

Honorable Cynthia Newton

Section 13 – CIVIL Division

545 1st Ave. North #402

St. Petersburg, FL 33701

727-582-7917

Email for Section 13 – Section13@jud6.org

Judicial Practice Preferences

(as of January 20, 2021)

IN ORDER TO PROVIDE YOU WITH THE BEST SERVICE POSSIBLE, WE HANDLE ALL COMMUNICATION BY EMAIL

THIS IS A MESSAGE FROM JUDGE CYNTHIA NEWTON'S OFFICE REGARDING COVID-19

Per The Florida Supreme Court AOSC20-23 - Amendment 1-23:
UNTIL FURTHER NOTICE, **ALL** HEARINGS set before Judge Cynthia Newton, will be conducted by telephone conference call or Zoom video conference.

(Zoom requests shall be made directly to the JA via e-mail when requesting a hearing).

SECTION 13 DOES NOT SCHEDULE HEARINGS VIA JAWS

TO SCHEDULE HEARINGS: (INCLUDING EMERGENCY/EXPEDITED HEARINGS)

Motions must be filed and **docketed** with the Clerk of Court and provided to the opposing side **BEFORE** scheduling for a hearing. When a motion is filed, it is not docketed immediately. It may take up to 72 hours to be docketed.

Email your request to the **JUDICIAL ASSISTANT, BRIDGET** at SECTION13@JUD6.ORG

Please put OUR case number and the style of the case in the Subject Line

In the body of the email:

- Motions requesting to be heard and when it was filed
- Amount of time you are requesting
- Name of the attorneys and the parties they represent and/or pro se parties

Any evidence, case law, etc., that you wish for Judge Newton to review or have at the time of the hearing, must arrive **no sooner** than the week prior to the hearing and **no later** than 4:00 p.m the Thursday prior to the scheduled hearing at the St. Petersburg Judicial Building.



Emergency Motions

Be sure to include **URGENT-EMERGENCY MOTION** in the subject line of your email for immediate attention. Otherwise, emails are answered in order in which they are received.

Emergency motions will not be set for hearing on an emergency basis unless the court deems it to be an emergency. When attorneys e-file an emergency motion, the Clerk does not forward it to the Judge's office and accordingly, the Judge or JA is not aware of the filing. It is the attorney's responsibility to contact the Judge's office and provide the Judge with a copy of the motion. If granted, a hearing will be set at date and time the Court Dictates. If counsel is not available at the time the Court picks for hearing then it is not an emergency. Opposing counsel/party is to be provided with Motion in same manner as the Court, unless reasons for no notice stated.

***Pro se* emergency motions ONLY are forwarded to the Judge's office by the Clerk.**

Motions for Rehearing/Reconsideration WILL NOT be set for hearing unless the court decides one is required. Please send a copy of the motion to the Judge. When e-filed, the Judge or JA is not aware of the filing.

Notice of Hearing. Must state what is being heard. **DO NOT NOTICE WITHOUT CONFIRMATION FROM JA.**

Any evidence, case law, etc., that you wish for Judge Newton to review or have at the time of the hearing, must arrive **no sooner** than the week prior to the hearing and **no later** than 4:00 p.m the Thursday prior to the scheduled hearing at the St. Petersburg Judicial Building.

Cross Notices. Motion must be approved to add by opposing and Judicial Assistant. **DO NOT NOTICE WITHOUT APPROVAL.**

Copies to/Service List: Section should **ALWAYS** set forth either the individual names of the recipients/attorneys OR refer to an Attached Service List. It should **NEVER state "All Parties" or "Attorneys of Record."** The addresses for the attorneys do not need to be

included; however, the address of any non-party must be included. Each attorney's name should be followed by their eservice address.

CANCELLATION OF HEARINGS

If your case settles, email Bridget at section13@jud6.org to cancel any hearings that may be scheduled. The mere filing of a Stipulation of Dismissal is not adequate notice to the court that a case set for trial has been resolved. **(UNDERSTAND THAT FILING A "NOTICE OF CANCELLATION" IS NOT A REQUIREMENT OF LAW AND DOES NOT CANCEL THE HEARING WITH THE JUDGE'S OFFICE.)**

Stipulated to/Agreed Upon Orders ONLY

Proposed orders that are stipulated to/agreed upon by **all parties/both sides** may be uploaded to JAWS and will be reviewed and signed with Judge Newton's electronic signature. You must also upload an explanatory cover letter and every proposed order **MUST** state whether Opposing Counsel has agreed with the form and content. **All documents are to be uploaded as PDF documents.** The instructions for uploading orders are as follows:

1. JAWS submissions of proposed orders to the court should consist of two uploads:
 - a. The order or judgment to be reviewed and signed, and nothing else, goes in one location.
 - b. **Everything else** goes in the other upload location - namely, the information that shows the judge why the order should be signed (i.e.: cover letter and motion or stipulation, plus exhibits, if necessary). These are all uploaded as a single document.
Motions, stipulations, and supporting documents must be filed via the Clerk of Court's e-portal and viewable prior to submitting them to JAWS. If Judge Newton receives a proposed order and the documents are not viewable, the order will be rejected.
2. It should never be necessary to make a duplicate upload. These create many problems. If there is a problem with uploading, contact the JAWS Help Desk, 727-453-4357.
3. **Do not submit proposed orders on JAWS in advance of a scheduled hearing unless specifically requested by the Judge.**
4. Helpful tips:
 - a. Your cover letter shall include express confirmation by a member of the Florida Bar that the proposed order has been shared with all other non-defaulted parties, and that they have no objection as to its form and content. (If there is an objection, submit the order via US mail with an explanatory cover letter.)

- b. If your order is based on the Judge's ruling after a hearing, state that fact, including the date of the hearing.

Electronically conformed copies will only be provided to the email addresses, which have been properly associated to the case in JAWS. It is the responsibility of the party uploading a proposed order to confirm that all email addresses have been added to JAWS. The JA and the Clerk DO NOT maintain the associated party database.

All other orders should be sent in via US mail, Fed Ex, UPS or had delivered with enough copies. As provided by the Standards of Professional Courtesy for the Sixth Judicial Circuit [ADMINISTRATIVE ORDER 2015-052](#) proposed orders shall be submitted to the judge with a cover letter stating whether opposing counsel agrees, or objects, to the proposed Order – or, that opposing counsel was given the opportunity to object to the proposed Order, but did not. Transmittals of proposed orders should always reference the date of hearing if there was a hearing. Draft orders should have page breaks such that part of the body of the order is included on the signature page. The Court *will not hold* orders pending objections. ***Sufficient copies and stamped, addressed envelopes (WITH YOUR FIRM'S RETURN ADDRESS) must be provided. (DO NOT STAPLE ENVELOPES TO THE ORDERS)*** If only the original is submitted, copies will not be provided. If the parties cannot agree on a proposed order, they should submit all the proposed orders simultaneously in one combined mailing.

Copies to/Service List: Section should **ALWAYS** set forth either the individual names of the recipients/attorneys OR refer to an Attached Service List. It should **NEVER state “All Parties” or “Attorneys of Record.”** The addresses for the attorneys do not need to be included; however, the address of any non-party must be included. Each attorney's name should be followed by their eservice address.

DO EVERYTHING POSSIBLE TO MAKE YOUR ORDER ON ONE PAGE. If more than one page, the second page MUST NOT contain only the Judge's signature. Additional pages must contain at least a reference to the case number and also all pages must be numbered.

MOTIONS THAT DO NOT NEED TO BE SET FOR HEARING
(Motions - No Hearing Needed)

Motions to Compel (no response): [ADMINISTRATIVE ORDER 2020-011](#) If the Motion is pertaining to any type of discovery that has been propounded to which no response has been received AFTER a documented good-faith effort has been made to obtain the discovery. **DO NOT ATTACH A COPY OF THE DISCOVERY WHEN SENDING TO THE COURT, but DO ATTACH** a copy of the good-faith effort documentation. You do have to attach a copy of the discovery to the Motion that is being e-filed and sent to opposing counsel.

When to Set Hearing on discovery: If at the end of the time allowed for the extension the documents/answers have not yet been provided, the requesting party may then file a Motion to Compel or for Contempt/Sanctions which may then be set for hearing, with notice to all parties. The Motion shall contain language confirming that an extension was provided, the extension time has passed and there has still been no response at all – if a response was filed and you are requesting “better” answers or responses, then that is a separate Motion (Motion to Compel Better Responses to Discovery) and that motion must be submitted pursuant to A.O. 2020-012.

Motions for Extension of Time

Section 13, Judge Newton, will not be setting hearings on Motions for Extension of Time to Respond to the Complaint nor Motions for Extension of Time to Respond to Discovery. The availability of hearing time on our calendar is such that it would render a hearing time on any motions for extension of time as moot. The Court expects attorneys to demonstrate professional courtesy in providing an Order to this office allowing for at least a 20 day extension of time for either discovery or a response or answer to a complaint to be filed.

Motions to Reschedule Foreclosure Sale: If a request is being made by the PLAINTIFF to ONLY re-set a foreclosure sale that was previously canceled and not re-set, due to bankruptcy or due to the borrower’s default on an agreement and inability to qualify for a modification, please submit the original Motion through the eportal and then provide a copy of the Motion to me along with a proposed Order (be sure the Order has a place for the new date) and the time should ALWAYS be 10:00 a.m.) The Order must also have the website address for the sale: www.pinellas.realforeclose.com . Please provide adequate number of copies of the Order, and **envelopes (WITH YOUR FIRM’S RETURN ADDRESS)** directly to me at the address located at the top of this document. There should be one for the Judge to sign that is filed with the Clerk and one copy for each of the addresses listed on your certificate of service.

MORTGAGE FORECLOSURE CASE PROCEDURES

Please visit the Sixth Judicial Circuit website at www.jud6.org for the latest information regarding foreclosure cases. The procedures established in [Administrative Order 2019-004 PA/PI-CIR](#) should be followed in mortgage foreclosure cases filed in Pinellas County.

Foreclosure Motions for Summary Judgment. To schedule a Foreclosure Motion for Summary Judgment, contact Bridget at SECTION13@JUD6.ORG for dates. Attendance in person is required. Summary Judgment Packets may be mailed **no sooner** to Judge Newton 3-5 days prior to the hearing or the attorney may bring the packet to court the day of the hearing.

Foreclosure Non-Jury Trials. To schedule a Non-Jury Trial (Residential or Commercial and contested or uncontested), contact Bridget at SECTION13@JUD6.ORG for dates. Attendance in person is required. Non-Jury Trial Packets may be mailed **no sooner** to Judge Newton 3-5

days prior to the hearing or the attorney may bring the packet to court the day of the non-jury trial. (ATTACHEMENT A)

Court files

- Court file(s) will NOT be ordered for the trial. If you want the Judge to have the court file(s) for the trial, **please make sure to request them AT LEAST ONE WEEK IN ADVANCE**. Failure to make prior arrangements for these file(s) to be available at trial will not be grounds for a continuance.
- To order the court file(s), please follow the below instructions:
 1. Use civilatty@pinellascounty.org email address only
 2. Subject line: "File(s)/Original Note and/or Mortgage needed for foreclosure hearing in Section 13-Judge Newton"
 3. Mark as "High Priority"
 4. Body of email: Provide case number, style of case, date of hearing, which volume(s) needed and identify that the files are for Section 13

Sale Cancellations. **Sale Cancellations.** Parties shall comply with the provisions of [A.O. 2019-004](#). For text of entire AO go to www.jud6.org .

