

**COMPLEX BUSINESS LITIGATION DIVISION
AMENDED PROCEDURES
FOR THE THIRTEENTH JUDICIAL CIRCUIT COURT,
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA**

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SECTION 1 – PHILOSOPHY, SCOPE AND GOALS

1.1 – Citation to Procedures. These Procedures shall be known and cited as the Complex Business Litigation Procedures. They may also be referred to in abbreviated form as the “Complex Business Procedures” or “CBP,” e.g., this section may be cited as “CBP 1.1.”

1.2 – Purpose and Scope. The Complex Business Litigation Procedures are designed to facilitate the proceedings of cases by the Complex Business Litigation Division. The Complex Business Litigation Procedures shall apply to all actions in the Complex Business Litigation Division of the Thirteenth Judicial Circuit Court of Florida (CBLD).

1.3 – Goals. The Complex Business Litigation Procedures are intended to provide better access to Court information for litigants, counsel and the public; increase the efficiency and understanding of Court personnel, counsel and witnesses; decrease costs for litigants and others involved in the court system; and facilitate the efficient and effective presentation of evidence in the courtroom. These Procedures shall be construed and enforced to avoid technical delay, encourage civility, permit just and prompt determination of all proceedings and promote the efficient administration of justice.

1.4 – Integration with Other Rules. These Procedures are intended to supplement, not replace, the rules adopted by the Supreme Court of Florida. Should any conflict be deemed to exist between the Complex Business Litigation Procedures and the Supreme Court rules, then the Supreme Court rules shall control.

SECTION 2 – CASE FILING, ASSIGNMENT, TRACKING AND IDENTIFICATION

2.1 – Cases Subject to Complex Business Litigation Division. The principles set out in

Administrative Order S-2008-105, which is located on the Complex Business Litigation Division web site, Division L (see CBLD uniform resource locator (URL) at CBP 17.1), shall govern the assignment of cases to the Complex Business Litigation Division.

2.2 – Case Identification Numbers. On assignment of any matter to the Complex Business Litigation Division, the matter shall retain the civil action number assigned to it by the Clerk of Courts.

SECTION 3 – PROFESSIONAL CONDUCT AND DECORUM

3.1 – Compliance with the Guidelines for Professional Conduct. Counsel are at all times to be familiar with and conduct themselves in accordance with the Guidelines for Professional Conduct published by the Trial Lawyers Section of The Florida Bar. The Guidelines for Professional Conduct are available at the Trial Lawyers Section web site (<http://www.flatls.org/>).

3.2 – Professional Discovery Practice. Counsel are at all times to be familiar with and conform to the applicable civil discovery rules and case law interpreting the rules. In deciding discovery disputes the Complex Business Litigation Division will consider the latest edition of the Handbook On Discovery Practice issued by the Joint Committee of The Trial Lawyers Section of the Florida Bar and Conferences of the Circuit and County Courts Judges. The Handbook can be found on the web site of the Trial Lawyers Section of the Florida Bar (<http://www.flatls.org/>).

SECTION 4 – CALENDARING, APPEARANCES AND SETTLEMENT

4.1 – Preparation of Calendar. The calendar for the Complex Business Litigation

Division shall be prepared under the supervision of the CBLD Judge and may be published on the CBLD web site.

4.2 – Appearances. An attorney who is notified to appear for any proceeding before the CBLD, must, consistent with ethical requirements, appear or have a partner, associate or another attorney familiar with the case present.

4.3 – Notification of Settlement. When any cause pending in the Complex Business Litigation Division is settled, all attorneys or unrepresented parties of record must notify the CBLD Judge or the Judge’s designee within twenty-four (24) hours of the settlement and must advise the Court of the party who will prepare and present the judgment, dismissal or stipulation of dismissal and when such filings will be presented.

SECTION 5 – MOTION PRACTICE

5.1 – Form. All motions, unless made orally during a hearing or a trial, shall be accompanied by a memorandum of law, except as provided in CBP 5.11. Any memorandum of law shall be filed in support of one motion only and shall not exceed twenty (20) pages in length. Separate motions shall be filed separately and a memorandum of law filed in support of each. Motions that are inextricably intertwined and either substantively related or in the alternative may be filed together.

5.2 – Content of motions. All motions shall state with particularity the grounds for the motion, shall cite any statute or rule of procedure relied upon and shall state the relief sought. Factual statements in a motion for summary judgment shall be supported by specific citations to the summary judgment evidence and other supporting papers. The parties shall not raise issues at the hearing on the motion that were not addressed in the motion and memoranda in support of

and in opposition to the motion. The practice of offering previously undisclosed cases to the Court at the hearing is specifically discouraged.

5.3 – Certificate of Good Faith Conference. Before filing any motion in a civil case, the moving party shall confer with counsel for the opposing party in a good faith effort to resolve the issues raised by the motion and shall file with the motion a statement certifying that the moving party has conferred with opposing counsel and that counsel have been unable to agree on the resolution of the motion (the “Certificate”).

- a. The term “confer,” as used herein, requires an actual, substantive conversation *in person or by telephone* in a good faith effort to resolve the motion without court action and does not envision an exchange of ultimatums by fax or letter. Counsel must respond promptly to inquiries and communications from opposing counsel. The Court may *sua sponte* deny motions that fail to include an appropriate and complete Certificate under this section.
- b. The Certificate shall set forth the date of the conference, the names of the participating attorneys, and the specific results achieved. It shall be the responsibility of counsel for the movant to arrange for the conference.
- c. No conference, and therefore no Certificate, is required in motions for injunctive relief without notice, for judgment on the pleadings, summary judgment, or to permit maintenance of a class action.
- d. A party alleging that a pleading fails to state a cause of action will confer with counsel for the opposing party before moving to dismiss, and, upon request of the other party, will stipulate to an order permitting the filing of a curative amended pleading in lieu of filing a motion to dismiss.

5.4 – Motions Decided on Papers and Memoranda. Generally, motions shall be considered and decided by the Court on the pleadings, admissible evidence, the court file, and memoranda, without hearing or oral argument, unless otherwise ordered by the Court. The exception to the general rule is dispositive motions for which the Court will grant oral argument should any party request it. (If necessary, a party is permitted to obtain an available hearing time prior to filing a dispositive motion.)

Any party seeking oral argument shall file a separate request or motion setting forth the reasons oral argument should be granted. If the Court grants oral argument on any motion, it shall give the parties at least five (5) business days' notice of the date and place of oral argument. The Court, for good cause shown, may shorten the five (5) day notice period. All papers relating to the issues to be argued at the hearing shall be delivered to opposing counsel and the Court at least five (5) business days before the hearing. Service and receipt of the papers less than five days before the hearing is presumptively unreasonable.

5.5 – Response to Motion and Memoranda. The respondent, if opposing a motion, shall file a memorandum in opposition within fifteen (15) days after service of the motion or within twenty (20) days of service if the motion is for summary judgment. Memoranda in opposition shall not exceed twenty (20) pages in length. If supporting documents are not then available, the respondent may move for an extension of time. For good cause appearing therefore, a respondent may be required by the Court to file any response and supporting documents, including a memorandum, within such shorter or longer period of time as the Court may specify.

5.6 – Extension of Time for Filing Supporting Documents and Memoranda. Upon proper motion accompanied by a proposed order, the Court may enter an order, specifying the

time within which supporting documents and memoranda may be filed, if it is shown that such documents are not available or cannot be filed contemporaneously with the motion or response. The time allowed to an opposing party for filing a response shall not run during any such extension.

5.7 – Reply Memorandum. The movant may file a reply memorandum within five (5) days of service of the memorandum in opposition to the motion. A reply memorandum is limited to discussion of matters raised in the memorandum in opposition and shall not exceed ten (10) pages in length.

5.8 – Font and Spacing Requirements. All motions and memoranda shall be double-spaced and in Times New Roman with a minimum 12-point font or Courier New with a minimum 11-point font, or equivalent, and page margins shall be not less than one (1) inch.

5.9 – Copies to be Provided to the Court. It is not necessary to provide the Court with copies of routine pleadings, motions and memoranda filed with the Clerk. However, the parties shall provide to the Court a copy of any emergency motions and memoranda filed with the Clerk. Such copies shall be served in electronic format by e-mail, disk or comparable electronic data transmission to the Court’s email address (DivisionL@fljud13.org).

5.10 – Suggestion of Subsequently Decided Authority. A suggestion of controlling or persuasive authority that was decided after the filing of the last memorandum may be filed at any time prior to the Court’s ruling and shall contain only the citation to the authority relied upon and a copy, if published, or a copy of the authority if it is unpublished, and shall not contain argument.

5.11 – Motions Not Requiring Memoranda. Memoranda are not required by either the movant or the opposing party, unless otherwise directed by the Court, with respect to the

following motions. However, the motion must include a certificate of good faith conference pursuant to CBP 5.3, stating if the motion is opposed and describing the basis for any opposition. The motions must state good cause for the motion and cite any applicable rule, statute or other authority justifying the relief sought. The motions must be accompanied by proposed orders.

Also, a party opposing such a motion must object to the motion in a letter or memorandum within seven (7) calendar days briefly stating the objection and grounds. Motions not requiring a memoranda include:

- a. discovery motions, (which must be set for hearing either on the Uniform Discovery Motion Calendar for a hearing of ≤ 30 minutes or specially set through the Judicial Assistant for a hearing ≥ 30 minutes);
- b. extensions of time for the performance of an act required or allowed to be done, provided that the request is made before the expiration of the period originally prescribed or extended by previous orders;
- c. to continue a pre-trial conference, hearing, or the trial of an action;
- d. to add or substitute parties;
- e. to amend the pleadings;
- f. to file supplemental pleadings;
- g. to appoint a next friend or guardian *ad litem*;
- h. to stay proceedings to enforce judgment;
- i. for *pro hac vice* admission of counsel who are not members of The Florida Bar;
- j. relief from the page limitations imposed by these Procedures; and
- k. request for oral argument.

5.12 – Failure to File and Serve Motion Materials. The failure to file a memorandum within the time specified in this section shall constitute a waiver of the right thereafter to file such memorandum, except upon a showing of excusable neglect. A motion unaccompanied by a required memorandum may, in the discretion of the Court, be summarily denied. Failure to timely file a memorandum in opposition to a motion will result in the pending motion being considered and decided as an uncontested motion.

5.13 – Preparation of Orders. In matters in which the Court does not prepare its own orders, the Court will direct the prevailing party to prepare an order in accordance with its ruling. In cases in which a party submits an order to the Court, it shall be accompanied by multiple copies and addressed, stamped envelopes sufficient for all parties. No order will be entered unless the party proffering such an order represents that he or she has provided copies to the opposing parties in advance, and they have no objection to the form of the order.

a. In a complex order or an order containing findings the party submitting an order shall not only follow the above procedures but shall email a copy of the proposed order to the Court for possible revisions by the Court.

b. In proposing an order granting a final judgment by default, the party must contemporaneously provide the Court with sufficient information establishing that the motion for entry of a final judgment by default should be granted.

c. If an agreement among the parties cannot be reached on a proposed order, the parties must set a uniform motion calendar hearing to address objections to the proposed order.

5.14 – Uniform Motion Calendar. The Court will convene a uniform motion calendar on a schedule published on the Complex Business Litigation Division web site (see CBLD URL at CBP 17.1). Uniform motion calendar is reserved for uncontested matters, matters that can be

heard in ten (10) minutes or less and disputes over the form of proposed orders (as discussed in CBP 5.13c., above).

5.15 – Determination of Motions Through Oral Argument Without Briefs. The parties may present motions and the Court may resolve disputes regarding the matters described in CBP 5.11 through the use of an expedited oral argument procedure. Should the Court grant oral argument, counsel shall coordinate scheduling of the hearing with opposing counsel and reserve a specific hearing time.

a. Should a party believe that a motion listed in CBP 5.11 can be argued and determined in fifteen minutes or less, then in the discretion of the Court, such a motion may be heard on the Court’s Uniform Motion Calendar.

b. For any motion listed in CBP 5.11 which is not covered by sub-paragraph a., above, the party shall request oral argument pursuant to CBP 5.4, specifically estimating the total amount of time needed for argument by all parties.

5.16 – Motions to Compel and for Protective Order. Any party seeking to compel discovery or to obtain a protective order with respect to discovery must identify the specific portion of the requested discovery that is directly relevant and ensure that it is filed as an attachment to the application for relief.

5.17 – Motions to File Under Seal. Whether documents filed in a case may be filed under seal is a separate issue from whether the parties may agree that produced documents are confidential. Motions to file under seal are disfavored. The Court will permit the parties to file documents under seal only upon a finding of extraordinary circumstances and particularized need. A party seeking to file a document under seal must file a motion to file under seal requesting such Court action. The motion, whether granted or denied, will remain in the public

record.

5.18 – Emergency Motions. The Court may consider and determine emergency motions at any time. Counsel should be aware that the designation “emergency” may cause a judge to abandon other pending matters in order to immediately address the emergency. The Court will sanction any counsel or party who designates a motion as an emergency under circumstances that are not true emergencies. (E.g., it is not an emergency when counsel has delayed discovery until the end of the discovery period.)

SECTION 6 – CASE MANAGEMENT NOTICE, MEETING, REPORT, CONFERENCE AND ORDER

6.1 – Notice of Hearing and Order on Case Management Conference. Within 30 days of filing or transfer of a case to Complex Business Litigation Division, the Court will issue and serve on Plaintiff’s counsel a Notice of Hearing and Order on Case Management Conference (the “Notice”). Plaintiff’s counsel shall immediately thereafter serve a copy of the Notice on all Defendants. Defendants shall immediately serve a copy of the Notice on all Third Party Defendants.

6.2 – Case Management Meeting. Regardless of the pendency of any undecided motions, Lead Trial Counsel shall meet no less than 30 days in advance of the Case Management Conference (“CMC”) and address the following subjects, along with other appropriate topics, including those set forth in Florida Rule of Civil Procedure 1.200(a) and Florida Rule of Civil Procedure 1.201, some of which subjects and topics will be incorporated into a Case Management Order prepared by the Court:

- a. Pleadings issues, service of process, venue, joinder of additional parties,

- theories of liability and damages, damages claimed and applicable defenses;
- b. The identity and number of any motions to dismiss or other preliminary or pre-discovery motions that have been or may be filed and the time period in which they shall be filed, briefed and argued;
 - c. A discovery plan and schedule including the length of the discovery period, the number of fact and expert depositions to be permitted and, as appropriate, the length and sequence of such depositions;
 - d. The possibility of obtaining admissions of fact and voluntary exchange of documents and electronically stored information (“ESI”), stipulations regarding authenticity of documents, ESI and the need for advance rulings from the Court on admissibility of evidence;
 - e. Anticipated areas of expert testimony, timing for identification of experts, responses to expert discovery and exchange of expert reports;
 - f. An estimate of the volume of documents and electronically stored information (“ESI”) likely to be the subject of discovery from parties and nonparties and whether there are technological means that may render document and ESI discovery more manageable for the parties and the Court at an acceptable cost;
 - g. The necessity for a protective order to facilitate discovery;
 - h. The advisability of using special magistrate(s) or master(s) for fact finding, mediation, discovery disputes or such other matters as the parties may agree upon;
 - i. The time period after the close of discovery within which dispositive motions shall be filed, briefed and argued and a tentative schedule for such activities;

- j. The possibility of settlement and the timing of Alternative Dispute Resolution, including the selection of a mediator or arbitrator(s);
- k. Whether a party desires to use technologically advanced methods of presentation or court-reporting and, if so, a determination of the following:
 - 1. Issues of fairness, including but not necessarily limited to use of such capabilities by some but not all parties and by parties whose resources permit or require variations in the use of such capabilities;
 - 2. Issues related to compatibility of Court and party facilities and equipment;
 - 3. Issues related to the use of demonstrative exhibits and any balancing of relevance and potential prejudice that may require Court decision concerning such exhibits;
 - 4. The feasibility of sharing the technology resources or platforms among all parties so as to minimize disruption at trial; and
 - 5. Such other issues related to the use of the Court's and parties' special technological facilities as may be raised by any party, the Court or the Court's technological advisor, given the nature of the case and the resources of the parties.
- l. Proposals for the formulation and simplification of issues, including the elimination of frivolous claims or defenses;
- m. A preliminary listing of the principal disputed legal and factual issues;
- n. A preliminary listing of any legal principles and facts that are not in dispute;
- o. A good faith, preliminary estimate by each party of the length of time to try the

case;

- p. Any issues relating to disclosure or discovery of electronically stored information (“ESI”), including the following:
1. The form or forms in which ESI should be produced.
 2. The need for retention of relevant documents and ESI and whether any suspension of automatic deletions of ESI may be appropriate and necessary.
 3. The need for cost-shifting of expenses related to discovery of ESI and the possibility of obtaining the desired information from alternate sources at reduced expense.
 4. The format in which the electronic records are to be produced, and procedures to avoid unnecessary burden and expense associated with such production. If metadata is to be produced, the parties shall discuss a protocol for producing such information, including the format for production (e.g., native, copy, original), and the ability to search such information.
 5. The need for security measures to be adopted to protect any information that is produced in electronic format or that will be converted into electronic format and stored on counsel's computer systems. Such discussion should encompass whether and under what circumstances clients will be afforded access to the information produced by another party and what security measures should be used for such access.
- q. Whether a demand for jury trial has been made;

- r. The litigation track to which the case will be assigned. The CBLD typically employs the following management tracks which are designed to set a trial date within the stated number of months from the filing of the complaint:
1. Track 1 – Business Expedited (within 13 months);
 2. Track 2 – Business Standard (within 18 months); and
 3. Track 3 – Business Complex (within 24 months).
- s. Such other matters as the Court may assign to the parties for their consideration.

6.3 – Joint Case Management Report. No less than ten (10) days in advance of the CMC, the Parties shall file the Joint Case Management Report addressing the matters described above. All counsel and parties are responsible for filing a Joint Case Management Report in full compliance with these Procedures. Plaintiff’s counsel shall have the *primary* responsibility to coordinate the meeting between the parties and the filing of the Joint Case Management Report. If a non-lawyer plaintiff is proceeding *pro se*, defense counsel shall coordinate compliance. If counsel is unable to coordinate such compliance, counsel shall timely notify the Court by written motion or request for a status conference. The attorneys shall either include in the Report, or provide, by way of a confidential communication sent only to the Court, a good faith estimate by each party based upon consultation among the parties of the attorneys fees and costs each party is likely to incur in pursuing the litigation through trial court adjudication;

6.4 – Case Management Conference (CMC). The attendance by Lead Trial Counsel for all parties is mandatory. In addition, all parties *must* attend the CMC. When the party is not a natural person, a high ranking management representative of the party is required to attend. Parties may attend in person or by telephone. The court will hear the views of counsel on such

issues listed in CBP 6.2 above as are pertinent to the case or on which there are material differences of opinion.

6.5 – Case Management Order. Following the CMC, the Court will issue a Case Management Order. The provisions of the Case Management Order may not be deviated from without notice, an opportunity to be heard, a showing of good cause and entry of an order by the Court.

The Case Management Order may also specify a schedule of status conferences, when necessary, to assess the functioning of the Case Management Order, assess the progress of the case, and enter such further revisions to the Case Management Order as the Court may deem necessary or appropriate.

6.6 – Final Case Management Conference. In accordance with Rule 1.201, Fla. R. Civ. P., the parties shall schedule with the Court a final case management conference not less than 90 days prior to the date the case is set for trial. The parties shall also fully comply with Rule 1.201(d).

SECTION 7 – DISCOVERY

7.1 – Discovery Practice. In addition to the applicable civil rules and case law interpreting the rules, in deciding discovery disputes the Complex Business Litigation Division will consider the latest edition of the HANDBOOK ON DISCOVERY PRACTICE issued by the Joint Committee of The Trial Lawyers Section of the Florida Bar and Conferences of the Circuit and County Courts Judges. The Handbook can be found on the web site of the Trial Lawyers Section of the Florida Bar (<http://www.flatls.org/>).

7.2 – Presumptive Limits On Discovery Procedures. Presumptively, subject to

stipulation of the parties and order of the Court for good cause shown, each party is presumptively limited to the following number of discovery requests:

- a. Fifty (50) interrogatories (including sub-parts) on each opposing party.
- b. Fifty (50) requests for admission on each opposing party.
- c. Twelve (12) depositions (not including depositions of testifying experts) taken by the plaintiffs, twelve (12) depositions taken by the defendants, and twelve (12) depositions taken by the third-party defendants, regardless of the number of separate parties designated as plaintiffs, defendants, and third-party defendants.

The parties may agree by stipulation on other limits on discovery within the context of the limits and deadlines established by these Procedures and the Court's Case Management Order, but the parties may not alter the limitations provided by these Procedures without leave of Court.

7.3 – Depositions. Depositions shall be conducted in accordance with the following guidelines:

- a. All parties or employees will be made available for deposition on five days notice to counsel.
- b. Counsel and their clients shall not engage in private, off-the-record conferences during the client's deposition, except for the purpose of deciding whether to assert a privilege.
- c. Deposing counsel shall provide to the witness's counsel a copy of all documents shown to the witness during the deposition. The copies shall be provided either before the deposition begins or contemporaneously with the showing of each document to the witness. The witness and the witness's counsel do not have the right to

discuss documents privately before the witness answers questions about the documents.

d. When the deponent or any party demands that the deposition be read and signed, the failure of the deponent to read and sign the deposition within thirty days from the date the transcript becomes available to the deponent shall be deemed to ratify the entire deposition.

To the extent the Court's schedule permits, the Court will entertain telephonic hearings regarding issues raised during depositions then in progress.

7.4 – Special Masters. The Court may, at any time, on its own motion or on the motion of any party, appoint a special master in any given case pending in Complex Business Litigation Division in accordance with Florida Rule of Civil Procedure 1.490. Unless otherwise ordered, the parties shall bear equally the cost of proceeding before a special master, and such fees may be taxed as costs.

The Court may condition the filing or maintaining of an action in the CBLD upon the parties agreeing to use a Special Magistrate (or Special Master) for discovery motion practice. This would include, but may not be limited to, motions to compel, motions for protective orders, motions for confidentiality orders, etc. Decisions of a Special Magistrate will be included in a Report and Recommendation and are subject to exceptions if a party seeks court review.

7.5 – Discovery with Respect to Expert Witnesses. Discovery with respect to experts must be conducted within the discovery period established by the Case Management Order. In complying with the obligation to exchange reports relating to experts, the parties shall disclose all opinions to be expressed and the basis and reasons for such opinions; the data or other information considered by the witness in forming the opinions, any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of

publications authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition or affidavit within the preceding four years. Each party offering an expert witness shall provide three alternative dates for the deposition of the expert.

7.6 – Completion of Discovery. The Court does not anticipate entertaining motions relating to discovery conducted after the close of the discovery period as set forth in the Case Management Order.

7.7 – Extension of the Discovery Period or Request for Additional Discovery. Motions seeking an extension of the discovery period or permission to take more discovery than is permitted under the Case Management Order must be presented prior to the expiration of the time within which discovery is required to be completed. Such motions must set forth good cause justifying the additional time or additional discovery and will only be granted upon such a showing of good cause and that the parties have diligently pursued discovery. The Court usually will only permit additional depositions upon a showing of exceptionally good cause.

7.8 – Trial Preparation After the Close of Discovery. Ordinarily, the deposition of a material witness not subject to subpoena should be taken during discovery. However, the deposition of a material witness who agrees to appear for trial, but later becomes unavailable or refuses to attend, may be taken at any time prior to or during trial.

7.9 – Confidentiality Agreements. The parties may reach their own agreement regarding the designation of materials as confidential. There is no need for the Court to endorse the confidentiality agreement through an order. The Court discourages unnecessary stipulated motions for protective orders. The Court will enforce signed confidentiality agreements. Each confidentiality agreement shall provide or shall be deemed to provide that no party shall file

documents under seal without having first obtained an order granting leave of Court to file documents under seal based upon a showing of particularized need.

7.10 – Electronic Discovery

7.10.1 – Two Tiered Discovery of ESI. A party need not provide discovery of electronically stored information (ESI) from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the Court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the costs and potential benefits of the discovery. The Court may specify conditions for the discovery, including cost allocations. In determining whether there is good cause to require a responding party to search for and produce information that is not reasonably accessible the Court will consider factors such as: (1) whether the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (2) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues; (3) the specificity of the discovery request; (4) the quantity of information available from other and more easily accessed sources; (5) the failure to produce relevant information that seems likely to have existed but is no longer available on more easily accessed sources; and, (6) the likelihood of finding relevant, responsive information that cannot be obtained from other, more easily accessed sources.

7.10.2 – Form of Production of ESI. If a request for electronically stored information

does not specify the form or forms of production, a responding party must produce the information in a form or forms in which it is ordinarily maintained or in a form or forms that are reasonably usable. A party need not produce the same electronically stored information in more than one form.

7.10.3 – Limited Protection From Sanctions. Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good faith operation of an electronic information system.

7.10.4 – Non-Waiver of Privilege from Inadvertent Production. If information is produced in discovery that is subject to a claim of privilege or protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the Court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

7.10.5 – Use of Mediators or Special Masters. Upon agreement by the parties and stipulated order or by order of the Court, Mediators or Special Masters may be utilized to facilitate the resolution of disputes related to electronically stored information.

SECTION 8 – ALTERNATIVE DISPUTE RESOLUTION

8.1 – Alternative Dispute Resolution Mandatory in All Cases. Alternative Dispute

Resolution (“ADR”) is a valued tool in the resolution of litigated matters. An appropriate mechanism for ADR shall be discussed by the Court and counsel at the Case Management Conference. The Case Management Order shall order the parties to a specific ADR process, to be conducted either by a court-assigned or an agreed-upon facilitator and shall establish a deadline for its completion.

8.2 – Non-Binding and Voluntary Binding Arbitration. The parties may agree to submit to non-binding or voluntary binding arbitration. Non-binding arbitration also may be ordered upon motion of any party or upon the Court’s own motion. Non-binding and voluntary binding arbitration shall be governed by Administrative Order No. S-1998-106 (S-01-03-28-98-106) of the Thirteenth Judicial Circuit Court.

8.3 – Mediation.

a. Case Summaries - Not less than five business days prior to the mediation conference, each party shall deliver to the mediator a written summary of the facts and issues of the case.

b. Identification of Business Representative - As part of the written summary, counsel for each corporate party shall state the name and general job description of the employee or agent who will *attend and participate with full authority to settle* on behalf of the business entity.

c. Attendance Requirements and Sanctions - Lead Trial Counsel and each party (including, in the case of a business party, a business representative, and in the case of an insurance company, the insurance company representative as set forth in Florida Rule of Civil Procedure 1.720(b)(3)) with full authority to settle *shall* attend and participate in the mediation conference. In the case of an insurance company, the term “full authority to

settle” means authority to settle up to the amount of the party’s last demand or the policy limits, whichever is less, without further consultation. The court will impose sanctions upon Lead Trial Counsel and parties who do not attend and participate in good faith in the mediation conference.

d. Authority to Declare Impasse - Participants shall be prepared to spend as much time as may be necessary to settle the case. No participant may force the early conclusion of mediation because of travel plans or other engagements. Only the mediator may declare an impasse or end the mediation.

e. Rate of Compensation - The mediator shall be compensated at an hourly rate stipulated by the parties in advance of mediation. Upon motion of the prevailing party, the party’s share may be taxed as costs in this action.

f. Settlement and Report of Mediator - A settlement agreement reached between the parties shall be reduced to writing and signed by the parties and their attorneys in the presence of the mediator. Within five business days of the conclusion of the mediation conference, the mediator shall file and serve a written mediation report stating whether all required parties were present, whether the case settled, and whether the mediator was forced to declare an impasse.

SECTION 9 – JOINT FINAL PRETRIAL STATEMENT

9.1 – Meeting and Preparation of Joint Final Pretrial Statement. On or before the date established in the Case Management Order, Lead Trial Counsel for all parties and any unrepresented parties shall meet together in person for the purpose of preparing a Joint Final Pretrial Statement that strictly conforms to the requirements of this section. The case must be

fully ready for trial when the Joint Final Pretrial Statement is filed. Lead Trial Counsel for all parties, or the parties themselves if unrepresented, shall sign the Joint Final Pretrial Statement. The Court will strike pretrial statements that are unilateral, incompletely executed, or otherwise incomplete. Inadequate stipulations of fact and law will be stricken. Sanctions may be imposed for failure to comply with this section, including the striking of pleadings. At the conclusion of the final pretrial conference, all pleadings are deemed to merge into the Joint Final Pretrial Statement, which will control the course of the trial.

9.2 – Contents of Joint Final Pretrial Statement.

a. Stipulated Facts. The Parties shall stipulate to as many facts and issues as possible. To assist the Court, the parties shall make an active and substantial effort to stipulate at length and in detail as to agreed facts and law, and to limit, narrow and simplify the issues of fact and law that remain contested.

b. Exhibit List. An exhibit list containing a description of all exhibits to be introduced at trial and in compliance with the approved form located on the CBLD web site (see CBLD URL at CBP 17.1) must be filed with the Joint Final Pretrial Statement. Each party shall maintain a list of exhibits on CD-ROM or an email version to allow a final list of exhibits to be provided to the Clerk of Court at the close of the evidence. Unlisted exhibits will not be received into evidence at trial, except by order of the Court in the furtherance of justice. The Joint Final Pretrial Statement must attach each party's exhibit list on the approved form listing each *specific* objection ("all objections reserved" does *not* suffice) to each numbered exhibit that remains after full discussion and stipulation. Objections not made – or not made with specificity – are waived.

c. Witness List. The parties and counsel shall prepare a witness list designating

in good faith which witnesses will likely be called and which witnesses may be called if necessary. Absent good cause, the Court will not permit testimony from unlisted witnesses at trial over objection. This restriction does not apply to rebuttal witnesses. Records custodians may be listed, but will not likely be called at trial, except in the event that authenticity or foundation is contested. For good cause shown in compelling circumstances the Court may permit presentation of testimony in open court by contemporaneous transmission or videoconferencing from a different location.

d. Depositions. The Court encourages stipulations of fact to avoid calling unnecessary witnesses. Where a stipulation will not suffice, the Court permits the use of videotaped depositions at trial. At the required meeting, counsel and unrepresented parties shall agree upon and specify in writing in the Joint Final Pretrial Statement the pages and lines of each deposition (except where used solely for impeachment) to be published to the trier of fact. The parties shall include in the Joint Final Pretrial Statement a page-and-line description of any testimony that remains in dispute after an active and substantial effort at resolution, together with argument and authority for each party's position. The parties shall prepare for submission and consideration at the final pretrial conference or trial edited and marked copies of any depositions or deposition excerpts which are to be offered into evidence, including edited videotaped depositions. Designation of an entire deposition will not be permitted except on a showing of necessity.

e. Joint Jury Instructions and Verdict Form. In cases to be tried before a jury, counsel shall attach to the Joint Final Pretrial Statement a copy and an original set of jointly-proposed jury instructions, together with a single jointly-proposed jury verdict

form. The parties should be considerate of their juries, and therefore should submit short, concise verdict forms. The Court prefers pattern jury instructions approved by the Supreme Court of Florida. A party may include at the appropriate place in the single set of jointly-proposed jury instructions a contested charge, so designated with the name of the requesting party and bearing at the bottom a citation of authority for its inclusion, together with a summary of the opposing party's objection. The parties shall submit a CD-ROM or an email containing the single set of jury instructions and verdict form with the Joint Final Pretrial Statement.

9.3 – Coordination of Joint Final Pretrial Statement. All counsel and parties are responsible for filing a Joint Final Pretrial Statement in full compliance with these Procedures. Plaintiff's counsel shall have the *primary* responsibility to coordinate the meeting of Lead Trial Counsel and unrepresented parties and the filing of a Joint Final Pretrial Statement and related material. If a non-lawyer plaintiff is proceeding *pro se*, then defense counsel shall coordinate compliance. If counsel is unable to coordinate such compliance, counsel shall timely notify the Court by written motion or request for a status conference.

SECTION 10 – TRIAL MEMORANDA AND OTHER MATERIALS

10.1 – Trial Memoranda. In the case of a non-jury trial, the Court may require the parties to file and serve a Trial Memoranda. If so, no later than ten days before the first day of the trial period for which the trial is scheduled, the parties shall file and serve a Trial Memoranda. At the conclusion of a non-jury trial, the parties may be asked to submit proposed findings of fact and conclusions of law, together with a CD-ROM or emailed version in Word format.

In the case of a jury trial, no later than ten days before the first day of the trial period for which the trial is scheduled, the parties may file and serve Trial Memoranda, together with a CD-ROM or emailed version in Word format.

SECTION 11 – FINAL PRETRIAL CONFERENCE

11.1 – Mandatory Attendance. Lead Trial Counsel and local counsel for each party, together with any unrepresented party, *must* attend the final pretrial conference in person unless previously excused by the Court.

11.2 – Substance of Final Pretrial Conference. At the final pretrial conference, all counsel and parties must be prepared and authorized to address the following matters: the formulation and simplification of the issues; the elimination of frivolous claims or defenses; admitting facts and documents to avoid unnecessary proof; stipulating to the authenticity of documents; obtaining advance rulings from the Court on the admissibility of evidence; settlement and the use of special procedures to assist in resolving the dispute; disposing of pending motions; establishing a reasonable limit on the time allowed for presenting evidence and argument; and such other matters as may facilitate the just, speedy, and inexpensive disposition of the actions.

SECTION 12 – SANCTIONS

12.1 – Grounds. The Court will impose sanctions on any party or attorney: 1) who fails to attend and to actively participate in the meeting to prepare the Joint Final Pretrial Statement or refuses to sign or file the Joint Final Pretrial Statement; 2) who fails to attend the final pretrial conference, or who is substantially unprepared to participate; 3) who fails to attend the mediation

and actively participate in good faith, or who attends the mediation without full authority to negotiate a settlement, or who is substantially unprepared to participate in the mediation; or 4) who otherwise fails to comply with the Complex Business Procedures. Sanctions may include, without limitation, some or all of the following: an award of reasonable attorneys' fees and costs, the striking of pleadings, the entry of default, the dismissal of the case, or a finding of contempt of court.

SECTION 13 – TRIAL

13.1 – Examination of Witnesses. When several attorneys are employed by the same party, the examination or cross-examination of each witness for such party shall be conducted by one attorney, but the examining attorney may change with each successive witness or, with leave of the Court, during a prolonged examination of a single witness. The examination of witnesses is limited to direct, cross and re-direct. Parties seeking further examination shall request a bench conference to discuss the reasons for such, and, upon the articulation of good cause, may be allowed further examination.

13.2 – Objections. Speaking objections are not permitted. A party interposing an objection shall state the legal basis for the objection only. No response from the interrogating party will be permitted unless requested by the Court.

(SECTION 14 – Available for future use.)

SECTION 15 – JURIES

15.1 – Jury Instruction Conference. At the close of the evidence (or at such earlier time as the judge may direct) in every jury trial, the judge shall conduct a conference on

instructions with the parties. Such conference shall be out of the presence of the jury and shall be held for the purpose of discussing the proposed instructions.

15.2 – Objections to Instructions. The parties shall have an opportunity to request any additional instructions or to object to any of those instructions proposed by the judge. Any such requests, objections and rulings of the Court shall be placed on the record.

At the conclusion of the charge and before the jury begins its deliberations (and out of the hearing, or upon request, out of the presence of the jury), the parties shall be given an opportunity to object on the record to any portion of the charge as given, stating with particularity the objection and the grounds for same.

SECTION 16 – TRIAL DATES AND FINAL PRETRIAL PREPARATION

16.1 – Trial Date. Trial shall commence on the date established by the Court, normally through the Case Management Order or amendments thereto, or in such other manner as the Court shall deem appropriate. The Court will consider a request to continue a trial date only if the request is signed by both the party and counsel for the party.

SECTION 17 – WEB SITE AND PUBLICATION

17.1 – Web Site. The Complex Business Litigation Division shall maintain a site on the World Wide Web for ready access to members of the Bar and the public. The web site is located at the uniform resource locator (URL): http://www.fljud13.org/divisionspage_CBLD.asp. The web site will store for ready retrieval basic information about the Complex Business Litigation Division, including but not limited to these Procedures and the procedure for Complex Business Litigation Division case designation. In addition, the web site will store, in the sole discretion of the Complex Business Litigation Division Judge:

- a. the Court's docket;
- b. papers filed with the Court;
- c. motions filed with the Court;
- d. briefs filed with the Court; and
- e. opinions of the Court.

[Last revised August 2009]