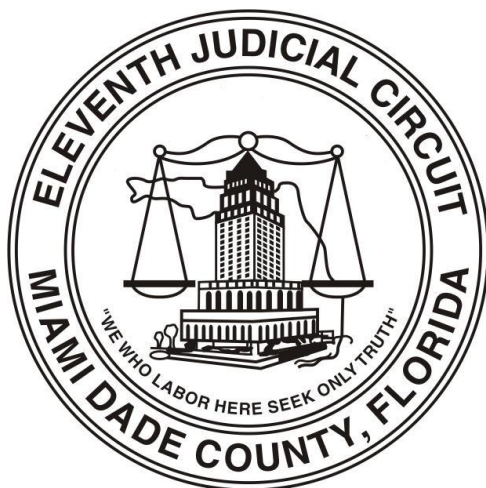




**COMPLEX BUSINESS LITIGATION**  
**DIVISION 43 POLICIES AND PROCEDURES<sup>1</sup>**

**JUDGE JAVIER A. ENRIQUEZ**

Eleventh Judicial Circuit Court of the State of Florida

Oswaldo N. Soto Justice Center  
Courtroom 13A  
20 NW 1<sup>st</sup> Avenue, Chamber 13.236  
Miami, Florida 33128

**Estephania Acosta, Judicial Assistant**

[eacosta-serret@jud11.flcourts.org](mailto:eacosta-serret@jud11.flcourts.org)

(305) 349-6237

---

<sup>1</sup> These “Policies and Procedures” are published to assist counsel appearing in Complex Business Litigation, Division 43 by addressing routine questions and issues that arise while litigating and trying cases and will be revised/updated periodically. They are not intended to relax or supplant the Florida Statutes, the Florida Rules of Court, local rules of Court, administrative orders, case specific court orders, the Rules Regulating Florida Bar (including, without limitation, the Rules of Professional Conduct), or any other substantive or procedural law (collectively, the “Applicable Law, Rules and Procedures”). All Applicable Law, Rules, and Procedures are intended to prevail, unless expressly stated otherwise.

## INTRODUCTION

The effective administration of justice requires the interaction of many professionals and disciplines, but none is more critical than the role of the lawyer. In fulfilling that role, a lawyer performs many tasks, few of which are easy, most of which are exacting. In the final analysis, a lawyer's duty is always to the client. In striving to fulfill that duty, lawyers must be conscious of their broader duty to the judicial system that serves both attorney and client. To the judiciary, a lawyer owes candor, diligence, and utmost respect. To the administration of justice, a lawyer unquestionably owes the fundamental duties of personal dignity and professional integrity.

Coupled with those duties is a lawyer's duty of courtesy and cooperation with fellow professionals for the efficient administration of our system of justice and the respect of the public it serves. In furtherance of these fundamental concepts, the lawyers should familiarize themselves with the current "Guidelines for Professional Conduct by the Trial Lawyers Section of the Florida Bar" (adopted by the Conferences of Circuit and County Court Judges), and the Rules Regulating the Florida Bar. It is recognized that these Guidelines must be applied in keeping with the advocacy of the interests of one's client and the long tradition of professionalism among and between members of the Trial Lawyers Section of The Florida Bar.

These Guidelines are subject to the Florida Rules of Civil Procedure, and the specific requirements of any standing or administrative order, local court rule, or order entered in a specific case. The lawyers should also familiarize themselves with the **"2024-2026 Professionalism Handbook"** by the Florida Bar Standing Committee on Professionalism. These policies and procedures have been created in response to promote judicial efficiency, including, but not limited to, the greater use of communication technology to participate in remote court proceedings, Fla. R. Civ. P. 1.201, the amendments to Fla. R. Civ. P. 1.510, various Florida Supreme Court Administrative Orders reemphasizing the trial court's responsibility to actively case manage, and the significant amendments to the Florida Rules of Court. These divisional policies and procedures are intended to streamline litigation, reduce the need for hearing time, avoid the unnecessary stress that arises during trial preparation, and reduce the number of trial cases which are continued.

These same procedures apply equally to *pro se* litigants, who are expected to comply with the applicable rules, orders, and scheduling requirements of the court. While the judiciary recognizes the challenges faced by individuals representing themselves, such litigants are held to the same procedural standards as attorneys to ensure fairness, consistency, and the orderly administration of justice. If any lawyer or *pro se* litigant has any questions about these procedures, they are encouraged to *promptly* e-mail my judicial assistant.