The sale date set by the judgment can only be canceled and rescheduled by Court order. Any motion or request to cancel this sale must be served on all parties in conformity with Florida Rule of Civil Procedure 1.080(a). A violation of any party's due process rights will subject the movant and/or counsel to sanctions. See *Jade Winds v. Citibank*, 63 So. 3d 819 (Fla. 3d DCA 2011). The Court may grant an ex-parte cancellation without hearing, if ALL parties agree.

If a Plaintiff wishes to cancel a sale, a written motion must be filed with the Court in substantial compliance with Florida Rules of Civil Procedure Form 1.996(c). The motion also must state the number of times the Plaintiff has previously requested the cancellation of a sale and must include an affidavit with supporting grounds for the motion. Because of the advent of online sales, publication in a newspaper is not as necessary as it once was. Therefore, the mere failure to publish a notice of sale is not a ground for canceling the sale. (ATTACHMENT B)

WRITS OF POSSESSION.

- Because Section 83.561, Florida Statutes, now affects residential premises, a Court Order is required before the Clerk will issue a writ of possession.
- Writs of possession may be considered **ex parte** by following the procedures applicable to writs of possession in [A.O. 2019-004 PA/PI-CIR](#).
- You will be notified by our office if a hearing is necessary.
- When submitting paperwork, please include an email address and phone number to be contacted should a hearing be necessary.

ASSIGNMENT OF FINAL JUDGMENT AND CREDIT BID:

- As provided by the Uniform Final Judgment, assignment of the **FINAL JUDGMENT AND CREDIT BID** prior to the sale does not require a court order.

- Assignments prior to sale MUST have the following language: “the Plaintiff assigns the judgment and credit bid to (name of assignee.)”

ASSIGNMENT OF BIDS, SUCCESSFUL BIDS, SALE, AND CERTIFICATE OF SALE:

- PLAINTIFF MAY NOT ASSIGN BIDS OR SUCCESSFUL BIDS THAT TAKE EFFECT AFTER THE SALE.
- All purported assignments of bids or successful bids are a nullity if they are to take effect after the sale.
- By operation of law, these are assignments of a sale or a certificate of sale.
- Assignments of a sale or certificate of sale require a court order.

MOTIONS TO BE CONSIDERED UPON WRITTEN SUBMISSION

(AO 2020-012)

DO NOT SUBMIT MOTION PER A.O. 2020-012 AND ALSO REQUEST A HEARING

You **MUST** let the opposing party know that you will be submitting the motion per the A.O.

Read below procedures

In addition to motions that have been customarily considered ex parte (e.g., motions for judicial default, motions to compel pursuant to Administrative Order 2020-011, etc.), certain other motions may be decided based solely upon written submissions pursuant to ADMINISTRATIVE ORDER 2015-056 and ADMINISTRATIVE ORDER 2020-012. As provided by the AOs, after being served with such motions, the nonmoving opposing party shall have 10 days to file any written response, after which the court may rule without further notice or hearing.

You **MUST** let the opposing party know that you will be submitting the motion per the A.O.

The following motions shall generally be considered on written submissions:

- ✓ Motions for Default
- ✓ Motions to Withdraw (must comply with Fla.R.Jud.Admin. 2.505)
- ✓ Motions to Compel
- ✓ Motions to Strike
- ✓ Motions for Extension of Time
- ✓ Motions to Dismiss
- ✓ Motions for Substitution of Counsel (must comply with Fla.R.Jud.Admin. 2.505)
- ✓ Motions for Substitution of Party Plaintiff
- ✓ Motions to Substitute Counsel (must include client consent)
- ✓ Motions to Add Party, Motions to File Amended Complaint
- ✓ Motions to Continue Non-Jury Trials

Parties may, by stipulation only, waive hearing on other non-evidentiary motions and request the court rule on written submissions alone. Conversely, parties may by stipulation, or motion, request oral argument on any motion otherwise subject to this procedure. The court will consider such requests without hearing and advise the parties if a hearing should be scheduled.

DO NOT SUBMIT MOTION PER A.O. 2020-012 AND ALSO REQUEST A HEARING

Procedures: File and serve motions without contacting the court initially. When **fifteen (15) days have passed** after service on opposing parties, then send the court:

1. A cover letter in compliance with AO 2020-012. A copy to all opposing party(ies)
A courtesy copy of the motion
2. Any supporting material of record not filed with the Clerk via the e-portal
3. Copies of any material served in response by another party
4. **A PROPOSED ORDER**
5. Self-addressed stamped envelopes with conforming copies for all parties.

PRE-TRIAL AND JURY TRIAL PRACTICE

All Exhibits shall be properly & clearly marked, divided, and placed in a binder.

All pertinent Case Law, Legal Authority should be highlighted.

Originals should be filed with the Clerk of Court, a copy provided to opposing counsel/party, and a copy to the Court.

☐☐ Prior to Pre-trial, please email the judicial assistant a copy of the Pre-trial Order and bring hard copies with you.

☐☐ Prior to Trial, please submit Jury instructions and verdict forms by hard copy via U.S. Mail or other delivery means. Also, please e-mail a courtesy copy of the Jury Instructions and Verdict Forms in word format to the Judicial Assistant the week of trial for changes, if necessary.

For security purposes, the Court does not accept discs, flash drives, or drop boxes per Court technology.

*** Attention Lawyers ***

Courtroom facilities & equipment for Jury Trial:

How do I schedule a video conference or reserve equipment that will be needed for a trial or hearing?

To schedule the use of any audio/video equipment maintained by the court, call 727-453-7928. Equipment reservations should be phoned in a minimum of seven days in advance of the proceeding. If you are requesting use of the Nomad evidence presentation system, the person who will be using the equipment must be trained. To schedule training, call the above numbers.

NOTE: When calling to schedule equipment, please have all necessary information (courtroom, time of hearing, etc.).

Scheduling Jury Trials

Copies of motions (Notice That Cause is at Issue) to set jury trial should be provided to the court via e-mail (copy opposing counsel), when filed via the e-portal they do not come to the Judge. Mediation should be attempted in all cases unless excused by the court upon motion and hearing. Cases that have not been mediated will be referred for mediation and usually not set for trial until mediation is completed. In setting trial, counsel are encouraged to coordinate a trial date among the parties using the available trial dockets. When a trial docket is agreed upon, contact the Judicial Assistant via e-mail to calendar the trial and prepare the Trial Order setting pre-trial conference and jury trial. *When e-mailing the J.A. to set jury trial, copy all parties, include the date mediation was completed and the trial docket agreed upon by all parties.* The Trial Order will be furnished to the parties via JAWS.

If the parties cannot agree on a trial date, a hearing needs to be scheduled for that purpose.

Order Setting Pretrial Conference and Jury Trial

[ADMINISTRATIVE ORDER 2019-025](#): The discovery cutoffs and deadlines provided by this order are binding, as are the provisions for counsel to meet to resolve minor evidentiary problems and to provide the court a proposed Pretrial Conference Order prior to the PTC.

Motions to Continue Trial

These motions must be signed by the client, as provided by Rule 1.460. When providing such motions, ALWAYS inform the Judicial Assistant whether opposing has an objection or not.

Motions in Limine

Motions in Limine will be heard prior to trial. Any anticipated Motions in Limine or Motions for Summary Judgment should be scheduled **EARLY**. Everyone is aware of the increase in volume of cases in the civil division and the difficulty in obtaining hearing times at the last minute. Motions not heard may be heard morning of trial. Failure to hear such motions is not a basis for a continuance.

OTHER MOTION PRACTICES

Withdrawal or Substitution of Counsel: Rule of Judicial Administration 2.505 requires a “motion and hearing” for withdrawal of counsel. Judge Newton will forego a live hearing and deem this requirement adequately complied with if, and only if, there is filed a Stipulation for Withdrawal signed by both the client and all counsel. The same rule requires that all substitutions of counsel be “signed off” by the client. Orders granting withdrawal must include the complete address, e-mail address and telephone number where future correspondence and pleadings may be sent to the client.

COMPULSORY MEDICAL EXAMINATIONS: In order to resolve most CME issues, the Court has a standard Order which can be submitted with a Motion on an ex parte basis with a cover letter setting forth that opposing counsel has reviewed it and has no objection to the form or entry. Attached is a copy of the form Order preferred by Judge Newton. (ATTACHMENT C)

Motions for Summary Judgment/Final Judgment (even Defaulted): All Motions for Summary Judgment/Final Judgment must be set for hearing with the required statutory notice to all parties.

MOTIONS FOR JUDICIAL DEFAULT: Motions for Judicial Default can be submitted and considered:

- 1) On an ex parte basis as long as a Motion for Clerk’s Default was submitted to the Clerk but not entered. A cover letter must be submitted stating why a Clerk’s Default was not entered.
or
- 2) If an extension of time was granted and at the end of the extension time for a responsive pleading or answer to a complaint, that has been nothing filed, AND the order allowing the extension of time contains language that a default may be entered without further notice, then a copy of the Plaintiff’s ex parte Motion for Judicial Default (confirming an Order allowing an extension was provided) may be sent to the Court by regular U.S. Mail along with a copy of the Affidavit of Non-Military Service and attached DOD confirmation, the proposed Order, copies and **envelopes (WITH YOUR FIRM’S RETURN ADDRESS)**.

If the Order entered for the extension of time for a responsive pleading or answer to a complaint did not contain language that the default may be entered without further notice, then a Motion for Judicial Default based upon the other party’s non-compliance MUST be filed and set for hearing with notice to all parties.

Ex Parte Motions

(in accordance with AO 2020-012)

Counsel seeking consideration of a matter ex parte should always provide the Court with courtesy copies of a motion and any supporting materials such as affidavits with their proposed orders, service copies, postage-paid envelopes, and an appropriate cover letter signed by a member of the Florida Bar, not a staff member.

Attention Pro Se litigants

The Judicial Assistant CANNOT answer legal questions, or “explain” things to the Judge. Your opportunity to speak to the Judge happens in Court only. The Clerk of the Court has a Self Help Program for self-represented litigants in the St. Petersburg Judicial Building. Gulfcoast Legal Services may be reached in St. Petersburg (727) 821-0726 or Clearwater (727) 443-0657. Bay Area Legal Services is available at 1-(800)-625-2257. Lawyer referral services of the St. Petersburg and Clearwater Bar Associations may be contacted at (727) 821-5450 and (727) 461-4880, respectively.

ATTACHMENT A

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CASE NO.: _____**

Plaintiff(s),
vs.
Defendant(s).

_____ /

ORDER SCHEDULING NON-JURY TRIAL

THIS CAUSE being at issue and the Court being otherwise fully advised in the premises, it is;
ORDERED AND ADJUDGED that a Non-Jury Trial in the above-styled cause is hereby scheduled on _____ at _____ a.m. / p.m. before the Honorable Cynthia Newton, Circuit Judge, at the St. Petersburg Judicial Building, 545 First Avenue North, Room 402, St. Petersburg, FL 33701. **All parties or their representatives named herein and their counsel, if any, shall attend the Non-Jury Trial, in person. The Court will have only an electronic file available at the Non-Jury Trial. It is counsel’s responsibility to bring any hard copy documents that may be needed at trial. Failure to make prior arrangements for these documents to be available at trial will not be grounds for a continuance.** It is further;

ORDERED AND ADJUDGED that at least **30 days before the Non-Jury Trial**, counsel for all parties, and any pro se party, must serve a list of the names and addresses of all lay or expert **witnesses** who are expected to testify at trial, whether for substantive, collaborative, impeachment or rebuttal purposes, as well as a list of all **exhibits** which are expected to be admitted at Trial, whether for substantive, demonstrative, collaborative, impeachment or rebuttal purposed. Witnesses and exhibits not listed as described above may not provide testimony or may not be admitted at trial except by stipulation of all parties or as allowed by order of the Court.

DONE AND ORDERED at St. Petersburg, Pinellas County Florida on this _____ day of _____, 20__.

CYNTHIA NEWTON, Circuit Judge

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the Human Rights Office, 400 S. Ft. Harrison Ave., Ste. 300, Clearwater, FL 33756, (727) 464-4062 (V/TDD) at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

(ORDER MUST HAVE A SERVICE LIST ATTACHED)

ATTACHMENT B

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF
THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY
CIVIL DIVISION
XX-XXXXXX-CI-13**

Plaintiff,

v.

Defendant.

_____ /

**ORDER ON PLAINTIFF’S MOTION CANCELLING (date of sale) FORECLOSURE SALE
AND RESCHEDULE FORECLOSURE SALE**

THIS CAUSE came before the Court on Plaintiff’s Motion to Cancel the Foreclosure Sale Scheduled for _____. There have been _____ prior cancellations of sales in this case and the Court being fully advised rules as follows:

It is hereby **ORDERED**

_____ Plaintiff’s motion is denied.

_____ Plaintiff’s motion is granted. The foreclosure sale is hereby cancelled.

_____ Plaintiff’s motion is granted. The foreclosure sale is hereby cancelled. The new sale date shall be _____ at 10:00 a.m. The sale will be conducted at

www.pinellas.realforeclose.com. Plaintiff is responsible for completing and submitting the Notice of Sale directly to the appropriate newspaper and providing the Clerk of the Court a copy of the publication no later than 24 hours prior to the sale date.

DONE AND ORDERED in St. Petersburg, Pinellas County, Florida this _____ day of

_____, 20__.

CYNTHIA NEWTON
Circuit Judge

Copies :

ATTACHMENT C

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIRCUIT CIVIL DIVISION
CASE NUMBER: XX-XXXXXX-CI-13

,

Plaintiffs,

v.

,

Defendants.

_____ /

ORDER COMPELLING RULE 1.360 EXAMINATION

Pursuant to Florida Rule of Civil Procedure 1,360, (“Examinations of Persons”), Defendant’s counsel has notified Plaintiff’s counsel that the Plaintiff, _____, is requested to be present for a non-invasive medical examination as follows:

- Examiner:
- Address:
- Date:
- Time:
- Scope:

THE FOLLOWING CONDITIONS ARE TO BE OBSERVED BY ALL PARTIES INVOLVED:

1. This examination is not a deposition so the examiner shall be limited to that information reasonably necessary to conduct the specialty-appropriate examination and evaluation of an individual, including a brief medical history as

well as present complaints. The examination is to be limited to the specific medical or psychological conditions in controversy and unless modified by another court order, such examination will be the only exam for the specific condition(s) or issues in controversy (without limiting the possibility of multiple specialties). No invasive testing shall be performed without informed consent by the Plaintiff/examinee, or further Order of Court.

2. The examinee will not be required to complete any lengthy information forms upon arrival at the examiner's office. The examinee will furnish the doctor with name, address, and date of birth. Questions pertaining to how the Plaintiff was injured, and where and how the Plaintiff sustained the injuries complained of, are permitted. Questions pertaining to "fault," when the Plaintiff hired his/her attorney, who referred the Plaintiff to any doctor, and what the Plaintiff told his attorney or any investigators are NOT permitted.

3. It shall be the defense attorney's responsibility to provide the examiner with all medical records, imaging studies, test results, and the like, which the defense wants the examiner to review and rely upon as part of the examination. Unless he or she has exclusive control of any original records or imaging studies, Plaintiff shall not be required to bring anything to the exam other than valid identification (e.g., Driver's License, Official Florida Identification Card or government-issued Passport).

4. Plaintiff is permitted to have his/her attorney (and spouse or parent, or other representative) present for the examination, provided that only one of these listed non-attorney persons may attend. Such person(s) may unobtrusively observe

the examination, unless the examiner or defense counsel establishes a case-specific reason why such person's presence would be disruptive, and that no other qualified individual in the area would be willing to conduct the examination with such person present. In the case of a neuropsychological exam, all observers shall watch and listen from an adjacent room if available, or by video feed. If the examination is to be recorded or observed by others, the request or response of the examinee's attorney shall include the number of people attending, their role, and the method(s) of recording.

5. Plaintiff's counsel may also send a court reporter or a videographer to the examination, provided that claimant's counsel notifies defense counsel at least 10 days in advance of the identity, either by proper name or by title (e.g., videographer from XYZ Reporting Service). It is the duty of the defense counsel to relay this information to the examiner's office personnel.

6. Neither Defendant's attorney nor any of Defendant's representatives may attend or observe, record or video the exam. Only if the video is identified as impeachment material for use at trial may the defense counsel obtain a copy. The medical examiner shall not be entitled to any payment of an additional or accommodation fee from the Plaintiff or his/her counsel, simply because of the presence of legally permitted third parties. The Court shall 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.

7. If a videotape or digital recording is made of the examination by counsel for Plaintiff, it is considered work-product, and neither the defense nor the examiner

is entitled to a copy, unless and until same is designated as (or reasonably expected to become) trial evidence, subject to discovery only upon a showing of need and undue hardship. Use of the video or DVD is limited specifically to the instant litigation. At the close of litigation, including any appeal, all copies shall be destroyed – unless counsel convinces the Court (and an order is entered) that there is some compelling reason for either party, or the examiner, to retain a copy.

8. Neither Plaintiff's counsel, nor anyone else is permitted to be present, shall interject themselves into the examination unless the examiner seeks information not permitted by this Order. If Plaintiff's counsel speaks openly or confers privately with the examinee, and this disrupts the exam or causes the examiner to terminate the examination, counsel may be subject to sanctions.

9. The report of the examiner shall be sent to Plaintiff's counsel, as required by Rule 1.360(b), within 30 days of the examination – but in no event less than 21 days before the beginning of trial, unless otherwise agreed between counsel for the parties or ordered by the court due to special problems. Unless a Plaintiff's treating or retained expert has revised or supplemented an opinion after his/her report or deposition, the examiner shall not change, amend, or supplement the opinions set forth in said report during any testimony (deposition or trial) he may give in reference to his examination of the Plaintiff, without providing a supplemental report, which must be provided to Plaintiff's counsel at least 15 days before trial. Violation of this provision may result in the limitation or striking of the examiner's testimony.

9(a) If the examination involves neuropsychological testing: In addition to the report, the examiner shall provide all raw data, including copies of all notes, tests, tests results, scoring, and test protocols, to Plaintiff's treating or retained psychologist or neuropsychologist, who must return them to the defense examiner at the conclusion of the case.

10. All protected health information generated or obtained by the examiner shall be kept in accordance with HIPPA requirements and shall not be disseminated by the examiner or defense counsel to any other person or entity not a party to this case without a specific order from this Court.

11. Defense counsel must provide the examiner with a copy of this Order and explain the need for the examiner's compliance. As a condition of performing the examination, the examiner shall agree to provide responses to FRCP 1.280(b)(4)(A) inquiries, once such interrogatories or Requests to Produce are propounded by Plaintiff.

ORDERED at St. Petersburg, Pinellas County, Florida, on this ____ day of _____, 20____.

CYNTHIA J. NEWTON
Circuit Judge

Copies furnished to: