

**IN THE CIRCUIT COURT
OF THE FOURTEENTH JUDICIAL CIRCUIT,
IN AND FOR BAY COUNTY, FLORIDA**

**ORDER SETTING AND ESTABLISHING TIMELINES AND PROCEDURES
FOR MOTIONS AND MOTIONS FOR SUMMARY JUDGMENT**

SUMMARY JUDGMENT MOTIONS: Rule 1.510 requires motion for summary judgments be served at least 40 days before the time fixed for the hearing. Therefore, ALL motions for summary judgment must be filed and served no later **than 60 days** before the trial to allow sufficient time for consideration by the Court. The Parties **shall strictly follow** the requirements of Rule 1.510, and Federal Rule 56.1 as attached. A statement of material facts shall be filed with the motion for summary judgment as provided in the attached Modified Rule 56.1.

ALL OTHER MOTIONS: Including motions in limine shall be filed and served no later than 30 days before the Pretrial Conference. No motion will be heard at or after the pretrial conference absent compelling circumstances and consent of the Court. All motions not heard by the pretrial conference shall be deemed abandoned.

Failure to timely comply with this Order may result in the exclusion of witnesses and/or use of exhibits at trial and subject counsel to other sanctions that the Court deems appropriate.

DONE AND ORDERED in Panama City, Bay County, Florida, on October 4, 2023.

**/s/ Elijah Smiley, MBA, CPA
Circuit Judge**

Fla. R. Civ. P. 1.510 - SUMMARY JUDGMENT

(a) Motion for Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense-or the part of each claim or defense-on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court shall state on the record the reasons for granting or denying the motion. The summary judgment standard provided for in this rule shall be construed and applied in accordance with the federal summary judgment standard.

(b) Time to File a Motion. A party may move for summary judgment at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party. The movant must serve the motion for summary judgment at least 40 days before the time fixed for the hearing.

(c) Procedures.

(1) Supporting Factual Positions. A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

- A. citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
- B. showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) Objection That a Fact Is Not Supported by Admissible Evidence. A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) Materials Not Cited. The court need consider only the cited materials, but it may consider other materials in the record.

(4) Affidavits or Declarations. An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

(5) Timing for Supporting Factual Positions. At the time of filing a motion for summary judgment, the movant must also serve the movant's supporting factual position as provided in subdivision (1) above. At least 20 days before the time fixed for the hearing, the nonmovant must serve a response that includes the nonmovant's supporting factual position as provided in subdivision (1) above.

(d) When Facts Are Unavailable to the Nonmovant. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

1. defer considering the motion or deny it;
2. allow time to obtain affidavits or declarations or to take discovery; or
3. issue any other appropriate order.

(e) Failing to Properly Support or Address a Fact. If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by rule 1.510(c), the court may:

1. give an opportunity to properly support or address the fact;
2. consider the fact undisputed for purposes of the motion;
3. grant summary judgment if the motion and supporting materials-including the facts considered undisputed-show that the movant is entitled to it; or
4. issue any other appropriate order.

(f) Judgment Independent of the Motion. After giving notice and a reasonable time to respond, the court may:

1. grant summary judgment for a nonmovant;
2. grant the motion on grounds not raised by a party; or
3. consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

(g) Failing to Grant All the Requested Relief. If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact-including an item of damages or other relief-that is not genuinely in dispute and treating the fact as established in the case.

(h) Affidavit or Declaration Submitted in Bad Faith. If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court-after notice and a reasonable time to respond-may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

FEDERAL RULE 56.1 MOTIONS FOR SUMMARY JUDGMENT (modified)

(a) Statements of Material Facts.

1. A motion for summary judgment and the opposition to it shall each be accompanied by a separate and contemporaneously filed and served Statement of Material Facts. **The movant's** Statement of Material Facts shall list the material facts that the movant contends are not genuinely disputed.
2. **An opponent's** Statement of Material Facts shall clearly challenge any purportedly material fact asserted by the movant that the opponent contends is genuinely in dispute. An opponent's Statement of Material Facts also may thereafter assert additional material facts that the opponent contends serve to defeat the motion for summary judgment.
3. **The movant** shall respond to any additional facts asserted in the opponent's Statement of Material Facts even if the movant does not serve a reply memorandum. The due date for the Reply Statement of Material Facts is within 10 days of opponent response.

(b) Form Required for Statements of Material Facts.

(1) All Statements of Material Facts. All Statements of Material Facts (whether filed by the movant or the opponent) shall be filed and served as separate documents and not as exhibits or attachments. In addition, the Statements of Material Facts shall:

- A. Not exceed ten (10) pages;
- B. Consist of separately numbered paragraphs, limited as far as practicable to a single material fact, with each fact supported by specific, pinpoint references to particular parts of record material, including depositions, documents, electronically stored information, affidavits, stipulations (including those made for purposes of the motion only), admissions, and interrogatory answers (e.g., Exhibit D, Smith Affidavit, ¶2; Exhibit 3, Jones deposition, p. 12/lines 4-9).

The pinpoint citations shall reference pages (and line numbers, if appropriate, of exhibits, designate the number and title of each exhibit). When a material fact requires specific evidentiary support, a general citation to an exhibit without a page number or pincite (e.g., "Smith Affidavit" or "Jones Deposition" or "Exhibit A") is **non-compliant**.

(2) Opponent's Statement of Material Facts.

(A) In addition to complying with the requirements of sub-section (b)(1), an opponent's Statement of Material Facts shall correspond with the order and

paragraph numbering **format used by the movant**, but it shall not repeat the text of the movant's paragraphs.

- A. An opponent's Statement of Material Facts shall use, as the very first word in each paragraph-by-paragraph response, the word "disputed" or "undisputed."
- B. If an opponent's Statement of Material Facts disputes a fact in the movant's Statement of Material Facts, then the evidentiary citations supporting the opponent's position must be limited to evidence specific to that particular dispute.
- C. Any additional facts that an opponent contends are material to the motion for summary judgment shall be numbered and placed immediately after the opponent's response to the movant's Statement of Material Facts. The additional facts shall use separately numbered paragraphs beginning with the next number following the movant's last numbered paragraph. The additional facts shall be separately titled as "Additional Facts" and may not exceed five (5) pages (beyond the ten(10)-page limit for the opponent's Statement of Material Facts.

(3) Reply Statement of Material Facts.

A. If an opponent's Statement of Material Facts includes additional facts, then the movant shall respond to each additional fact in a separately served Reply Statement of Material Facts.

B. The Reply Statement of Material Facts shall correspond with the order and paragraph numbering format used in the opponent's additional facts, identifying with the very first word in each fact as "disputed" or "undisputed" at the beginning of each paragraph in the statement, and, if disputed, citing to particular parts of materials in the record in the same manner as required by subsections (b)(1) and(b)(2).

C. The movant may file and serve a reply memorandum of law, which is separate and distinct from the required Reply Statement of Material Facts addressing the opponent's additional facts.

a. **Effect of Failure to Controvert Undisputed Facts.** All material facts in any party's Statement of Material Facts may be deemed admitted unless controverted by the other party's Statement of Material Facts, provided that: (i) the Court finds that the material fact at issue is supported by properly cited record evidence; and (ii) any exception under Fed. R. Civ. P. 56 does not apply.

b. Consequences of Non-Compliance. If a party files and serves any Statement of Material Facts that does not comply with this rule, then the Court may strike the Statement, require immediate compliance, grant relief to any opposing party for any prejudice arising from a non-compliant statement or response, or enter other sanctions that the Court deems appropriate.

Summary Judgment Motions. The parties are reminded that strict compliance with Rule 56.1 as modified herein is required. A statement of material facts must be supported by *specific* references to pleadings, depositions, answers to interrogatories, admissions, and affidavits on file with the Court. In the event a responding party fails to controvert a movant's supported material facts in an opposing statement of material facts, the movant's material facts will be deemed admitted. *See Rule 56.1(b).* In the interest of judicial economy, in the interest of proper and careful consideration of each party's statement of material facts, and in the interest of determining matters on summary judgment on the merits, the Court orders the parties to file any statements of material facts as follows:

1. The moving party shall file a statement of material facts as a separate filing from a motion for summary judgment.
2. Each material fact in the statement that requires evidentiary support shall be set forth in an individually numbered paragraph and supported by a specific citation. This specific citation shall reference pages (and paragraph or line numbers, if applicable) of the cited exhibit(s). When a material fact requires evidentiary support, **a general citation to an exhibit, without a page number or pincite, is not permitted.**
3. Each exhibit referenced in the motion for summary judgment and/or in the statement of material facts must be filed on the docket. Exhibits which have already been filed on the docket *need not be refiled*. If a deposition transcript is referenced, a complete copy must be filed **which includes all exhibits**. Within twenty-four (24) hours of filing a motion for summary judgment, the movant shall separately file an index of the cited exhibits which names each exhibit and references the docket entry at which that exhibit may be found.
4. The responding party may file an opposing statement of material facts which responds to the moving party's statement of material facts. A responding party's opposing statement of material facts must specifically respond to each statement in the movant's statement by setting forth each of the individually numbered paragraphs contained in the movant's statement and after each paragraph, detail respondent's response or opposition. By way of example:

Movant's Statement of Material Facts

1. Blackacre is a vacant property located at 123 Main Street. Exhibit A ¶ 1.
2. John Smith owns Blackacre. Exhibit B ¶ 12.

Respondent's Opposing Statement of Material Facts

1. Blackacre is a vacant property located at 123 Main Street. Exhibit A ¶ 1. *Admitted that Blackacre is located at 123 Main Street. Exhibit A ¶ 1. Denied that the property is vacant. Exhibit C at 5.*
2. John Smith owns Blackacre. Exhibit B ¶ 12.
Denied as phrased. Admitted that the last recorded deed to Blackacre names John Smith. Exhibit B ¶ 12.

5. Each exhibit referenced in the response to the motion for summary judgment and/or in the opposing statement of material facts must be filed on the docket. Exhibits which have already been filed on the docket *need not be refiled*. If a deposition transcript is relied upon, a complete copy must be filed **which includes all exhibits**. Within twenty-four (24) hours of filing a response to the motion for summary judgment, the responding party shall separately file an index of the cited exhibits which names each exhibit and references the docket entry at which that exhibit may be found.

6. In the event that cross motions for summary judgment are filed, the Court may order the parties to submit a consolidated statement of material facts and responses as appropriate. If cross motions are anticipated, the parties may jointly move for an order to file consolidated statements prior to filing the motions for summary judgment.