

IN THE SUPREME COURT OF FLORIDA

Case No: SC15-2150: Advisory Opinion to the Attorney General re:
Rights of Electricity Consumers Regarding Solar Energy Choice

**REPLY TO SPONSOR’S OPPOSITION TO FLORIDA ENERGY
FREEDOM’S MOTION TO ACCEPT ITS BRIEF AS TIMELY FILED**

This Court issued an Order on January 22, 2016 (the “Order”) that directed Florida Energy Freedom to “immediately file a motion (the “Motion”) to accept its brief (the “Brief”) as timely with this Court.” Florida Energy Freedom filed the Motion within a week, and Consumers for Smart Solar (the “Sponsor”) filed a response opposing the Motion later that same day (the “Response”). Florida Energy Freedom replies to the Response below.

1. Florida Energy Freedom complied fully with the Court’s Order.

The Response states that “Florida Energy Freedom did not immediately file [the Motion] as directed, but inexplicably waited a week to file it on January 29, 2016.” Florida Energy Freedom, however, began preparing the Motion the day after the Order was issued. But the meaning of the word “immediately,” as used in the Order, appears to be context-sensitive.^[1] The 1997 commentary under rules 2.505 and 2.525 says “[i]mmediately thereafter’ means ‘filed with reasonable

¹ In [Sch. Bd. v. Survivors Charter Sch., Inc.](#), 3 So. 3d 1220, 1233 (Fla. 2009), this Court defined “immediate” in a student safety statute as being “without interval of time.” But in [Frohman Gear Co. v. Fellows](#), 149 So. 2d 557, 560 (Fla. 1963), this Court said, in defining “immediately” as used in a medical statute, that “there is necessarily some latitude, whether it be a few hours or even a few days....”

promptness” (quoting [Miami Transit Co. v. Ford](#), 155 So. 2d 360, 363 (Fla. 1963)).^[2] In that case, service in ten days was “reasonably prompt.” In a citizen initiative petition proceeding more similar to the instant case, [Adv. Op. to the Atty. Gen. – VPK](#), 824 So. 2d 161 (Fla. 2002), this Court received a brief which did not comply with rule 9.210(a)(2). This Court ordered the filer to amend and refile it “immediately.” In complying with the order in that case, an amended brief was filed one week later and accepted by this Court, albeit without any objections.^[3] Similarly, Florida Energy Freedom complied with the Court’s Order within one week after it was issued.

Moreover, the timing of the filing was consistent with a call from the Clerk’s Office on January 28, 2016 at 5:15 p.m. In that call, Clerk’s staff asked if Florida Energy Freedom had received the Order, and if it intended to respond. The Clerk explained that the Order was intended to reiterate that this Court wanted Florida Energy Freedom to file the Motion. Florida Energy Freedom confirmed that it had received the Order and was finishing the Motion which would be filed within the next day. After final review, Counsel filed and served the Motion the next day.

² This case discusses serving motions, rather than filing them, but it appears to be the seminal case in defining the word “immediately” in this procedural context.

³ The [order](#) in [Adv. Op. – VPK](#), 824 So. 2d (Fla. 2002), the [docket](#), and the [index](#).

2. There is no risk of prejudice to the Sponsor or to any other party if this Court grants the Motion and accepts the Brief.

The Response also argues that this Court should deny the Motion because accepting the Brief “will prejudice the Sponsor’s ability to fully respond to any issues raised in that [B]rief.” But there is no such risk in accepting the Brief, because (1) it was filed and served to all parties on January 21, 2016, and (2) Florida Energy Freedom personally notified Sponsor’s counsel of its intent to file the Motion by phone and by e-mail on January 27, 2016.

Florida Energy Freedom contacted Sponsor’s counsel on January 27, 2016 to notify them of its intent to file the Motion as instructed in the Order. The parties briefly exchanged opinions on the Brief and the Motion. Florida Energy Freedom that day sent Sponsor’s counsel the following e-mail, in relevant part:

I wanted to let you know that we are preparing to file a motion requesting that the Court accept as timely the amicus brief we filed on January 21, 2016 in case no. SC15-2150. We may also file a separate motion to correct some formatting issues in that brief. I wanted to ask - as counsel for the [S]ponsor of the proposed amendment, would you object to either of these motions?

Sponsor’s counsel replied with the objection that was listed in the Motion.

Sponsor’s counsel was therefore on notice that Florida Energy Freedom intended to comply with the Order. Even assuming for the sake of argument that there were some risk of prejudice, this exchange ameliorated it.^[4]

⁴ Where Florida courts find delay in filing motions, or even prejudice resulting from delay, notifying counsel may ameliorate it. In [Cinkat Transp., Inc. v. Md.](#)

Furthermore, Sponsor accurately notes that Florida Energy Freedom did not file the Motion simply on its own accord. Rather, it did so in response to the Court's Order, which was a clear direction from this Court to file the Motion. Thus, when Sponsor says that it "did not plan to respond because the [C]ourt denied [the Motion]," Sponsor also concedes that it mistakenly assumed that Florida Energy Freedom would not comply with the Order, despite Florida Energy Freedom's call and e-mail informing them of its intent to comply.

3. Conclusion

For these reasons, in addition to those stated in the Motion, Florida Energy Freedom respectfully requests this Court grant the Motion and accept the Brief.

Respectfully submitted, this
Tuesday, February 2, 2016

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[Cas. Co.](#), 596 So. 2d 746, 747 (Fla. 3d DCA 1992) and [Atl. Asphalt & Equip. Co. v. Mairena](#), 578 So. 2d 292, 293 (Fla. 3d DCA 1991), movants who promptly contacted opposing counsel (at least four days after orders) put them "on notice" of a motion, excusing two-month delays. This was "reasonable promptness." [Pieco, Inc. v. Sunset Amoco W., Inc.](#), 597 So. 2d 972, 973 (Fla. 3d DCA 1992).

CERTIFICATE OF SERVICE

I hereby certify that on Tuesday, February 2, 2016, a true and correct copy of the foregoing was electronically filed with the Florida Courts E-Filing Portal, as authorized by Fla. R. Jud. Admin. 2.516, with notice furnished as indicated below:

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CERTIFICATE OF COMPLIANCE

Pursuant to Florida Rules of Appellate Procedure 9.210(a), I certify that this Reply to Sponsor's Opposition to Florida Energy Freedom's Motion to Accept its Brief as Timely Filed was generated using Times New Roman, a proportionately spaced font, and has a typeface of 14 points.

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