/s Judge Javier A. Enriquez

## Table of Contents

- I. SETTING CASE FOR PROJECTED AND ACTUAL TRIAL PERIOD (JURY AND NON-JURY)
  - A. Projected Trial Period
  - B. Initial and Final Case Management Conference
  - C. Trial Conduct and Courtroom Decorum Policy
  - D. Settlement
- II. SETTING HEARING FOR PENDING MOTION
  - A. E-mail Hearing Time Request
  - B. Court's Response to Hearing Time Request
  - C. Non-Evidentiary Hearings
  - D. Evidentiary Hearing or Non-Jury Trial
  - E. Zoom Best Practices
  - F. Courtesy Copies and Supporting Documents
  - G. Limitations on Hearings
  - H. Meet and Confer Requirement Prior to Filing the Motion
  - I. Meet and Confer Requirement Prior to Scheduling a Hearing on the Motion
- III. REQUEST FOR EMERGENCY HEARING
- IV. HEARING REQUIRING MORE THAN ONE (1) HOUR
- V. CANCELLATION OF HEARING
- VI. MOTION TO COMPEL OR MOTION FOR SANCTIONS FOR FAILURE TO PRODUCE DISCOVERY AND MOTION FOR PROTECTIVE ORDER
- VII. COMPULSORY MEDICAL EXAMINATIONS (CME)
- VIII. PROCEDURES FOR SETTLEMENT OR DISMISSAL OF CASES
- IX. MINOR'S SETTLEMENT
- X. MOTIONS IN LIMINE (MIL)
- XI. PROPOSED ORDERS WHEN THE COURT MAKES A RULING FOLLOWING A HEARING
- XII. PROPOSED AGREED OR CONSENT ORDERS OR ORDERS ON MOTIONS NOT OBJECTED TO, WITHOUT A HEARING
- XIII. WITHDRAWAL OF COUNSEL
- XIV. EX PARTE COMMUNICATIONS/CORRESPONDANCE

## **I. SETTING CASE FOR PROJECTED AND ACTUAL TRIAL PERIOD (JURY AND NON-JURY):**

**A. Projected Trial Period:** The Court, for all cases that Fla. R. Civ. P. 1.201 applies to, will enter an initial case management order fixing a projecting trial date and specifying no less than the projected pretrial deadlines required in Fla. R. of Civ. P. 1.201.

**B. Initial and Final Case Management Conference:** The Court will promptly notice and schedule the Initial and Final Case Management Conferences pursuant to Fla. R. Civ. P. 1.201; however, the Parties must provide the Court with the joint statement and status report, respectively, required for both conferences. For the Initial Case Management Conference, lead trial counsel shall attend and be prepared to discuss pleadings, preservation of evidence, ESI, experts, mediation, anticipated motions, trial length, and realistic deadlines. The parties should identify the core legal and factual issues early, exchange information sufficient to evaluate settlement, and discuss proportional discovery. The Parties are to comply with all Notices and Orders entered in their cases.

**C. Trial Conduct and Courtroom Decorum Policy:** The parties must always comport themselves with decorum and dress appropriately while in Court.

**D. Settlement:** If a case settles, the parties must *immediately* contact the Court to have the case removed from the calendar/trial docket. In addition, the parties must comply with the Court's "Procedures for Settlement or Dismissal of Cases" *See* Section XVI *infra*.

## **II. SETTING HEARING FOR PENDING MOTION:**

**A. E-mail Hearing Time Request:** Only after first conferring, the party requesting the hearing shall email the Court's Judicial Assistant and copy their opposing counsel, and provide the case number, the motion(s) to be set for hearing and how much time is being requested.

**B. Court's Response to Hearing Time Request:** The Judicial Assistant will "Reply to All" with available hearing dates/times. PLEASE NOTE: HEARING DATES/TIMES PROVIDED ARE NOT HELD AND MAY BE GIVEN TO OTHERS. HEARING DATES/TIMES ARE NOT SECURED UNTIL NOTICED. If the Court does not receive a response from all parties within twenty-four (24) hours, the date provided will be released to another case. Failure to respond may also result in the Court setting the matter without consideration of the parties' calendars.

**C. Non-Evidentiary Hearings:** For non-evidentiary hearings scheduled for thirty (30) minutes or less, counsel may be permitted to appear in-person and/or via Zoom, regardless of whether they are local or out-of-town, pursuant to Florida Rule of General Practice & Judicial Administration 2.530(b)(1). If counsel would like to attend a non-evidentiary hearing scheduled for thirty (30) minutes on Zoom, counsel may do so without further Order of the Court, pursuant to Florida Rule of General Practice & Judicial Administration 2.530(b)(1). Please notify the Court of counsel's intention to appear via Zoom at the time the hearing is scheduled and include all necessary information in the Notice of Hearing for the Court to log into the Zoom hearing room.

The Court's non-evidentiary Motion Calendar is recurring weekly, on Tuesdays and Thursdays, on Zoom. Motion Calendar hearings are limited to five (5) minutes total per case. CourtMAP allows only two (2) motions per case. For additional motions to be heard, the moving party must schedule a separate event in courtMAP.

