

**IN THE CIRCUIT COURT OF FLORIDA, SEVENTH JUDICIAL CIRCUIT COURT
IN AND FOR FLAGLER, PUTNAM, ST. JOHNS, AND VOLUSIA COUNTIES**

RE: Civil Pretrial Procedures

REF: CV-2023-002-SC

WHEREAS, it has been made known to the undersigned that the establishment of Uniform Pretrial Procedures in Civil Actions in the Seventh Judicial Circuit, and the creation of appropriate form orders related to such procedures, is necessary for the efficient and proper administration of justice, and

WHEREAS, the judges of the Seventh Judicial Circuit have approved the use of such procedures and orders throughout the circuit,

NOW THEREFORE, I, JAMES R. CLAYTON, Chief Judge of the Seventh Judicial Circuit, hereby approve and authorize the use of the attached Uniform Pretrial Procedures in Civil Actions and related orders throughout the Seventh Judicial Circuit.

TO BE RECORDED in Flagler, Putnam, St. Johns, and Volusia Counties.

DONE AND ORDERED in DeLand, Volusia County, Florida, this 13 day of January 2023.



JAMES R. CLAYTON
CHIEF JUDGE

cc: Circuit Judges
Court Administration
Clerks of Court

UNIFORM PRETRIAL PROCEDURES IN CIVIL ACTIONS

BY ORDER OF THE COURT, each party and all counsel shall comply with the following Uniform Pretrial Procedures in Civil Actions:

1. REFERRAL TO MEDIATION/ARBITRATION; DEADLINE.

(a) Unless this matter has been previously mediated or is excluded from mediation by Fla.R.Civ.P. 1.710(b), this case is hereby referred to mediation in accordance with Fla.R.Civ.P. 1.700.et seq. Plaintiff's counsel (or Defendant's counsel, if Plaintiff is unrepresented), shall submit a mutually agreeable mediation order to the Court at least seventy-five (75) days prior to docket sounding. If the parties are unable to agree on a mediator and a place and time for mediation, counsel shall promptly notify the Court.

(b) Mediation shall be completed, and the mediation report filed with the Court prior to docket sounding. The requirement to mediate this case cannot be waived by agreement of the parties.

(c) Court ordered arbitration shall be completed and the arbitration report filed with the Court at least thirty (30) days prior to docket sounding.

2. WITNESS LISTS.

(a) **EXPERT WITNESSES.** No less than seventy-five (75) days before docket sounding, each party seeking affirmative relief will file with the Court and serve on all other parties 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. No later than sixty (60) days before docket sounding, each party not seeking affirmative relief shall file with the Court and serve on all other parties 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 designate his/her area of expertise (i.e. "accident reconstruction", "economist", "treating orthopedic physician" etc.).

(b) **NON-EXPERT WITNESSES.** No less than sixty (60) days prior to docket sounding, each party will file with the Court and serve on all other parties 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, including witnesses expected to be called for impeachment or rebuttal.

(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 2(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.

3. EXHIBITS.

(a) **EVIDENTIARY EXHIBITS.** No less than sixty (60) days before the docket sounding, each party shall disclose and specifically describe in writing each exhibit intended to be offered at trial, including exhibits to be used for impeachment. Exhibits not timely disclosed shall not be used at trial unless good cause is shown.

(b) **DEMONSTRATIVE EXHIBITS.** Demonstrative Exhibits shall be shown to and initialed by opposing counsel at the attorneys' pretrial conference. PowerPoint or similar media presentations shall be treated as Demonstrative Exhibits governed by this requirement. Media presentations used solely for or during opening statement shall be shown to opposing counsel before the start of trial and media presentations used solely for or during closing argument shall be shown to opposing counsel before such argument.

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 docket sounding.

(b) No interrogatories, requests to produce or requests for admissions shall be served later than forty-five (45) days prior to docket sounding. Exceptions shall be permitted only by written stipulation of the parties or by Court order.

5. CONTINUANCES. Motions for continuance must be in writing and specifically set forth: (a) the reason for the requested continuance; (b) if any party objects to the requested continuance and (c) when it is anticipated the case will be ready for trial. The rule requires that the party (not just the attorney) requesting the continuance should sign the motion or stipulation. (Fla. R. Gen. Prac. & Jud. Admin. 2.545(e)). 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.

6. PRETRIAL 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.

(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. This provision does not apply to motions for summary judgment or other case dispositive motions.

(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 in *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 or is dismissed prior to the trial date, the parties shall promptly notify the Court by telephone and confirm the settlement or dismissal in writing. A notice of voluntary dismissal or joint motion to dismiss shall be submitted to the Court within thirty (30) days after the Court is first advised of the settlement.

9. PRETRIAL MEETING OF ATTORNEYS AND UNREPRESENTED PARTIES.

(a) **MANDATORY PRETRIAL MEETING.** No later than ten (10) days prior to docket sounding (or ten (10) days prior to the pretrial conference, if one is scheduled), trial counsel and all unrepresented parties shall meet together. Attendance at this meeting (in person or by telephone) is mandatory. Plaintiff's attorney (or if Plaintiff is unrepresented, Defendant'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 pretrial meeting, the attorneys and 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 pretrial 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 pretrial 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) Agree upon and draft a concise but complete statement of the case to be read by the Court to the jury at the beginning of the case if a jury trial.
- (8) Attempt to agree upon the number of peremptory challenges if a jury trial.
- (9) 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 treatment of collateral source set-offs, the need to call records custodians, etc.)

(b) **JOINT PRETRIAL STATEMENT.** Following the meeting required by paragraph 9(a), Plaintiff's attorney (or Defendant's attorney, if Plaintiff is unrepresented) shall prepare and present to opposing counsel and all unrepresented parties a proposed joint pretrial statement. The statement shall be signed by all attorneys and unrepresented parties. The original shall be filed, and one copy shall be mailed or delivered to the Judge no later than docket sounding; provided, however, that if the Court schedules a pretrial conference, the joint pretrial statement shall be provided to the Court at or before the pretrial conference. To the extent the parties differ as to how portions of the pretrial statement should read, the differing views should be set forth in the statement.

The pretrial statement shall contain the following items in the following format:

- (1) A statement of the case to be read to the jury if a jury trial.
- (2) 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.
- (3) A list of issues raised by the pleadings that are abandoned.
- (4) A list of the issues of fact to be tried (framed as they would be set forth in an interrogatory verdict).
- (5) A list of significant issues of law, procedure, or evidence to be determined by the Court prior to or during trial.
- (6) An itemized list of special damages that each party claiming special damages expects to prove.
- (7) The annotated copy of each party's list of exhibits showing objections required by paragraph 9(a)(2) of this Order.
- (8) The annotated copy of each party's witness list required by paragraph 9(a)(3) of this Order.
- (9) The number of peremptory challenges agreed upon or requested, if no agreement is reached, if a jury trial.
- (10) A current estimate of the number of days required for trial and the time requested for opening statements.
- (11) Any other agreed matters.

10. JURY INSTRUCTIONS. If this case is scheduled for a jury trial, no later than the docket sounding, each party shall submit to the Court an original and one electronic copy of that party's proposed jury instructions and verdict form. Each jury instruction shall be on a separate page; shall contain citations of supporting authorities, if any; shall designate the party submitting the instruction; and shall be numbered in sequence. Attorneys shall confer prior to trial and attempt to agree on the jury instructions and verdict form. This paragraph shall not foreclose the right of each party to modify proposed instructions up to and including the charge conference at the close of evidence.

11. INCONSISTENCY WITH CASE MANAGEMENT ORDER. If any provision of this order is inconsistent with any case management order entered in this case, the case management order will govern.

12. MARKING EXHIBITS BEFORE TRIAL. Each party shall, at least two days before jury selection or such other time as agreed by the Clerk, meet with, and assist the Clerk in marking all exhibits for identification in the manner directed by the Clerk.

13. EXTENSION OF TIME LIMITS. No extension of deadlines or compliance dates established by this Order are 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.

14. 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) 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) 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 will consult with each other regarding scheduling matters in a good faith effort to avoid scheduling conflicts.

(f) Attorneys and parties shall make all reasonable efforts to expedite this litigation.

(g) Attorneys 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 thereafter, attorneys and 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) The attorneys who make final argument in this case must be present during the taking of all testimony.

(j) 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.

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