

**PROCEDURES FOR SETTING F.S. 90.702
 (“DAUBERT¹”) TYPE HEARINGS IN DIVISION 39**

Procedures for hearings on motions entitled “*Daubert Motions*” or Plaintiff and Defendant’s *Motion to Exclude Novel Opinion of Expert* which are treated as a requests for Daubert Hearing” pursuant to Florida State 90.702.

Hearings to determine the admissibility of opinion testimony by experts must be heard prior to the pretrial and can be time consuming. By statutory definition these hearings will be evidentiary in nature. Testimony will probably be required.² Accordingly, sufficient hearing time will have to be set aside within the court’s docket, and once set will not be able to be continued. **ALL HEARINGS OF THIS NATURE MUST BE SCHEDULED AND HEARD AT LEAST 90 DAYS PRIOR TO THE PRETRIAL.**

Accordingly, the following procedures are hereby set forth:

1- Once the detailed motion has been filed and served on opposing counsel, counsel must meet and confer pursuant to *Admin. Order* 2012-03. A certification of the meeting pursuant to the Administrative Order must be filed before, or no later than, the Notice of Hearing is sent.

2- If the matter is not resolved at the meet and confer, the attorneys will discuss and provide to the Court the following:³

- a. a list of the experts that will be the subject of the hearing;
- b. a copy of the detailed resume or CV of each expert witness;
- c. the specific subject matter about which the witness is expected to testify;
- d. each opinion the expert is expected to provide at trial about which there is a concern and for which a ruling is requested from this court;
- e. the basis of each opinion including the facts and data relied upon or that is absent;
- f. the principles and methodology used, or not utilized, to arrive at those opinions;
- g. the peer review to which these methods have been subjected; and
- h. a good faith estimate by each party of the time each will need for their presentation as well as an estimate of the total amount of time needed for the entire hearing. (Counsel are reminded that hearing time is limited and estimates should be as accurate as possible.)

3- Each party shall provide the opposing counsel and the Court a list of any witnesses to be called at the Daubert hearing, including the challenged expert, and a short summary of their expected testimony and relevance to the issue(s) before the Court.

¹ Daubert v. Merrill Dow Pharmaceuticals, Inc., 509 U.S. 579; 113 S.Ct. 2786; 125 L.Ed. 469 (1993)

² Video-conferenced testimony can be utilized if coordinated with other counsel and approved by the Court.

³ If the attorneys cannot agree, the attorney challenging the expert will provide a list of the opinions that they expect the expert to provide and about which they object. The proponent of the expert will provide the information set forth herein as to each of those expert opinions.

4- If a court reporter is to be obtained by either party, the party obtaining the court reporter should notify opposing counsel and the court that she/he is obtaining a court reporter.

5- Counsel shall coordinate a hearing time and location with the judicial assistant and opposing counsel within the time frame set forth in #2 above. Depending on the number of people to be present, the JA will determine if the courtroom or the hearing room is appropriate.

6- Memorandums in support of, or in opposition to, the motion must be filed, exchanged and a hard copy delivered to the judge's chambers not later than 3 business days before the scheduled hearing. Case law not provided to the Court in advance of the hearing will not be reviewed prior to ruling.

7- Once a ruling is announced an order must be prepared and submitted by that attorney asked to prepare the proposed order to opposing counsel within three business days of the announced ruling. Opposing counsel shall have three additional business days to object and submit a revised proposed order, if appropriate. Once the six business days have passed, the order is to be submitted to the court in hard copy and in Word to allow the court to make any necessary changes or additions. Lack of a timely response by opposing counsel will be deemed a consent to the form of the proposed order submitted. The proposed orders must contain only the findings and ruling of the Court as announced. The transmittal letter must include a statement that the proposed order has been submitted to opposing counsel and their position or lack of a timely response.

8-The court will not read depositions that are offered in lieu of live testimony either at the hearing or after the hearing. If portions of the deposition are considered important to the issue(s) those portions should be published at the hearing, on the record. The Court will usually attempt to announce a ruling at the hearing if at all possible.

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