To set a matter for Motion Calendar, select an available date on courtMAP. The filed motion(s) and all documents in support must be attached when the hearing is scheduled. Once a green "Success" message appears, the hearing is properly calendared. However, **you must still prepare, file and serve a Notice of Hearing.**

**\* EVIDENTIARY HEARINGS MAY NOT BE SET ON THE MOTION CALENDAR. \***

**D. Evidentiary Hearing or Non-Jury Trial:** All evidentiary hearings shall take place *in-person*. Should all parties agree to conduct their hearing via Zoom, the parties must all consent to such in writing. In the event all parties do not consent to use communication technology for an evidentiary hearing, any party desiring to use communication technology shall seek leave of court by filing a written motion setting forth why good cause exists pursuant to Florida Rule of General Practice & Judicial Administration 2.530(b)(2) and schedule a fifteen (15) minute hearing on such a motion to be heard prior to the evidentiary hearing.

**E. Zoom Best Practices:** Zoom appearance is a privilege. All counsel and parties shall log in before the hearing is scheduled to begin. All attorneys, parties, witnesses, or other persons participating in or observing court proceedings remotely using communication technology shall comply with "The Florida Bar Recommended Best Practices for Remote Court Proceedings."

**F. Courtesy Copies and Supporting Documents:** Courtesy copies shall be provided **electronically only**. The Court does not require or accept hard-copy courtesy copies, binders, or other physical media, unless specifically ordered otherwise. For **all** motion hearings, all materials the parties wish the Court to consider – including the motion, responses, replies, exhibits, affidavits, declarations, deposition excerpts, demonstratives, legal memoranda, and authorities – **must be uploaded to courtMAP as Supporting Documents no less than seven (7) days before the scheduled hearing**, or immediately if the hearing is scheduled within that time period. All Supporting Documents uploaded to courtMAP should be clearly identified and organized so that the Court can readily determine their relevance to the motion. Where practicable, documents should be submitted as searchable PDF files, with appropriate bookmarks, descriptive file names, and hyperlinks for lengthy submissions. The filing of a document with the Clerk through the Florida Courts E-Filing Portal does not, by itself, constitute a submission of a courtesy copy to the Court. A party wishing the Court to review a filed document in advance of a hearing must separately upload that document to courtMAP as a Supporting Document. Failure to *timely* upload the required Supporting Documents to courtMAP *may* result in the Court declining to consider the materials, cancellation of the hearing, or other appropriate action.

**G. Limitation on Hearings:** All hearings related to dispositive motions and trial matters must be **filed and heard prior to the pre-trial conference, pursuant to the deadlines set forth in the Court's Case Management Order Setting Case for Trial**. Motions in Limine ("MIL") are governed by Section X *infra*. **NO HEARINGS DIRECTED TOWARDS MATTERS**

**INVOLVING THE TRIAL, MSJ, OR MIL WILL BE HEARD DURING THE ACTUAL TRIAL PERIOD** absent unanticipated events occurring.

**H. Meet and Confer Requirement Prior to Filing the Motion:** Pursuant to Fla. R. Civ. P. 1.202(a), before filing a motion, except for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, or to involuntarily dismiss an action, the movant **must** confer with the opposing party in a good faith effort to resolve the issues raised in the motion.

**\*\*\* This Court construes the term “confer” as requiring a substantive conversation in person, by telephone, or by communication technology in a good faith effort to resolve the issues raised in the motion *without* the need to file the motion and does not envision an exchange of ultimatums by text, e-mail, fax, or letter. A statement that counsel attempted to confer with opposing counsel is insufficient unless the good faith statement details the date and time of at least three attempts to confer that occurred within the one-month period prior to the filing of the motion. The Certificate of Conferral, as provided in Fla. R. Civ. P. 1.202(b) should describe, with particularity, all the efforts undertaken to accomplish dialogue with the opposing party or opposing party’s counsel prior to filing the subject motion. \*\*\***

Pursuant to Fla. R. Civ. P. 1.202(b), the movant must file with the motion a “certificate of conferral, prior to filing the motion,” substantially in the form provided in quotation marks within Rule 1.202(b). The Court will accept a certificate of conferral substantially in the form provided within Rule 1.202(b) set forth directly above the signature block of the motion.

Movant’s failure to make a good-faith effort to resolve the issues raised in the motion before filing a motion pursuant to Rule 1.202(a) may, in the Court’s discretion, result in the motion being stricken from the Court’s hearing calendar or denied, the imposition of sanctions, and/or the denial of any monetary or non-monetary sanctions requested by movant in the motion. The Court may waive this good-faith effort requirement under appropriate circumstances.

