

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

**In re  
FLSA Cases**

**Case No. 6:08-mc-49-Orl-UA-GJK**

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**REPORT AND RECOMMENDATION**

**TO THE UNITED STATES DISTRICT COURT**

**I. BACKGROUND**

On April 29, 2008, each of the District Judges for the Middle District of Florida, Orlando Division endorsed an Order (“Order”) issued to the Pantas Law Firm, P.A. (herein the “Pantas Law Firm”) and Morgan & Morgan, P.A. (herein, “Morgan & Morgan”) (collectively, the “Law Firms”). Doc. No. 1. Although the Fair Labor Standards Act (“FLSA”) cases are garden variety civil actions in which routine court orders are entered to assist in the efficient administration of justice, for some reason, such cases being handled by the Law Firms have generated an extraordinary number of show cause orders.<sup>1</sup> The noncompliance giving rise to the entry of show cause orders against the Law Firms ranges from routine failure to prosecute, such as failure to perfect service, failure to timely seek entry of a default when appropriate, failure to seek entry of a default final judgment, to failure to comply with orders requiring disclosure of interested

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<sup>1</sup> The Order states that for a period of one year, “a search of the relevant dockets reflects a total of 120 show cause orders being issued for these two firms . . .” *Id.* The Clerk opened a miscellaneous docket and referred this matter to the undersigned “for issuance of an appropriate show cause order and recommendation to the Court.” *Id.*

persons or related cases, and failure to comply with the requirements of the Court's routine FLSA case management order.<sup>2</sup>

On May 28, 2008, this Court issued an Order to Show Cause (“SCO”) to the Pantas Law Firm, P.A., Morgan & Morgan, P.A., Charles L. Scalise and Jay M. Yenor, III. Doc. No. 2.<sup>3</sup> The SCO directed the Law Firms and respective attorneys to show cause: 1) why they repeatedly fail to comply with the Court’s customary orders; 2) what sanctions should be imposed; 3) why the attorneys should not be banned from filing any future actions; and 4) what steps would immediately be taken to eliminate future noncompliance. Doc. No. 2.<sup>4</sup> As mentioned below, all counsel acknowledged their obligation to comply with these requirements and no one claimed they were unclear about what was required.<sup>5</sup>

#### **A. The Responses**

##### **1. Morgan & Morgan**

On June 5, 2008, managing partner H. Scott Bates, Esq. (herein “Bates”), on behalf of Morgan & Morgan and each of the Morgan & Morgan attorneys, Carlos V. Leach, Esq. (“Leach”), Kelly A. Amritt, Esq. (“Amritt”), C. Ryan Morgan, Esq. (“Morgan”), Andrew R. Frisch, Esq. (“Frisch”) and Richard B. Celler, Esq. (“Celler”) filed a response (the “Response”) to this Court’s SCO. Doc. No. 6 and attachments thereto.

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<sup>2</sup> Counsel have repeatedly failed to comply with the customary Related Case Order, the Interested Persons Order for Civil Cases, and the FLSA Scheduling Order (herein referred to as the “Standard Order(s”).

<sup>3</sup> Charles L. Scalise was no longer employed by Morgan & Morgan and Jay M. Yenor, III was no longer employed by Pantas Law Firm.

<sup>4</sup> The SCO quoted a number of prior show cause orders entered by various judges within the Middle District of Florida, Orlando Division. Doc. No. 2 at 2-3. One Order to Show Cause issued on January 3, 2008, directed K.E. Pantas (herein “Pantas”) to include in his response an explanation as to how his office would rectify the continued noncompliance. *Id.* at 4; *Coleman*, Case No. 6:07-cv-1884-GAP-GJK, Doc. No. 4. The Court quoted portions of Pantas’s response and noted that Pantas was thereafter subject to six additional orders to show cause. *Id.* at 4-5.

<sup>5</sup> The record reflects a common theme that the noncompliance is largely attributable to the high volume nature of an FLSA practice and that the attorneys intend to reduce their caseload to a manageable level and/or increase staff to cope with the volume of cases.

In the Response, Bates acknowledges: “The ultimate accountability rests with each of the lawyers in my division.” *Id.* at 5. Morgan & Morgan provides an extensive summary of remedial actions taken to ensure future compliance with Court orders. For example, Bates states Morgan & Morgan:

- Requires the division head to travel to the Orlando office on a weekly basis to address any issues relating to compliance issues or case concerns and to ensure deadlines are being properly calendared;
- Requires each attorney and staff member to reread the Local Rules for this division and the Federal Rules of Civil Procedure; and
- Requires each attorney to file a notice of appearance for the division head, Celler, on a percentage of all their cases.

*Id.* at 4. Morgan & Morgan has hired additional attorneys and staff members due to the volume of FLSA cases it has. Doc. No. 6 at 1-2. In addressing whether and/or what sanctions would be appropriate, Bates states that the conduct was “not intentional and has been corrected” thus not rising “to a level warranting the imposition of sanctions.” *Id.* at 6. Nonetheless, Bates states that Morgan & Morgan defers to the Court in making the determination of what sanctions may be appropriate. *Id.*

Celler is the managing attorney for Morgan & Morgan’s FLSA division. Doc. No. 6-6 at 1. Celler maintains that he was only subject to four orders to show cause. *Id.* at 2.<sup>6</sup> He accepts responsibility for the four orders to show cause and apologizes to the Court. *Id.* He adopts the Response filed by Bates on behalf of Morgan & Morgan as to the remedial action taken. *Id.*

In Leach’s Response, he maintains that his repeated noncompliance resulted from an increased caseload and his “delegating too much responsibility to inexperienced staff members

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<sup>6</sup> He states that six of the ten identified in the SCO were entered prior to him appearing in the cases. *Id.*

regarding calendaring and adhering to Court Orders.” Doc. No. 6-2 at 1-2. Leach identifies a number of measures he has employed to ensure future compliance. *Id.* at 2-3.<sup>7</sup> He requests that no sanctions be imposed against him and states that he has only been subject to one (1) order to show cause relating to the Standard Orders since implementing his new protocol. Doc. No. 6-2 at 4.<sup>8</sup>

On June 9, 2008, Charles L. Scalise, Esq., (herein “Scalise”) responded to this Court’s SCO. Doc. No. 9.<sup>9</sup> Scalise states that prior to working at Pantas Law Firm and Morgan & Morgan, he was responsible for a lower volume of FLSA cases. *Id.* He maintains that at the Pantas and Morgan & Morgan firms, his caseload typically ranged from 120 to 200 active files, including collective actions. *Id.*<sup>10</sup> Scalise is now working with a law firm based in Austin, Texas, and he states that although he plans to continue filing FLSA cases in the Middle District of Florida, he will only have a low volume of cases, which will allow him to comply with the Court’s orders. Doc. No. 9 at 2, 7.

Scalise acknowledges that one order to show cause is one too many, and he states his show cause orders “were due primarily to [his] undue and unwarranted reliance on support staff to monitor and ensure compliance with court deadlines.” Doc. No. 9 at 2, 6-7. Scalise maintains that he “too often allowed certain report deadlines to pass because [he] relied upon defense

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<sup>7</sup> He prepares and finalizes Related Case Orders, Certificates of Interested Persons, and Answers to Court Interrogatories prior to filing any complaint; he attempts to file Answers to Court Interrogatories immediately following the entry of the FLSA Scheduling Order; every Monday he and his staff review deadlines and discuss any potential concerns; he no longer relies on defendants to file a case management and/or settlement report; and he has enforced a “double staff calendar compliance policy” wherein at least two people, including Leach, must check for compliance with deadlines.

<sup>8</sup> Leach also asks the Court to consider the affect the SCO has had on his reputation and the respect of his peers. He asks the Court to re-evaluate his record of compliance in three to six months. *Id.* at 5.

<sup>9</sup> Scalise states that from January 1, 2004 through March 15, 2007, he was employed as an associate attorney with the Pantas Law Firm, and from March 16, 2007 through February 8, 2008, he was an associate attorney with Morgan & Morgan. *Id.* at 1.

<sup>10</sup> While at Morgan & Morgan, with exception of a few weeks, Scalise states he “was assigned one paralegal and had no paralegal support for an approximate five-week period.” Doc. No. 9 at 1.

counsel to file joint responses to the Court . . .” *Id.* Scalise also states that many deadlines were missed “because clients failed to provide necessary information and responses in a timely manner . . .” *Id.* Scalise requests that no sanctions be issued against him. Doc. No. 9 at 7. He provides plans to alter his practices when handling future claims. Doc. No. 9 at 8.<sup>11</sup> The remaining Morgan & Morgan attorneys subject to the SCO had a substantially lower number of orders to show cause entered against them.<sup>12</sup>

## 2. The Pantas Law Firm

On June 27, 2008, Pantas, individually and on behalf of the Pantas Law Firm, responded to the SCO. Doc. No. 11.<sup>13</sup> Pantas states that he takes the “Rules, Procedures and Orders of this Court seriously.” *Id.* at 1. Pantas states that his noncompliance is a result of various reasons, including: human error; inexperienced staff; negligence; oversight; uncooperative clients; and miscommunication with and/or uncooperative defense counsel. Doc. No. 11 at 2.<sup>14</sup>

Pantas maintains the following: “unless the firm’s business model is changed, there is no system, procedure, or anything else that the undersigned could implement that would prevent another Order to Show Cause from being issued by this Court.” Doc. No. 11 at 4. He states that

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<sup>11</sup> He will take a much more active role in reviewing upcoming deadlines and ensuring matters have been properly calendared; he will implement weekly review of court-order deadlines and the calendaring of such deadlines; he will continue to track when and why orders to show cause are issued in his cases; he will ensure that he has sufficient support staff to handle the number of FLSA cases filed; he will immediately withdraw as counsel for an uncooperative client rather than miss a deadline; and he will no longer rely on defense counsel to file joint reports required by the Court.

<sup>12</sup> Amritt was subject to five (5) orders to show cause prior to the SCO. *See* 6:07-cv-165-JA-KRS, Doc. No. 41; 6:07-cv-274-GLS-UAM, Doc. No. 9; 6:07-cv-1020-GAP-UAM, Doc. No. 19; 6:07-cv-1918-MSS-DAB, Doc. No. 14; 6:07-cv-1180-GAP-UAM, Doc. No. 27. Frisch was subject to one order to show cause prior to the SCO. *See* 6:07-cv-2026-PCF-DAB, Doc. No. 21. Morgan was only subject to one order to show cause and it did not arise out of failure to comply with a prior order of the court. *See* 6:08-cv-498-ACC-KRS, Doc. No. 7.

<sup>13</sup> On June 10, 2008, this Court granted Pantas an extension of time to respond to this Court’s SCO. Doc. Nos. 4, 10.

<sup>14</sup> Pantas states that prior to January 14, 2008, he required each case from his firm to be filed with his name and Bar number in the signature block. Thus, he maintains a number of the orders to show cause attributed to him in the SCO were actually due to the fault of other lawyers in his firm. *Id.* at 3. Pantas no longer mandates that his name and Bar number appear in the signature block of all cases. *Id.*

the “volume basis” business model “simply requires too much administration coupled with inexperienced staff and/or attorneys” which, in and of itself, “is nothing more than the formula for the entry of an Order to Show Cause.” *Id.* Thus, Pantas states that his firm will no longer handle a high volume of FLSA cases. *Id.* Pantas implemented the following changes in his “new business model”:

- Better case screening and case selection techniques that focus on the quality of the client, the facts, the issues, collectability, FLSA coverage, the dollar amount at issue, and other similar types of issues;
- Procedures that require the completion of all of the documents necessary for each case prior to the actual filing of the complaint, including preparing and finalizing the complaint, summons, notice of pendency of related cases, certificate of interested persons and corporate disclosure and answers to court’s interrogatories;
- Calendaring procedures set forth in the response to Judge Presnell’s January 3, 2008 Order to Show Cause remain in place except Pantas has created a new position and hired an additional staff member that will be solely responsible for calendaring Court orders and coordinating the scheduling conferences;<sup>15</sup>
- A policy of filing status reports with the Court regarding settlements;
- Reluctance to agree to continue settlement discussions beyond the initial settlement conference held pursuant to the Scheduling Order; and
- Gradual reduction of the caseload for each attorney and paralegal, with focus on quality rather than quantity.

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<sup>15</sup> In his response, Pantas states: “The undersigned will require all attorneys employed by his firm to assign a redundant e-mail address to their respective CM/ECF electronic filing account. The redundant e-mail address will direct a copy of all future Orders (including Scheduling Orders) directly to the Senior Paralegal for the Firm so he can review each Order on a daily basis and provide daily direction to the paralegal staff regarding proper calendaring of the response to such Orders. Each paralegal will in turn provide the Senior Paralegal with a daily Calendaring Report at the end of each day reflecting that the Order has been properly calendared. The daily Calendaring Reports will be forwarded to the undersigned for review every day.” *See* Doc. No. 2 at 4-5; *Coleman*, Doc. No. 7 at 1-2 (emphasis in original).

*Id.* at 5-7. Pantas states he and each employee of his firm “understand the magnitude, gravity and implications of the Court’s Order.” Doc. No. 11 at 8. He requests that sanctions not be issued because his misconduct was not “deliberate, intentional or otherwise malicious.” *Id.*<sup>16</sup>

On June 5, 2008, Jay M. Yenor, III, Esq. (“Yenor”) responded to this Court’s SCO. Doc. No. 7. Yenor states that he left employment with the Pantas Law Firm and is currently employed by the Office of Criminal Conflict and Civil Regional Counsel Fifth District of Florida practicing criminal law in state court. *Id.* at 1. He states that he no longer handles FLSA cases. *Id.* He apologizes to the Court for the “unacceptable oversight” in failing to comply with the Standard Orders and requests leniency. *Id.* He asks that he not be disciplined or sanctioned and that he be excused from any future proceedings. Doc. No. 7 at 1.

On June 6, 2008, Scott C. Adams, Esq. (herein “Adams”) of the Pantas Law Firm filed his response to the Court’s SCO. Doc. No. 8. Adams “assumes full responsibility, as an officer of this Court, for show cause orders issued on cases in which he was or is counsel of record.” *Id.* at 5. Adams provides a number of corrective measures he plans to implement to ensure future compliance. Doc. No. 8 at 7-8.<sup>17</sup>

## **B. The Hearings**

### **1. Morgan & Morgan**

The Court heard from Morgan & Morgan’s attorneys on July 25, 2008 and August 6, 2008. On July 25, 2008, a hearing was held regarding Morgan & Morgan and attorneys Leach

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<sup>16</sup> He also states that the entry of the SCO “has been a personal sanction” and “the past few weeks have been the most gut-wrenching weeks of [his] legal career.” *Id.*

<sup>17</sup> He has reviewed all cases in which he has appeared to ensure compliance with all Court Orders; he “will implement a more stringent case selection process”; he will ensure the “highest level of professionalism” is maintained by his immediate staff and will ensure a high standard of working life is maintained for his staff; he will meet with his staff on a weekly basis to ensure compliance with deadlines; and he will seek appropriate, timely relief if a problem arises in meeting a deadline. *Id.*

and Morgan.<sup>18</sup> Bates addressed the Court and admitted that the attorneys had not been provided sufficient support staff. Bates stated he was unaware of the problems at issue until he received the SCO. He confirmed that in the future, all show cause orders will be directly forwarded to the head of the division, Celler.

At the August 6, 2008 hearing, Celler agreed that it is never acceptable to miss a deadline.<sup>19</sup> He stated the SCO has been both embarrassing and damaging to his legal career. Celler maintained that a problem lies within the efficiency of the Court's Scheduling Order.<sup>20</sup> Celler has not been subject to any orders to show cause following the hearing.

On July 25, 2008, Leach appeared for a hearing. Leach was subject to forty-six (46) orders to show cause from March 2007 through May 2008.<sup>21</sup> Following the SCO and up to the

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<sup>18</sup> It was determined that no further action would be taken against Morgan as the sole order to show cause entered against him was not due to his failure to comply with a Court order. Morgan was subject to two (2) orders to show cause following the hearing, one for failing to seek dismissal and the other for failing to obtain service of process. *See* 6:08-cv-861-ACC-KRS, Doc. No. 24; 6:08-cv-498-ACC-KRS, Doc. No. 31.

<sup>19</sup> Celler was subject to five (5) orders to show cause from March 2007 through May 2008. *See* 6:07-cv-1470-GAP-JGG, Doc. No. 21; **6:07-cv-922-PCF-KRS, Doc. No. 41; 6:07-cv-1020-GAP-UAM, Doc. No. 19; 6:08-cv-132-ACC-GJK, Doc. No. 11;** 6:07-cv-1180-GAP-DAB, Doc. No. 27 (The Court notes Celler is counsel of record in this case along with Amritt, but Amritt responded to the order). Of those orders to show cause, three (3) resulted from counsel's failure to comply with one or more of the Standard Orders. *See* bold citations. The remaining orders to show cause were for the failure to prosecute his clients' cases. *See* non-bold citations. Following the SCO and up to the date of the hearing, Celler was only subject to one order to show cause for failure to prosecute. *See* 6:07-cv-643-PCF-GJK, Doc. No. 39.

<sup>20</sup> He argued that the FLSA Scheduling Order is fundamentally unfair because it requires plaintiffs to disclose their damages first and early in the case. Doc. No. 26 at 12. He also argued it was: "no secret that the federal bench is not enamored with these [FLSA] cases." *Id.* at 7. He then clarified his statement, maintaining that the volume of FLSA cases is presenting an "administrative nightmare for the court system." *Id.* at 8. Although Celler argued the fairness of the FLSA Scheduling Order, he conceded that it is the attorney's obligation to comply with this Court's orders and the failure to do so is inexcusable. *Id.* at 14.

<sup>21</sup> *See* **6:07-cv-58-JA-DAB, Doc. No. 18; 6:07-cv-136-GKS-KRS, Doc. No. 42;** 6:07-cv-310-ACC-UAM, Doc. Nos. 10, 14; 6:07-cv-456-JA-KRS, Doc. Nos. 9, 15, 19; 6:07-cv-548-GAP-DAB, Doc. No. 8; 6:07-cv-571-GAP-GJK, Doc. No. 10; **6:07-cv-640-JA-GJK, Doc. No. 8; 6:06-cv-644-GAP-KRS, Doc. No. 6; 6:07-cv-867-JA-KRS, Doc. Nos. 29, 32;** 6:07-cv-890-GAP-GJK, Doc. Nos. 13, 17; **6:07-cv-1006-PCF-GJK, Doc. No. 10;** 6:07-cv-1046-GKS-DAB, Doc. Nos. 9, 12, 18; 6:06-cv-1072-JA-KRS, Doc. No. 9; **6:07-cv-1149-GKS-DAB, Doc. Nos. 10, 42;** 6:07-cv-1427-GAP-KRS, Doc. No. 7; **6:07-cv-1521-GAP-DAB, Doc. No. 16; 6:07-cv-1522-GAP-DAB, Doc. No. 21; 6:07-cv-1536-GKS-KRS, Doc. No. 4; 6:07-cv-1564-ACC-KRS, Doc. No. 18;** 6:07-cv-1567-ACC-KRS, Doc. No. 9; **6:07-cv-1568-JA-DAB, Doc. No. 4;** 6:07-cv-1595-ACC-DAB, Doc. No. 8; **6:07-cv-1738-PCF-GJK, Doc. No. 4;** 6:07-cv-1768-ACC-DAB, Doc. No. 8; 6:07-cv-1813-ACC-DAB, Doc. No. 12; **6:07-cv-1822-JA-KRS, Doc. No. 5;** 6:07-cv-1823-ACC-DAB, Doc. No. 7; **6:07-cv-1908-PCF-GJK, Doc. No. 24; 6:07-cv-1979-GAP-DAB,**

date of the hearing, Leach was only subject to two (2) orders to show cause, which were for the failure to prosecute.<sup>22</sup> He was subject to six (6) orders to show cause district-wide.<sup>23</sup> Leach maintained the following contributed to his resulting show cause orders: 1) he used less administrative procedures; 2) he allowed staff members to administer cases; and 3) he relied on opposing counsel. Leach stated that he is taking corrective action to ensure compliance with the Court's orders. Since the hearing, Leach has been subject to only one order to show cause, which was for the failure to prosecute. *See* 6:07-cv-1979-GAP-DAB, Doc. No. 29.

The Court also heard from Scalise. Scalise was subject to eighteen (18) orders to show cause.<sup>24</sup> Scalise confirmed that he is no longer conducting a high volume practice and stated he did not anticipate future problems in complying with this Court's orders. Scalise indicated that he has not been the subject of any further orders to show cause since the entry of the SCO. Scalise requests that no sanctions be imposed and verbally assured the Court that no future orders of this nature would be necessitated by his conduct.

Amritt stated at the hearing that her orders to show cause were essentially the product of human error.<sup>25</sup> She stated that she reviews all of her cases every Friday and maintains contact

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**Doc. Nos. 17, 24; 6:08-cv-94-ACC-DAB, Doc. No. 18; 6:08-cv-97-GAP-DAB, Doc. Nos. 6, 16; 6:08-cv-156-JA-KRS, Doc. Nos. 9, 22; 6:08-cv-257-JA-DAB, Doc. No. 7; 6:08-cv-278-GKS-KRS, Doc. No. 5; and 6:08-cv-483-ACC-GJK, Doc. No. 5.** Of those orders to show cause, twenty-three (23) resulted from counsel's failure to comply with one or more of the Standard Orders. *See* bold citations. The remaining orders to show cause were either for failure to prosecute or failure to procure service of process. *See* non-bold citations.

<sup>22</sup> *See* 6:08-cv-258-ACC-GJK, Doc. No. 6 and 6:07-cv-1979-GAP-DAB, Doc. No. 29.

<sup>23</sup> *See* Orlando: 6:08-cv-258-ACC-GJK, 6:07-cv-1979-GAP-DAB; Jacksonville: 3:07-cv-1148-HES-TEM; Tampa: 8:08-cv-385-JSM-TGW, 8:08-cv-387-SCB-EAJ and 8:08-cv-417-SDM-417.

<sup>24</sup> *See* 6:04-cv-291-PCF-UAM, Doc. No. 21; 6:06-cv-467-JA-DAB, Doc. No. 31; 6:06-cv-1231-JA-UAM, Doc. No. 41; 6:06-cv-1646-JA-KRS, Doc. No. 14; ; 6:06-cv-448-GAP-DAB, Doc. No. 22; 6:07-cv-540-GAP-KRS, Doc. No. 18; 6:07-cv-747-PCF-KRS, Doc. No. 9; 6:07-cv-826-PCF-DAB, Doc. No. 16; 6:07-cv-827-PCF-KRS, Doc. No. 20; 6:07-cv-828-ACC-DAB, Doc. No. 22; 6:07-cv-909-ACC-DAB, Doc. No. 30; 6:07-cv-910-PCF-KRS, Doc. No. 18; 6:07-cv-916-GAP-DAB, Doc. No. 22; 6:07-1074-ACC-DAB, Doc. No. 23; 6:07-cv-1181-GAP-DAB, Doc. No. 7; 6:07-cv-1340-GAP-DAB, Doc. Nos. 14, 18, and 6:07-cv-1542-JA-GJK, Doc. No. 8.

<sup>25</sup> Amritt was subject to five (5) orders to show cause from March 2007 through May 2008. *See* 6:07-cv-165-JA-KRS, Doc. No. 41; 6:07-cv-274-GKS-UAM, Doc. No. 9; **6:07-cv-1020-GAP-UAM, Doc. No. 19; 6:07-cv-1918-**

with Celler on a daily basis. Following the hearing, Amritt has been subject to three (3) orders to show cause, one for a failure to comply with a Standard Order and two for failure to prosecute.<sup>26</sup>

Frisch stated that most of his orders to show cause resulted from settlement issues.<sup>27</sup> He agreed that allowing a case to sit idle following a settlement is inexcusable and stated that in the future he would not allow that to occur. Frisch stated that he now has an additional staff member to assist him.<sup>28</sup>

On September 11, 2008, Morgan & Morgan requested a supplemental hearing to update the Court on their proactive measures. Doc. No. 29. On September 29, 2008, attorneys John Morgan, Esq., Bates and Keith Mitnik, Esq. were present. Each of the attorneys accepted full responsibility for the repeated noncompliance with Court's orders and deadlines.<sup>29</sup>

Since the SCO, Bates represented that they have hired one additional FLSA attorney; they are currently looking for another FLSA attorney; they have increased the number of labor investigators to a total of three (3) and each FLSA attorney now has three (3) support staff members. Bates also stated that the FLSA department meets on a weekly basis and they obtain

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**GAP-DAB, Doc. No. 14;** and 6:07-cv-1180-GAP-DAB, Doc. No. 27. Of those orders to show cause, two (2) resulted from counsel's failure to comply with one or more of the Standard Orders. *See* bold citations. The remaining orders to show cause were for the failure to prosecute. *See* non-bold citations. Following the SCO and up to the date of the hearing, Amritt was only subject to one order to show cause for failure to prosecute. *See* 6:07-cv-1965-JA-DAB, Doc. No. 19.

<sup>26</sup> *See* 6:08-cv-1093-ACC-DAB, Doc. No. 5 and 6:08-cv-544-PCF-GJK, Doc. Nos. 12, 17.

<sup>27</sup> Frisch was only subject to one (1) order to show cause from March 2007 through May 2008 for failing to comply with a Standard Order. *See* 6:07-cv-2026-PCF-DAB, Doc. No. 21. Following the SCO and up to the date of the hearing, Frisch was subject to two (2) additional orders to show cause, one for a failure to obtain service and the other for a failure to timely and correctly re-file a response to a Standard Order. *See* 6:08-cv-133-GAP-DAB, Doc. No. 8 and 6:08-cv-1091-GAP-KRS, Doc. No. 12. Frisch was subject to ten (10) orders to show cause district wide following the SCO, which in large part arise from a failure to prosecute. *See* 2:08-cv-164-MMH-SPC, Doc. No. 16; 2:08-cv-268-UA-DNF, Doc. No. 19; 6:08-cv-133-GAP-DAB, Doc. No. 8; 6:08-cv-1091-GAP-KRS, Doc. No. 12; 8:08-cv-99-JDW-MSS, Doc. No. 10; 8:07-cv-2265-EAK-MAP, Doc. No. 16; 8:07-cv-2272-JDW-EAJ, Doc. No. 16; 8:08-cv-425-EAK-MAP, Doc. No. 7; 8:08-cv-865-JSM-TBM, Doc. No. 7; and 3:08-cv-431-TJC-JRK, Doc. No. 9. Following the hearing, Frisch has been subject to three (3) orders to show cause, each for failure to prosecute and two were in the same case entered on the same day against separate defendants.

<sup>28</sup> *See* 6:08-cv-384-JA-KRS, Doc. Nos. 10 and 11; 6:08-cv-389-JA-GJK, Doc. No. 12.

<sup>29</sup> Each of the attorneys clarified that Morgan & Morgan does not share Celler's opinion that the federal bench is frustrated with the volume of FLSA cases or that the FLSA Scheduling Order is somehow fundamentally unfair.

detailed claim information from clients prior to initiating an FLSA action. Bates now receives copies of the show cause orders entered by this Court.<sup>30</sup> Finally, Bates stated that they have reduced the caseload for each attorney and have shown substantial improvement.

## 2. The Pantas Law Firm

Pantas was subject to forty-five (45) orders to show cause from March 2007 through May 2008.<sup>31</sup> Of those orders to show cause, thirty-two (32) resulted from counsel's failure to comply with one or more of the Standard Orders. *See* n. 31, bold citations. The remaining orders to show cause were either for the failure to prosecute or the failure to perfect service of process. *Id.*, non-bold citations. Following the SCO and up to the date of the hearing, Pantas was subject to four (4) orders to show cause for the failure to prosecute.<sup>32</sup>

At the hearing, Pantas offered the following reasons for his failure to comply on a repeated basis with this Court's orders:

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<sup>30</sup> He stated that the most recent show cause orders primarily relate to either timely perfecting service of process, timely pursuit of a clerk's default or timely pursuit of a final judgment after entry of a default. *See e.g.*, Fed. R. Civ. P. 4(m) (Service should be perfected within 120 days of filing the complaint.) and Local Rule 1.07(b) (When no appearance or response is made, the party shall promptly apply for entry of default. Thereafter, within 60 days of service, the party shall seek final judgment or be subject to dismissal.) Bates stated that Morgan & Morgan is committed to improving its performance in those areas and management has reviewed the deadlines for perfecting service, seeking a default and thereafter seeking a final judgment.

<sup>31</sup> *See* 6:06-cv-78-JA-UAM, Doc. No. 22; 6:06-cv-131-GKS-UAM, Doc. No. 36; **6:06-cv-687-GAP-DAB, Doc. Nos. 110, 120, 156**; 6:06-cv-1173-GKS-KRS, Doc. No. 23; 6:06-cv-1231-JA-UAM, Doc. No. 41; **6:06-cv-1494-PCF-DAB, Doc. No. 30**; **6:06-cv-1572-GAP-DAB, Doc. No. 27**; **6:06-cv-1645-GKS-KRS, Doc. No. 34**; 6:06-cv-1646-JA-KRS, Doc. No. 14; 6:06-cv-1665-GAP-KRS, Doc. No. 24; 6:06-cv-1712-GAP-KRS, Doc. No. 34; **6:06-cv-1811-JA-DAB, Doc. No. 221**; **6:06-cv-1814-JA-KRS, Doc. No. 20**; 6:07-cv-206-JA-KRS, Doc. No. 10; 6:07-cv-207-GAP-DAB, Doc. No. 10; **6:06-cv-448-GAP-DAB, Doc. No. 22**; **6:07-cv-466-GAP-UAM, Doc. No. 13**; **6:07-cv-467-GAP-UAM, Doc. No. 10**; **6:07-cv-469-GKS-DAB, Doc. No. 4**; **6:07-cv-548-GAP-DAB, Doc. No. 32**; 6:07-cv-554-JA-KRS, Doc. No. 5; **6:07-cv-598-ACC-DAB, Doc. No. 27**; **6:07-cv-600-ACC-UAM, Doc. No. 26**; **6:07-cv-615-PCF-UAM, Doc. No. 15**; 6:07-cv-627-GAP-GJK, Doc. No. 18; **6:07-cv-701-GAP-GJK, Doc. Nos. 4, 20**; **6:07-cv-703-PCF-KRS, Doc. No. 7**; 6:07-cv-704-JA-KRS, Doc. No. 6; **6:07-cv-800-GKS-KRS, Doc. No. 13**; **6:07-cv-849-GAP-DAB, Doc. Nos. 5, 15**; **6:07-cv-850-ACC-DAB, Doc. No. 18**; **6:07-cv-1238-PCF-KRS, Doc. No. 13**; **6:07-cv-1280-GAP-DAB, Doc. No. 13**; **6:07-cv-1319-ACC-GJK, Doc. No. 21**; **6:06-cv-1450-PCF-GJK, Doc. No. 4**; 6:07-cv-1589-GKS-KRS, Doc. No. 15; 6:07-cv-1614-GAP-DAB, Doc. No. 11; **6:07-cv-1748-GAP-KRS, Doc. No. 15**; **6:07-cv-1770-PCF-DAB, Doc. No. 4**; **6:07-cv-1825-ACC-DAB, Doc. No. 27**; **6:07-cv-1884-GAP-GJK, Doc. No. 4**; and **6:07-cv-1978-PCF-KRS, Doc. No. 16**.

<sup>32</sup> *See* 6:05-cv-1829-GJK, Doc. No. 44; 6:07-cv-702-PCF-KRS, Doc. No. 16; 6:07-cv-1771-PCF-KRS, Doc. No. 18; and 6:08-cv-196-PCF-DAB, Doc. No. 15.

- Lack of accountability;
- Inexperienced staff members and attorneys;
- Oversight;
- Clients' failure to cooperate;
- High volume caseload; and
- Turnover and dispersion to remaining staff.

Pantas indicated he is more selective in taking FLSA cases and he is decreasing the volume of his cases and his advertising. Following the hearing, Pantas has been subject to five (5) orders to show cause. Four of those orders were due to the failure to prosecute, the remaining one was entered against both parties for the failure to comply with the Court's Case Management and Scheduling Order.<sup>33</sup>

Yenor confirmed that he is no longer taking FLSA cases, and he is currently employed by the Office of Criminal Conflict and Civil Regional Counsel Fifth District of Florida practicing criminal law. It was clarified at the hearing that Pantas appeared in all of Yenor's cases, and Yenor was only subject to seven (7) orders to show cause from March 2007 through May 2008.<sup>34</sup> Yenor has not been subject to any orders to show cause following the entry of the SCO. He maintains that the SCO alone amounted to sanctions as a public reprimand.<sup>35</sup>

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<sup>33</sup> See 6:05-cv-1776-DAB, Doc. No. 88; 6:08-cv-542-GAP-DAB, Doc. No. 14; 6:07-cv-105-ACC-GJK, Doc. No. 43; 6:07-cv-850-ACC-DAB, Doc. No. 34; and 6:08-cv-13-ACC-DAB, Doc. No. 21.

<sup>34</sup> See 6:06-cv-1811-JA-DAB, Doc. No. 221; 6:07-cv-206-JA-KRS, Doc. No. 10; 6:07-cv-207-GAP-DAB, Doc. No. 10; 6:07-cv-554-JA-KRS, Doc. No. 5; 6:07-cv-598-ACC-DAB, Doc. No. 27; 6:07-cv-600-ACC-UAM, Doc. No. 26; and 6:07-cv-1614-GAP-DAB, Doc. No. 11.

<sup>35</sup> Adams was only subject to two (2) orders to show cause from March 2007 through May 2008. At the hearing, Adams stated that he provides a good environment for his support staff and that they are well trained. He has had no additional orders to show cause entered against him to date.

## II. LAW

Rule 1 of the Federal Rules of Civil Procedure provides:

These rules govern the procedure in all civil actions and proceedings in the United States district courts . . . They should be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding.

Fed. R. Civ. P. 1 (2008). According to the Supreme Court, “the principle function of procedural rules should be to serve as useful guides to help, not hinder, persons who have a legal right to bring their problems before the courts.” *Schiavone v. Fortune*, 477 U.S. 21, 27 (1986) (quoting Justice Black in the Order adopting revised rules of S. Ct. of U.S. April 12, 1954). Rule 1 directs courts and counsel to avoid delay and facilitate an expeditious resolution of disputes. *See Dussouv v. Gulf Coast Inv. Corp.*, 660 F.2d 594, 600 (5th Cir. 1981).

“The district court possesses the inherent power to police its docket.” *Collins v. Lake Helen, L.P.*, 249 Fed. Appx. 116, 120 (11th Cir. 2007) (citing *Link v. Wabash Railroad Co.*, 370 U.S. 626, 629-30 (1962)). “The sanctions imposed can range from a simple reprimand to an order dismissing the action with or without prejudice.” *Id.* (quoting *Mingo v. Sugar Cane Growers Co-op. of Fla.*, 864 F.2d 101, 102 (11th Cir. 1989)).

Pursuant to Rule 16(f), Federal Rules of Civil Procedure, it is within the Court’s discretion to sanction counsel’s failure to abide by scheduling orders. Fed. R. Civ. P. 16(f).<sup>36</sup> It is well settled that a court may discipline and/or sanction an attorney for failure to comply with its orders. *See, e.g., Wouters v. Martin County, Fla.*, 9 F.3d 924, 933 (11th Cir. 1993) (“district courts have broad powers under the rules to impose sanctions for a party’s failure to abide by

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<sup>36</sup> Rule 16(f) incorporates portions of Rule 37(b)(2), which authorizes a preclusion order, striking a pleading, staying the proceeding, default judgment, contempt (only available for a violation of a court order), and charging a party, his attorney, or both with the expenses, including attorney’s fees, caused by noncompliance. The references in Rule 16(f) are not exhaustive. *See* Advisory Notes.

court orders . . .”). “Rule 16(f) sanctions were ‘designed to punish lawyers and parties for conduct which unreasonably delays or otherwise interferes with the expeditious management of trial preparation.’” *U.S. v. Samaniego*, 345 F.3d 1280, 1284 (11th Cir. 2003) (quoting *Goforth v. Owens*, 766 F.2d 1533, 1535 (11th Cir. 1985) (“A district court is authorized . . . to dismiss an action for failure to prosecute or to obey a court order or federal rule”). District courts “have discretion to decide if there is a pattern of delay or a deliberate refusal to comply with court orders or directions that justifies a sanction.” *Samaniego*, 345 F.3d at 1284; *see Brooks v. U.S.*, 837 F.2d. 958, 963 (11th Cir. 1988) (the record must reflect a pattern of delay and/or deliberate refusal of counsel to abide by court orders to warrant the imposition of sanctions).

Pursuant to the Local Rules of this Court, a member of the bar of this Court “may, after hearing and for good cause shown, be disbarred, suspended, reprimanded or subjected to such other discipline as the Court may deem proper.” Local Rule 2.04(a).

### **III. CONCLUSION**

The Court finds the circumstances surrounding this proceeding troublesome and unfortunate. Most concerning is the impression that an “order to show cause”, which is issued for the purpose of admonishing an attorney’s deficiency, oversight and/or incompetence, has become commonplace for a small number of attorneys practicing before this Court. These orders appear to be received more as a reminder rather than a reprimand. They have become ordinary rather than extraordinary. An attorney has the duty to the Court and to his client(s) to abide by pretrial orders that are designed to promote the fair and efficient administration of justice.

All lawyers have the inherent obligation to avoid accepting more responsibility than they can properly manage. Having a voluminous clientele does not diminish that obligation.<sup>37</sup> The conduct of some of the attorneys outlined above shows an inexcusable pattern of noncompliance. Their conduct plainly falls within the ambit of Rule 16(f) and given the extensive history of noncompliance, sanctions are warranted.<sup>38</sup>

Accordingly, the Court recommends that the following sanctions be imposed:

1. The conduct of attorneys K.E. Pantas, Carlos V. Leach and Charles L. Scalise rises to the level of justifying a reprimand because from March 2007 through May 2008, Carlos V. Leach received 46 orders to show cause, K.E. Pantas received 45 orders to show cause and Charles L. Scalise received 18 orders to show cause;
2. Any future orders to show cause issued against Carlos V. Leach, K.E. Pantas and/or Charles L. Scalise should be directed to the grievance committee pursuant to Local Rule 2.04(e); and
3. Morgan and Morgan and the Pantas Law Firm should continue to file a quarterly report until the Court is satisfied that the concerns raised within this proceeding have been resolved.

**RECOMMENDED** in Orlando, Florida on October 9, 2008.

  
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GREGORY J. KELLY  
UNITED STATES MAGISTRATE JUDGE

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<sup>37</sup> The Court notes that FLSA cases, in and of themselves, are not a burden for this Court. On the other hand, counsel's repeated noncompliance with the Court's orders not only burdens the Court, but also unnecessarily delays the swift and efficient administration of justice.

<sup>38</sup> Nonetheless, the Court notes the initiation and progression of this proceeding has revealed substantial improvement on behalf of all subject attorneys.

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