any objection to a future request. Likewise, by agreeing to limit a discovery demand, a party does not waive its right to seek additional discovery in the future. Parties need not serve a response or objection that specifically reserves their rights or disavows a waiver.

II. DISCOVERY OBJECTIONS

A. Boilerplate or General Objections

The parties shall not make nonspecific, boilerplate objections. The parties also shall not make General Objections that are not tied to a particular discovery request. Such objections will be summarily overruled.

B. Vague, Overly Broad, and Unduly Burdensome

Objections that state that a discovery request is "vague, overly broad, or unduly burdensome" will be overruled by this Court. If a party believes that a request or a term is vague, the party shall state the objections in writing and that party shall then attempt to obtain clarification from opposing counsel.

If a party believes a discovery request seeks irrelevant information or is unduly burdensome, that party shall confer in good faith with opposing counsel to narrow the scope of the request before asserting these objections. The objecting party nevertheless shall respond as to those matters for which the scope or burden is not contested. For example, if there is an objection based upon the scope of the request, such as time frame or geographic location, discovery should be provided as to the time period or locations that are not disputed, and the response should clearly state such. Thus, if discovery is sought nationwide for a ten-year period, and the responding party objects on the grounds that only a five-year period limited to activities in the State of Florida is appropriate, the responding party shall provide responsive discovery falling within the five-year period as to the State of Florida and state such with its objection to the remainder.

A party objecting on any of these grounds must explain the specific and particular way in which a request is vague, seeks irrelevant information or is unduly burdensome. *See Topp Telecom, Inc. v. Atkins*, 763 So. 2d 1197, 1199 (Fla. 4th DCA 2000) (an affidavit must be provided stating the factual basis for the assertion of undue burden).

C. Formulaic Objections Followed by an Answer

A party shall not recite a formulaic objection followed by an answer to the request. It has become common practice for a party to object to a discovery request, and then state that "notwithstanding the above," the party will respond to the discovery request, subject to or without waiving such objection. Such a response will be deemed to preserve nothing. Further, it leaves the requesting party uncertain as to whether the discovery request (as propounded) has actually been fully answered, whether the response relates only to the request as unilaterally narrowed by the responding party, and whether the responding party is withholding any responsive materials.

The proper practice is to state (1) whether documents are being provided in response to the request and identify those documents by sequential number or category, and (2) whether any responsive documents are being withheld, and if so the specific legal basis for that objection.

Samples of proper objections include:

Defendant is providing documents marked as Defense 1 - 250, as well as a USB drive containing emails for the following custodians in native format _____

Defendant has identified other documents which are responsive to the request as propounded, but Defendant asserts that those additional documents are irrelevant to the claims and defenses in this matter because _____.

Plaintiff is providing documents marked as Plaintiff 1 - 100. Plaintiff has identified other documents which are responsive to the request as propounded, but

Plaintiff asserts that production of those materials would be unduly burdensome and disproportionate to the needs of the case because the burden and expense of the proposed discovery outweighs its likely benefit for the following reasons:

_____.

D. Production at an Indeterminate Time

It has also become a common practice to respond to Requests for Production by saying that the party will either produce responsive materials, or make those materials available for inspection, at an indeterminate future date. Such a response is not a response and only serves to delay the discovery process. Production must be completed no later than the time for inspection specified in the request or another reasonable time specified in the response. Hence, unless all unobjectionable materials are being produced contemporaneously with the written response, the response must specify a date by which production will be completed; the respondent may adopt the date proposed in the request or may propose its own reasonable time, after consultation with opposing counsel.

The parties may agree to a longer period for production, without leave of Court. In the absence of agreement among the parties, if the production will not be completed within 30 days of the response deadline, a motion for enlargement of time should be filed by the responding party. The motion shall include a good cause explanation for why production cannot be completed within that time period, and a proposed schedule for completing the production.

E. Objections Based upon Privilege- Requests for Production and Interrogatories

Generalized objections asserting attorney-client privilege or work product doctrine do not comply with the Rules. The Rules require that objections based upon privilege identify the specific nature of the privilege being asserted, as well as, *inter alia*, the nature and subject matter of the communication at issue and the sender and receiver of the communication and their relationship to each other. The production of non-privileged materials should not be delayed while a party is preparing a privilege log or seeking a ruling. The log shall be in accord with *TIG. Ins. Corp. v. Johnson*, 799 So. 2d 339, 341 (Fla. 4th DCA 2001).

F. Instructions to the Responding Party.

A party propounding discovery cannot impose legal obligations on the respondent through the use of Instructions. Discovery is governed by the rules of Court, which cannot be unilaterally supplemented by a party. Any Instruction that purports to impose a duty not otherwise mandated by the Florida Rules of Civil Procedure has no legal effect.

III. PROCEDURES FOR DISCOVERY DISPUTES

A. Pre-hearing Communication. If a discovery dispute arises, counsel must actually speak to one another (in person or via telephone) and engage in reasonable compromise in a genuine effort to resolve their discovery disputes before seeking Court intervention. No discovery motions shall be filed until after the parties have engaged in this process. The Court encourages filing the discovery objections without a motion if the Court can simply review the request and objection in order to rule, thereby saving the parties unnecessary briefing and expense.

B. Encouraging Participation by Less-Experienced Lawyers: Ordinarily, only one lawyer for each party may argue at the discovery hearing. Nevertheless, the Court has a strong commitment to supporting the development of inexperienced lawyers. The Court encourages parties

and experienced, seasoned attorneys to allow less-experienced practitioners the opportunity to argue in court. A party should advise the Court prior to the beginning of the hearing if a lawyer of 3 or fewer years of experience will be arguing the matter. In that event, the Court will allow multiple lawyers to argue on behalf of that party or additional hearing time if available.

IV. DEPOSITION ORDER TO CLARIFY PROCEDURES

On a showing of issues and at the request of any counsel or *sua sponte*, the Court, in its discretion, will enter the attached Deposition Order. In doing so, the Court will not consider fault or blame; rather, the Order will be entered to enable clarity on a going-forward basis without regard to prior disputes or discovery issues.

DONE and ORDERED at West Palm Beach, Florida.



Hon. Santo DiGangi
County Court Judge

IN THE COUNTY COURT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO:

Plaintiff,

v.

Defendant.

_____ /

**SUA SPONTE ORDER ESTABLISHING PROCEDURES
REGARDING DISCOVERY**

THIS ORDER is to Establish Procedures Regarding Discovery. The Court believes that this Order is needed to provide clarity and efficiency. As a result thereof, it is hereby

ORDERED ADJUDGED as follows:

1. This Order shall govern the conduct of all counsel, parties and witnesses in this cause.

2. DISCOVERY - All discovery matters are to be resolved by agreement, if possible. In the event that agreement is not possible, the parties shall refer all such disagreements to the Court and the Court will entertain and resolve them. In the event of a dispute at an ongoing deposition which threatens to cause a termination of the deposition, counsel shall first discuss the issue outside the presence of the deponent (but on the record) in

an effort to resolve the issue. Should such reasonable, good faith efforts fail, before termination of the deposition, the attorneys shall attempt to contact the Court by telephone.

3. DEPOSITIONS - Depositions will be conducted in compliance with the following rules:

(a) LOCATION - Absent contrary order of Court, all depositions shall be taken only in court reporter's offices or at counsel's offices.

(b) PERSONS PRESENT - At all depositions in this cause, absent a Court order specifically directing otherwise, the only persons who shall be in attendance while any deposition is being conducted are (1) the attorneys for Plaintiff; (2) the attorneys for Defendant; (3) one representative of each of the parties, including any corporate representatives; (4) the court reporter; and (5) such other personnel as may be necessary to record the deposition. If the parties wish to have additional persons attend, a prior court order or agreement of counsel is required.

(c) OBJECTIONS - The only objections to questions asked at a deposition that may be made at a deposition are those involving a privilege against disclosure or objection as to the form of the question being asked. All other objections

to questions asked are preserved until trial. There will be no objection that the question posed seeks information beyond the scope of discovery, as any such objection shall be raised before the Court on motion by the objecting party pursuant to those provisions of the Florida Rules of Civil Procedure which address such objections. All objections shall be concise, shall never suggest answers to the deponent nor will any party or attorney coach the deponent. Argumentative interruptions, objections or statements will not be permitted at depositions.

(d) DIRECTIONS NOT TO ANSWER QUESTIONS - Directions to any deponent, by any counsel or party, not to answer questions are improper, except upon the ground of privilege, and no such direction shall be made by any counsel to any deponent. All parties and counsel are directed to follow, comply with, and obey all of the instructions, procedures and holdings as set forth in the Fourth District Court of Appeal Opinion in the case of Smith v. Gardy, 569 So.2d 504 (Fla. 4th DCA 1990) (attached). If there is a privilege objection, the witness shall, nevertheless, answer all questions relevant to the existence, extent or waiver of the privilege, such as the day of the communication, who made the statement in question, to whom and in whose presence the statement was made, other persons to whom the statement was made, other persons to whom

the content of the statement has been disclosed, and the general subject matter of the statement.

(e) RESPONSIVENESS - All deponents are required to answer all questions directly, without evasion and to the extent of their knowledge.

(f) PRIVATE CONSULTATION - Private conferences between deponents and attorneys during the actual taking of the deposition are improper and the Court prohibits same when any question is pending to the witness, except as may be necessary for the purpose of determining whether a privilege should be asserted. However, unless prohibited by the Court for good cause shown, such conferences may be held during recesses and adjournments.

4. The parties' counsel shall review the attached Palm Beach County Rules of Professional Courtesy and Civility and are hereinafter ordered to comply with same.

5. SANCTIONS - All parties, counsel and witnesses are hereby advised and notified in advance that the Court will impose such sanctions as are authorized by the Fla. R. Civ.P., including but not

limited to an award of attorney's fees and costs, as to any party, counsel or witness who violates the terms and provisions of this Order.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida, this ___ day of _____, _____.

Santo DiGangi
County Court Judge

Copies furnished to: