

IN RE: DISCOVERY MOTIONS IN CIVIL ACTIONS

**ORDER REQUIRING CERTIFICATE OF GOOD FAITH FOR DISCOVERY
MOTIONS IN CIVIL ACTIONS IN CIRCUIT COURT OF TWENTIETH JUDICIAL
CIRCUIT IN AND FOR LEE COUNTY, FLORIDA**

At the outset, the Court notes that discovery in civil actions is, for the most part, designed to be self-executing. As stated by Third District Court of Appeals in Summit Chase

Condominium Ass'n, Inc. v. Protean Investors, Inc., 421 So. 2d 562 (Fla. 3d DCA 1982):

The superintendence of trial judges should be resorted to only with respect to whether information should be disgorged and the sequence or timing of its proliferation. It is inherent in the present rules of discovery that lawyers, out of respect for the adversary system, should make good faith efforts to comply with one another's reasonable discovery requests without constant recourse to the trial courts. This is especially so when counsel know full well that compliance with discovery is inevitable if sanctions are to be avoided.

Id. at 564.

In an effort to encourage good faith efforts to comply with discovery requests and the applicable rules of court, and to promote communication between counsel, **the Court will require counsel, in all civil actions in the Circuit Court of the Twentieth Judicial Circuit in and for Lee County, Florida, to provide a certificate of good faith with all discovery motions. More specifically, prior to scheduling any hearings on discovery motions, including, but not limited to, motions to compel, motions for protective orders, motions for sanctions, motions for extensions of time, etc., counsel for the moving party shall confer with counsel for the opposing party and thereafter file with the Clerk of the Court contemporaneously with the discovery motion, a statement certifying that counsel has personally conferred with opposing counsel in a good faith effort to resolve by agreement**

the issues raised and that counsel have been unable to do so. The certificate of good faith shall specify the details of counsel's efforts to confer with opposing counsel and the details of that conference. If certain of the issues have been resolved by agreement, the certificate shall specify the issues so resolved and the issues that remain unresolved.

The conference by and between counsel shall be conducted in person or by telephone. Counsel that merely "attempt" to confer have not "conferred." The word "confer" requires a substantive conversation in person or by telephone in a good faith effort to resolve the matter without court action and does not envision an exchange of self-serving letters or ultimatums submitted via e-mail or facsimile. Counsel shall promptly respond to communications and inquires from opposing counsel in regards to any discovery disputes.

The Court's Judicial Assistant will not schedule any hearings on discovery motions without first receiving a courtesy copy of the motion and the accompanying certificate of good faith. Counsel should note that if the Court grants any discovery motion and no sufficient excuse or basis for non-compliance with the discovery rules is advanced and presented by counsel, the Court will entertain the imposition of appropriate sanctions, including the assessment of attorneys' fees and costs.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this
2nd day of July, 2012.

Hon. Alane C. Laboda
Circuit Judge