EIGHTEENTH JUDICIAL CIRCUIT COURT UNIFORM GUIDELINES REGARDING
COMPULSORY MEDICAL EXAMINATIONS

CONDUCTED PURSUANT TO *FLA. R. CIV. P.* 1.360(a)(1)(A)
& IF ORDERED (B), AS WELL AS 1.360(b) AND 1.390(b) & (c)[1]

In order to assist counsel for all parties seeking to invoke the privileges and protections afforded under *Fla. R. Civ. P.* 1.360, the Court herein addresses the most frequently disputed matters that are brought before the Court.

The examination under the Rule is a Compulsory Examination and not an Independent Examination. The physician or healthcare provider was not chosen by the Court. The examination must not be referred to in front of the jury as an "independent medical exam."

Request for, Objections to and Hearings on

Requests for an examination must set forth the time, place, manner, conditions and scope of the examination as well as the name of and the qualifications of the person conducting the examination with specificity**. If examinations under these rules are requested such written request should be made no later than 70 days before the pretrial date to allow time for objections, hearings on same and an opportunity to reset the examination.** Objections to "Examination of Persons" under *Fla. R. Civ. P.* 1.360(a)(1)(A) must be filed no later than 30 days from the written request assuming service of process has occurred at least 15 days prior to the request being served. The objections must state the specific reasons for the objections. A hearing must be immediately requested on any objection filed. Failure to set the objection for immediate hearing within 5 days of filing said Objection will be deemed an "Abandonment of the Request" under the rules.

Examinations sought under *Fla. R. Civ. P.* 1.360(a)(1)(B) [non-physical condition] must be obtained with an order from this Court, or with a written agreement of all parties. Please make certain the time, place, manner, conditions, and scope of the examination, including if there is any testing, as well as the name of and the qualifications of the person conducting the examination are set forth with specificity. See, Maddox v. Bullard, 141 So.3d 1264 (Fla. 5th DCA July 11, 2014) [Order on psychological examination reversed because specifics were not set forth in the order including the "manner, conditions or scope of the examination thereby, in effect, giving the psychologist 'care blanche' …."]

[1]These "Guidelines" are published to assist trial counsel with issues that routinely come before the Civil Courts involving expert examinations of injured parties and discovery of those expert opinions. Counsels are not precluded from filing the appropriate motions and obtaining a hearing before the Court on a particular case should the facts of that case, in good faith, suggest that these standard provisions should not control.

The date and time of the examination must be coordinated with opposing counsel. If the attorneys cannot agree on a mutually convenient date for the examination to occur within 45 days of the request, the Court, upon written motion, will pick the date without consultation with counsels' calendars.

Location of Examination

The examination should occur in Seminole, or Orange County, absent agreement of counsel to the contrary, since counties are geographically close to one another. See *Blagrove v. Smith,* 701 So.2d 584 (Fla. 5th DCA 1997) Any other out-of-county examination must be approved by the Court after an evidentiary hearing and the proper record having been made. While requiring an in-county exam is not a hard and fast, inflexible rule, it is generally well within the Court's discretion. See *McKenney v. Airport Rent-A-Car*, 686 So. 2d 771 (Fla. 4th DCA 1997). Generally, if an out-of-county examination is to be conducted, the transportation and loss of work expense will have to be born by the party requesting the examination.

A plaintiff who was a resident of Florida and who has now moved out of State, or who was a guest in State may be requested to undergo a CME. Knowing that such a request is permitted under the rules and is a normal process of litigation, attorneys for the Plaintiff should notify opposing counsel when they learn that their client is going to move out of State to allow for an examination before the party moves. A request that an out-of-state examination be done if not agreed to, will require a hearing.

Multiple factors will be considered by the Court, not the least of which is whether or not opposing counsel was notified that plaintiff was permanently moving before he/she moved. While it may be an inconvenience and an expense to plaintiff to return to Florida for an examination, it is also an inconvenience and an expense to defendant to have the defendant's examining doctor have to travel to Florida for the trial to testify. Factors such as the cooperation of Plaintiff, timeliness of the requested examination, type and availability of the physician or expert needed for the condition, whether it is an initial or subsequent or updated examination, whether it is in conjunction with a deposition or mediation that is also scheduled, and the cost as well as who will be paying the cost will be considered and evaluated. See, *Goeddel v. Davis*, 993 So.2d 99 (Fla. 5th DCA 2008) [clarifying *Tsutras* to say that the examination must be at a "reasonable place," not that it required Plaintiff to return to forum especially after he had already come to Florida for a deposition]; See also, *Tsutras v. Duhe*, 85 So2d 979 (Fla. 5th DCA 1997) If Plaintiff is out-of-state, the CME should be coordinated with a trip to Florida either for his/her deposition or mediation. The Court can award the reasonable expense of the travel if deemed appropriate.

Persons Who May Be Present at the Examination

One of Plaintiff's counsel or a representative thereof, a videographer, a court reporter, an interpreter, if necessary, and/or if a minor, a parent or guardian, may attend the compulsory medical examination. *See Broyles v. Reilley*, 695 So. 2d 832 (Fla. 2d DCA 1997). Audio tape recordings are also permitted by Plaintiff. *See Palank v. CSX Transp. Inc*., 657 So. 2d 48 (Fla. 4th DCA 1995). No other persons may attend without specific order of the Court. **Plaintiff's counsel will notify, in writing within days of the examination, the names, relationship to the plaintiff, and number of persons who will be**

present so that an examining room of sufficient size can be reserved. The presence of these third parties is premised upon a requirement that they will not interfere with the doctor's examination. *See Bacallao v. Dauphin*, 963 So. 2d 962 (Fla. 3d DCA 2007). **To that end, no person present may interrupt, enter or leave the examining room during the examination, or vocalize in any matter.** No communication vocally, in writing, or in any other manner may occur between or amongst the party being examined and anybody else in the examining room except the examiner or individuals that she/he deems necessary for the examination.

If the person to be examined is not fluent in English and if the examiner is not fluent in the language of the person being examined a certified interpreter must be utilized to interpret the examination. The expense of the interpreter will be born by the party requesting the examination.

Number of Examinations

Generally, a party will be limited to one examination in a specialty. A second examination will only be allowed upon good cause being shown. *Royal Caribbean Cruises, Ltd. V. Cox*, 974 So2d 462 (Fla. 3rd DCA 2008). However, when there are multiple defendants, from separate accidents, and the allegation alleges that the injuries from the three accidents are "indivisible and superimposed upon one another and the plaintiff is unable to apportion her damages between them" each defendant may be entitled to a separate CME. *Goicochea v. Lopez*, 39 Fla. L. Weekly D1245b (Fla. 3rd DCA June 11, 2014) [noting that plaintiff had "pitted codefendant against codefendant."

Videotape and Stenographic Record of Examination

As noted above, a person being examined may be accompanied by a videographer, certified court reporter, and/or interpreter. The recordings are the property of the legal representative of the person being examined and are considered work product, not discoverable without further order of this Court, unless listed as an exhibit for use at trial. See *McGarrah v Bayfront Medical Center,* 889 So.3d 923, (Fla. 2nd DCA 2004) The party requesting the examination is not permitted to record or video tape the examination. See *Prince v. Mallari,* 36 So.3d 128(Fla. 5th DCA 2010)

Items and Information to Be Brought

The person being examined is not required to bring any medical records, diagnostic films or studies or aids or reports with him/her.[2] *See Franklin v. Nationwide Mut. Fire Ins. Co*., 566 So. 2d 529 (Fla. 1st DCA 1990) (requesting party must obtain records through normal discovery process). *See also Rojas v. Ryder Truck Rental, Inc*., 641 So. 2d 855 (Fla. 1994) (proper for injured party to sign appropriately limited release for out-of-state medical records where subpoenas have been ignored). The person being examined should have a form of identification to verify their identity if requested. If a patient information sheet was forwarded to counsel for the party to be examined at least 7 business days before the examination, the party to be examined should bring the completed information sheet with them.

[2]If the original records, films or other diagnostic aids are in the actual possession of the party, or his/her guardian, being examined, those records would have to be produced at the time of the examination upon proper written request.