**I. Meet and Confer Requirement Prior to Scheduling a Hearing on the Motion:**

A mandatory meet and confer process is hereby established as set forth below, for all motions to be ***set for hearing*** in Complex Business Litigation Division 43 and to occur ***before*** scheduling the hearing except for the following motions: injunctive relief without notice; judgment on the pleadings; default, default final judgment, default summary judgment; or to permit maintenance of a class action.

(i) Counsel with full authority to resolve the matter shall confer before scheduling the hearing on the motion to attempt to resolve or otherwise narrow the issues raised in the motion and include a Certificate of Conferral Prior to Scheduling Motion for Hearing that the conference has occurred with the Notice of Hearing filed with the court. It shall be the responsibility of counsel who schedules the hearing to arrange the conference.

(ii) The term “confer” requires a substantive conversation in person, by telephone, or by communication technology in a good faith effort to resolve the motion without the need to schedule a hearing and does not envision an exchange of ultimatums by fax, e-mail or letter. Counsel who merely attempt to confer have not conferred for purposes of these Policies and Procedures.

(iii) Counsel must respond promptly to inquiries and communications from opposing counsel who notices the hearing and is attempting to schedule the conference. If counsel who notices the hearing is unable to reach opposing counsel to conduct the conference after three (3) good faith attempts, counsel who notices the hearing must identify in the Certificate of Conferral Prior to Scheduling the Motion for Hearing the dates and times of the efforts made to contact opposing counsel.

(iv) Counsel must file with the Notice of Hearing a “Certificate of Conferral Prior to Scheduling the Motion for Hearing” certifying that the meet and confer occurred (or did not occur and setting out the good faith attempts to schedule the conference) and identifying the date of the conference, the names of the participating attorneys, and the specific results obtained. The Court will accept a certificate of conferral substantially in the form provided in, either First Option or Second Option, attached to these “Policies and Procedures,” set forth directly above the signature block of the Notice of Hearing for the motion. For the convenience of counsel preparing the Notice of Hearing, the Court has provided Exhibit “B” attached to these “Policies and Procedures” together with the same template certificate of conferral in Microsoft Word format published on the Court’s website for counsel to edit and insert above this signature block of the Notice of Hearing.

(v) Counsel who notices the hearing shall ensure that the Court and the Court’s Judicial Assistant are aware of any narrowing of the issues or other resolution because of the conference.

(vi) Failure to make a good faith effort to resolve the issues raised in the motion before scheduling a hearing on the motion may, in the Court’s discretion, result in the hearing being canceled, the motion being stricken from the Court’s calendar or denied, the imposition of sanctions, and/or the denial of any monetary or non-monetary sanctions requested by movant in the motion. The Court may waive this good faith effort requirement under appropriate circumstances, at the Court’s discretion.

### **III. REQUEST FOR EMERGENCY HEARING:**

The Court will decide whether the reasons set forth in the motion for emergency hearing and/or the allegations contained in the motion constitute an actual emergency. If the Court determines that the motion does allege an actual emergency, it will take whatever action deemed appropriate, including setting an emergency hearing or entry of an *ex parte* order if permissible by law.

#### IV. HEARING REQUIRING MORE THAN ONE (1) HOUR:

Any motion, regardless of whether the hearing will be conducted in person or via Zoom, for which counsel is seeking more than one (1) hour of hearing time must be scheduled with the Court. In an email to the Court's Judicial Assistant, the party seeking to schedule same should provide the Court with the estimated time required for such motion hearing for consideration by the Court.

#### V. CANCELLATION OF HEARING:

A. When cancelling a hearing, please call the Court with opposing counsel's office also on the line. You may also email the Judicial Assistant and carbon copy opposing counsel notifying the Judicial Assistant of the cancellation.

B. DO NOT assume the hearing is automatically removed from the Court's calendar. If you do not receive a telephone call or email confirming the cancellation, please try contacting the Judicial Assistant again. **A Notice of Cancellation that has been e-filed with the Clerk is not sufficient notice of a cancellation. Cancellation of a hearing MUST be confirmed with and by the Court.**

C. When a hearing on a motion to compel discovery or a motion for protective order has been placed on the Court's calendar, the hearing may not be cancelled without the Court's consent and an order or agreed order submitted to the Court ruling on said motion(s).

#### VI. MOTION TO COMPEL OR MOTION FOR SANCTIONS FOR FAILURE TO PRODUCE DISCOVERY AND MOTION FOR PROTECTIVE ORDER

To avoid recurring discovery problems and curtail perceived abuses in discovery and unnecessary delays, counsel should comply not only with the technical provisions of the discovery rules, but also with the purpose and spirit of these rules. *Bainter v. League of Women Voters of Fla.*, 150 So. 3d 1115, 1118 (Fla. 2014). Whether conducting or responding to discovery, and in both oral and written practice, counsel must conduct themselves consistent with the standards of behavior codified in (1) the Oath of Admission to The Florida Bar; (2) The Florida Bar Creed of Professionalism; (3) The Florida Bar Ideals and Goals of Professionalism; (4) The Rules Regulating The Florida Bar; (5) the decisions of the Florida Supreme Court and (6) the applicable code of conduct and standing orders promulgated by the Eleventh Judicial Circuit and Division 43. Counsel should also familiarize themselves with the current "Florida Handbook on Civil Discovery Practice" as a quick reference for many recurring discovery problems and quickly access legal authority for various topics.

All discovery motions and motions to compel must be set for hearing to bring the matter to the Court's attention. **All discovery motions and motions to compel shall be heard in person, without exception.** The mere filing of a motion is insufficient. Any motions filed but not set for hearing will be considered abandoned. All such discovery motions must comply with the Florida Rules of Civil Procedure including, but not limited to, a certification of a good faith attempt to resolve that matter without court action. *See Fla. R. Civ. P. 1.380(a)(2)* and the "Meet and Confer Requirement" *See* Sections II *supra* for motion hearings.

The filing of a Motion for Protective Order, without attempting to set it for immediate hearing, is insufficient to protect from any discovery requested. The Court will make itself available for immediate hearings on said motions where the motion could not have been filed and heard in the due course of discovery. Where necessary, and when possible, the Court will hear and, if possible and appropriate, rule by telephone on motions or substantive objections that occur during depositions where a failure to do so would require the stopping of a deposition and the resetting of same depending on the Court's ruling.

## **VII. COMPULSORY MEDICAL EXAMINATIONS (CME):**

### **A. Request for, Objections to, and Hearings on Examination:**

Requests for an examination must set forth the time, place, manner, conditions, and scope of the examination as well as the name of and the qualifications of the person conducting the examination with specificity. If examinations under these rules are requested such written request should be made no later than 150 days before the pretrial date to allow time for objections, hearings on same and an opportunity to reset the examination. Objections to "Examination of Persons" under Florida Rule of Civil Procedure 1.360(a)(1)(A) must be filed no later than thirty (30) days from the written request assuming service of process has occurred at least fifteen (15) days prior to the request being served. The objections must state the specific reasons for the objections. A hearing must be immediately requested on any objection filed. Failure to set the objection for immediate hearing will be deemed an "Abandonment of the Request" under the rules.

Examinations sought under Fla. R. Civ. P. 1.360(a)(1)(B) [non-physical condition] must be obtained with an order from this Court, or with a written agreement of all parties in the form of an agreed order submitted to this Court. Please make certain that the time, place, manner, conditions and scope of the examination as well as the name of and the qualifications of the person conducting the examination are set forth with specificity. The date and time of the examination must be coordinated with opposing counsel. If the attorneys cannot agree on a mutually convenient date for the examination to occur within forty-five (45) days of the request, the Court, upon written motion, will pick the date without consultation with counsels' calendars.

### **B. Location of Examination:**

Fla. R. Civ. P. 1.360(a)(1)(A), governing physical examinations, does not restrict where the examination is to be performed, except that it be set at a "reasonable place." See *McKenney v. Airport Rent-A-Car*, 686 So. 2d 771, 112 (Fla. 4th DCA 1997); and *Tsutras v. Duhe*, 685 So. 2d 979, 981 (Fla. 5th DCA 1997). Determination of "reasonable place" is based upon geographic proximity as well as undue burden and expense. See *Tsutras* (finding that the distance between Florida and Virginia is not a reasonable proximity); *Blagrove v. Smith*, 701 So. 2d 584, 585 (Fla. 5th DCA 1997) (holding that the distance from Hernando County to Hillsborough County is reasonable proximity); and *Liberatore v. MSC Cruises (USA), Inc.*, 268 F.R.D. 678 (S.D. Fla. 2010) (finding that a 14-mile difference is a reasonable proximity).

Generally, the examination should occur in the county where the case is being tried absent agreement of counsel to the contrary. An out-of-county examination must be approved by the Court after an evidentiary hearing and the proper record having been made. While requiring an in-county examination is not a hard and fast, inflexible rule, it is generally well within the Court's discretion. *See McKenny v. Airport Rent-A-Car*, 686 So.2d 771 (Fla. 4th DCA 1997). Generally, if an out-of-county examination is to be conducted, the transportation and loss of work expense will have to be born by the party requesting the examination.

