



JUDGE EDWARD NICHOLAS

PRE-TRIAL PROCEDURES & PROTOCOL FOR JURY TRIALS & REFERRAL TO MEDIATION

REVISED: FEBRUARY 2020

I LOCAL RULES, STANDARDS OF PROFESSIONALISM & GOOD FAITH CERTIFICATIONS

In all pre-trial and trial conduct, attorneys shall comply with the Local Rules and Standards of Professionalism of the Twelfth Judicial Circuit located at www.jud12.flcourts.org.

II PRE-TRIAL CONFERENCES FOR JURY TRIALS

A Attendance Optional if *Pre-Trial Conference Order* Submitted Beforehand

Prior to Pre-Trial Conference, the attorneys shall confer and complete a *Pre-Trial Conference Order* form. Attorneys are not required to attend the Pre-Trial Conference if, at least three (3) business days prior to the hearing, they submit a joint *Pre-Trial Conference Order* directly to the Judge's chambers. Said form is available on the Circuit's website. Be advised that trial scheduling will take place at Pre-Trial Conference and parties attending will be given priority. Attendance is strongly encouraged.

B No Motions Heard at Pre-Trial Conference

No motions will be heard at Pre-Trial Conferences. All pre-trial motions must be scheduled on the Court's docket according to the Rules of Civil Procedure, the Local Rules, Standards of Professionalism of the Twelfth Judicial Circuit, and the presiding judge's requirements.

C Submission of *Jury Trial Information Statement*

Plaintiff's counsel, after conferring with defense counsel, shall file a neutral *Jury Trial Information Statement* at or prior to Pre-Trial Conference. The Court will use the *Statement* during jury selection to inform potential jurors about the issues and witnesses involved in the case. Said form is available on the Circuit's website.

D Submission of Jury Instructions and Verdict

Prior to Pre-Trial Conference, the attorneys shall confer and complete a single set of proposed jury instructions and provide a copy to the Court at Pre-Trial Conference or on the Thursday prior to the trial period at the LATEST. The set shall include all agreed-upon instructions, whether standard or non-standard. Any instructions that are not agreed-upon should be submitted along with the parties' supporting case law. The same procedures apply to the proposed verdict form. (NOTE: Please have Jury Instructions in 16-point font.)

III DEADLINES FOR DISCOVERY, PRE-TRIAL MOTIONS AND EXCHANGE OF INFORMATION

A Prior to Pre-Trial Conference

1 Discovery

All discovery should be completed prior to Pre-Trial Conference. Discovery conducted after Pre-Trial Conference may be done upon written stipulation of the parties or with leave of Court. A case will not be continued where facts discovered after the Pre-Trial Conference that could have been discovered earlier using due diligence.

2 Exchange of Lay and Expert Witness Lists and Trial Exhibits

Initial Exchange 60 Days Prior to Pre-Trial Conference. Unless otherwise ordered by the Court, no later than sixty (60) days prior to the Pre-Trial Conference date, counsel shall exchange lists of exhibits expected to be actually used at trial as well as the names, addresses and expected subject matter of testimony as to all lay and expert witnesses expected to testify. *Counsel shall specifically designate expert witnesses.*

Supplemental Exchange 45 Days Prior to Pre-Trial Conference. Each party shall have the right to submit a supplemental list upon receipt and review of the opposing party's list no later than forty-five (45) days prior to the Pre-Trial Conference.

Enforcement. The lists must be specific. General categories will not be accepted or enforced. No party shall be permitted to call a witness or introduce any exhibit not so disclosed without a written stipulation or leave of court.

3 Fabre Defendants.

The deadline for disclosure of persons or entities other than parties sought to be placed on the verdict form and against whom some measure of liability may be assessed by the jury is not later than forty-five (45) days before the Pre-Trial Conference. No undisclosed person or entity may be placed on the verdict form.

4 Pre-Trial Motions.

All pre-trial motions must be scheduled on the Court's docket prior to Pre-Trial Conference. All motions must be scheduled according to the Rules of Civil Procedure, the Local Rules, Standards of Professionalism of the Twelfth Judicial Circuit, and the presiding judge's requirements.

5 Witnesses Appearing via Deposition Testimony.

All depositions, recorded or otherwise, that are to be read or reviewed by the jury should be in final form, i. e., objections or redaction issues shall have been resolved by written stipulation or heard by the Court prior to Pre-Trial Conference. The objecting party has the burden of ensuring that the matter has been resolved or any objection will be considered waived.

PROCEDURES ON DAUBERT MOTIONS/MOTIONS IN LIMINE

A party who intends to file a **Daubert challenge shall notify the Court no later than the pre-trial conference.** All Daubert hearings must be held **prior to trial.** Some Daubert issues require extended evidentiary hearing time; therefore, all counsel are advised to plan ahead as

Daubert matters will not be addressed and will be considered waived after the deadline set forth by the Court absent a showing of good cause. The Court will typically schedule these hearings on the Friday prior to the trial period if time is unavailable on the JACS. Please contact the judicial assistant to schedule if there is insufficient time available on JACS.

Motions in Limine that are expected to be contested and/or require lengthy argument should be filed no later than the pre-trial conference. If counsel cannot schedule the motion(s) on the regular JACS motion calendar prior to trial, the Court will typically hear these motions the Friday before trial to avoid a delay in jury selection. Please contact the judicial assistant to schedule if there is insufficient time available on JACS. **The Court will not hear untimely Motions in Limine absent a showing of good cause.**

IV SCHEDULING JURY TRIALS

A In General

Jury trials are set during two-week trial periods and are generally scheduled by the Court according to the age of the case as indicated by the assigned Clerk's case number. Other factors may affect the trial line-up and the Court will attempt to accommodate timely scheduling requests.

B Trial Line-Ups Posted on the Circuit's Web Site

Tentative Trial Line-Up Posted After Pre-Trial Conference. The Court will post a *Tentative Trial Line-Up* on the Circuit's web site following the Pre-Trial Conference. This line-up will contain a tentative schedule that includes all pending trials and is subject to change.

C Categories of Trials

Primary Trials. Primary cases are assigned a definite starting date and time. Attorneys on these cases must appear for jury selection as indicated on the *Final Trial Line-Up*.

Back-Up Trials. Back-up cases must be ready to proceed to trial on short notice on the day of the week assigned to them on the trial line-up.

Cases Not Reached on Trial Docket. Any cases not tried during the assigned trial period will be continued. The attorneys will be notified by the Court and will have the opportunity to stipulate to a new trial period. Cases continued under these circumstances will be given priority status on the new trial docket.

D Settlements or Requests for Continuances

For the benefit of the Court and all cases set on the trial docket, Plaintiff's counsel must notify the presiding judge of any settlements or requested continuances immediately by telephone followed by written confirmation via e-mail or fax.

E Trial Exhibits

Counsel shall confer with the Trial Clerk and pre-mark all exhibits. The Plaintiff(s) shall use **numbers** to denote their exhibits (Plaintiff's Exhibit #1); the Defendant(s) shall use **letters** (Defendant's Exhibit A).

V CONTINUANCES

Attorneys shall consult clients and witnesses to coordinate and confirm availability *before* selecting a trial period. The Court strictly adheres to the Rule of Judicial Administration 2.545(e) and Rule of Civil Procedure 1.460. Continuances will rarely be granted and only upon a showing of an unanticipated event good cause. A joint stipulation for a continuance must be submitted in writing and signed by all parties.

If, after selecting a trial date, an attorney learns that an expert or any other witness may not be available for trial, that attorney is directed to otherwise obtain and secure that witness' testimony for presentation at trial.

Unavailability of attorneys or witnesses will not be good cause for continuing a case or disrupting the Court's trial docket, as the multiple trials set cannot be arranged based upon conflicts of various individuals.

VI REFERRAL TO MEDIATION / MEDIATOR'S REPORT TO THE COURT

A Mediator

Mediator's Report to Court. Pursuant to Florida Rule of Civil Procedure, the mediator shall submit a written report to the presiding judge.

Selection of Mediator. Pursuant to Florida Rule of Civil Procedure 1.720(f) within ten (10) days of the date of this Order, the parties shall either:

(1) Sign a written stipulation naming a mediator and provide the Court with an order appointing mediator, or

(2) The attorney for the party who initiated the litigation in this case shall provide a list of proposed mediators to the Court by letter, which does not identify which party suggested which mediator. Each party will be entitled to provide the names of two mediators. The parties shall have determined prior to the submission of those names that the mediators will be available and able to schedule a formal mediation of whatever length is necessary within sixty (60) days of the date of this Order. The initiating party's attorney will also submit an original order for the Court to inset the name of the mediator chose by the Court, along with copies and stamped and addressed envelopes for all parties.

Status Conference re Mediation. Immediately upon determining the date of the mediation, the parties will also confer and agree upon a status conference date to discuss the results of the mediation and any future action that may be necessary. The hearing should be scheduled to occur no later than seventy-five (75) days from the date of this Order. *This status conference may be waived upon the parties providing the Court with a stipulation regarding the status of mediation.*

Notices re Mediation. The attorney for the party who initiated litigation shall notify all counsel in writing of the date and time agreed for mediation and shall prepare the Notice of Hearing as to the Status Conference date.

Mediator's Fee. In the absence of a written agreement, the mediator's fee shall be \$150.00 per hour, to be initially paid equally by each party.

B Unsuccessful Mediation / Ultimate Prevailing Party

The parties are advised that, as part of the mediation process, if an agreement is not reached and further litigation occurs, it is quite likely that the non-prevailing party may be responsible for the full costs of the mediation as well as attorney fees and costs pertaining to the litigation.

C Waiver of Referral to Mediation

If formal mediation has already occurred in this case, or if a written stipulation (signed by *all* lead counsel and parties) is submitted to Court within fifteen (15) days of the date of this Order, attesting that mediation is not appropriate, the referral to mediation will be deemed waived by the Court.

VII SANCTIONS

Failure to comply with the requirements of this Order will subject the offending party and/or attorney to appropriate sanctions.