IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT

HILLSBOROUGH COUNTY, FLORIDA

CIVIL DIVISION

[P],

Plaintiff(s),

vs. CASE NO.:

DIVISION: “C”

[D],

Defendant(s).

/

**ORDER IDENTIFYING PROCEDURES APPLICABLE TO**

**NON-JURY TRIALS IN DIVISION “C”**

The following procedures are applicable to non-jury trials conducted before the Honorable Elizabeth G. Rice, Circuit Judge:

1. **Motions in Limine**. Motions in limine shall be served and heard, **no later than the week before commencement of trial**. As the availability of hearing time no doubt will be extremely limited that week, please file all motions and schedule all hearings thereon sufficiently in advance of this week so the motions may be heard timely.
2. **Exhibits & Witness Lists**.
   1. **Trial Exhibit Lists**. **No later than two full business days before the commencement of trial**, each attorney shall file with the clerk of the court the original and provide to the Court a **courtesy copy** of a list of exhibits, numbered in the sequence in which the attorney will tender same. The exhibit list shall describe the exhibit sufficiently for the Court to identify it.
   2. **Trial Exhibits.** All exhibits shall be pre-marked with a permanent exhibit tag or stamp as prescribed by the clerk's office. In addition, counsel for the parties shall deliver to the Court **no later than two full business days before the commencement of trial** the following:
      * + 1. two complete sets of trial exhibits (the **original for the clerk** **of the court**, which will contain the exhibits actually entered into evidence, and a **courtesy copy for the Court**); and
          2. a statement of stipulations and objections to the opposing party’s trial exhibits (“Statement”).

The Statement shall set forth as to **each** of the opposing party’s exhibits which exhibits the party stipulates as to its admissibility or objects as to its admissibility. Each objection asserted shall state the grounds for the objection in reasonable detail and cite to case law, if necessary. At the commencement of the trial, all exhibits to which there are no objections and the Court approves shall be admitted into evidence. Any exhibit to which there is an objection may be offered into evidence by the party seeking its admission during the trial and at that time the Court will rule on the admissibility of the evidence. Failure to comply with the requirements set forth in this paragraph 2. may result in the exclusion of evidence at trial, removal of the case from the trial docket, or other appropriate sanction.

Further, impeachment materials such as trial transcripts, deposition testimony, and learned treatises must be shown to the Court prior to use in the examination of a trial witness.

* 1. **Witness List**. **No later than two full business days before the commencement of trial**, each attorney shall file with the clerk of the court the original and provide to the Court a courtesy copy of a “refined list” of all witnesses actually expected to be called at trial, listing the full names of the witness and any professional designation applicable to that witness (e.g., M.D.). The list shall include all impeachment and rebuttal witnesses and any witness testifying via deposition. The list also should include, if necessary, a phonetic spelling of the name. Any witness referenced as a “records custodian” may be called only to lay a foundation for the entry of records and may not be called as a fact witness for matters outside of the records.
  2. **Exhibit/Witness Exclusion**. Any witnesses or exhibits not listed in accordance with the Order Setting Trial will not be allowed to testify or be admitted absent extraordinary or compelling reasons outside the control of the attorneys for noncompliance with the pretrial order. *See Binger v. King Pest Control*, 401 So. 2d 1310 (Fla. 1981); *Louisville Scrap Material Co., Inc., v. Petroleum Packers, Inc.*, 566 So. 2d 277 (Fla. 2d DCA 1990.
  3. **Exchange of Lists**. **No later than three full business days before the commencement of trial**, the parties shall

(1) exchange their respective trial exhibit list, listing with specificity each exhibit expected to be offered into evidence, denoting which exhibits are composite exhibits; and

(2) exchange their respective “refined” trial witness list, listing each witness the parties expect to actually call to testify at trial, including all impeachment and rebuttal witnesses and any witness testifying via deposition.

* 1. **Review of Exhibits**. **No later than three full business days before the commencement of trial**, the attorneys shall meet and review all proposed exhibits, which exhibits must be pre-marked with a permanent exhibit tag or stamp as prescribed by the clerk's office and in binders (not boxes or red wells). Copies of any exhibits requested shall be furnished to opposing counsel at that time, if not previously furnished. During the presentation of evidence, it shall not be required, and counsel for the parties are directed not to, “tender,” any exhibit to opposing counsel for review in the presence of the Court. Any exhibit for which no stipulation as to its admissibility exists shall be pre-marked for identification, tendered to the witness, and after sufficient evidentiary predicate has been established, tendered to the Court and offered into evidence. Demonstrative exhibits may not be displayed when not in use with a witness. Exhibits admitted into evidence shall be kept by the deputy clerk of the court except when being used by a witness.