The examining physician may question the party about entries made on the form regarding medical issues. *See Bozman v. Rogers*, 640 So. 2d 180 (Fla. 1st DCA 1994) (court could require party being examined to provide all "appropriate" information by filling out forms and answering questions at CME).

The party being examined will not be required to provide information as to when or why they retained counsel. Further, while they will not be required to respond to questions regarding who was at fault in the accident, they will need to respond to inquiry from the healthcare provider regarding the mechanics of the accident or incident and their body movements within the vehicle or at the time of the incident. They will be required to provide their medical history without limitation as to time frame and a work history with regard to the physical attributes and activities of their present and past occupations and hobbies.

Limitations on Examination

The examiner will be limited to non-invasive procedures unless a prior order from the court has been obtained and will further be limited to the extent of the examination that was set forth in the "Request for Examination" and/or Order allowing the examination. Neither an examination nor subsequent opinions resulting from the examination outside of the examiner's specialty will be permitted.

Times for the Examination

While an expert's time is valuable, so is the time of the party who is being examined. The party being examined should arrive no later than 15 minutes before the start time of the examination. Examinations which have been scheduled for a specific time should commence within 30 minutes of that time. The party who was to be examined will be free to leave the examiner's office if she/he has not been called in for the examination after having waited for 30 minutes from the published start time of the examination.

Expert Reports and Anticipated Discovery and Testimony

Subpoenas

Retained experts must be produced for discovery deposition without the necessity of a subpoena. If specific items are to be brought to the deposition by the retained expert witness, opposing counsel must be notified in writing sufficiently in advance of the deposition pursuant to time limits set forth in Rule 1.310, *Fla.R.Civ.Pro.* in order to produce said items or documents. Otherwise, unretained experts are required to be produced

All experts should be under subpoena for trial. The Court cannot force a witness to appear who is not under subpoena.

Written Reports

Pursuant to *Fla. R. Civ. P.* 1.360(b) a "**detailed written report**" will be issued by the examining physician or healthcare provider **and provided to all counsel no later than 14 business days after the day of the examination.** As noted in the rule, "...if an examiner fails or refuses to make a report, the court may exclude the examiner's testimony if offered at the trial."

The party requesting the examination shall also provide to opposing counsel, at the time the examination is scheduled, no less than three dates when the examiner will be available for oral deposition. Should any of the dates be within 14 days of the examination the above referred to report shall be provided to deposing counsel no later than 5 days before the deposition date.

No report under *Fla. R. Civ. P.* 1.360 will be admissible at trial, absent a stipulation by the parties.

Opinions Not Contained in Written Reports

Experts rendering opinions under this rule will be prohibited from expressing opinions, diagnostic impressions, causation opinions and other conclusions that are not contained within the written report. Any changes in opinions or conclusions based on new information must be made known to opposing counsel immediately, a revised or supplemental report provided and dates for updated depositions must also be provided. At trial, failure to have taken all immediate, timely and reasonable steps to advise opposing counsel of changes in experts' opinions or conclusions will mitigate against allowing such testimony. *See Office Depot v. Miller*, 584 So. 2d 587 (Fla. 4th DCA 1991).

Expert Fees and Charges

The Court will not require counsel to tender fees for discovery or trial testimony in advance of or as a condition of the examiner appearing. However, the Court does require full payment to be remitted to the examiner no later than 10 business days from receipt of the invoice from the examiner's office.

The retaining party is free to compensate an expert witness any amount they deem appropriate or any amount which they have agreed by contract to pay. The Court will only require opposing counsel to pay a reasonable fee for the time reserved, or the time used whichever is less. If counsel and the examiner can agree on such a fee, that fee will apply. If no agreement can be reached, the Court will, upon proper motion and hearing and notice to all parties of interest, including the examiner, establish a reasonable fee for the services. In some cases, this may involve an evidentiary hearing as to the reasonable amount of the fee and the time expended. Be sure to advise the Judicial Assistant as to how much time will be needed. See *Fla. R. Civ. P.* 1.390(c)