

§2.F.00 | RESPONSE BY OPPOSING PARTY⁵⁶

The proper method for the party opposing the motion to state a position on the relief is to serve a written response.⁵⁷ A response should include a complete presentation of the factual representations and legal arguments necessary to support the contention of the responding party. Briefs are not permitted in support of either a motion or a response.⁵⁸ Because oral argument is unlikely, a response should be drafted with the expectation that it will be the sole form of advocacy.

A response to a motion filed in an appellate court must be served “within ten days of service of the motion.”⁵⁹ However, the time for serving a response is fifteen days if the motion was served on the opposing party by mail.⁶⁰ If additional time is needed to prepare a response, counsel may file a motion for extension of time to respond. The appellate court has authority to shorten or extend the time period for filing a response.

It is proper to submit an appendix in support of the response, and that may be advisable if the circumstances warrant the consideration of documents or other relevant materials that are not yet before the appellate court.⁶¹ As with the motion itself, an appendix to a response may include affidavits or other documents that are not a part of the record of the proceedings in the lower tribunal.⁶² The form of the appendix to a response should be the same as the form of an appendix to a motion.⁶³

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Footnotes

⁵⁶. See Padovano, *supra* n. 1, at § 14.7 for the source of the material that is adapted in this Subsection.

⁵⁷. A party is entitled to file one response to a motion. Fla. R. App. P. 9.300(a). The appellate court may permit a further response on its own motion or upon the party's motion. *Id.* 9.300(a) comm. nn. 1977 amend.

⁵⁸. There is no authority in Rule 9.300(a) for filing a brief in support of a motion or response. The drafters of the Rule intended to avoid the cumbersome and unnecessary procedure of allowing briefs in support of motions and responses. Fla. R. App. P. 9.300(a) comm. nn. 1977 amend.

⁵⁹. *Id.* 9.300(a).

⁶⁰. *Id.* 9.420(d); *Sebree v. Salcedo*, 390 S.2d 801, 801 (Fla. Dist. App. 3d 1980). However, additional time is not afforded if a specific rule provides that the time for responding is measured from the time the motion was filed. E.g. Fla. R. App. P. 9.190(e)(2)(C); see *Ludwig v. Dept. of Health*, 778 S.2d 531, 533 (Fla. Dist. App. 1st 2001) (stating that, unless an agency responds within ten days as proscribed in Rule 9.190(e)(2)(c), the court will grant a motion for stay).

⁶¹. Fla. R. App. P. 9.300(a). Rule 9.300(a) authorizes the filing of an appendix to a motion. *Id.* By implication, it also would be proper to file an appendix in support of a response to the motion. Otherwise, the opposing party may not have an effective means of rebutting the factual material set forth in support of the motion. The conclusion that an appendix to a response is permitted also is supported by Rule 9.220, the Rule governing the filing of an appendix generally, which expressly includes the term “response” in the list of appellate pleadings that may be supported by an appendix.

⁶². *Id.* 9.300(a). Rule 9.300(a) provides in material part that an appendix “may include affidavits and other appropriate supporting documents not contained in the record.”

⁶³. See *supra* n. 38–39 and accompanying text (discussing the form of an appendix to a motion).