1. **Witness Examination**. The examination of witnesses shall be limited to direct examination, cross-examination, and re-direct examination. *See* *Fla. Stat*. § 90.612.
2. **Evidentiary Objections**. In making objections, the attorney making the objection shall announce the legal basis for the objection without further argument (e.g., “Objection, hearsay.”). The responding attorney shall respond accordingly, giving only the legal basis for opposing the objection. Neither attorney shall make any further argument or comment except upon the Court's directive.
3. **No Surprise Expert Opinions or In-Court Demonstrations**. All expert opinions being offered during trial must be disclosed in conformance with the Order Setting Trial. This includes new opinions based on demonstrations or manipulations of demonstrative exhibits during trial. Any untimely disclosed opinion or any opinion not disclosed in reasonably sufficient detail (a) in the party’s designation of expert witnesses pursuant to paragraph 3 of the Order Setting Trial; (b) in a party’s response to expert discovery requests; (c) in an expert’s written report; or (d) during an expert’s deposition, shall be excluded at trial unless good cause for its admissibility is demonstrated by the party seeking admission of the opinion.
4. **No Surprise Material to be Included in Power Point Presentation**. If counsel intends to use a power point presentation during opening statement or closing argument and the presentation contains material other than counsel’s mental impressions or trial strategy, such as exhibits or the Standard Mortality Tables, such material must be disclosed to opposing counsel and the Court **no later than the commencement of trial**.
5. **No Surprise Demonstrative Exhibits**. Demonstrative exhibits and aids in the possession of an expert witness must be disclosed and reviewed by opposing counsel and the Court **no later than the commencement of trial**.
6. **Waiver of Records Custodians**. If the parties have stipulated to waive records custodians, business records admissible under the business records exception to the hearsay rule (*Fla. Stat*. § 90.803(6)) will be admissible without the necessity of calling a qualified witness, absent a showing that the records are otherwise untrustworthy. *See Heckford v. F.D.O.C*., 699 So. 2d 247 (Fla. 1st DCA 1997) (holding that, where parties waived records custodians, medical records, specifically the report of an independent medical examining physician, are admissible under § 90.803(b), absent proof that report was not trustworthy). *See also, Love v. Garcia*, 634 So. 2d 158 (Fla. 1994).
7. **Deposition Transcript Review**. If any party intends to publish to the Court all or any portion of a deposition transcript, the party shall deliver to opposing Counsel on or before the Friday before commencement of trial a page and line reference of all testimony intended to be published. Any and all objections to any portions of deposition transcripts to be offered into evidence shall be made known to the Court and shall be considered by the Court **no later than the week before the commencement of trial**.
8. **No Improper Impeachment**. When impeaching a witness with a prior recorded statement, regardless of form, counsel must first show the statement to opposing counsel, lay a proper foundation for the prior recorded statement and provide the Court and the witness with a copy of the prior recorded statement prior to proceeding with impeachment. *Cf.* C. Ehhardt, *Florida Evidence* § 614.1 (2013 Edition).
9. **Summaries**. If a party intends to use a summary at trial, the party shall file and serve written notice on the opposing party **no later than** **two full business days** before the commencement of the trial of such intent and otherwise comply with section 90.956, *Florida Statutes*. Otherwise, the summary will be excluded at trial.
10. **Judicial Notice**. The Court will take judicial notice of all pleadings and orders filed in this case, including financial affidavits. *See* § 90.204, *Florida Statutes*. Other requests for judicial notice must be filed **no later than** **two full business days** before the commencement of the trial.
11. **Cumulative Evidence/Mode and Order of Interrogation and Presentation**. Cumulative evidence is not permitted. In addition, any issues or problems with the scheduling of witnesses must be raised and addressed at the pretrial conference. The Court will make every effort to adhere to counsel’s preferred order of presentation of witnesses and other evidence. However, once the trial commences, the Court expects the presentation of evidence to proceed smoothly and efficiently. Lastly, the Court shall enforce section 90.612, *Florida Statutes*, strictly, and reserves the right to require counsel to call witnesses out of order if necessary to avoid late starts, long mid-day recesses, and early afternoon recesses.
12. **Professionalism & Courtroom Decorum**. The conduct of this trial shall be pursuant to and consistent with the Florida Bar, Trial Lawyers Section, Guidelines for Professional Conduct, specifically Section M thereof, “Trial Conduct and Courtroom Decorum,” other than as modified herein. Each attorney shall admonish their client(s) and office staff not to exhibit inappropriate behavior in the presence of the Court. Inappropriate conduct shall include but not be limited to facial gestures and audible comments.
13. **Use of Surnames Only**. All counsel are directed to refer to their clients, each other, and all witnesses only by surnames and not be their first or given names.
14. **Electronic Devices**. Counsel shall advise clients, witnesses, and staff that all electronic devices shall be turned off prior to entering courtroom and shall remain off in the courtroom during the trial. During trial, electronic devices which are audible in the courtroom shall be confiscated and retained by the bailiff until the conclusion of the trial.
15. **Failure to Comply**. Failure to comply with the requirements of this order will subject the party and/or counsel to appropriate sanctions. Sanctions include the striking of pleadings; exclusion of evidence; refusal of the Court to award attorney’s fees and costs; and any other sanctions deemed appropriate by the Court. All parties must comply as ordered in the preceding paragraphs.
16. **Other**. None. OR [ ]

DONE AND ORDERED: .

ELIZABETH G. RICE

Circuit Court Judge

*Conformed copies furnished to:*

Counsel for Plaintiff:

Counsel for Defendant: