

6/29, 2017

THIRTEENTH JUDICIAL CIRCUIT  
HILLSBOROUGH COUNTY, FLORIDA  
JOHN A. TOMASINO  
CLERK SUPREME COURT

### LOCAL RULE 3

### BUSINESS COURT PROCEDURE

In accordance with Rule 2.215(e), Florida Rules of Judicial Administration, the following local rule of procedure applies only to cases in the Business Court, Circuit Civil Division "L" in the Thirteenth Judicial Circuit of Florida, as established by Administrative Order S-2013-021 (the "governing administrative order") and its predecessors. It supersedes and rescinds the document titled Complex Business Procedures, last revised May 2014.

- 3.1. Effective Date.** This local rule becomes effective only if approved by the Florida Supreme Court following proposal by the majority of judges in the circuit and a recommendation by the local rules advisory committee. Rule 2.215(e)(1). Under subdivision (E), the local rule becomes effective on the date specified by the Court. Pending such approval, these rules are to be considered guidelines that litigants should follow.
- 3.2. Interpretation.** This rule facilitates application of and supplies omissions in the Florida Rules of Civil Procedure due to a local condition as specified in Rule 2.120(b)(1). Specifically, the Thirteenth Judicial Circuit is one of a minority of circuits that have specialized business courts. Business Court cases are facilitated by rules which, for example, require filing of legal memoranda with motions and filing of written oppositions to motions, providing for decisions without hearing when appropriate, and providing clear expectations for case management. The provisions of this rule are not to be interpreted to conflict with any rules or administrative orders adopted by the Florida Supreme Court, or with any administrative order of the chief judge of the circuit; any of which would control over these provisions.
- 3.3. Citation.** The provisions of this rule may be cited as "Thirteenth Circuit Local Rule 3.x," or for brevity, "Rule 3.x."
- 3.4. Filing.** The governing administrative order specifies classes of "mandatory" cases which must be assigned to Business Court. A plaintiff filing a mandatory case must complete and electronically file, along with the complaint, the form entitled "Civil Cover Sheet and Addendum for Business Court Case" located at: <http://www.fljud13.org/Forms.aspx>. The Clerk will then assign the case to Business Court Division "L."

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- 3.5. Transfer – Discretionary Cases.** If a party believes a case pending in a Circuit Civil Division meets some or all of the Business Court discretionary transfer criteria set forth under the governing administrative order, the party may file a motion to transfer the case to Business Court in the Circuit Civil Division in which the case is pending. A Circuit Civil Division judge may also initiate a transfer if he or she believes the case is appropriate for Business Court. The Circuit Civil Division judge will then recommend in writing, either via an order recommending referral or informal memorandum to the file, to the Business Court judge that transfer occur. The Business Court judge will then make a determination and, if he or she finds transfer appropriate, the Business Court judge will enter the order of transfer.
- 3.6. Notification of Settlement.** When any cause pending in Business Court is settled, all attorneys or unrepresented parties of record must notify the Business Court judge or the judge's designee within 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.
- 3.7. Motions – Certificate of Good Faith Conference.** Before filing any motion, the moving party must confer in person or telephonically with counsel for the opposing party in a good faith effort to resolve the issues raised by the motion and must 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. Counsel must respond promptly to efforts by opposing counsel who wish to confer to resolve motions prior their filing. Prior to filing a motion to dismiss for failure to state a cause of action, counsel must notify opposing counsel in writing of the intention to file a motion to dismiss and must identify the reason(s) counsel will allege that the complaint fails to state a cause of action. If requested, counsel will stipulate to the filing of an amended complaint in lieu of filing the motion. No conference is required prior to the filing of a motion for injunctive relief without notice, for summary judgment, or to permit maintenance of a class action.
- 3.8. Motions – Memorandum in Support and Memorandum in Opposition.** All substantive motions must be accompanied by a memorandum of law, which must not exceed 25 pages in length. A memorandum in opposition may be filed within 10 days thereafter and must not exceed 25 pages in length. A reply memorandum may be filed within 5 days following the filing of a memorandum in opposition, which must not exceed 5 pages in length and must address only those matters raised in the memoranda in opposition. With respect to memorandums in opposition to summary judgment, however, the timeframe is extended to 20 days, and with respect to

replies thereto, the timeframe is extended to 10 days. Memorandum may be supplemented by time lines, charts, diagrams, visual aids, or exhibits.

- 3.9. Motions – Exceptions to Memoranda Requirements.** Memoranda of law are not required for motions: (a) to extend time; (b) to continue; (c) to amend the pleadings or substitute parties; (d) for pro hac vice admission; (e) for relief from page limitations imposed by these rules; or (f) for discovery motions. In the event memoranda of law are filed, they should meet the page limitations set forth above.
- 3.10. Motions – Setting Hearing.** Promptly after filing a motion, if the motion is contested and the hearing is not waived, the moving party must initiate the scheduling of a hearing. The parties must confer and, if possible, set the motion for hearing at a mutually agreeable time at least 5 business days after the time has expired for the filing of a reply memorandum. If the parties are unable to agree on a hearing date, they must promptly advise the court and the court will set the hearing. A motion requiring a hearing under this subdivision may be deemed abandoned and denied without prejudice if a notice of hearing on the motion is not filed within 45 days of its filing.
- 3.11. Motions – Waiver of Hearing.** The court will decide a contested motion only after hearing unless:
- (a) The parties waive a hearing, by filing a waiver with a copy e-mailed to chambers, but the court may nonetheless request the parties to schedule a hearing if the court finds oral argument would be helpful; or
  - (b) The court determines that extraordinary circumstances justify a decision without a hearing, in which case any party may request a hearing upon a motion for reconsideration.
- 3.12. Case Management – Conference.** Within 60 days following the service of a complaint in the Business Court Division or within 30 days following the transfer of a case to the Business Court Division, counsel for the respective parties must meet in person or telephonically to prepare and thereafter file a Case Management Report. The parties must cooperate in the scheduling of a case management conference, following which plaintiff's counsel must coordinate, schedule, and notice a case management conference at a time reasonably convenient to the parties.
- 3.13. Case Management – Meeting and Report.** The parties must meet in person or by telephone to discuss and prepare a Case Management Report, which must be submitted to the court no later than 5 days before the case management conference. The parties' Case Management Report must address those matters set forth in rules 1.200(a) and 1.201 of the Florida Rules of Civil Procedure as well as the following:

- (a) A summary of the claims and defenses of the parties and whether a jury trial has been demanded;
- (b) A discovery schedule including, an estimate of the number of facts witnesses to be deposed, the number and expertise of experts to be deposed, and whether the parties anticipate any problems in doing so;
- (c) Anticipated areas of expert testimony, timing for identification of experts, and responses to expert discovery;
- (d) The necessity for a protective order to facilitate discovery;
- (e) The time period after the close of discovery within which dispositive motions must be filed, briefed and argued and a tentative schedule for such activities;
- (f) The timing of Alternative Dispute Resolution, including the selection of a mediator or arbitrator(s);
- (g) Proposals for the formulation and simplification of issues, including the elimination of frivolous claims or defenses;
- (h) A preliminary listing of the principal disputed legal and factual issues;
- (i) A preliminary listing of any legal principles and facts that are not in dispute;
- (j) A good faith, preliminary estimate by each party of the length of time to try the case, along with a statement of when the parties anticipate being ready for trial;
- (k) Any issues known or anticipated discovery issues;
- (l) The extent to which the parties anticipate or would prefer amendments or additions to the court's Uniform Trial Order and, if so, the reasons therefor;
- (m) Such other matters as the parties may suggest that would facilitate the orderly, economical and expeditious management of the litigation by the court or the parties.

**3.14. Case Management – Attendance.** The attendance by lead trial counsel for each party is mandatory.

**3.15. Case Management – Order.** Following the case management conference, the parties will submit to the court a proposed Case Management Order. 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.

- 3.16. Discovery – Guidelines.** With respect to the conduct of discovery generally, in addition to the applicable rules of procedure and professional conduct, counsel are encouraged to consult 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 Court Judges. The Handbook can be found on the website of the Trial Lawyers Section of The Florida Bar (<http://www.flatls.org/>).
- 3.17. Discovery – Experts.** Discovery with respect to experts must be conducted within the discovery period established by the Case Management Order. At least 30 days before the deposition of any expert (or, if no deposition is required, within the time set by the court), the party who retained the expert must produce an expert report which discloses, at a minimum, the expert's opinions and the bases and facts underlying 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 paid for the expert's work and expected costs for his or her 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.
- 3.18. Discovery – Extension of Time or Request for Additional Discovery.** Motions seeking an extension of the discovery period 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 a showing of good cause.
- 3.19. Confidentiality Agreements.** The parties may reach their own agreement regarding the designation of materials as confidential. The parties may submit a stipulated motion and proposed order incorporating the agreed upon confidentiality agreement. A party must not 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 in accordance with Florida law.
- 3.20. Mediation.** The parties in all cases assigned to Business Court must be ordered to attend mediation to be conducted by a mediator who the parties agree upon or who the court assigns.

- 3.21. Non-Binding and Voluntary Binding Arbitration.** Non-binding and voluntary binding arbitration are governed by Florida Statutes, Florida Rules of Civil Procedure, and the Thirteenth Judicial Circuit Non-Binding Arbitration administrative order, as amended from time to time.
- 3.22. Pretrial – 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 self-represented parties must meet together in person for the purpose of preparing a Joint Final Pretrial Statement that is in substantial compliance with the Uniform Pretrial Conference Order applicable to civil cases in this circuit and 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, must 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.
- 3.23. Pretrial – 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 has the *primary* responsibility for coordinating the meeting of lead trial counsel and self-represented parties and the filing of a Joint Final Pretrial Statement and related material. If a non-lawyer plaintiff is self-represented, then defense counsel must coordinate compliance. If counsel is unable to coordinate such compliance, counsel must timely notify the court by written motion or request for a status conference.
- 3.24. Pretrial – Mandatory Attendance.** Lead trial counsel and local counsel for each party, together with all parties, *must* attend the final pretrial conference in person unless previously excused by the court.
- 3.25. Pretrial – 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.

**3.26. Pretrial – Sanctions.** The court may impose sanctions on any party or attorney who: (a) 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; or (b) fails to attend the final pretrial conference or is substantially unprepared to participate.

**3.27. Website.** The presiding judge of the Business Court Division will maintain a website for ready access to members of the Bar and the public. The website is located at the uniform resource locator (URL): <http://www.fljud13.org/businesscourt.aspx>. The website will store for ready retrieval basic information about the Business Court Division, including but not limited to, these Procedures and the procedure for Business Court Division case designation.