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**MOTION PRACTICE RULES  
FOR  
THE TRIAL DIVISION OF THE SUPREME COURT****RULE 1. MOTION PRACTICE.**

Absent an order of the court before whom a case is pending requiring otherwise, all motions, applications, requests and petitions of a miscellaneous nature in civil actions in the Trial Division of the Supreme Court shall be filed and considered in accordance with these rules. Except as otherwise stated in these rules, the failure of a party to observe the requirements of the rules may be deemed an abandonment in whole or in part of that party's position on the pending motion.

**Notes**

These rules were promulgated October 27, 1994 and applicable to motions filed on or after November 14, 1994.

**RULE 2. MAKING OF MOTIONS.**

The moving party shall set forth in the motion the basis for the motion and the specific relief requested.

(a) Supporting Briefs. Every motion raising a substantial issue of law shall be supported by a brief which shall be filed simultaneously with the motion. The brief shall contain a concise statement of the reasons for the motion and a citation of the authorities relied upon. Briefs are not required when the motion raises no substantial issue of law and relief is within the court's discretion. Examples include, but are not limited to, motions to which all of the parties are shown to agree; motions to withdraw as counsel to a party; motions to pay in installments the estimated cost of preparing a transcript; motions for an extension of time; motions for default judgment; motions for voluntary or stipulated dismissal; and motions for leave to proceed in forma pauperis.

(b) Evidence. If a motion requires consideration of matters not established by the pleadings, the moving party, at the time of filing the motion, shall also file such evidentiary materials, including affidavits, as are being relied upon. Documents must be identified and authenticated by affidavit. Each affidavit must be made on personal knowledge, must set forth such facts as would be admissible in evidence, must show affirmatively that the affiant is competent to testify to the matters stated therein, and must identify the motion in connection with which the affidavit is filed. If the motion requires consideration of discovery materials, the motion shall refer to the specific pages and lines being relied upon.

(c) Proposed Orders. At the time of filing a motion for which no supporting brief is required the moving party shall submit to the judge a proposed order granting the motion and setting forth the requested relief.

(d) Emergency Motions. Motions requesting relief which should be granted or denied in less than 14 days should be so designated in the title of the motion and shall be accompanied by a showing of why the motion could not have been filed in a more timely manner.

**RULE 3. OPPOSING OF MOTIONS.**

(a) Opposing Brief or Opposition. Any brief or opposition opposing a motion shall contain a concise statement of the reasons for opposing the motion and a citation of authorities relied upon. Failure to file an opposing brief or opposition shall not be considered a confession of the motion.

(b) Evidence. If the opposition to a motion requires consideration of matters not established by the pleadings, the moving party at the time of filing the motion shall also file such evidentiary materials, including affidavits, as are being relied upon. Any affidavits or evidentiary material filed in opposition to a motion shall conform to the requirements of Rule 2(b).

**RULE 4. TIME FOR OPPOSING OF MOTION.**

(a) Substantial Motions. Any opposing brief, opposition, or evidentiary material, being relied upon in opposition to a motion, including motions for summary judgment, must be filed no later than 14 days after service of the motion.

(b) Routine and Emergency Motions. Routine motions and motions requesting relief which should be granted or denied in less than 14 days, may, in the discretion of the court, be ruled upon by the court at any time after their filing. Examples of routine motions include motions to pay in installments the estimated cost of preparing a transcript; motions for an extension of time; and motions for leave to proceed in forma pauperis. If a motion is granted in less than 14 days after its filing, any brief or opposition to the motion filed after the granting of the motion shall be considered a motion to set aside the court's order to which no opposing brief or opposition need be filed.

**RULE 5. REPLYING TO OPPOSING BRIEFS, OPPOSITIONS AND EVIDENCE.**

Any reply brief or rebuttal evidentiary material being relied upon in support of a motion shall be filed no later than 7 days after the last opposing brief or opposition is filed. Reply briefs and oppositions shall be filed only in response to arguments raised in opposition to the motion and not to repeat previously presented arguments or to raise new arguments. Rebuttal evidentiary material shall be filed only to dispute evidentiary material filed in opposition to the motion.

**RULE 6. ORAL ARGUMENT.**

Oral argument on any motion shall be held only upon order of the court. Oral argument may be requested by any party by separate statement filed at the time of filing of the motion or any opposing brief or opposition and shall be included in the title of the motion or opposing brief or opposition.

**RULE 7. ORAL TESTIMONY.**

Oral testimony in support of or in opposition to any motion shall be permitted only upon order of the court. The opportunity to present oral testimony may be requested by any party by separate statement filed at the time of filing of the motion or any opposing brief or opposition and shall be included in the title of the motion or opposing brief or opposition.

**RULE 8. SUBMISSION OF MOTIONS.**

Unless oral argument or oral testimony is ordered, a motion shall be deemed submitted and shall be decided by the court on the briefs and evidence filed, if any, at the expiration of the time limits specified in these rules. Briefs and evidence filed not in conformity with these rules may, in the discretion of the judge, be disregarded.

**RULE 9. PREREQUISITES TO DISCOVERY MOTIONS.**

No motion relating to discovery shall be considered by the court unless moving counsel, as part of the motion, shall make a written showing that after personal consultation with counsel for opposing parties and sincere attempts to resolve differences, they are unable to reach an accord. This showing shall recite, additionally, the date, time and place of such conference and the names of all persons participating in them. As used in this paragraph, "counsel" includes parties who are acting pro se.

**RULE 10. FORM OF DISCOVERY MOTIONS.**

All discovery motions shall include in the motion or in an attachment a verbatim recitation of each such interrogatory, request, answer, response, and objection that is the subject of the motion.

**RULE 11. FORM OF SUMMARY JUDGMENT MOTIONS.**

(a) Brief Supporting a Motion for Summary Judgment. A party moving for summary judgment shall set forth in the supporting brief a separate statement of each material fact as to which the moving party contends there is no genuine issue to be tried and as to each shall identify the specific document or affidavit, portion thereof, or discovery response or deposition testimony, by line and page, which it is claimed establishes the fact.

(b) Brief or Opposition Opposing a Motion for Summary Judgment. The party opposing a motion for summary judgment shall set forth in its opposing brief or opposition a separate statement of each material fact as to which it is contended there exists a genuine issue to be tried and as to each shall identify the specific document or affidavit, or portion thereof, or discovery response or deposition testimony, by page and line, which it is claimed establishes the issue.

**RULE 12. MOTIONS FOR DEFAULT JUDGMENT.**

Any motion for default judgment for a sum certain shall be accompanied by an affidavit of the party or the party's attorney showing that the party against whom judgment is sought is not an infant or incompetent person, and has defaulted in appearance in the action, that the damages alleged in the complaint are justly due and owing, that no part thereof has been paid, and that the costs sought to be taxed have been made or incurred in the action or will necessarily be made or incurred therein. No motion for default judgment shall be granted against an individual defendant unless the affidavit of service of process shows that the process server complied with the requirement of ROP Rules of Civil Procedure 4(d)(1) that "Reasonable attempts shall also be made by the person serving the summons and complaint to assure that the person served understands the meaning of the summons and complaint." No motion for default judgment shall be granted against a party when service has been accomplished by certified or registered mail

unless the affidavit of service of process shows that the defendant has received the summons and complaint 30 days or more before the filing of the motion or cause is shown why such is not necessary.

**RULE 13. MOTIONS FOR WITHDRAWAL OF COUNSEL.**

Any motion by an attorney or trial assistant to withdraw as counsel for a party shall be accompanied by a written showing setting forth the manner by which notice was given, the client's last known address and telephone number, if any, and that reasonable efforts have been made to give actual notice to the client:

- (a) That the attorney or trial assistant wishes to withdraw;
- (b) That the court retains jurisdiction to decide the lawsuit;
- (c) That the client has the obligation of keeping the court informed of where notices, pleadings or other papers may be served;
- (d) That the client has the obligation to prepare for trial or hire other counsel to prepare for trial when the trial date is set;
- (e) That if the client fails or refuses to meet these obligations, the client may suffer possible default;
- (f) Of the dates of any proceedings, including trial, and that the holding of such proceedings will not be affected by the withdrawal of counsel; and
- (g) Of the client's right to object to the motion to withdraw no later than 14 days after service of the notice.

Following the granting of a motion to withdraw, the client shall be notified by the withdrawing attorney or trial assistant of the effective date of the withdrawal.

**RULE 14. CERTIFICATES OF SERVICE.**

No paper presented to the Clerk of Courts pursuant to these rules shall be accepted for filing unless accompanied by a certificate stating that sufficient copies of the paper have been provided to the Clerk of Courts for placement in the court mailboxes of all opposing counsel and/or, if any party is not represented by counsel or is not represented by counsel with a court mailbox, that a copy of the paper has been served on such party in accordance with. ROP Rules of Civil Procedure 5.

**RULE 15. [CITATION.]**

These rules shall be cited as "ROP Mot. R. \_\_\_\_."