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**CHAPTER V**  
**FLORIDA HANDBOOK ON CIVIL DISCOVERY PRACTICE (2016)**  
**[ALL-IN-ONE DOCUMENT]**

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CHAPTER V  
EFFECT OF A MOTION FOR PROTECTIVE ORDER ON PENDING DISCOVERY

E: TextBookDiscrimination@gmail.com  
W: [www.TextBookDiscrimination.com](http://www.TextBookDiscrimination.com)

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**2016 FLORIDA HANDBOOK ON CIVIL DISCOVERY PRACTICE**

**CHAPTER** V      EFFECT OF A MOTION FOR PROTECTIVE ORDER ON  
PENDING DISCOVERY

**ITEMS:** 5.01 through 5.03

**ITEM 5.01 | APPLICABLE RULE**

Fla. R. Civ. P. 1.280(c), states in pertinent part:

Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending may make any order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;... If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 1.380(a)(4) apply to the award of expenses incurred in relation to the motion.

Rule 1.380(a)(4) addresses a party's failure to permit discovery and sanctions against the party wrongfully thwarting discovery.

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**ITEM 5.02 | DEPOSITIONS**

This issue most commonly arises in connection with a scheduled or court ordered deposition. A motion for protective order does not automatically stay a pending deposition.<sup>1</sup> The movant must file the motion as soon as the need for protection arises, schedule the motion for hearing sufficiently in advance of the pending proceeding, and show good cause why discovery should not go forward. A party who seeks a protective order to prevent discovery must make every reasonable effort to have a motion heard before a scheduled deposition or other discovery is to occur. The movant bears the burden of showing good cause and obtaining a court order related to the pending proceeding before discovery is to be had. The failure to file a timely motion for a protective order or to limit discovery may result in a waiver. However it does not bar a party from asserting privilege or exemption from matters outside the scope of permissible discovery.<sup>2</sup>

As always, lawyers should cooperate with each other concerning the scheduling of both, discovery, and a hearing on a motion for a protective order. Except where the taking of a deposition is an urgent matter or where the cancellation of a scheduled deposition would be prejudicial to a party, it is generally in the best interest of both parties to have the court rule on objections to depositions prior to the time that the deposition is conducted in order to avoid the necessity for a second deposition of a witness after are later resolved. Faced with a decision as to whether to attend a deposition while a motion for protective order is pending (and for which a prior hearing is unavailable), a lawyer often must make the difficult decision of whether to waive the objection by appearing at the deposition or risking sanctions by the court for not appearing. While the filing of a motion for protective order does not act as a stay until such time as an order is procured from the court, the courts have the authority to grant or withhold sanctions for failing to appear based upon the factors enumerated in the case law, including the diligence and good faith of counsel.<sup>3</sup>

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### Footnotes

<sup>1</sup> *Rahman Momenah v. Ammache*, 616 So. 2d 121 (Fla. 2d DCA 1993); citing: *Stables and CNA Ins. Co. v. Rivers*, 559 So. 2d 440 (Fla. 1st DCA 1990). See also: *Don Mott Agency, Inc. v. Pullum*, 352 So. 2d 107 (Fla. 2d DCA 1977).

<sup>2</sup> *Liberty Mutual Insurance Co. v. Lease America, Inc.*, 735 So. 2d 560 (Fla. 4th DCA 1999); *Insurance Company of North America v. Noya*, 398 So. 2d 836 (Fla. 5th DCA 1981). See also: *Berman, Florida Civil Procedure* §280.4[1][b] (2005 Edition).

<sup>3</sup> See: *Canella v. Bryant*, 235 So. 2d 328 (Fla. 4th DCA 1970); and *Rahman Momenah*, *supra*.

### **ITEM 5.03 | OTHER FORMS OF DISCOVERY**

Preservation of objections to other forms of discovery is generally accomplished in accordance with the Rule of Civil Procedure applicable to that particular method of discovery. For instance, objections to interrogatories served under Rule 1.340 are preserved by serving any objections to the interrogatories within 30 days after service of the interrogatories. If objections are served, the party submitting the interrogatories may move for an order under Rule 1.380(a) on any objection to or in the event of failure to answer an interrogatory. Similarly, in the case of production of documents under Rule 1.350, a party objecting to the production of documents shall state its objection in the written response to the document production request, in which event the party submitting the request may seek an order compelling the discovery in accordance with Rule 1.380. Similar procedures exist for the production of documents and things without a deposition under Rule 1.351 and for the examination of persons under Rule 1.360.

The timely filing of objections to written discovery as described above effectively stays any obligation of the party objecting to the discovery to provide same until such time as the objections are ruled upon. This does not, of course, prevent the court from granting an award of attorneys' fees or other sanctions under Rule 1.380 in the event that the court finds that the objections were without merit.

With respect to the necessity for filing a privilege log when withholding information from discovery claiming that it is privileged, see Chapter Ten, Privilege Logs.

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## APPENDIX

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### **CONTACT INFORMATION**

E: [TextBookDiscrimination@gmail.com](mailto:TextBookDiscrimination@gmail.com)

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