Basic Evidence 2017

COURSE CLASSIFICATION: BASIC LEVEL

December 8, 2017

Live Presentation:
Tampa Airport Marriott
4200 George J Bean Parkway
Tampa, FL 33607
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Common Questions About CLER

1. What is CLER?
   CLER, or Continuing Legal Education Requirement, was adopted by the Supreme Court of Florida in 1988 and requires all members of The Florida Bar to continue their legal education.

2. What is the requirement?
   Over a 3 year period, each member must complete 33 hours, 5 of which are in the area of ethics, professionalism, substance abuse, or mental illness awareness, and 3 hours in technology.

3. Where may I find information on CLER?
   Rule 6-10 of the Rules Regulating The Florida Bar sets out the requirement. All the rules may be found at www.floridabar.org/rules.

4. Who administers the CLER program?
   Day-to-day administration is the responsibility of the Legal Specialization and Education Department of The Florida Bar. The program is directly supervised by the Board of Legal Specialization and Education (BLSE) and all policy decisions must ultimately be approved by the Board of Governors.

5. How often and by when do I need to report compliance?
   Members are required to report CLE hours earned every three years. Each member is assigned a three year reporting cycle. You may find your reporting date by logging in to your member portal at member.floridabar.org.

6. Will I receive notice advising me that my reporting period is upcoming?
   Four months prior to the end of your reporting cycle, you will receive a CLER Reporting Affidavit, if you still lack hours.

7. What happens if I am late or do not complete the required hours?
   You run the risk of being deemed a delinquent member which prohibits you from engaging in the practice of Florida law.

8. Will I receive any other information about my reporting cycle?
   Yes, you will receive reminders prior to the end of your reporting cycle, if you have not yet completed your hours.

9. Are there any exemptions from CLER?
   Rule 6-10.3(c) lists all valid exemptions. They are:
   1) Active military service
   2) Undue hardship (upon approval by the BLSE)
   3) Nonresident membership (see rule for details)
   4) Full-time federal judiciary
   5) Justices of the Supreme Court of Florida and judges of district, circuit and county courts
   6) Inactive members of The Florida Bar
10. Other than attending approved CLE courses, how may I earn credit hours?
   Credit may be earned by:
   1) Lecturing at an approved CLE program
   2) Serving as a workshop leader or panel member
   3) Writing and publishing in a professional publication or journal
   4) Teaching (graduate law or law school courses)
   5) University attendance (graduate law or law school courses)

11. How do I submit various activities for credit evaluation?
   Applications for credit may be found on our website, www.floridabar.org.

12. How are attendance hours posted on my CLER record?
   You must post your credits online by logging in to your member portal at member.floridabar.org.

13. How long does it take for hours to be posted to my CLER record?
   When you post your CLE credit online, your record will be automatically updated and you will be able to see your current CLE hours and reporting period.

14. How may I find information on programs sponsored by The Florida Bar?
   You may wish to visit our website, www.floridabar.org/cle, or refer to The Florida Bar News. You may also call CLE Registrations at 850/561-5831.

15. If I accumulate more than 30 hours, may I use the excess for my next reporting cycle?
   Excess hours may not be carried forward. The standing policies of the BLSE, as approved by the Supreme Court of Florida specifically state in 6.03(b):
   "CLER credit may not be counted for more than one reporting period and may not be carried forward to subsequent reporting periods."

16. Will out-of-state CLE hours count toward CLER?
   Courses approved by other state bars are generally acceptable for use toward satisfying CLER.

17. If I have questions, whom do I call?
   You may call the Legal Specialization and Education Department of The Florida Bar at 850/561-5842.

   While online checking your CLER, don’t forget to check your Basic Skills Course Requirement status.
PREFACE

The course materials in this booklet were prepared for use by the registrants attending our Continuing Legal Education course during the lectures and later in their offices.

The Florida Bar is indebted to the members of the Steering Committee, the lecturers and authors for their donations of time and talent, but does not have an official view of their work products.

CLER CREDIT
(Maximum 7.0 hours)

General......................................................7.0 hours

Seminar credit may be applied to satisfy both CLER and Board Certification requirements in the amounts specified above, not to exceed the maximum credit. Refer to Chapter 6, Rules Regulating The Florida Bar, see the CLE link at www.floridabar.org for more information about the CLER and Certification Requirements.

Prior to your CLER reporting date you will be sent a Reporting Affidavit (must be returned by your CLER reporting date). You are encouraged to maintain records of your CLE hours.

CLE CREDIT IS NOT AWARDED FOR THE PURCHASE OF THE COURSE BOOK ONLY.

CLE COMMITTEE MISSION STATEMENT

The mission of the Continuing Legal Education Committee is to assist the members of The Florida Bar in their continuing legal education and to facilitate the production and delivery of quality CLE programs and publications for the benefit of Bar members in coordination with the Sections, Committees and Staff of The Florida Bar and others who participate in the CLE process.

COURSE CLASSIFICATION

The Steering Committee for this course has determined its content to be BASIC.
YOUNG LAWYERS DIVISION

Zackary Zuroweste, — President
Christian George — President-elect

FACULTY & STEERING COMMITTEE

Patrick Douglas, Lake City
Joe Joyce, Lake City
Daniel Hilbert, St. Augustine
Nicholas Martino, Jacksonville
Andrew Morgan, St. Augustine
Travis Mydock, St. Augustine
Nick Zissimopulos, Gainesville

CLE COMMITTEE

Jenifer S. McCaffrey Lehner, Tampa — Chair
Terry L. Hill — Director, Programs Division

For a complete list of Member Services visit our web site at www.floridabar.org.
LECTURE PROGRAM

8:00 a.m. – 8:15 a.m.  Registration

8:15 a.m. – 8:30 a.m.  Welcome/Opening Remarks

8:30 a.m. – 9:20 a.m.  Civil Law – Part 1
Joy Joyce, Lake City

9:20 a.m. – 10:10 a.m.  Civil Law – Part 2
Patrick Douglas, Lake City

10:10 a.m. – 10:20 a.m.  Break

10:20 a.m. – 11:10 a.m.  Criminal Law – Part 1
Daniel Hilbert, St. Augustine

11:10 a.m. – 12:00 p.m.  Criminal Law – Part 2
Nick Zissimopulos, Gainesville

12:00 p.m. – 1:30 p.m.  Lunch (on your own)

1:30 p.m. – 2:20 p.m.  Family Law
Andrew Morgan, St. Augustine

2:20 p.m. – 3:30 p.m.  Child Testimony
Travis Mydock, St. Augustine

3:10 p.m. – 3:20 p.m.  Break

3:20 p.m. – 4:10 p.m.  Appellate Law/Experts
Nicholas Martino, Jacksonville

4:10 p.m.  Adjorn
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4:10 p.m.  
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AUTHORS/LECTURERS

PATRICK V. DOUGLAS is the co-founder of Douglas & Carter, a five-attorney, north Florida law firm with offices in Lake City and Jacksonville. Patrick’s represents plaintiffs in personal injury law suits as well as employment discrimination and wage claims. Patrick is a trial lawyer and has successfully tried many personal injury cases to a jury verdict. Prior to co-founding Douglas & Carter, he worked for a law firm defending corporations and insurance companies in automobile liability, medical malpractice, premises liability, product liability, and employment discrimination cases. He also worked for a national construction and commercial litigation law firm. Patrick was born and raised in Lake City, Florida and attended Brigham Young University in Provo, Utah, where he received his Bachelor of Science, with University Honors, from the Marriott School of Business Management. During his undergraduate studies, Patrick spent two years as a full-time volunteer in Buenos Aires, Argentina. He received his Juris Doctorate from Florida State University, where he was selected as a member of the Mock Trial Team as well as the Journal of Transnational Law and Policy. Patrick is fluent in Spanish and is an avid tennis player. Patrick is the vice chair of the Suwannee Valley Community Foundation, a north-Florida based philanthropic organization and he is the chair of Equality Florida Steering Committee for the greater Jacksonville area. He is also an active member of the Jacksonville Justice Association.

DANIEL K. HILBERT moved to Florida in 2003 to attend law school at Florida Coastal School of Law in Jacksonville, Florida. In law school, Mr. Hilbert was a member of the Mock Trial Team and was awarded Best Advocate in 2006. Mr. Hilbert graduated in the top twenty-percent (20%) of his class and earned the Humanitarian Award at graduation. After graduating in 2006, Mr. Hilbert began a career as an Assistant State Attorney working in both the Fourth Judicial Circuit and the Seventh Judicial Circuit. Mr. Hilbert prosecuted mainly in Duval, Clay, Saint Johns, Putnam, and Flagler Counties. As an Assistant State Attorney, Mr. Hilbert tried over 30 trials to completion including Armed Robbery, Attempted Murder and Trafficking in Narcotics. In 2010, Mr. Hilbert went into private practice to utilize his litigation experience to help people all over northeast Florida. In the Summer of 2013, Mr. Hilbert began teaching at Florida State College at Jacksonville as an Adjunct Professor focusing specifically on Litigation. In August of 2016, Mr. Hilbert earned Board Certification in the specialty of Criminal Trial Law. Established in 1982 by the Florida Supreme Court, board certification helps consumers identify specialists in various areas of law. As of 2016, only 7% of all eligible Florida Bar members are designated as board certified in their areas of focus. Currently, Mr. Hilbert handles cases involving Personal Injury, Criminal Defense, Civil Litigation, Contract Disputes, Property Disputes, and Family Disputes.

JOHN J. (JOE) JOYCE is a partner at Robinson, Kennon & Kendron in Lake City, Florida. Mr. Joyce is a double Gator, having attended the University of Florida for both his bachelor’s degree and law school. He started his career as an assistant public defender, and currently practices all types of civil litigation, criminal defense, and some appellate work. Mr. Joyce is an AV rated attorney by Martindale-Hubbell, and is the elected Young Lawyers Division Governor for the Third Judicial Circuit.
NICHOLAS MARTINO attended Florida Coastal School of Law where he won the Robert Orseck Moot Court Competition, and received the Best Advocate award in the final round determined by members of the Florida Supreme Court. He also was a finalist in the Chicago Bar Association Moot Court Competition, semi-finalist in the National Sports Law Competition, as well as receiving a best advocate award for the competition. Professor Martino received his LL.M. in Trial Advocacy with Honors from Temple University - Beasley School of Law. At the forefront of teaching advocacy, Temple Law has consistently been ranked by U.S. News & World Report in the top two in trial advocacy. Professor Martino was also the Assistant Director of Moot Court at Florida Coastal School of Law and taught Appellate Advocacy as well as Public Speaking for Lawyers. The Moot Court program was consistently ranked among the best in the country, winning numerous state, regional, national and international moot court competitions. Professor Martino’s tenure with the Moot Court Program culminated with it being ranked first in the country amongst all law schools. In 2016, National Jurist Magazine ranked the program as third best in the nation over the last decade. Professor Martino’s legal career had included time as a prosecutor, private defense attorney, and law professor. He stays active in the practice of law consulting as Of Counsel with many firms on appellate and complex litigation issues, working as a Special Assistant Appellate Public Defender, and handling various legal matters for private clients.

