

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA

Plaintiff(s),

-vs-

Case Number:
Section:

Defendant(s).

_____ /

**ORDER SETTING PRETRIAL CONFERENCE AND NON-JURY TRIAL
AND DIRECTING MEDIATION**

Pursuant to Florida Rules of Civil Procedure 1.200(a)(2) and 1.440(c), the following is hereby **ORDERED**:

1. SCHEDULE. The **Pretrial Conference** is set on _____, at _____ a.m./p.m., before the Honorable _____, Circuit Judge, in Hearing Room, _____ Floor, _____ Elevator, _____ Tower, in the Polk County Courthouse, 255 N. Broadway Ave., Bartow, Florida.

The non-jury trial in this cause has been set for _____ day(s) on _____, at _____ a.m./p.m., in Courtroom _____, _____ Elevator, _____ Tower, Polk County Courthouse, 255 N. Broadway Ave., Bartow, Florida.

2. CONFLICTS. *Within 10 days of this Order*, counsel shall notify the Court in writing if inadequate time has been allowed for trial, if a scheduling conflict exists, *or if discovery cannot be completed by the Pretrial Conference as ordered in paragraph 7 below, whereupon a Case Management Conference may be set by counsel or ordered by the Court.* The Court recognizes that most scheduling conflicts will resolve themselves. However, if a conflict about which the Court has been notified persists, it could later be a valid ground for a continuance.

3. CONTINUANCES. No continuance will be granted unless dire need is demonstrated in writing, signed by counsel and the parties he or she represents. Conflicts about which the Court has been notified pursuant to Paragraph 2 will be persuasive. Conflicts arising after the date of this Order will not be persuasive.

4. DISCLOSURE. *Within 30 days of this Order*, each party shall provide the other with:

- a. A witness list of the names and addresses (sufficient for service of subpoena), "of all persons believed or known... to have any knowledge concerning any of the issues raised by the pleadings and specify the subject matter about which the witness has knowledge" -Fla.R.Civ.P., app. Forms 1,2. The subject matter about which the witness has knowledge is particularly important. The purpose of this disclosure is to enable each party to accurately respond to the Court's inquiries found in Fla.R.Civ.P. 1.200(b)(1)-(5).
- b. A list of all experts that will be called to testify at trial so that expert discovery is completed by the time of the Pretrial Conference. **Not later than 60 days before the Pretrial conference**, the parties shall exchange the names and addresses of all experts, that will be called to testify at trial, along with the expert's specialty, the subject matter on which the expert is expected to testify, and the substance of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion.

- c. A list of all potential exhibits, copies of which shall be provided promptly to opposing counsel. Newly discovered exhibits shall be immediately provided.

Failure to timely comply with the above may result in the exclusion of said witness and/or use of said exhibit at trial.

5. CONSULTATION. At least 15 days before Pretrial Conference, Plaintiff's counsel shall conduct a consultation, by telephone or in person, with all counsel cooperating in order to:

- a. Discuss settlement
- b. Arrange to examine all trial exhibits and demonstrative aids.
- c. Review witness lists with the goal of identifying those witnesses each party reasonably anticipates will be called to testify at trial.
- d. Review the five (5) items found in Rule 1.200(b), Fla.R.Civ.P., in preparation for the Pretrial Conference.
- e. Prepare mutual stipulation and proposed Pretrial Order as required below.

6. MUTUAL STIPULATION AND PROPOSED PRETRIAL ORDER. At least three working days before Pretrial Conference, a Stipulation (in one document) shall be submitted directly to the Court's Chambers either by U.S. mail or by hand delivery, **not** by facsimile. Plaintiff's counsel shall have the responsibility for drafting the Stipulation which shall contain:

- a. A statement of the case agreed to by the parties containing:
 1. Paragraph, agreed to by the parties, describing the overall case.
 2. Paragraph from each party containing the contentions of that party.
 3. Paragraph from the Plaintiff concerning the relief sought.These paragraphs shall be brief and to the point. In jury trials, the Court will probably read these paragraphs to the jury. (Counsel may simply update the Statement of the Case provided for mediation.)
- b. A list of pleadings upon which the case will go to trial.
- c. A statement of
 1. Facts admitted by the parties
 2. Factual issues remaining to be litigated.
- d. A statement of
 1. All matters requiring action by the Court
 2. Legal and evidentiary issues likely to arise at trial
 3. Anticipated special instructions beyond standard instructions
- e. A list of witnesses that each party reasonably anticipates will be called to testify at trial. (Previously submitted lists, as updated, may be attached.)
- f. A list of all exhibits and demonstrative aids. Those exhibits and aids the parties agree are admissible or acceptable for use at trial shall be marked with an asterisk.
- g. An indication of party will securing the court reporter, if any.
- h. A statement confirming and attesting that counsel have complied with paragraphs 4, 5 and 12 of this Order.
- i. The signatures of counsel for all parties.

Plaintiff's counsel, unless otherwise directed by the Court, will have responsibility for drafting the proposed Pretrial Order which shall contain:

- a. The incorporated mutual Pretrial Stipulation.
- b. The Court's rulings upon all matters requiring Court action.

The Pretrial Order shall thereafter control the course of action. Fla.R.Civ.P. 1.200(d).

7. DISCOVERY. The Court directs that all discovery shall be completed before Pre Trial Conference.

Discovery conducted thereafter will be at the risk of counsel. No continuances will be granted because of facts arising from discovery conducted after the Pretrial Conference.

8. MOTIONS. No Motions will be heard at or after the Pretrial Conference absent compelling circumstances and consent of the Court.

9. ATTENDANCE. Each party shall be represented at the Pretrial Conference by the person who will try the case. In addition to the items in the Pretrial Stipulation, each participant must be prepared to discuss the five (5) items of *Fla.R.Civ.P. 1.200(b)*. *If the person attending the Pretrial Conference is not authorized to enter into binding stipulations concerning anticipated trial matters [i.e., needs to confer with the client before entering into any agreements concerning matters that will expedite the progress of the trial; See, Fla. R. Civ. P. 1.200(b)], then the party must also be present.*

10. SETTLEMENT. In the event this case settles, Plaintiff's counsel shall immediately notify the undersigned judge by written fax memorandum (863-534-____), and/or by phone call (863-534-____).

11. MEDIATION:

a. This case is ordered to mediation.

b. Plaintiff's counsel shall seek agreement with all concerned as to a certified mediator their compensation. If achieved, Plaintiff's counsel shall file a notice containing this information in the record. If the parties cannot agree within ten (10) days of this Order, Plaintiff's counsel shall notify the Court which will enter an Order appointing the mediator and set compensation.

c. Plaintiff's attorney shall

(1) Schedule the mediation conference at a time agreeable to all concerned sufficiently in advance of the Pretrial conference.

(2) Confirm the date, time and place of the mediation conference by letter to all concerned. The mediation conference shall occur prior to the Pretrial Conference.

d. At last ten (10) days in advance of the mediation conference, Plaintiff's attorney shall schedule a conference for all counsel, either in person or by telephone, for the purpose of presenting a Statement of the Case to the mediator at least five (5) days in advance of the mediation. The statement of the case shall contain:

(1) A concise paragraph agreed to by the parties describing the overall case;

(2) A paragraph from each party containing the contentions of that party; and

(3) A paragraph from Plaintiff concerning the relief sought.

These paragraphs shall be brief and to the point and of the kind utilized later in the Pretrial Stipulation for the trial judge to read to the jury.

e. Each party shall be represented at the mediation conference by the person who will try the case. The parties must also be present. A corporate party must be represented by a managing agent. An insured party must also have a representative present with full (not limited) authority to settle the case. A participant who fails to attend, or leaves the mediation conference before the mediator declares the conference ended, or

a party in attendance with limited authority, is subject to sanctions by the Court. Sanctions may include taxing of fees and costs for the participants and the mediator.

f. All discussions, representations and statements made at the mediation conference shall be absolutely privileged and nothing related to the conference shall be admitted at trial or be subject to discovery.

g. In the event the parties settle the case, a binding agreement shall be immediately reduced to writing and executed by counsel and all parties before the conference ends.

h. FEES AND COSTS. Plaintiff's counsel shall assure that all fees and costs of mediation have been paid before distribution of any settlement proceeds. If the case is to proceed to trial, these expenses shall be satisfied prior to trial date.

i. The mediator shall provide the Court with a mediation report five (5) days before Pre-Trial Conference, unless otherwise ordered by the Court.

12. COMMUNICATIONS NOTICING COURT PROCEEDINGS: All communications noticing Court proceedings including, but not limited to, subpoenas for trial, jury summons, notices of hearings, notices for depositions and all other Court- related proceedings shall provide that a person with a disability who needs a special accommodation shall contact the Office of the Court Administrator to insure that reasonable accommodations are available. Such communications noting Court proceedings shall include the following substantive language:

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 Office of the Court Administrator, (863)534-4690, within two (2) working days of your receipt of this (describe notice); if you are hearing or voice impaired, call TDD (863)534-7777 or Florida Relay Service 711.

DONE AND ORDERED in Chambers at Bartow, Polk County, Florida, this _____day of _____ 2006.

CIRCUIT JUDGE

Copies furnished to: