

## UNIFORM PRE-TRIAL PROCEDURES IN FAMILY CASES

**BY ORDER OF THE COURT**, each party and all counsel shall comply with the following Uniform Pre-Trial Procedures in Family Cases:

**1. PARENTING EDUCATION CLASSES.** It has been found to be beneficial to parents who are separating or divorcing to attend an educational program that will provide general information regarding: (a) the issues and legal procedures for resolving custody and child support disputes; (b) the emotional experiences and problems of divorcing adults; (c) the family problems and emotional concerns and needs of the children; and (d) the availability of community services and resources. Accordingly, §61.21, Florida Statutes (2011) requires that **all parties to a dissolution of marriage proceeding with minor children or modification of a final judgment involving custody or time-sharing are required to attend a four-hour Parent Education and Family Stabilization Course.** A Final Judgment may not be entered by the court until a certificate of completion is filed with the clerk. The Clerk of Court shall advise the parties of the requirements of this Order by providing a copy of court-approved instructions and a list of providers to the parties. Additional information is also available through the Family Court Services Office (Daytona Beach office: 386-248-8182, Extension 1 OR the DeLand office at 386-626-6615).

**2. REFERRAL TO FAMILY MEDIATION; DEADLINE.** Mediation should occur as soon as possible to minimize the expense and uncertainty of litigation. Unless this matter has been previously mediated, it is **ORDERED** that this case is hereby referred to family mediation in accordance with Rule 12.740, Florida Family Law Rules of Procedure (“Fla. Fam. L. R. P.”) Petitioner’s counsel, (or Respondent’s counsel if Petitioner is unrepresented), shall submit a mutually agreeable mediation order to the Court at least thirty (30) days prior to docket sounding. If neither party is represented, then Petitioner shall call the Office of the Family/Dependency Mediator at 386-248-8117 in Daytona; or 386-943-7099 in DeLand to schedule a mediation. **Unless otherwise agreed upon by the parties or ordered by the Court, the parties shall be equally responsible for payment of all costs of mediation, which shall be paid to the Clerk of Court in full prior to the mediation.** The Report on Mediation shall be prepared in accordance with Rule 12.740(f), Fla. Fam. L. R. P., and filed with the court prior to docket sounding. The requirement to mediate this case cannot be waived by agreement of the parties.

**3. WITNESS LISTS.**

**(a) EXPERT WITNESSES.** No later than thirty (30) days before docket sounding, each party shall file with the Court and serve on the other party a notice containing the names, addresses and telephone numbers of each expert witness whom the noticing party in good faith expects to call as a witness at trial. For each expert witness listed, the noticing party shall also designate the witness’ area of expertise and the subject matter about which the witness will testify (e.g. certified public accountant - valuation of Respondent’s business).

(b) **NON-EXPERT WITNESSES.** No less than thirty (30) days prior to docket sounding, each party will file with the Court, and serve on the other party, a notice containing the names and addresses of each non-expert witness whom the noticing party in good faith expects to call as a witness at trial.

(c) A party may amend or supplement his/her witness list without leave of Court at any time until the deadline for the filing of witness lists set forth in paragraphs 3(a) and (b) above. If a witness list is amended or supplemented, it shall be restated in full.

(d) Absent good cause, no witness shall be permitted to testify unless the party calling that witness has complied with this Order.

(e) All expert witnesses must be ready to testify and be reasonably available for deposition no less than thirty (30) days before docket sounding.

(f) The Court may, on its own motion or on the motion of any party, limit the number of experts or other witnesses permitted to testify at trial.

#### **4 DISCOVERY.**

(a) Except as otherwise provided herein or agreed to by the parties in writing, discovery shall remain open until ten (10) days prior to the trial date.

(b) No interrogatories, requests to produce or requests for admissions shall be served later than forty-five (45) days prior to the trial date. Exceptions shall be permitted only by written stipulation of the parties or by Court order. However, the deadlines in this section shall not apply to service of a subpoena duces tecum to a witness for trial or service of a Notice To Produce at trial upon a party which are otherwise in accordance with the Rules of Civil Procedure and Family Law Rules of Procedure.

5. **CONTINUANCES.** Motions for continuance **must be in writing** and specifically set forth: (a) the reason for the requested continuance; (b) if the other party objects to the requested continuance and; (c) when it is anticipated the case will be ready for trial, and (d) except for good cause shown, all motions for continuance shall be signed by the party requesting the continuance. If the requested continuance is based on the unavailability of a witness, the Court must be advised of when it is believed the witness will be available. The inability to require the attendance of a witness at trial shall not be the basis for continuance of the trial unless a witness subpoena was issued and served on the witness (or was attempted to be served on the witness) at least ten (10) days prior to the trial date. Rule 1.460, Rules of Civil Procedure and Rule 2.085(c), Rules of Judicial Administration.

## **6 PRE-TRIAL MOTIONS.**

(a) **DEADLINES FOR MOTIONS.** Motions filed within thirty (30) days of the trial date will not be considered if predicated on matters the movant knew or should have known with the exercise of reasonable diligence at least thirty (30) days prior to the trial date. Because of busy court calendars, hearing time may not be available to consider motions filed close to the deadline. The inability of a party to obtain hearing time will generally not constitute grounds for a continuance of the trial.

(b) **MOTIONS GENERALLY.** The failure of a party to call up for hearing any timely filed motion at least ten (10) days prior to the trial date may constitute a waiver thereof unless the grounds therefor did not exist or the party was not aware of the grounds for the motion(s) prior to the filing of such motion(s) after the exercise of reasonable diligence. However, pre-trial Motions For Contempt may be heard during the trial even though not previously scheduled provided timely notice is furnished to the opposing counsel or unrepresented party.

(c) **CERTIFICATE OF GOOD FAITH.** Before any motion is filed, the moving party shall contact the opposing party and attempt, in good faith, to amicably resolve the issues raised by the motion(s). Each motion shall contain a certificate of the movant's attorney if represented (or the moving party if unrepresented) certifying his/her compliance with this requirement.

(d) **DAUBERT HEARINGS.** Any challenge to the admissibility of evidence at trial asserted to be “novel scientific evidence” or based on a contention that anticipated expert testimony does not meet the requirements of Section 90.702, Florida Statutes, and seeking a court ruling in accordance with the decision of *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993), must be raised by a motion in limine filed at least thirty (30) days before the trial date. Failure to meet this deadline shall be deemed a waiver, absent good cause.

7. **COURT REPORTER.** The parties shall coordinate the scheduling of a court reporter if a reporter is desired.

8. **SETTLEMENT.** If this case is settled prior to the trial date, the parties shall promptly notify the Court by telephone and then confirm the settlement in writing.

## **9. PRETRIAL MEETING OF ATTORNEYS AND UNREPRESENTED PARTIES.**

(a) **MANDATORY PRE-TRIAL MEETING.** No later than ten (10) days prior to docket sounding, trial counsel and all unrepresented parties shall meet together. Attendance at this

meeting is mandatory. Petitioner's attorney (or if Petitioner is unrepresented, Respondent's attorney) shall arrange a mutually agreeable time, date and place for this meeting. If the parties are unable to agree, counsel shall promptly notify the Court in writing and the Court will then set the time, date and place for the meeting.

At the pre-trial meeting, the attorneys and/or unrepresented parties shall:

(1) Discuss and attempt to settle the case.

(2) Produce, examine and initial every evidentiary exhibit intended to be offered at trial; agree on those which can be admitted as joint exhibits, those which can be admitted without objection, and identify those to which objections will be made and the grounds for each objection, and note this on a separate copy of each party's exhibit list. Objections not reserved or grounds not noted on the annotated exhibit lists will be deemed waived at trial. The annotated copies of the exhibit lists will be attached to and made a part of the joint pre-trial statement required by paragraph 9(b) of this Order. **Any listed exhibit not objected to will be admitted into evidence.**

(3) Review the witness lists and note on a separate copy which witnesses and depositions the parties in good faith anticipate will actually be used at trial. The annotated copies of the witness lists will be attached to the joint pre-trial statement required by paragraph 9(b) of this Order.

(4) Discuss and stipulate as to those facts which do not require proof at trial.

(5) Discuss, clarify and frame all factual issues to be tried.

(6) Identify all significant issues of law, procedure or evidence to be decided by the Court prior to or during trial.

(7) Discuss and attempt to agree upon any other matters which will lead to a more orderly trial (e.g., copies in lieu of originals, witnesses out of turn, how depositions will be presented, the need to call records custodians, etc.)

(b) **JOINT PRE-TRIAL STATEMENT.** Following the meeting required by paragraph 9(a), Petitioner's attorney (or Respondent's attorney, if Petitioner is unrepresented) shall prepare and present to opposing counsel and all unrepresented parties a proposed joint pre-trial statement. The statement shall be signed by all attorneys and parties; the original shall be filed with the Clerk and one copy mailed or delivered to the Judge no later than docket sounding. To the extent the parties differ as to how portions of the pre-trial statement should read, the differing views should be set forth in the statement. If an attorney believes the opposing party is not in good faith compliance with the disclosure requirements of this Pre-Trial Order, then that attorney shall not be required to file a Pre-Trial Statement that is not truly mutual. In that event, counsel may withhold compliance provided a date for Pre-Trial Conference before the presiding judge is obtained, and notice mailed or served on opposing counsel not more than 15 days after the passing of the deadline for filing of the Joint Pre-Trial Statement under this paragraph.

The joint pre-trial statement shall contain the following items in the following format:

(1) A statement of facts which are admitted and which of those admitted facts may be read in evidence at trial as a stipulation of the parties.

(2) A list of issues raised by the pleadings which are abandoned.

(3) A list of the issues of fact to be tried. If attorney's fees are sought, then the parties are directed to read Rule 4-1.5, Rules Regulating Florida Bar; §61.16, Florida Statutes; Rosen v. Rosen, 696 So.2d 697 (Fla. 1997); Canakaris v. Canakaris, 382 So.2d 1197 (Fla. 1980); Naugle v. Naugle, 632 So.2d 1146 (Fla. 5th DCA 1994) and Abernethy v. Abernethy, 638 So.2d 160 (Fla. 5th DCA 1994).

(4) A list of significant issues of law, procedure or evidence, if any, to be determined by the Court prior to or during trial.

(5) The annotated copy of each party's list of exhibits showing objections required by paragraph 9(a)(2) of this Order.

(6) The annotated copy of each party's witness list as required by paragraph 9(a)(3) of this Order.

(7) A current estimate of the time required for trial.

(8) Financial affidavits of both parties, as supplemented, and all other mandatory disclosure required by Rule 12.285, Fla. Fam. L. R. P.

(9) Equitable Distribution Worksheet shall be prepared by each party to state the following:

*a* Each party's list of alleged "marital" assets, suggested valuations for each asset (real and personal property), suggested distribution for each pursuant to Section 61.075, Fla. Stat. and proposed brief factual findings in support of each asset's distribution.

*b* List of all assets claimed to be "nonmarital" together with suggested valuation and brief statement in support of claim.

*c* List of all vested and nonvested benefits, rights or funds as defined by Section 61.076, Fla. Stat. and suggested distribution for each plan.

*d* List of all liabilities, designating each as "marital" or "nonmarital" and stating amount and name of creditor.

*e* List any asset which shall be asserted either as a claim for unequal distribution of marital property and resolved by the factors set forth in subsection (1) or as a claim of enhancement in value or appreciation of non-marital property; stating the extent of the claim and a brief explanation in support of it.

(10) If there are minor children, the following shall be provided:

*a* A **Parenting Plan** outlining time-sharing with minor child(ren), even when time-sharing is not in dispute. The Parenting Plan must be developed and agreed to by the parents and approved by the court. (Supreme Court approved form available at [www.flcourts.org](http://www.flcourts.org)) *If the parties cannot agree to a Parenting Plan or if the parents agreed to a plan that is not approved by the court, a Parenting Plan will be established by the court.*

*b* A completed **child support guideline worksheet** calculated in accordance with Section 61.30, Florida Statutes.

*c* Shared parental responsibility shall be ordered pursuant to Section 61.13, Florida Statutes unless the Court finds it will be detrimental to the child. If "sole parental

responsibility” will be sought by either party, a brief factual basis supporting it shall be stated in the Pre-Trial Statement.

(11) Any other matters agreed upon.

10. **INCONSISTENCY WITH CASE MANAGEMENT ORDER.** If any provisions of this order are inconsistent with any case management order entered in this case, the case management order will govern.

11. **MARKING EXHIBITS BEFORE TRIAL.** Each party shall contact Lisa Sheppard, in the Family Law Court Clerk’s office, to coordinate marking exhibits for identification prior to the trial commencing. Her phone number is 386-736-5908.

12. **EXTENSION OF TIME LIMITS.** No extension of deadlines or compliance dates established by this Order is permitted if the extension or modification would cause a continuance of the trial or would prevent the completion of mediation prior to docket sounding. Any extension or modification agreed to shall be by written stipulation signed by all parties to this action and filed with the Court. Any other extension of the deadlines or compliance dates established herein or modifications of this Order requires Court approval.

13. **STANDARDS OF CONDUCT.** Conduct that may be characterized as uncivil, abusive, hostile or obstructive impedes the fundamental goal of resolving cases fairly and efficiently and will not be tolerated. Such conduct tends to delay and deny justice. Accordingly, in addition to the standards imposed on all attorneys by the Florida Code of Professional Responsibility, the following standards will apply to all attorneys and parties to this action:

(a) All attorneys, parties and witnesses will be treated in a civil and courteous manner, not only in court, but at depositions and in all written and oral communications.

(b) No attorney or party will abuse or indulge in offensive conduct directed to other attorneys, parties or witnesses. Counsel and all parties shall abstain from disparaging personal remarks or acrimony towards other attorneys, parties or witnesses. Adverse witnesses and parties will be treated with fair consideration.

(c) Absent good cause, no attorney or party shall attribute bad motives or improper conduct to opposing counsel or any adverse party or bring the legal profession into disrepute by unfounded accusations of impropriety.

(d) All attorneys and parties shall make good faith efforts to resolve by agreement any objections to matters contained in pleadings, discovery requests or objections.

(e) No attorney or unrepresented party shall time the filing or service of motions or pleadings in any way that unfairly limits the other party's opportunity to respond, and each will consult with the other regarding scheduling matters in a good faith effort to avoid scheduling conflicts.

(f) All attorneys and parties shall make every reasonable effort to expedite this proceeding.

(g) Counsel shall strictly abide by Fla. Bar Code Prof. Resp. Rule 4.3-6 regarding trial publicity.

(h) Before hearings are scheduled, or if that is not feasible immediately after scheduling, counsel and all unrepresented parties will attempt to verify the availability of necessary participants and witnesses so that the Court can be notified of any foreseeable problems.

(i) Nothing in this Order supersedes or detracts from the Code of Professional Responsibility or alters existing standards of conduct. Counsel and all parties shall comply with the Court Conduct Handbook on Gender Equality in the Courts.

**14. SANCTIONS.** The unexcused failure of counsel or any party to comply with the requirements of this Order will subject the offending counsel or party to appropriate sanctions which may include, but are not limited to contempt, the striking of pleadings or claims or defenses, the exclusion of evidence or witnesses, or the assessment of fees or costs, or such other sanctions as may be appropriate.





**REQUESTS FOR ACCOMMODATIONS BY PERSONS WITH**

**DISABILITIES** If you are a person with a disability who needs an accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Court Administration, 101 N. Alabama Ave., Deland FL 32724, (386) 257-6096, at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the appearance is less than 7 days; if you are hearing or voice impaired, call 711.

**THESE ARE NOT COURT INFORMATION NUMBERS**



**SOLICITUD DE ADAPTACIONES PARA PERSONAS CON**

**DISCAPACIDADES**

Si usted es una persona con discapacidad que necesita una adaptación para poder participar en este procedimiento, usted tiene el derecho a que se le proporcione cierta asistencia, sin incurrir en gastos. Comuníquese con la Oficina de Administración Judicial (Court Administration), 101 N. Alabama Ave., Deland FL 32724, (386) 257-6096, con no menos de 7 días de antelación de su cita de comparecencia ante el juez, o de inmediato al recibir esta notificación si la cita de comparecencia está dentro de un plazo menos de 7 días; si usted tiene una discapacidad del habla o del oído, llame al 711.

**ESTOS NUMEROS TELEFONICOS NO SON PARA OBTENER INFORMACION JUDICIAL**