#### C. Persons Who May Be Present at the Examination

One of Plaintiff's counsel or a representative thereof, a videographer, a court reporter, an interpreter, if necessary, a spouse, and/or if a minor, a parent or guardian, may attend the compulsory medical examination. No other attendees shall be present during the examination without specific order of the Court. *See Broyles v. Reilley*, 695 So. 2d 832 (Fla. 2d DCA 1997). Absent a court order stating otherwise, the Defendant and/or Defense Medical Examiner shall not interfere with the Plaintiff's right to have the above listed persons in attendance and record the Rule 1.360 examination, regardless of whether the examination is a physical, psychiatric or psychological one. *See U.S. Security Ins. Co. v. Cimino*, 754 So.2d, 697 (Fla. 2000) and *Byrd v. Southern Prestressed Concrete, Inc.*, 928 So.2d 455 (Fla. 1st DCA 2006).

No other persons may attend without specific order of the Court. Plaintiff's counsel will notify, in writing within ten (10) days of the examination, the names, relationship to the plaintiff, and number of persons who will be present so that an examination room of sufficient size can be reserved. The presence of these third parties is premised upon a requirement that they will not interfere with the doctor's examination. *See Bacallao v. Dauphin*, 963 So. 2d 962 (Fla. 3d DCA 2007). To that end, no person present may interrupt, enter or leave the examination room during the examination, or vocalize in any matter. No communication vocally, in writing, or in any other manner may occur between or amongst the party being examined and anybody else in the examination room except the examiner or individuals that she/he deems necessary for the examination. Neither Plaintiff's counsel, nor anyone else permitted to be present, shall interject themselves into the examination unless the examiner seeks information not permitted by this Court's order.

If the person to be examined is not fluent in English and if the examiner is not fluent in the language of the person being examined a certified interpreter must be utilized to interpret the examination. The expense of the interpreter will be borne by the party requesting the examination.

Neither Defendant's attorney nor any of Defendant's representatives may attend or observe, record or video the examination or the questioning. *See Chavez v. J&L Dryvall*, 858 So. 2d 1266 (Fla. 1st DCA 2003); and *Ruiz v. Carpio*, 99 So. 3d 516 (Fla. 3d DCA 2011). The medical examiner shall not be entitled to any payment of an additional or accommodation fee from the Plaintiff or his counsel, simply because of the presence of legally permitted third parties. The Court will reserve ruling as to whether such costs, if imposed by an examiner, may be properly recoverable by the Defendant as a taxable cost, or otherwise awarded by the Court.

#### D. Number of Examinations

Generally, a party will be limited to one (1) examination in a specialty. A second examination will only be allowed upon a showing of good cause. *Royal Caribbean Cruises, Ltd. v. Cox*, 974 So. 2d 462 (Fla. 3d DCA 2008). However, when there are multiple defendants, from separate accidents, and the allegation alleges that the injuries from the three accidents are "indivisible and superimposed upon one another and the plaintiff is unable to apportion her damages between them" each defendant may be entitled to a separate CME.

## **VIII. PROCEDURES FOR SETTLEMENT OR DISMISSAL OF CASES:**

If a case settles or is voluntarily dismissed and there are future hearings or a trial scheduled on the Court's docket, please **promptly** provide the Court's Judicial Assistant with a courtesy copy of an e-filed Notice of Settlement or Dismissal immediately by email to allow the Court to free up hearing/trial time for other cases. The Notice of Settlement must indicate that the parties have settled the case and indicate whether the case will be dismissed with or without prejudice. Counsel shall also notify the Court of any pending hearings that will be canceled because of the settlement. A copy of the mediation report is insufficient to remove the case from the Court's hearing calendar or trial docket. It is disfavored for a Notice of Settlement to be filed pending signatures or releases. In the event of settlement, along with the Notice of Settlement, the parties are also to promptly submit a proposed order of dismissal. **The parties should promptly provide the Court with a proposed Order of Dismissal through courtMAP.**

## **IX. MINOR'S SETTLEMENT:**

### **A. Items Necessary for the Court's Approval of a Minor's Proposed Settlement:**

Multiple issues need to be addressed prior to the Court considering the potential approval of a proposed settlement. Florida law requires that the Court act as a "final check" before an attorney, guardian, or parent settles a claim and discharges a child's rights. The claim and the distribution of the proceeds must be examined as well as what protections are afforded the corpus of the funds.

### **B. Requirement of Court Approval:**

Florida law requires Court approval of any settlement of a minor or incompetent while an action is pending.

### **C. Appointment and Report Guardian *Ad Litem*:**

In performing its duties regarding evaluation of, and possible approval of, a settlement for a minor, the Court may appoint a Guardian *ad litem* before approving a settlement if "... the gross settlement of the claim exceeds \$15,000. *Section 744.3025(1)(a)*, Fla. Stat. However, "... before approving a settlement of the minor's claim in any case in which the gross settlement involving a minor equals or exceeds \$50,000," the Court must appoint a guardian *ad litem*. *Section 744.3025(1)(b)*, Fla. Stat. A guardian *ad litem* need not be appointed if "the guardian has no potential adverse interest to the minor." *Section 744.3025(e)*, Fla. Stat.

#### D. Items Required by the Court:

The Court will need the following information in most cases:

**Amount of Settlement:** The specific amount of the gross settlement in this proposed offer and Motion for Approval.

**Distribution of the net proceeds:** The itemized proposed distribution amongst the beneficiaries and/or survivors, the Estate, or other entities with claims and costs and attorney's fees.

**Guardian *Ad Litem* Report:** The appointment of, and report from, a Guardian Ad Litem regarding the proposed settlement. The dollar amount, as noted above may require the appointment of a GAL. Special attention will be necessary where the Personal Representative is representing the entire Estate and all the survivors and appears to have "potential adverse interest(s) to the minor(s)." The GAL should present the position of the natural parent or guardian as to the settlement and distribution and whether it comports with the GAL's recommendation or that it does not.

**Closing Statement:** A copy of a detailed closing statement showing the attorney's fees and the recipients, costs expended or to be expended, anticipated distribution of funds and to whom, liens resolved and unresolved, outstanding balances owed, as required by The Rules Regulating The Florida Bar and specifically Rule 4-1.5, and unresolved claims against the Estate, as well as any other claims being compensated from these proceeds. The closing statement should NOT be filed with the Court and should be submitted to the Court directly under seal or be brought to the hearing if one is held.

**Protection of Minor's net proceeds:** The Court will need to know how the funds will be invested or protected and in what institution(s) or through which vehicle(s). This would include the rating or stability of the institution(s) or fund(s). A designated financial institution can be used under Florida Statute 69.031 to protect the assets of the minor until he or she reaches the age of majority. Disbursement of the funds deposited to the account can only occur with an order from the court.

If an annuity is to be purchased, the Court will need a copy of the information setting forth the cost, present value, payment schedule, the name of the company that will be used, the name of the owner of the annuity and its relationship to those companies being released, as well the rating of the company.

Copies of the initial medical records including the history and physical showing the presenting condition, if hospitalized the admission and discharge and summary resume will be necessary. A final report from each primary treating physician with an indication of the need for, or the lack of need for, future care and, if possible, the approximate costs.

If the injury or treatment involves resulting scarring or disfigurement, photographs of the child after the incident and photographs of the present condition will be required. The Court may require that the child appear at the hearing to allow the Court to observe the condition(s). The above-mentioned medical reports should contain an estimate of the cost of and an explanation of the treatment plan for these injuries.

The existence of medical insurance, Medicaid, Medicare or other sources of payment, or lack thereof, for future treatment that has been projected.

Effect of Release and/or Settlement Agreement:

A copy of the release, and any settlement agreements to which the minor, or his guardian on behalf of the minor, will need to sign and assurances that it has been reviewed by counsel and that all parties agree, in writing, that it is only intended to release the settling party and their insurers as insurers of this particular settling party, and is not intended to release any other defendant or non-party.

If the release and/or settlement agreement contain a duty to defend, indemnify and hold harmless, is such agreement intended to bind and apply to the minor child or just the guardian. If it is intended to apply to the minor child, by what legal authority can the minor child be bound to defend, indemnify and hold harmless this party.

If the release and/or settlement agreement require a confidentiality agreement, is the minor child meant to be bound by such agreement and by what authority? What is the anticipated consequence to the minor child for violation of this confidentiality agreement? Which party will take responsibility to seek, and obtain, the appropriate measure to seal the limited documentation in the Court file pursuant to Florida Rules of Judicial Administration, Rule 2.420(d)?

If entitlement has not been found, a hearing on entitlement must be set first. If entitlement has previously been found or if entitlement is not being contested, counsel seeking attorney's fees and costs shall prepare the Order finding entitlement. The parties shall set the motion on attorney's fees in accordance with the procedures *supra*.

## **X. MOTIONS IN LIMINE ("MIL"):**

A. MIL may not be scheduled for a hearing unless counsel have complied with the "Meet and Confer" Requirement, *supra*, and such MIL must contain a certification of a good faith attempt as to each item to resolve the matter without court action in the form of a Certificate of Conferral Prior to Filing Motion. Such Certificate must certify that the conference has occurred in the MIL, and a Certificate of Conferral Prior to Scheduling the Motion for Hearing in the Notice of Hearing filed with the Court. Notices of hearing on MIL must identify the specific issues which remain in controversy after counsel have met and conferred. MIL will not be heard during the trial.

B. All case specific MIL shall be filed, served, noticed, and heard or agreed to by the parties no later than the deadline set forth in the Case Management Order or the Order setting case for trial. The MIL shall state with particularity the grounds upon which it is based and the substantial matters of law to be argued and shall identify any evidence or supporting material on which the movant relies. Opposing counsel shall have five (5) business days to file a written response if they wish. Courtesy copies of such MIL, Notices of Hearing, written response(s), hearing notebooks, legal memorandums and citations are governed.

C. The Court may summarily rule on any MIL not written with particularity as described above. Any MIL not timely filed and/or not discussed by counsel at the meet and confer and (if unresolved) not set for hearing will be considered abandoned.

D. The party filing the MIL will prepare the proposed order on any contested hearing reflecting the Court's ruling(s). All counsel is reminded that rulings on MIL are non-final orders subject to modification during trial as evidence is presented.

## **XI. PROPOSED ORDERS WHEN THE COURT MAKES A RULING FOLLOWING A HEARING:**

The Court will strive to issue orders and rulings in a timely manner. Every effort will be made to rule the day of the hearing.

A. Proposed orders after a hearing are to be timely submitted to the Court as follows:

1. If counsel is asked to prepare an order, following motion calendar, the order should be drafted and circulated to opposing counsel and submitted to the Court, via courtMAP, by close of business, or the date provided by the Court.

2. All orders must describe, in the caption, the subject and ruling of the court, i.e. "*Order Granting Plaintiff's Motion for Partial Summary Judgment on Liability*" See Fla. R. Civ. P. 1.100(1). Do not title the orders "proposed."

3. If the parties are unable to agree on the form of the order that accurately reflects the Court's ruling, the party that is requested to prepare the proposed order must include a cover letter reflecting such.

4. The aforementioned does not apply if the Court has asked for competing orders and provided a timeframe for the submission of same.

5. All proposed orders shall be submitted via courtMAP.

**B. ALL PROPOSED ORDERS PRESENTED FOLLOWING HEARING**, whether submitted to the Court in writing or via email as contemplated *supra*, **MUST INCLUDE A COVER LETTER INDICATING:**

1. What the Order is for (i.e. the case, the motion heard, including date and time, the title of the Order, etc.); and

2. That all opposing counsel/unrepresented parties have been provided with the same materials being provided to the Court, and whether the parties agree with the language of the proposed Order.

C. All counsel and unrepresented parties must be copied on the cover letter, including any proposed Order, at the same time provided to the Court. If counsel does not have an email address for an unrepresented party, counsel must mail or hand deliver the proposed order and letter to the Court consistent with the instructions above.

## **XII. PROPOSED AGREED OR CONSENT ORDERS, OR ORDERS ON MOTIONS NOT OBJECTED TO, WITHOUT A HEARING:**

A. Proposed agreed or consent orders, or orders on motions not objected to, without a hearing may be submitted to the Court **with a cover letter**, which must be copied to all opposing counsel/unrepresented parties, via courtMAP. A courtesy copy of the motion, joint stipulation, etc. related to the proposed Order must be attached as supporting documents. The letter must state that opposing counsel/unrepresented party has been provided with the same materials being provided to the Court and whether opposing counsel/unrepresented party agrees with the language of the proposed Order.

B. If counsel does not have an email address for an unrepresented party, counsel must mail or hand-deliver the proposed Order, cover letter and all attachments to the Court consistent with the instructions above. If an unrepresented party does not receive e-filings, counsel must immediately mail or hand deliver to the Court an addressed, stamped envelope for that party.

C. All consent Orders shall include the word “Consent” or “Agreed” in the caption of the proposed Order, and must describe in the caption, the subject and ruling of the court, i.e., “*Agreed Order Granting Plaintiff’s Motion to Compel.*” See Fla. R. Civ. P. 1.100(c)(2).

D. The proposed order service list must contain e-filing addresses for opposing counsel/unrepresented party. If an unrepresented party does not receive e-filings, counsel must immediately mail or hand deliver to the Court an addressed, stamped envelope.

E. If you want to know whether a specific order has been signed by the Judge, you should first check the Clerk of Court’s record system to confirm it has been docketed, as the Judicial Assistant is unable to track the signing of a specific order.

## **XIII. WITHDRAWAL OF COUNSEL:**

All Motions to Withdraw must set forth reasons for withdrawal and be set for hearing, **with proper notice to the client**, in accordance with Florida Rule of General Practice & Judicial Administration 2.505(f)(1), and all parties/attorneys. If the motion is granted, the attorney moving to withdraw

shall use the template Division 43 *Order Granting Motion to Withdraw* which is published on the Court's website in Word format.

**XIV. *EX PARTE* COMMUNICATIONS/CORRESPONDENCE:**

The Court **CANNOT** and **WILL NOT** engage in nor accept any *ex parte* personal communications or correspondence on a case. If you have a matter to bring to the Court's attention, please file the proper motion with the Clerk of Court and copy all parties and/or counsel in the case with said motion.