ANDREW T. MORGAN is an equity partner with Canan Law. His practice specializes in family and criminal law. He has worked extensively in St. Johns, Duval, Flagler and Putnam counties in matters involving high net-worth family law litigation and complex criminal defense. His family law litigation cases routinely include the valuation and distribution of business entities such as medical practices, restaurants, professional practices, construction companies and retail stores. Additionally, he has extensive experience in divorces that involve a high wage earner and alimony defense or request. His criminal experience involves litigation both as a defense attorney and as an Assistant State Attorney. While at the State Attorney's Office, he handled cases ranging from misdemeanors to offenses punishable by life in prison. Since leaving the State Attorney's Office, he has defended high profile and complex criminal cases including but not limited to murder, dui, dui manslaughter, sexual battery, robbery, drug offenses (trafficking and possession) and battery cases (aggravated, felony, domestic).

TRAVIS MYDOCK is a board-certified specialist and expert in criminal trial law. He practices DUI and criminal defense trial law in Northeast Florida with an office in Saint Augustine. His experience includes over 40 criminal trials completed to verdict. He previously served as a prosecutor in the Seventh Judicial Circuit from 2010 to 2015. Mydock currently serves as the Seventh Judicial Circuit Representative to the YLD Board of Governors of The Florida Bar, as an attorney member of the Seventh Judicial Circuit Bar Grievance Committee B for of The Florida Bar, as a member of Traffic Court Rules Committee of The Florida Bar, and as Vice President of the Saint Johns County Bar Association. Additionally, Mydock is a member of the Florida Association of Criminal Defense Lawyers and the Criminal Law Section of The Florida Bar. Mydock was born and raised in Gainesville, FL. He graduated from the University of Florida with a finance degree in 2006 and a law degree in 2009.

NICK ZISSIMOPULOS is Board Certified in Criminal Trial Law by The Florida Bar. He graduated from UF’s Levin College of Law in 2002. He practices in both State and Federal courts in Florida. He is a past President of the James C. Adkins Jr. Inn of Court, as well as, the Eighth Judicial Circuit Chapter of the Florida Association of Criminal Defense Lawyers. Since 2004, Nick has coached the student members of the mock trial team at the Levin College of Law.
He has guest lectured for many of the school’s classes, including trial practice, the criminal defense clinic, and appellate advocacy. In 2016, he began teaching the Trial Advocacy Class. Nick is a partner at the Law Office of Glassman & Zissimopulos a local firm focusing on criminal defense and personal injury plaintiff’s work.
CIVIL LAW – PART 1

By

Joe Joyce, Lake City
I. INTRODUCTION

II. PRACTICAL CONSIDERATIONS FOR EVIDENTIARY HEARINGS

A. Preliminary questions for each piece of evidence you want admitted at the hearing
   1. How is it relevant?
   2. How am I going to authenticate it?
   3. What other objections can be made to it?
      a. Hearsay, speculative, improper character evidence, etc.

B. Relevance
   1. Fla. Stat. 90.401 – “Relevant evidence is evidence tending to prove or disprove a material fact.”
   2. Fla. Stat 90.402 – “All relevant evidence is admissible, except as provided by law.”
   3. Fla. Stat. 90.403 (the “403 balancing test”) – “Relevant evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence. This section shall not be construed to mean that evidence of the existence of available third-party benefits is inadmissible.”

C. Authentication
   1. 90.901 – Authentication or identification – Authentication or identification of evidence is require as a condition precedent to its admissibility. The requirements of this section are satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.
   2. How can you prove something is authentic?
      a. Witness
         1. Most common means of authenticating evidence
         2. Personal knowledge – “How do you know that?”
            (a) The authenticity of the instrument … may be proved by anyone who has knowledge of the facts. The source of knowledge of the witness is subject to the test of cross-examination by the opposition. Leighton v. Harmon, 111 So. 2d 697, 698 (Fla. 2d DCA 1959).
            (b) 90.604 Lack of personal knowledge.—“Except as otherwise provided in s. 90.702, a witness may not testify to a matter unless evidence is introduced which is sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may be given by the witness’s own testimony.”
b. 90.902 Self-authentication (read the statute – there is more there than you would think!)
1. Certified copies that comport with the statute
2. Pamphlets, books etc. purporting to be issued by governmental authority
3. “Printed materials purporting to be newspapers or periodicals”
4. Business records certification (!)
   “(11) An original or a duplicate of evidence that would be admissible under s. 90.803(6), which is maintained in a foreign country or domestic location and is accompanied by a certification or declaration from the custodian of the records or another qualified person certifying or declaring that the record:
   (a) Was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person having knowledge of those matters;
   (b) Was kept in the course of the regularly conducted activity; and
   (c) Was made as a regular practice in the course of the regularly conducted activity,
   provided that falsely making such a certification or declaration would subject the maker to criminal penalty under the laws of the foreign or domestic location in which the certification or declaration was signed.”

c. 90.201-90.206 Judicial notice

d. Requests for Admission Fla. R. Civ. P. 1.370
1. (a) Request for admission --A party may serve upon any other party a written request for admission of the truth of any matters within the scope of rule 1.280(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying.

D. Evidentiary predicates for specific items of evidence
1. Photograph
   a. The prime condition as to the admissibility of a photograph is that it be identified by a witness as a portrayal of certain facts relevant to the issue, and verified by such witness on personal knowledge as a correct representation of these facts.” Oja v. State, 292 So. 2d 71, 72 (Fla. 2d DCA 1974)
b. So ask:
   1. I’m showing you a photograph that has been marked as exhibit X for identification, do you recognize that photo?
   2. Are you familiar with what is shown in this photo?
   3. How are you familiar with what is in the photo? (establish basis for the knowledge of the witness)
   4. Does the photo fairly and accurate represent the [thing or scene] as it existed on [date or date range in question]?
   5. Ask that the photo be admitted into evidence.

2. Video tape recording
   a. “[T]o be competent evidence, the films must be properly authenticated [sic] and shown to be a faithful representation of the subject, sound, movement, or other tangible or intangible thing which they purport to reproduce. When such a showing is made to the trial court, moving picture films should be admitted under the same rules as photographs”. Gulf Life Ins. Co. v. Stossell, 131 Fla. 127, 179 So. 163, 163 (Fla. 1938).
   b. A videotape, like a still photograph may be admissible, "if relevant to any issue required to be proven in a case," "unless it is barred by a rule of exclusion or its admission fails a balancing test to determine whether the probative value is outweighed by its prejudicial effect." "The proponent of a [videotape] must be prepared to establish as a predicate for its admission that the [videotape] fairly and accurately represents what its purports to depict." … Here, Mr. Smith stipulated that the videos were from the bus on the day in question. As such, we cannot say that the trial court abused its discretion in determining that the videos were a fair and accurate representation of what occurred on the bus that day. See Bryant, 810 So. 2d at 536(noting that if no witness is available to testify as to the accuracy of a video or photograph, a trial court can base a finding that the evidence "is a fair and accurate representation of a material fact," on "foundational facts establishing the reliability of the process that yielded the photographic images" (citations omitted). Smith v. Geico Cas. Co., 127 So. 3d 808, 811 (Fla. 2d DCA 2013)
   c. See also “silent witness” cases, e.g. Richardson v. State, 2017 Fla. App. LEXIS 13593 (Fla. 4th DCA 2017).

3. Audio tape recording
   a. A participant in the conversation who can confirm that the tape fairly and accurately memorialized the discussion at issue can authenticate the recording. McCoy v. State, 853 So. 2d 396, 403-04 (Fla. 2003)(“The audiotape was "properly authenticated by a person having personal knowledge of the contents of the tape recording." Nothing more than this confirmation, by a participant
in the conversation, that the tape fairly and accurately memorialized the discussion at issue is required to properly authenticate the recording.”

b. So ask:
1. On [date], did you have a conversation with [person]?
2. Do you remember that conversation?
3. After listening to the recording, does the recording fairly and accurately reflect your conversation with [person]?
4. Ask that the recording be admitted.

c. Keep in mind that if you are in a jury setting, you will need authenticate the tape before publishing to the jury.

4. Documents
a. Ask:
1. I am showing you a documents previously marked as Defense Exhibit X for identification. Do you recognize that document?
2. How are you able to recognize that document?
   (a) Establish basis for knowledge; “I read it and witnessed Mr. X sign it” “I wrote and signed it, that is my signature at the bottom” etc.
3. What is the document?
4. [if a copy] Is that a true and accurate copy of the original of that document?

5. Deposition of a witness (not really a “predicate” needed but good to know)
      1. The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (A) that the witness is dead; (B) that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the state, unless it appears that the absence of the witness was procured by the party offering the deposition; (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; (E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used; or (F) the witness is an expert or skilled witness.
II. PRACTICAL CONSIDERATIONS FOR SUMMARY JUDGMENT EVIDENCE – OBTAINING (OR DEFEATING) SUMMARY JUDGMENT BY MAKING SURE EVIDENCE IS CONSIDERED IN THE SUMMARY JUDGMENT RECORD

A. 1.510 generally
   2. The function of summary judgment procedure is to determine if there is sufficient evidence to justify a trial upon the issues framed by the pleadings, to expedite litigation, and to obviate expense. The granting of a summary judgment, in most instances, brings a sudden and drastic conclusion to a lawsuit, thus foreclosing the litigant from the benefit of and right to a trial on the merits of his or her claim. It is for this very reason that caution must be exercised in the granting of summary judgment, and the procedural strictures inherent in the Florida Rules of Civil Procedure governing summary judgment must be observed. The procedural strictures are designed to protect the constitutional right of the litigant to a trial on the merits of his or her claim. They are not merely procedural niceties nor technicalities. BiFulco v. State Farm Mut. Auto. Ins. Co., 693 So. 2d 707, 709 (Fla. 4th DCA 1997).

B. Rule 1.510(a)
   1. For Claimant - A party seeking to recover on a claim, counterclaim, crossclaim, or third-party claim or to obtain a declaratory judgment may move for a summary judgment in that party's favor on all or any part thereof with or without supporting affidavits at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party.

C. Rule 1.510(b)
   1. For Defending Party. --A party against whom a claim, counterclaim, crossclaim, or third-party claim is asserted or a declaratory judgment is sought may move for a summary judgment in that party's favor as to all or any part thereof at any time with or without supporting affidavits.

D. Rule 1.510(c)
   1. For the movant –
      a. Identify with particularity the grounds and the matters of law to be argued (“The motion must state with particularity the grounds on which it is based and the substantial matters of law to be argued”)
      b. Identify every piece of evidence you are relying upon (“… must specifically identify any affidavits, answers to interrogatories, admissions, depositions, and other materials as would be admissible in evidence ("summary judgment evidence") on which the movant relies.)
c. Must **serve** the motion at least 20 days before the time fixed for the hearing.

d. Must also serve at that time [with the motion] a copy of any summary judgment evidence on which the movant relies that has not already been filed with the court.

2. For the non-moving party

a. The adverse party must identify any summary judgment evidence on which the adverse party relies

   1. by notice **served** pursuant to rule 1.080 at least 5 days prior to the day of the hearing, OR

   2. **delivered** no later than 5:00 p.m. 2 business days prior to the day of the hearing.

b. To the extent that summary judgment evidence has not already been filed with the court, the adverse party must

   c. **serve** a copy on the movant pursuant to rule 1.080 at least 5 days prior to the day of the hearing, OR

   d. by **delivery** to the movant's attorney no later than 5:00 p.m. 2 business days prior to the day of hearing.

3. Service v. delivery is very important!

   a. All delivery is service but not all service is delivery.

   b. Rule 1.080

      1. **“Service.** --Every pleading subsequent to the initial pleading, all orders, and every other document filed in the action must be served in conformity with the requirements of Florida Rule of Judicial Administration 2.516.”

   c. Fla. R. Jud. Admin 2.516(b)(1) and (2)

      1. Service by email, service by mail (read the rule)

      2. **DELIVERY IS DIFFERENT**

      3. “Delivery of a copy within this rule is complete upon:

         (a) handing it to the attorney or to the party,

         (b) leaving it at the attorney's or party's office with a clerk or other person in charge thereof,

         (c) if there is no one in charge, leaving it in a conspicuous place therein,

         (d) if the office is closed or the person to be served has no office, leaving it at the person's usual place of abode with some person of his or her family above 15 years of age and informing such person of the contents, or

         (e) transmitting it by **facsimile** to the attorney's or party's office with a cover sheet containing the sender's name, firm, address, telephone number, and facsimile number, and the number of pages transmitted. When service is made by facsimile, a
copy must also be served by any other method permitted by this rule. Facsimile service occurs when transmission is complete.

(f) Service by delivery shall be deemed complete on the date of the delivery.”

d. Bottom line is if you do not serve it timely, your evidence will not be considered - Von Zamft v. S. Fla. Water Mgmt. Dist., 489 So. 2d 779, 780 (Fla. 2d DCA 1986) (“We need not reach Von Zamft's attack on the validity of the District's deed. This issue was first raised by affidavits filed and served by mail on Friday before the Monday hearing on the motion for summary judgment and by additional affidavits filed and served at the hearing. These affidavits were untimely presented, and the court was not required to consider them.”

4. “The judgment sought must be rendered immediately if the pleadings and summary judgment evidence on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.”

E. Rule 1.510(d)
1. Case Not Fully Adjudicated on Motion. --On motion under this rule if judgment is not rendered on the whole case or for all the relief asked and a trial or the taking of testimony and a final hearing is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, must ascertain, if practicable, what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It must then make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. On the trial or final hearing of the action the facts so specified must be deemed established, and the trial or final hearing must be conducted accordingly.

F. Rule 1.510(e)
1. Summary judgment affidavit requirements
   a. Personal Knowledge
      1. Personal knowledge requirement is to prevent the trial court from relying on hearsay when ruling on a motion for summary judgment and to ensure that there is an admissible evidentiary basis for the case rather than mere supposition or belief. Pawlik v. Barnett Bank of Columbia County, 528 So. 2d 956, 966 (Fla. 1st DCA 1988).
2. An affidavit does not need to state that it is based upon personal knowledge where the affiant is shown to be in a position where the affiant would necessarily possess the knowledge. Alvarez v. Florida Ins. Guar. Ass’n, 661 So. 2d 1230 (Fla. 3d DCA 1995).

b. Set forth facts as would be admissible in evidence
1. An unauthenticated letter that is offered to prove the truth of statements contained therein does not set forth facts that would be admissible in evidence, and therefore does not meet the requirements of the summary judgment rule. Moradiellos v. Cnty. Asphalt Corp., 170 So. 3d 920, 922 n.1 (Fla. 3d DCA 2015).

c. Affirmatively show that affiant is competent to testify in the matters set forth therein
1. Corporate title may not demonstrate competency to testify. Martins v. PNC Bank, Nat'l Ass'n, 170 So. 3d 932, 937 (Fla. 5th DCA 2015)(“While Arthur's affidavit and the line below his signature confirm that Arthur is a vice president of PNC Bank, it does not describe his duties or the department, division, or group over which he presides; thus, his commendable title sheds no light on his competence to testify about the matters and records set forth in his affidavit.”)

2. Kinds of summary judgment evidence
   a. Affidavits
   b. Depositions
      1. Must be previously filed and identified OR
      2. Filed with SJ evidence
   c. Answers to Interrogatories
      1. Must be previously filed and identified OR
      2. Filed with SJ evidence
      (a) (Indent entire paragraph or paragraphs.)
   d. AAA evidence (authenticated attachments to affidavits)
      1. Merely attaching documents which are not "sworn to or certified" to a motion for summary judgment does not, without more, satisfy the procedural strictures inherent in Fla. R. Civ. P. 1.510(e). Moreover, rule 1.510(e) by its very language excludes from consideration on a motion for summary judgment, any document that is not one of the
enumerated documents or is not a certified attachment to a proper affidavit. BiFulco v. State Farm Mut. Auto. Ins. Co., 693 So. 2d 707, 709 (Fla. 4th DCA 1997).

e. The last requirement [that the court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or by further affidavits], by its language, excludes any document from the record on a motion for summary judgment that is not one of the enumerated documents or is not a certified attachment to a proper affidavit. BiFulco v. State Farm Mut. Auto. Ins. Co., 693 So. 2d 707, 709 n.1 (Fla. 4th DCA 1997)

f. Requests for admissions – even though not in the rule, they may be used. See Holland v. CSX Transp., Inc., 583 So. 2d 777, 778 (Fla. 2d DCA 1991). Technical admissions (failure to respond within 30 days) should not be the basis for a summary judgment where there is contrary evidence. Sterling v. W. Palm Beach, 595 So. 2d 284, 285 (Fla. 4th DCA 1992) (we hold that the trial court should not have used the technically deemed admission to support a final summary judgment. This is because the record was replete with evidence to the contrary of the supposed admission. Sher v. Liberty Mutual Insurance Co., 557 So. 2d 638 (Fla. 3d DCA 1990). The use of admissions obtained through a technicality should not form a basis to preclude adjudication of a legitimate claim.)

G. 1.510(f)
1. “When Affidavits Are Unavailable. -- If it appears from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.”

2. In order to be entitled to a continuance under Fla.R.Civ.P. 1.510(f) the party opposing the motion for summary judgment should show by affidavit the existence and availability of additional evidentiary matter, what it is and its materiality, what steps have been taken to obtain it, and that failure to have obtained such evidence sooner did not result from inexcusable delay. De Mesme v. Stephenson, 498 So. 2d 673, 676 (Fla. 1st DCA 1986)

H. 1.510(g)
1. Affidavits Made in Bad Faith. -- If it appears to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court must immediately order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits
caused the other party to incur, including reasonable attorneys' fees, and any offending party or attorney may be adjudged guilty of contempt
CIVIL LAW – PART 2

By

Patrick Douglas, Lake City
Common Evidentiary Issues in Personal Injury Trials

- Evidence regarding plaintiff attorney referrals to physicians
- Subsequent remedial measures (and work product privilege)
- Surveillance footage – discovery and admissibility
- Compulsory Medical Examinations – restrictions
- Accident report privilege
Attorney-Physician Referral Relationship

- Worley v. Central Florida Young Men’s Christian Ass’n, Inc., 2017 WL 1366126 – April 13, 2017 Florida Supreme Court
  - Issue: Whether the attorney-client privilege precludes defense counsel from asking a plaintiff whether his or her attorney referred the plaintiff to a physician for treatment.
  - Ruling: Whether a plaintiff’s attorney referred him or her to a doctor for treatment is protected by the attorney-client privilege.
  - Bias
    - You may use LOPs to attack bias
    - You may attack necessity of treatment and high medical bills
    - No further discovery to physicians that require production of attorney-client privileged materials/communications

Worley answers the question “What discovery is allowed?”

- Depositions?
- Requests for production / Interrogatories?
Subsequent Remedial Measures

“Accordingly, it is conceded by almost all courts, that no act in the nature of repairs, improvements, substitution, or the like, done after the occurrence of an injury, is receivable as evidence of a consciousness, on the part of the owner, of negligence, connivance, or other culpability in causing the injury.”

- Wigmore on Evidence (2d Ed.) p. 582

(Cited in FL Supreme Court cases)

...BUT what about offering that evidence for other reasons?

Subsequent Remedial Measures

Fla. Stat. 90.407

Evidence of measures taken after an injury or harm caused by an event, which measures if taken before the event would have made injury or harm less likely to occur, is not admissible to prove negligence, the existence of a product defect, or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent remedial measures when offered for another purpose, such as proving ownership, control, or the feasibility of precautionary measures, if controverted, or impeachment.
Q. And why isn't the tree there anymore?
A. It was removed just part of general maintenance that was performed in March 2014, I believe, as outlined in those e-mails. It was just part of standard maintenance in terms of increasing the visibility of the property and, you know, ensuring that plants didn't outgrow their, you know, planters as just part of standard maintenance.

Q. Was there any other reason besides general maintenance to prevent the roots from interfering with the structures and esthetics? Any other reason to remove these trees?
A. No.
Subsequent Remedial Measure

When in doubt – good rule to follow:

“[T]he appropriate use of evidence of subsequent remedial measures are cast in terms of DEFENSE, not OFFENSE.”

Currie v. Palm Beach County, 578 So.2d 760 (Fla. 4th DCA 1991)

DEFENSE:

- Where one party argues it was NOT POSSIBLE to correct a condition before the operative event.
  
  American Motors Corp. v. Ellis, 403 So.2d 459, 465 (Fla. 5th DCA 1981)

- Where used to contradict evidence put on by the opposing party.
  
  Donahue v. Albertson’s Inc., 472 So.2d 482 (Fla. 4th DCA 1985)

Video/Photo Surveillance

Conflict in decisions brought this to FL Supreme Court

- 3rd DCA (1980): Surveillance is protected by the work product privilege

- 4th DCA (1977): Existence and contents of surveillance materials are discoverable
Video/Photo Surveillance

Florida Supreme Court (1980):
We resolve the conflict and hold, in summary, that:
(1) the existence of surveillance movies and photographs is discoverable in every instance;
(2) the contents are discoverable if the materials will be used as evidence either substantively or for impeachment;
(3) if the movies or photographs will not be used as evidence by the holder, the contents are discoverable only upon a showing of exceptional circumstances;
(4) the party seeking discovery must be afforded a reasonable opportunity to observe the movies or photographs before their presentation as evidence; and
(5) within the trial court's discretion, the surveilling party has the right to depose the party or witness filmed before being required to produce the contents of the surveillance information for inspection.

Dodson v. Persell, 390 So. 2d 704, 705 (Fla. 1980)

Video/Photo Surveillance

Work Product Privilege Protects ...
- Information relating to matter which is the subject of litigation, received by a party's attorneys from investigators in anticipation or in connection with litigation.
  See Seaboard Air Line R. Co. v. Timmons, 61 So.2d 426 (Fla. 1952); Federal Express Corp. v. O'Gara, 729 So.2d 1052 (Fla. 4th DCA 2001)
  - Any work product privilege that existed ceases once the materials or testimony are intended for trial use.
Compulsory Medical Examinations  
Fla. Rule Civ. P. 1.360

(A) When the physical condition of a person is in controversy, the request may be served on the plaintiff without leave of court after commencement of the action. The request shall specify a reasonable time, place, manner, conditions, and scope of the examination and the person or persons by whom the examination is to be made. The party to whom the request is directed shall serve a response within 30 days after service of the request, except that a defendant need not serve a response until 45 days after service of the process and initial pleading on that defendant. The court may allow a shorter or longer time. The response shall state that the examination will be permitted as requested unless the request is objected to, in which event the reasons for the objection shall be stated. If the examination is to be recorded or observed by others, the request or response shall also include the number of people attending, their role, and the method or methods of recording.

(3) Upon request of either the party requesting the examination or the party or person to be examined, the court may establish protective rules governing such examination.

Fla. R. Civ. P. 1.360

CMEs

The rule is now well established that a plaintiff is allowed to be accompanied at a compulsory medical examination by her counsel and a videographer of her choosing.

Florida courts have made it clear that, although the defense has the right, by rule, to a compulsory medical examination of a plaintiff, defense counsel does not have the right to be present at the examination.

Plaintiff’s video/transcript is protected by work product; if a plaintiff elects to use the video at trial, he loses its work product protection.

Prince v. Mallari, 36 So. 3d 128, 131-132 (Fla. 5th DCA 2010)
CMEs

- A plaintiff being examined is allowed to have his attorney (or videographer) “present to guarantee, for example, that the doctor does not interrogate the plaintiff on liability questions in order to seek damaging admissions.”
  
  *Chavez v. J & L Drywall, 858 So.2d 1266 (Fla. 1st DCA 2003)*

- The Rule does NOT limit Defendant to one CME. If good cause exists for a supplemental CME exists, the Court may grant it. ry wa
  
  *Gomez v. Rendon, 126 So. 3d 315 (Fla. Dist. Ct. App. 2013)*

Accident Report Privilege

- Except as specified in this subsection, each crash report made by a person involved in a crash and any statement made by such person to a law enforcement officer for the purpose of completing a crash report required by this section shall be without prejudice to the individual so reporting. Such report or statement may not be used as evidence in any trial, civil or criminal.

*Fla. Stat. Ann. § 316.066*
Accident Report Privilege

Outside of the privilege

- **Goodis v. Finkelstein**, 174 So. 2d 600, 601 (Fla. 3d DCA 1965)
  - Finkelstein was passenger injured in car driven by Goodis, who went across traffic and into a utility pole
  - Goodis exclaimed to Miami Beach police at the scene:
    “Oh my God, I must have passed out again! I thought this would happen.”
  - The statement was admissible as a declaration which was a part of the res gestae and as an admission against interest. **Foster v. Thorton**, 699, 170 So. 459 (1936)

- Approximately an hour after the accident, several of Mr. Cepeda’s (decedent, pedestrian) friends provided sworn testimony to a deputy sheriff about the events surrounding the accident. They stated that Mr. Cepeda was looking down at his phone and texting while crossing the highway. The deputy included these statements in his traffic fatality investigation report.
  - The witness statements to the police **should have been allowed** in for impeachment.

The statutes requiring an accident report and the case law interpreting those statutes demonstrate that the privilege only applies to a driver, owner, or occupant of a vehicle because those are the only people compelled to make a report under the statutes. **Sottilaro v. Figueroa**, 86 So. 3d 505, 508 (Fla. 2d DCA 2012)
CRIMINAL LAW – PART 1

By

Daniel Hilbert, St. Augustine
Criminal Law Part 1
Basic Skills CLE
Daniel K. Hilbert, B.C.S.

Topic Coverage

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Hearsay
Hearsay

90.801(1)(c) “Hearsay” is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the matter asserted.

90.802 “Except as provided by statute, hearsay evidence is inadmissible.”

Difference between “Non Hearsay” and “Hearsay Exceptions”

Hearsay and the exceptions is all about “reliability.”

Hearsay

90.801 During a trial on DWLR, the Defendant testified about what DMV officials allegedly told him regarding his driver license revocation. The Defense claimed it was not hearsay as they were not offering it for the truth of the matter asserted but rather to show the Defendant’s good-faith belief that his driving privilege had been reinstated.

Is it admissible?

Yes.

Velcofski v. State, 96 So.3d 1069 (Fla. 4th DCA 2012) As not offered for the truth of the matter asserted.

Non Hearsay
Non Hearsay

90.801(2) In order to be “Not Hearsay”
1. Declarant testifies at trial/hearing;
2. Subject to cross exam on the specific statement; and
3. Statement:
   1. Inconsistent with another statement given under oath subject to penalty of perjury at a trial, hearing, deposition or other proceeding;
   2. Consistent and offered to REBUT express or implied charge of improper influence, motive or recent fabrication; or
   3. Is one of identification of a person made after perceiving the person.

Non Hearsay: Inconsistent Statement

90.801(2)(a) Can an Officer testify to a statement of a witness under police interrogation as a prior inconsistent statement where the witness testifying differently at trial?

No.

Delgado-Santos v. State, 471 So.2d 74 (3rd DCA 1985) Police interrogation not an other “proceeding.”

Non Hearsay: Inconsistent Statement

90.801(2)(a) Is a witnesses’ grand jury testimony concerning their identification of defendant from a videotape of multiple murders admissible as substantive evidence after they testified differently at trial?

Yes.

Ibar v. State, 938 So.2d 451 (Fla. 2006)
Non Hearsay: Consistent Statement

90.801(2)(b) Co-defendant turned state's witness testified at trial that the Defendant told her to keep quiet about the murder of the victim. After vigorous attack on cross exam by the Defense regarding the Co-Defendant's plea agreement and motives, the State sought to introduce a statement of the Co-Defendant to a third party that the Defendant told her to keep quiet about the murder. Admissible?

Yes.

*Cunningham v. State*, 679 So.2d 70 (Fla. 4th DCA 1996) A "classic example of non-hearsay" via prior consistent statement.

Non Hearsay: Identity

90.801(2)(c) During a battery trial, the victim did not testify. Identity of the Victim needs to be proven. Can an officer state the identity of a victim at trial if he identified her via her Florida ID via 90.801(2)(c)?

No.

*Holborough v. State*, 103 So.3d 221 (Fla. 4th DCA 2012) The Victim's Florida Identification was an out-of-court statement offered for the truth asserted.

Non Hearsay: Identity

90.801(2)(c) Victim testifies at trial regarding a carjacking. The police officer then testifies about the victim's out-of-court identification of the Defendant made shortly after the crime. Is it admissible?

Yes.

*Lewis v. State*, 777 So.2d 452 (Fla. 4th DA 2001). It was non-hearsay because it was made after perceiving him.
Hearsay Exceptions

90.803 & 90.804

Hearsay Exceptions: 90.803

Covered in this Presentation *most common* 90.803 Exceptions:
1) Spontaneous Statements
2) Excited Utterance
3) Then-existing mental, emotional or physical condition
4) Statement for medical diagnosis/treatment
5) Recorded Recollection
6) Regular Business Activity
8) Public records and Reports
18) Admissions

Hearsay Exceptions: 90.803

Not Covered in this Presentation:
7) Absence of entry in records of regularly conducted activity
9) Records of Vital Statistics
10) Absence of public record or entry
11) Records of religious organizations.
12) Marriage, baptismal, and other similar certificates.
13) Family records
14) Records of documents affecting an interest in property
15) Statements in documents affecting an interest in property
16) Statements in ancient documents.
17) Market reports, commercial publications
18) Reputation concerning personal or family history
20) Reputation concerning boundaries or general history
22) Reputation as to character (among a community)
23) Former testimony w/ opportunity to develop via direct, cross or redirect examination
24) Child testimony
25) Statement of elderly or disabled adults.
Hearsay Exceptions: 90.803

Under 90.803, the availability of the declarant is immaterial.

Hearsay Exceptions: 90.803

90.803(1) Spontaneous Statements
Witnesses identified to law enforcement the make and model of the get-away car involved in a robbery which was quickly broadcast in a BOLO which led to the stop of the Defendant’s vehicle. Can the officer then testify in court as to the vehicle identification?

Yes.

Womack v. State, 42 So.3d 878 (Fla. 4th DCA 2010).

Hearsay Exceptions: 90.803

90.803(2) Excited Utterance
Victim’s statement to an officer that Defendant barged into her apartment when she opened the door was properly admitted to establish that his entry was nonconsensual. Admissible hearsay?

Yes.

Young v. State, 979 So.2d 1097 (Fla. 3rd DCA 2008) The officer testified that the victim was crying and visibly upset. Officer arrived to speak with victim four to five minutes after the call had been made.
Hearsay Exceptions: 90.803

90.803(3) Then-existing mental, emotional or physical condition
The defendant was charged with sexual battery. The defendant and the victim spent a day or so together and previously had consensual sex, but the victim eventually alleged that subsequent sexual relations later in the day were forced. The defense sought to testify regarding what the victim stated to him during the entire time they were together. The defense asserted that the statements went to her state of mind. The court disagreed. Are the statements admissible?

Yes.

Layman v. State, 728 So.2d 814 (Fla. 5th DCA 1999) A defendant accused of sexual battery should be permitted to testify as to the victim’s statements immediately prior to, and at the time of, the sexual encounter to show the state of mind regarding the question of consent.

Hearsay Exceptions: 90.803

90.803(4) Statement for medical diagnosis/treatment
Nurse testified about the victim’s explanation of how she was attacked in a sexual battery, burglary and armed kidnapping trial. Admissible?

Yes and No.

Roberts v. State, 990 So.2d 671 (Fla. 4th DCA 2008) Trial court erred in admitting the testimony, except for testimony directly relevant to the act of sexual intercourse or injuries that the victim suffered. “The nurse did not need to know, for example, the way in which the assailant gained access to the victim’s apartment or the facts surrounding the theft in order to conduct the medical examination.”

Hearsay Exceptions: 90.803

90.803(5) Recorded Recollection
Victim’s written statement prepared for law enforcement admissible as a “past recollection recorded” exception to the hearsay rule?

Yes.

McNeal v. State, 109 So.3d 268 (Fla. 1st DCA 2013) The evidence was such that the trial court could reasonably find that the victim’s written statement correctly reflected her knowledge of her call for police assistance.
Hearsay Exceptions: 90.803

90.803(6) Regular Business Activity

In order to lay a foundation for the business records exception to the hearsay rule, it was not necessary to call the person who actually prepared the document; the records custodian or any person who had the requisite knowledge to testify as to how the record was made could lay the necessary foundation. United Auto. Inc. Co. v. Affiliated Healthcare Ctrs., Inc., 43 So.3d 127 (Fla. 3rd DCA 2010)

Business records are admissible if the records custodian or other qualified witness testifies as to manner of preparation, reliability, and trustworthiness of the record. Arnett v. State, 843 So.2d 340 (Fla. 1st DCA 2003).

Hearsay Exceptions: 90.803

90.803(6) Admissible Business Records

• Report of the defendant’s blood alcohol test taken pursuant to Florida Law and contained within a hospital record. Baber v. State, 738 So.2d 379 (Fla. 4th DCA 1999)
• DOC Crime and Time Report. Yisrael v. State, 986 So.2d 491 (Fla. 4th DCA 2008)
• Certified Driving Record. Sproule v. State, 927 So.2d 46 (Fla. 4th DCA 2006)
• Lab reports identifying controlled substances. Williams v. State, 734 So.2d 1149 (Fla. 5th DCA 1999)
• Probation File. Snell v. State, 658 So.2d 1165 (Fla. 2nd DCA 1995)

Hearsay Exceptions: 90.803

90.803(6) Inadmissible Business Records

• Itemized list of a truck’s content’s which were stolen was not kept in the ordinary course of business. Simmons v. State, 697 So.2d 985 (Fla. 4th DCA 1997)
• Unsigned custodian’s affidavit. Lowe’s of Tallahassee v. Giaimo, 552 So.2d 304 (Fla. 1st DCA 1989)
• Current custodian testifying regarding old documents which were prepared under the former operational guidelines neither of which the current custodian was familiar with. Brown v. State, 113 So.3d 134 (Fla. 1st DCA 2013)
Letter generated by the Department of Agriculture indicating the defendant had not been granted a license to carry a concealed firearm?

No.

_Watt v. State_, 31 So.3d 238 (Fla. 4th DCA 2010) The Department had no duty to create the document and it was prepared specifically for litigation.

**Hearsay Exceptions: 90.803**

**90.803(18) Admissions**

- a) Party opponent statement
- b) Adopted admission
- c) Authorized statement
- d) Agents statement
- e) Co-conspirator’s statement

Don't lose sight of “Party” and “Opponent”

Defendant’s statements made at a pre-trial hearing were admissible.

_Shoenwetter v. State_, 46 So.3d 535 (Fla. 2010)
Hearsay Exceptions: 90.803

90.803(18) (b) Adopted admission

Defendant conceded the truthfulness of the victim's allegations when he filed his sworn motion to dismiss.

State v. Palmore, 510 So.2d 1152 (Fla. 3rd DCA 1987)

Hearsay Exceptions: 90.803

90.803(18) (c) Authorized statement

Police officer could testify regarding the Defendant's uncle's statement in translation for Defendant when the Defendant authorized him to translate.

Chao v. State, 478 So.2d 30 (Fla. 1985)

Hearsay Exceptions: 90.803

90.803(18) (d) Agents statement

Confidential informant’s statements are admissible against the State.

Osorio v. State, 186 So.3d 601 (Fla. 4th DCA 2016)
**Hearsay Exceptions: 90.803**

*90.803(18)(e) Co-conspirator’s statement*

Statement of co-conspirator occurring after the conspiracy was over and not in furtherance of the conspiracy was inadmissible.

*Antunes-Salgado v. State,* 987 So.2d 222 (Fla. 2nd DCA 2008)

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**Hearsay Exceptions: 90.804**

Under 90.804, the declarant **must be unavailable.**

---

**Hearsay Exceptions: 90.804**

“Unavailable:”

- Exempted from testifying via privilege.
- Persists in refusing to testify despite a court order to do so.
- Suffered a lack of memory so as to destroy the declarant’s effectiveness as a witness.
- Unable to testify due to death or a physical/mental illness or infirmity.
- Absent from the hearing, and the proponent is the proponent is unable to compel the declarant’s attendance by reasonable means.

Not “unavailable” if the issue is due to the wrongdoing of the party who is the proponent of the statement.
Hearsay Exceptions: 90.804

90.804 Declarat Unavailable Hearsay Exceptions:

a) Former testimony
b) Statement under belief of impending death.
c) Statement against interest
d) Statement of personal or family history
e) State by deceased or ill declarant similar to one previously admitted
f) Statement offered against a party that wrongfully caused the declarant’s unavailability.

Hearsay Exceptions: 90.804

90.804 (a) Former testimony

Prior testimony of witness inadmissible because Defendant failed to diligently attempt to procure the witness’ attendance at trial and failed to properly perpetuate the witness’ testimony.

**Hernandez v. State**, 608 So.2d 916 (Fla. 3rd DCA 1992)

Hearsay Exceptions: 90.804

90.804 (f) Statement offered against a party that wrongfully caused the declarant’s unavailability.

Prior to trial, the State filed a Motion to introduce a witness’s prior testimony due to the fact that the witness was now fearful of testifying due to tampering. Court found that it would be admissible under the Statutory exception.

**Mortimer v. State**, 100 So.3d 99 (Fla. 4th DCA 2012)
Special Hearsay Issues

Hearsay within Hearsay and Credibility of the Declarant

90.805: Hearsay within Hearsay

Hearsay can come in layers.

If each part “conforms with an exception” it is not excluded.

90.806: Attacking or Supporting the credibility of the declarant

1) When a hearsay statement has been admitted in evidence, credibility of the declarant may be attacked and, if attacked, may be supported by any evidence that would be admissible for those purposes if the declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time inconsistent with the declarant’s hearsay statement is admissible, regardless of whether or not the declarant has been afforded an opportunity to deny or explain it.

2) If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination. (Similar to Hostile Witness)
Special Hearsay Issues

90.806 Attacking or Supporting the credibility of the declarant

Introduction of defendant's exculpatory statements via rule of completeness within the State's case opens up the Defendant's credibility. As such, the State can introduce the Defendant's criminal history.

Kaczmar v. State, 104 So.3d 990 (Fla. 2012)

Special Hearsay Issues

90.806 Attacking or Supporting the credibility of the declarant

State could not introduce through police officer the hearsay statement of Defendant's passenger that he had been drinking in order to impeach the Defendant's statement that he had not been drinking via 90.806.


Reputation and Character
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<td>Generally, evidence of a person’s character or trait of character is inadmissible to prove action in conformity with the character trait.</td>
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<td>a) Character of accused either offered by the accused or by the prosecution to rebut the trait offered by the accused.</td>
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<td>b) Character of the victim (Wary of sex. bat. cases (794.022 Limits))</td>
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<tr>
<td>c) Character of witness (As provided in 90.608, 609 and 610)</td>
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<thead>
<tr>
<th>90.404 Williams Rule and Reverse Williams Rule</th>
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<tr>
<td>Prior Bad Acts / Williams Rule</td>
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<tr>
<td>Inadmissible solely to prove bad character or propensiy.</td>
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</table>

| Admissible to prove: Motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. |
| Also: |
| Premeditation Sireci v. State, 399 So.2d 964 (Fla. 1981) |
| Establish Context of the Crime LaMarca v. State, 785 So.2d 1209 (Fla. 2001) |
| Rebut Defense to Crime Williams v. State, 621 So.2d 413 (Fla. 1993) |
90.404 Williams Rule and Reverse Williams Rule

90.404(2) Prior Bad Acts / Williams Rule

Can be used for a variety of crimes... but two specifically by statute:

- Child Molestation 90.404(2)(b)
- Sexual offenses 90.404(2)(c)

90.404 Williams Rule and Reverse Williams Rule

90.404(2) Prior Bad Acts / Williams Rule

Steps:
1) Notice
2) Trial Court Determinations
   - Similarity
   - Probative v. Prejudicial Value
   - Sufficient Time Nexis

90.404 Williams Rule and Reverse Williams Rule

90.404(2)(d) Notice Requirement:

10 Days

“Written statement of the acts or offenses it intends to offer, describing them with the particularity required of an indictment or information.”
90.404 Williams Rule and Reverse Williams Rule

*Trial court determinations, read:*

- **Robertson v. State**, 829 So.2d 901, 907-08 (Fla. 2002)
- **Butler v. State**, 842 So.2d 817 (Fla. 2003)
- **McLean v. State**, 934 So.2d 1248, 1257(Fla. 2006)

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90.404 Williams Rule and Reverse Williams Rule

*Trial court determinations, read:*

**McLean v. State**, 934 So.2d 1248, 1257(Fla. 2006). We have since made it clear that "[(b)efore admitting Williams rule evidence, it is incumbent upon the trial court to make multiple determinations, including ... whether the prior crime meets the similarity requirements necessary to be relevant as set forth in our prior case law, ... and ... whether the prejudicial effect of the prior crime substantially outweighs its probative value."

---

90.404 Williams Rule and Reverse Williams Rule

*Trial court determinations, read:*

**Robertson v. State**, 829 So.2d 901, 907-08 (Fla. 2002). Before admitting Williams Rule evidence, it is incumbent upon the trial court to make multiple determinations, including:

- Whether the prior crime meets the similarity requirements necessary to be relevant,
- Whether the prior crime is too remote so as to diminish its relevance, and
- Whether the prejudicial effect of the prior crime substantially outweighs its probative value.
90.404 Williams Rule and Reverse Williams Rule

*Prejudicial Effect...*

The probative value evidence of other crimes or bad acts must outweigh any: 1) undue prejudice, 2) confusion of the issues, 3) misleading the jury or 4) needless presentation of cumulative evidence. *McLean v. State*, 934 So.2d 1248 (Fla. 2006).

Additionally, there must be a *sufficient time nexus* between the collateral occurrences and the conduct in question. If the prior activity is too remote, the necessary probative force will not be present and the evidence will be inadmissible. *Robertson v. State*, 829 So.2d 901 (Fla. 2002).

90.404 Williams Rule and Reverse Williams Rule

"Reverse Williams rule' evidence is evidence of a crime committed by another person that a defendant offers to show his or her innocence of the instant crime."

*Simpson v. State*, 3 So. 3d 1135, 1145 n.6 (Fla. 2009)
*Cooper v. State*, 45 So.3d 490 (Fla. 4th DCA 2010)

Reputation and Character

*90.405 Methods of Proving Character*

1) Reputation

2) Specific instances of conduct when character or a trait of character is an essential element of a charge or defense.
**Reputation and Character**

*90.405 Methods of Proving Character*

Defendant permitted to testify about a victim’s reputation for violence and carrying a gun to bolster his self defense claim?

*Yes.*

*Williams v. State*, 982 So.2d 1190 (Fla. 4th DCA 2008) Defendant claimed he saw a handgun in the victim’s possession and used that in combination with the victim's reputation to justify shooting the victim.

---

**Reputation and Character**

*90.406 Routine Practice*

Evidence of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is admissible to prove that the conduct of the organization on a particular occasion was in conformity with the routine practice.

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**Reputation and Character**

*90.406 Routine Practice*

“Under Rule 406 [e]vidence of a person’s habit . . . may be admitted to prove that on a particular occasion [he] acted in accordance with that habit . . . “ We have emphasized, however, that habit “is never to be lightly established, and evidence of example, for purpose of establishing such habit, is to be carefully scrutinized before admission.” Specifically, “[i]t is only when examples offered to establish such pattern of conduct or habit are ‘numerous enough to base an inference of systematic conduct,’ that examples are admissible.”

Reputation and Character

90.608 Impeachment

Any party may attack the credibility of a witness by:

1) Prior inconsistent statements
2) Witness is biased
3) Attack character via 609 or 610
4) Defect of capacity, ability or opportunity to observe, remember or recount matters.
5) Proof by other witness that material facts are not as testified to by the witness being impeached.

Reputation and Character

90.608(2) Motive or Bias

Defendant sought to question the step-son of the victim regarding a confrontation between her and the victim to establish bias against the Defendant in her charges stemming from an alleged assault with the Step-father. Admissible?

Yes.

Lloyd v. State, 909 So.2d 580 (Fla. 2nd DCA 2005) A defendant should be afforded wide latitude in demonstrating bias on the part of a witness.

Reputation and Character

90.609 Reputation Impeachment:

✓ Party may establish character of truthfulness

✓ Only after the character of the witness for truthfulness has been attacked by reputation evidence.
Reputation and Character

90.609 Reputation Impeachment:
Reputation testimony must be based upon a broad-based knowledge of the community’s opinion of the witness’s reputation for truthfulness. *Lott v. State*, 695 So.2d 1239 (Fla. 1997)

Testimony of child sex abuse victim’s parents that she would never lie was inadmissible as reputation evidence. *Reyes v. State*, 580 So.2d 309 (Fla. 3rd DCA 1991)

A person’s family is too narrow a segment of the community to be the source of reputation testimony. *Gonzalez v. State*, 871 So.2d 1010 (Fla. 4th DCA 2004)

Reputation and Character

90.610 Certain Crimes

- Any witness can be impeached by their past crimes.
- Punishable by death or imprisonment in excess of 1 year.
- Or crime involved dishonesty or false statement regardless of the punishment
- Juvenile adjudications are inadmissible.
- Pending appeal does not render the conviction inadmissible however, the evidence of the appeal is admissible.

The End
Practical Tips and Considerations

- Resources:
  - Google
  - LexisNexis
  - Westlaw
  - Fastcase

---

Practical Tips and Considerations

- Routine:
  - Always stand.
  - No speaking objections.

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Practical Tips and Considerations

- Resources:
  - Federal Rules of Evidence
  - Federal Trial Objections
  - Evidentiary Foundations

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4.2
Impeachment by Judgment and Sentence

- When can you?
- How can you?
- Remedies for Common Problems

When Can you Impeach?

- When the credibility of a witness is at issue, and they have been convicted (as an adult) of a felony or crime of dishonesty
  - "Unless it is so remote in time as to have no bearing on the character of the witness"
  - Florida Statutes, Section 90.610
  - Criminal v. Civil?

Credibility at Issue

- Impeachment through a certified judgment and sentence is only relevant where the credibility of a witness is at issue because it is solely relevant to the issue of credibility.
- Sole purpose of impeachment by prior convictions is to attack credibility or believability of witness. Bobb v. State, App. 4 Dist., 647 So.2d 881 (1994), rehearing denied, review denied 659 So.2d 270.
Credibility at Issue (cont)

- When is the credibility of a witness at issue?
  - They are a testifying witness; or
  - Statements from a non-testifying witness are introduced in court
  - Examples: Defendant’s self-serving statements are introduced via a rule of completeness argument by defense counsel even when the defendant elects not to testify, a 911 call placed by a non-testifying witness is offered into evidence; or any other hearsay statement offered in evidence
  - Under the Evidence Code, one can impeach a hearsay statement with any evidence that could be used to impeach in-court testimony. Freeman v. State, App. 1 Dist., 74 So.3d 123 (2011).

Crime of Dishonesty

- Any crime in which an element of the offense involves dishonesty or false statement
  - Any theft charges
  - Worthless Check
  - False ID to law enforcement

Adjudication vs. Withhold of Adjudication

- A withhold of adjudication does not result in the defendant having been convicted of an offense, as is required to impeach a witness. Williams v. State, App. 3 Dist., 834 So.2d 923 (2003).
- Guilty plea resulting in withhold of adjudication is no exception
  - Impeaching defendant with prior guilty plea was erroneous, and error was compounded when trial court improperly allowed state to point out precise nature of prior offense and identity of victim, where adjudication with respect to prior offense was withheld. State v. McFadden, 772 So.2d 1209 (2000).
How to Impeach With a Prior Conviction

- "Have you ever been convicted of a felony? Yes.
- How many times? Number
- Have you ever been convicted of a crime of dishonesty? Yes.
- How many times? Number
- That is all you get.
- Better practice is to ask whether he has been convicted of felony prior to asking whether he has ever been convicted of crime involving dishonesty or false statement, in order to avoid confusion. Jackson v. State, App. 1 Dist., 570 So.2d 1388 (1990)
- If a defendant merely denies the prosecutor's questions as to whether he has committed any offenses involving dishonesty or false statement and the number of those convictions, prosecutor may not inquire as to the specifics of any of the prior convictions. Livingston v. State, App. 2 Dist., 682 So.2d 591 (1996)

If a witness merely denies a conviction

- Have you ever been convicted of a felony? Yes.
- No.
- The offering attorney then gets to offer into evidence a certified judgment and sentence, NOT into the details of the offense.
- "Your honor, I have asked as Defense Exhibit X, showing the witness was previously convicted of a felony and I now enter into evidence.”
- If it is misleading or untruthful, then it will open the door to details of the conviction to the extent they contradict the representation of the witness.
- Even when a witness denies the existence of a conviction when it is offered for impeachment purposes, the specific offense identified only incidentally when the record of the conviction is offered into evidence. Bus v. State, App. 4 Dist., 121 So.3d 1145 (2013)

If a witness misleads the jury

- If a witness offers content regarding the prior conviction, that may or may not open the door to the prior conviction.
- If it is misleading or untruthful, then the offering attorney may then offer into evidence the details of the conviction to the extent they contradict the representation of the witness.
- When a criminal defendant who has chosen to testify attempts to mislead or delude the jury about his prior convictions, the prosecution is entitled to inquire further about prior convictions to dispel any false impression that may have been given.
- Under Florida law, exception exists to the general rule for impeachment by prior convictions that state is entitled to inquire further about prior convictions to dispel any false impression that may have been given. Cooper v. McNeil, M.D.Fla.2008, 622 F.Supp.2d 1242
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- In bad for burglary of an occupied dwelling and petit theft of a checkbook, defendant did not attempt to mislead jury about his prior conviction for burglary by leading them in cross examination that "neither one of those convictions are from a theft check," and double state, impeachment statute was not violated when state asked and defendant admitted that he had not committed a burglary. Johnson v. State, App. 3 Dist., 923 So.2d 541 (2006)

Better practice is to ask witness whether he has been convicted of felony prior to asking whether he has ever been convicted of crime involving dishonesty or false statement, in order to avoid confusion. Jackson v. State, App. 1 Dist., 570 So.2d 1388 (1990)

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Other Problems

- What if an opposing witness denies that a certified judgment and sentence belongs to them?
  - The easiest way is to ask your opponent to stipulate to the number of prior convictions for each type of offense.
  - Alternatively, use a fingerprint analyst.
  - If a conviction that would show up on a driving record (drug or driving charged) can request a certified DL record as a means of proving up prior conviction.

Issues in Sex Cases

- 90.404(2)(b)1. In a criminal case in which the defendant is charged with a crime involving child molestation, evidence of the defendant's commission of other crimes, wrongs, or acts of child molestation is admissible and may be considered for its bearing on any matter to which it is relevant.

Issues in Sex Cases (Cont.)

- Notice Requirement:
  - 90.404(b)(d)1. When the state in a criminal action intends to offer evidence of other criminal offenses under paragraph (a), (b), or (c), no fewer than 10 days before trial, the state shall furnish to the defendant or to the defendant's counsel a written statement of the acts or offenses it intends to offer, describing them with the particularity required of an indictment or information.
  - No notice is required for evidence of offenses used for impeachment or on rebuttal.
Issues in Sex Cases (Cont.)

- Other issues:
  - Admissibility of prior sexual acts is subject to 403 Balancing test.
  - Prior sexual acts cannot become a feature of the trial.

Prior Sex Acts Admissibility Subject to 403

- Collateral crime evidence may be considered in child molestation cases only for the limited purpose of proving intent, and the absence of mistake or accident on the part of the defendant. Lopez v. State, App. 4 Dist., 169 So.3d 143 (2015).
- Although statute governing admission of other crimes, wrongs, or acts in a criminal case in which the defendant is charged with a crime involving child molestation broadly provides that evidence of the defendant's commission of other acts of child molestation is admissible regardless of whether the charged and collateral offenses occurred in the familial context or whether they share any similarity, such evidence remains subject to weighing, which requires the court to assess whether the probative value of evidence of previous molestations is substantially outweighed by the danger of unfair prejudice. Peralta-Morales v. State, App. 1 Dist., 143 So.3d 483 (2014).

- Where necessary to ensure that a defendant receives a fair trial in a case in which defendant is charged with child molestation, the trial court should either exclude evidence of other acts of child molestation or substantially limit its presentation so that it does not become a feature of the trial. Delatorre v. State, App. 3 Dist., 45 So.3d 817 (2010).
- Because of the commonly held belief that individuals who commit sexual assaults are more likely to recidivate, as well as societal outrage directed at child molesters, the admission of prior acts of child molestation has an even greater potential for unfair prejudice than the admission of other collateral crimes. Downs v. State, App. 5 Dist., 40 So.3d 49 (2010)
**Feature of The Trial**

- In determining the admissibility of evidence of previous child molestations in a case in which the defendant is charged with a crime involving child molestation, the court must ensure that the evidence will not become a feature of the trial or confuse or mislead the jurors and give an appropriate cautionary instruction if it is requested. *Peralta-Morales v. State, App. 1 Dist., 143 So.3d 483 (2014)*

- Similar fact evidence of other crimes, wrongs or acts, was inadmissible to prove bad character or propensity in prosecution for lewd or lascivious conduct and capital sexual battery; there was significant lack of similarity between charged offense and collateral victim's allegations; similar fact evidence became central feature of trial necessitating new trial, greater emphasis was placed on offenses involving two collateral victims than charged offense involving victim, majority of testimony related to these collateral crimes, victim's testimony was sandwiched between testimony of two collateral victims, and, in closing, prosecutor continually addressed all three offenses. *Fiore v. State*, App. 5 Dist., 967 So.2d 995 (2007)

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**Photographic evidence (Foundation)**

- **Foundation for Admissibility:**
  - Mr. Witness, I'm handing you a photograph that is marked for identification as exhibit 1, do you recognize what is depicted in exhibit 1?
  - What is it?
  - How do you recognize it?
  - Does exhibit 1 fairly and accurately depict (describe what you're offering; the scene, the injuries, the vehicle, etc.)?
  - The Defense offers exhibit 1 into evidence.

- **Foundation for Admissibility (From Evidentiary Foundations):**
  - The witness is familiar with the object or scene.
  - The witness explains the basis for his or her familiarity with the object or scene.
  - The witness recognizes the object or scene in the photograph.
  - The photograph is a "fair", "accurate", "true", or "good" depiction of the object or scene at the relevant time.
Photographic Evidence (Requirements)

- It is only required that the witness be familiar with what the photo depicts.
  - Not req’d to have taken the photo
  - Not req’d to have seen the photo before
  - Not required to have been taken at the time witness observed the scene
  - Not req’d that photo be identical in every respect to the witness’ memory
  - Example: “Does exhibit 1 fairly and accurately depict that intersection as you last saw it on [Date]? Yes, everything is the same except it looks like they’ve added a stop sign and made it a four-way stop.
  - This foundation is still going to be sufficient for the admissibility of the exhibit.
  - “If a photograph is a correct representation of a physical object to which testimony is adduced, it is admissible in evidence for the use of witnesses to explain their testimony and to enable the jury to understand the case.” Simmons v. Roorda, 601 So.2d 609, 611 (Fla. 2d DCA 1992)

Photographic Evidence (403 Balancing)

- Farias v. State, 31 So. 3d 909, 913 (Fla. 4th DCA 2010) (In prosecution for lewd and lascivious molestation of a child, error to admit photograph of child’s physical examination because photograph showed no injury and had minimal probative value and substantial potential for offending the jury’s sensibilities and evoking sympathy for the victim.)
- Copertino v. State, 726 So. 2d 330, 334 (Fla. 4th DCA 1999) (In manslaughter prosecution, “[i]n the admission of the autopsy photographs of the victims served no purpose other than to highlight the horror of their injuries and deaths and was therefore improper.”)
- Young v. State, 234 So. 2d 341, 348 (Fla. 1970) (“the number of inflammatory photographs and resulting effect thereof was totally unnecessary to a full and complete presentation of the state’s case. The same information could have been presented to the jury by the use of the less offensive photographs whenever possible, and by careful selection and use of a limited number of the more gruesome ones relevant to the issues before the jury.”)

Admitting Video Evidence

- There are two common ways videos may come into evidence during a hearing or trial:
  - Interview “Fair and Accurate”
    - Witness testifies to a fair and accurate depiction of the evidence, similar to the foundation for the admissibility of a photograph.
    - Same requirements, does not need to have taken video
  - Surveillance Video: “Functioning properly”
Surveillance Video: “Functioning Properly”

- Witness will need to establish:
  - They are aware of the video surveillance that takes place in a certain area.
  - The surveillance system was functioning properly at the time the video was captured.
  - The video images captured and contained on the exhibit (disc/thumb drive, etc) were not edited in any way.

Video Evidence (Other Issues)

- Video quality goes to weight not admissibility of the video evidence. State v. Lewis, 543 So. 2d 760, 767 (Fla. 2d DCA 1989).
- Videotaped recreations or reenactments are also permitted into evidence subject to a 403 Balancing Test. Dowell v. State, 516 So. 2d 271, 274 (Fla. 2d DCA 1987).
- The editing of videos generally goes to the weight, not admissibility of the evidence, so long as it remains a fair and accurate representation of what happened. Pritchard v. Downie, 326 F.2d 323, 326 (8th Cir. 1964).

Obtaining Grand Jury Testimony

- Defendants do not have a right to discover and inspect all grand jury testimony. Ricci v. State, 500 So. 2d 34 (Fla. 2d DCA 1989)
- State is required to disclose those portions of recorded grand jury minutes that contain testimony of the defendant. Fla. R. Crim. P. 3.220 (E).
- Defendant is not absolutely entitled to transcript of grand jury testimony of victim for use for impeachment at trial unless there is showing of evidence favorable to defendant in accordance with United States Supreme Court's decision in Brady v. Maryland. Aaron v. State, 345 So.2d 641 (1977).
Grand Jury Testimony: Substantive Evidence

Section 90.801(2)(a) provides:

"(2) A statement is not hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement and the statement is:

(a) Inconsistent with his testimony and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding or in a deposition."

Prior inconsistent statements of the kind qualifying under the above-quoted provision may be used as substantive evidence, not just for impeachment purposes. Hills v. State, 428 So. 2d 318, 320 (Fla. Dist. Ct. App. 1983).

Using Depositions to Impeach

Fla. Stat. § 90.608 States in Relevant Part:

“Any party, including the party calling the witness, may attack the credibility of a witness by:

(1) Introducing statements of the witness which are inconsistent with the witness’s present testimony.”

When can you impeach with a deposition?

When

0 1) the witness makes a statement at trial that is contrary to their prior statement in a deposition. 

Fla. Stat. § 90.608 (1)

0 2) the contradictory statement made is material to the guilt or innocence of the accused (cannot impeach on a collateral matter)

An issue is collateral for purposes of impeachment by contradiction if it cannot be introduced for any reason other than contradiction.

Proposed impeachment of victim as to type of clothing she was wearing at time of sexual battery was impermissible impeachment on a collateral issue; evidence was material to any issue in the case and did not show bias, corruption, or lack of competency as a witness. Anderson v. State, App. 1 Dist., 133 So.3d 646 (2014).
How to Impeach With a Deposition: Confirm, Commit, Confront

1. "Isn't it true that ________?"
2. If answer to question 1 is inconsistent with prior statement, must confirm inconsistent statement by asking "So it's your testimony today that ______________?"
3. "You gave a deposition in this case, correct?"
4. "You were under the same oath then that you are under today?"
   If witness denies it, or doesn't remember being placed under oath, ask court to take judicial notice that all depositions are taken under oath to tell the truth
5. "You were provided a copy of your deposition so you could check it for accuracy and completeness and correct any errors?"
6. "Then you signed your deposition swearing it was accurate?"
7. "For the record I'm referring to page X, lines Y-Z isn't it true that during your deposition you were asked the following question and you gave the following answer: Q:_____... A:_____..."

Evidence of Drug Usage

- "[E]vidence of drug use for the purpose of impeachment [is not admissible] unless:
  (a) it can be shown that the witness had been using drugs at or about the time of the incident which is the subject of the witness's testimony;
  (b) it can be shown that the witness is using drugs at or about the time of the testimony itself; or
  (c) it is expressly shown by other relevant evidence that the prior drug use affects the witness's ability to observe, remember, and recount"

  Edwards v. State, 548 So. 2d 656, 658 (Fla. 1989).
FAMILY LAW

By

Andrew Morgan, St. Augustine
I. THE IMPORTANCE OF DOCUMENTARY EVIDENCE:

A. General Provisions – Rule 12.280(c)(1)
   a. Scope of Discovery: Parties may obtain discovery regarding ANY matter, not privileged, that is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.
   b. It is not grounds for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

B. Collect:
      a. All proceedings except simplified dissolution, enforcement, contempt, injunctions.
      b. Must be served within forty-five (45) days.
      c. Not to be filed with court except for financial affidavit and child support guidelines worksheet.
   2. Requests to Produce – Rule 12.350 (Fla. R. Civ. P. 1.350)
      a. Permitted to inspect and copy documents in control of party.
      b. Thirty (30) days to respond after service of request.
      c. Must set forth and describe each item, either individually or by group.
      d. See attached “Standard Request to Produce.”
      e. RTP of Financial Records of New Spouse.
         1. Joint tax returns, joint savings, etc.
         2. Moving party must establish relevance of information sought through testimony or other evidence.
         3. See Rowe v. Rodriguez-Schmidt, 89 So. 3d 1101, 1104 (Fla. 2d DCA 2012)
      4. Common Objections to RTP:
         (a) Age, relevancy, or availability of documents.
         (b) Business records: confidential nature of information includes information related to parties not before the court.
Objections to discovery must be timely or they are deemed waived. Don Mott Agency, Inc. v. Pullum, 352 So. 2d 107 (Fla. 2nd DCA 1977); American Funding, Ltd. v Hill, 402 So.2d 1369 (Fla. 1st DCA 1981)

5. Privileged Information:
   (a) Objection to otherwise discoverable information.
   (b) Must describe nature of documents or things not produced in a manner that will not divulge.

3. Discovery From Nonparties – Rule 12.531
   a. Governed by Fla. R. Civ. P. 1.360 except:
      1. Notice served to other parties.
      2. Proposed subpoena must be attached.
      3. Ten (10) days to object if by delivery
      4. Fifteen (15) days if by mail or email.
   5. Common examples:
      (a) Corporate Records
      (b) Medical Records/ HIPPA Authorization
      (c) Employer Records
      (d) Insurance Policies
   6. Other spouse must be furnished copy of documents upon request.

C. Create:

1. Depositions Upon Oral Examination– Rule 12.310
   a. Any person or party with reasonable notice given.
   b. Leave of court required if petitioner seeks to take deposition within thirty (30) days after service or process, unless respondent has sought discovery.
   c. Use of Depositions in Court – Rule 12.330
      1. Deposition of a party may be used by an adverse party for any purpose.
      2. Deposition of a witness may be used for any purpose if court finds:
         (a) Witness is deceased;
         (b) Witness is located more than 100 miles away;
         (c) Witness is ill, infirmed, or imprisoned;
         (d) Exceptional circumstances would prevent live testimony;
         (e) The witness is an expert or skilled witness.

2. Interrogatories – Rule 12.930
   a. Limit of ten (10) to a party unless court authorizes.
b. Use in trial: must still conform to Rules of Evidence if intended to be used as direct evidence or for impeachment purposes.

3. **Request for Admissions - Fla. R. Civ. P. 1.370**
   a. Often overlooked
   b. Purpose is to eliminate matters that are not actually in controversy.

   a. Investigator may be appointed on party’s or court’s motion.
   b. Investigator shall consider best interest of the child based on factors set out in 61.13, Florida Statutes.
   c. The court may consider the information contained in the study in making a decision on the parenting plan, and the technical rules of evidence do not exclude the study from consideration.
   d. Guardian ad litem (GAL) reports are not treated the same as social investigation reports. GAL reports are subject to hearsay objections. *Searinge v. Herrick*, 711 So.2d 204 (Fla. 2nd DCA 1998)

5. **Examination of Persons – Rule 12.360**
   b. ANY type of examination related to a matter in controversy.
   c. Mental/Physical Examinations.
   d. Vocational Examination: employability or vocational testing.
   e. Attorney may be present for exam (some exceptions).
   f. Examiners
      1. May be called as witness by any party.
      2. No presumption given to court appointed examiners.

6. **Evaluations of Minor Children - Rule 12.363**
   a. On party’s motion or court’s own.
   b. Expert appointed for examination, evaluation, testing, or interview.
   c. Parties provided written report. Court does not receive unless parties agree.
   d. Expert may testify only if there is good cause.
   e. Additional experts may testify if restricted to opinion testimony based on the examining expert’s report.
   f. Rule does not apply to social investigators.

D. **Enforce: Sanctions**

1. **Motion to compel – Fla. R. Civ. P. 12.380(a)**
   a. Fails to adequately answer depositions, interrogatories, or submit to a properly served examination.
   b. Fails to comply with Request to Produce.
1. Inadequate response: must swear an attempt was made in good faith, i.e. ten (10) day letter.
2. If no response: party may motion directly to court.
c. Denial of Motion: Party against whom sanctions are sought is should request a protective order.
d. Motion Granted: court may award movant reasonable expenses, including attorney’s fees.

2. **Direct Sanctions**
a. Party seeking discovery may file motion for immediate sanctions if other party properly served and:
   1. Fails to appear at deposition;
   2. To serve answers or objections to interrogatories; or
   3. Respond to request to produce.

3. **Contempt - Fla. R. Civ. P. 12.380(b)**
a. Failure to comply with court order after being directed to do so.
b. Party Sanctions:
   1. Dismiss.
   2. Strike all or part of pleadings.
   3. Stay proceedings until complied with.
   4. Award fees and expenses.
   5. Additional penalties at court’s discretion.

II. **HEARSAY**

A. "My sister said that she heard my husband say, that our daughter said, she watched him hit our son."
   1. **Section 90.801, Florida Statutes**: a statement or “nonverbal conduct of a person if it is intended as an assertion . . . other than one made by the declarant while testifying at trial or hearing,” offered to prove the truth of the matter asserted.

III. **HEARSAY EXCEPTIONS**

A. **Party admissions – 90.803(18)**
   1. A statement offered against a party and is:
      a. The party’s own statement; or
      b. A statement of which the party has adopted as truth.

B. **Public Records – 90.803(8)**
   1. Records, reports, statements reduced to writing . . . of matters observed pursuant to duty imposed by law as to matters which there was a duty to report.
C. **Excited Utterance - Section 90.803(2)**
   1. Admissible when certain factors exist that courts assume indicate reliability can be established.
      a. Spontaneous declarations purport to narrate or describe or explain an act, condition or event that was witnessed by the declarant.
      b. The statement sought to be admitted must have been made "spontaneously" while the declarant was under the stress or excitement caused by such a perception.

D. **Business Records - Section 90.803(6)**
   1. Made at or near the time of the incidents while fresh;
   2. Made from information transmitted by person with personal knowledge;
      a. Person recording may obtain from someone with personal knowledge.
      b. United Auto Ins. Co. v. Affiliated Healthcare Centers, Inc., 43 So.3d 127, 130 (Fla. 3d DCA 2010). [I]n order to lay a foundation for the business records exception to the hearsay rule, it is not necessary to call the person who actually prepared the document. The records custodian or any person who has the requisite knowledge to testify as to how the record was made can lay the necessary foundation.”
   3. Kept in the course of a regularly conducted business activity; and
   4. A regular practice of business to make when activity occurs.
   5. 90.803(6)(c): Can offer by certification or declaration.
      a. Must serve reasonable written notice to other party; and
      b. Make available for inspection.
      1. See Dutilly v. Department of Health & Rehabilitative Service, 450 So.2d 1195, (Fla. 5th DCA 1984)

E. **Official Records**
   1. This hearsay exception deals with records maintained by public entities. Such records are assumed to be more or less inherently reliable. These typically relate to vital statistics (i.e., birth records).

F. **Declaration against interest - Section 90.804(2)(c)**
   1. The declarant must be unavailable to testify as a witness;
   2. They must be shown to have had personal knowledge of the subject matter;
   3. The statement must have been against the declarant's interest when it was made (i.e., something that was damaging to them or their interests); and
   4. The statement must have other indicia of reliability that the court finds warrants admission.

G. **Former testimony - Section 90.804(2)(a)**
   1. The declarant must be unavailable to testify as a witness;
2. Declarant has previously testified under oath in another action or proceeding, that testimony may be admitted if;
   a. Party against whom testimony is now offered had an opportunity and similar motive to direct, cross, or redirect examination.

H. Child Hearsay – Section 90.803(23)
1. An out-of-court statement made by a child victim with a physical, mental, emotional, or developmental age of 16 or less describing any act of child abuse or neglect, any act of sexual abuse against a child . . . is admissible in evidence in any civil or criminal proceeding if:
   a. Court holds hearing and determines circumstances of statement provide sufficient safeguards of reliability.
      1. Age and maturity of child;
      2. Nature of abuse;
      3. Relationship to offender;
      4. Any other factor deemed appropriate.
   b. Child either:
      1. Testifies; or
      2. Is unavailable as witness.
         (a) Corroborative evidence of abuse;
         (b) Unavailability includes finding that testimony would result in likelihood of severe emotional or mental harm to child.
   c. The court shall make specific findings of fact, on the record, as to the basis for its ruling.
   d. May satisfy requirements for exception but be deemed inadmissible if Confrontation Clause violated unless statements deemed non-testimonial. See Herrera-Vega v. State, 888 So.2d 66 (Fla. 5th DCA 2004)

   a. No minor child shall be deposed or brought to a deposition, brought to court to appear as a witness or to attend a hearing, or subpoenaed to appear at a hearing without prior order of the court based on good cause shown unless in an emergency situation. This provision shall not apply to uncontested adoption proceedings.
   b. This rule is intended to afford additional protection to minor children by avoiding any unnecessary involvement of children in family law litigation. While due process considerations prohibit an absolute ban on child testimony, this rule requires that a judge determine whether a child's testimony is necessary and relevant to issues before the court prior to a child being required to testify.

IV. EXPERT TESTIMONY
1. Trial court has the discretion to limit the scope of an expert’s testimony.
2. Expert’s opinion admissible if:
   a. Testimony based on sufficient facts or data;
b. The testimony is the product of reliable principles and methods;
c. The witness has applied the principles and methods reliably.
d. Cannot assume facts for basis of their conclusion, but can make reasonable inferences from facts in evidence.
   1. Example: If psychiatrist determines a mother is suffering a serious mental disorder and has difficulty taking care of herself, he/she would be able to infer the mother is unable to take care of infant. He/She would not need to see the mother and child interact.

e. Exception to Hearsay
   1. Hearsay must contain facts that expert in the particular field would normally rely on in forming their opinion.
   2. Social Investigations
      (a) Court authorized to consider studies in matters in which a parenting plan is in controversy, without regard to rules of hearsay.
      (b) Limited to qualified staff of the court, i.e. licensed psychologists; social workers, marriage and family therapists, and licensed mental health counselors.

BIOS:

Andrew T. Morgan

Andrew T. Morgan is an equity partner with Canan Law. His practice specializes in family and criminal law. He has worked extensively in St. Johns, Duval, Flagler and Putnam counties in matters involving high net-worth family law litigation and complex criminal defense. His family law litigation cases routinely include the valuation and distribution of business entities such as medical practices, restaurants, professional practices, construction companies and retail stores. Additionally, he has extensive experience in divorces that involve a high wage earner and alimony defense or request. His criminal experience involves litigation both as a defense attorney and as an Assistant State Attorney. While at the State Attorney's Office, he handled cases ranging from misdemeanors to offenses punishable by life in prison. Since leaving the State Attorney's Office, he has defended high profile and complex criminal cases including but not limited to murder, DUI, DUI manslaughter, sexual battery, robbery, drug offenses (trafficking and possession) and battery cases (aggravated, felony, domestic).

Mr. Morgan has been recognized by several independent and peer review legal services including Super Lawyers. Mr. Morgan is very active in community and professional associations. He is the past president of both the St. Johns and Putnam County Bar Associations, he is a member of the Florida Bar Family Law section and the Florida Association of Criminal Defense Attorneys. He is a past member of the National District Attorneys Association and former Assistant Director of the Republican National Lawyers Association. Mr. Morgan has been a member of the St. Augustine Sunrise Rotary since 2008.
He earned his J.D. in 2005 from Florida Coastal School of Law, his M.B.A. in 2002 from Winthrop University, and his B.A. in 2001 from Eckerd College. He is admitted to the Florida Bar and the United States Middle District of Florida.

He is married and has two sons.

A special thanks to John E. Westfield, Esq., and Julie Kurtz Esq., for helping to complete the material and PowerPoint.

**SAMPLE FORMS:**

Appendix A: Client Questionnaire

Appendix B: Standard Family Law Interrogatories for Original or Enforcement Proceedings

Appendix C: Standard Family Law Interrogatories for Modification Proceedings

Appendix D: Timesharing Interrogatories

Appendix E: Expert Witness Interrogatories

Appendix F: Request to Produce Schedule A and Schedule B (Business Records)
APPENDIX A

CLIENT QUESTIONNAIRE

1. Answer all questions completely. If you need more space, please use additional paper and attach it to this questionnaire.

2. If a particular question does not apply, enter "n/a".

3. CONFIDENTIALITY: The information you enter in this questionnaire is confidential and protected by Attorney-Client Privilege. The information will not be disclosed to anyone outside of this office, except in the course of rendering legal services on your behalf or as otherwise provided by law.

Date: __________________________

A. CLIENT INFORMATION:

Name: ____________________________ Soc. Sec. No.: ____________________________
Home Address: ________________________________________________________________
City: _____________________________ State: _____________________________ Zip Code: _____________________________
County: ____________________________ Gender: _______ Male _______ Female
DOB: _____________________________ State of Birth: _____________________________
Home Phone: ___________________ Work Phone: __________________ Facsimile Number: ___________________
E-mail Address: ___________________ Driver's License Number: ___________________

Dates of residency at current address: ____________________________________________

List any previous residences in the past five (5) years, and dates resided in each:

____________________________________________________________________________________

Employer's Name (if any): __________________________________________________________
Employer's Address: ________________________________________________________________

Employer's Telephone No.: __________________________________________________________
Date of Employment: __________________________ Occupation: _____________________________
Salary: $_________ weekly/biweekly/twice a month/monthly/annual (circle one)

List any other jobs held during the course of this marriage (indicate employer and annual salary):

____________________________________________________________________________________

If not currently employed, list date of last employment, name of last employer, and reason currently unemployed: ________________________________________________________________

Indicate any additional plans for future employment: ________________________________________
APPENDIX A

Highest level of education completed: __________________________________________________________

Describe any other education received such as Post-high school training/education including the name of
the school or college, dates attended and degree received: __________________________________________

Describe plans you have to enroll in school or complete your education, if any: _________________________

What is your religious preference? _____________________________________________________________

Do you have a Will? ___________ If so, do you wish it to be reviewed? _____________________________
(If so, please return a copy of the Will with this completed form.)

How did you hear about our office? __________________________________________________________

Have you retained any other attorneys on this matter prior to coming to this office? (If yes, please provide
name, date retained, and reason to discontinue service.) ____________________________________________

B. SPOUSE'S INFORMATION:

Name: ___________________________________ Soc. Sec. No.: _________________________________
Home Address: __________________________________________________________________________
City: _______________________________ State: ______________________ Zip Code: __________________
County: _________________________________________________________________________________
Gender: _____ Male _____ Female
DOB: ______________________________ State of Birth: _________________________________
Home Phone: __________________ Work Phone: ______________ Facsimile Number: _______________
E-mail Address: __________________________ Driver's License Number: _______________________

Is spouse represented by counsel in this matter? _______ Yes _____ No - If yes, complete the following:
Spouse's Attorney: _________________________________________________________________________
Street Address: __________________________________________________________________________
City: _______________________________ State: ______________________ Zip Code: __________________
Phone Number: ______________________ Facsimile Number: _________________________________

Employer's Name (if any): __________________________________________________________________
Employer's Address: _______________________________________________________________________

Job Title: ___________________________________ Nature of Job: _________________________________
Date of Employment: ______________________ Occupation: _________________________________
Salary: $ ______________ weekly/biweekly/twice a month/monthly/annual (circle one)

List any other jobs held during the course of this marriage (indicate employer and annual salary):
____________________________________________________________________________________
____________________________________________________________________________________
____________________________________________________________________________________
If not currently employed, list date of last employment, name of last employer, and reason currently unemployed: ______________________________________________________________________________

Indicate any additional plans for future employment: ______________________________________________________________________________

Highest level of education completed: ______________________________________________________________________________

Describe any other education received such as Post-high school training/education including the name of the school or college, dates attended and degree received: ______________________________________________________________________________

Describe any plans your spouse may have to enroll in school or complete his/her education: ________________

What is your spouse's religious preference? ______________________________________________________________________________

C. GENERAL MARITAL HISTORY:

Date of Marriage: _________________________________

Place of Marriage: ______________________________________________________________________________

(Please provide a marriage certificate)

Are you and your spouse currently living together? ______ Yes _____ No

If not, then Date of Separation: _____________________________

Do you have an interest in reconciliation? ______ Yes _____ No

To the best of your knowledge, does your spouse want reconciliation? ______ Yes ____ No

Describe the circumstances that caused your separation: __________________________________________________________

___________________________________________________________________________________________________________

___________________________________________________________________________________________________________

___________________________________________________________________________________________________________

___________________________________________________________________________________________________________

___________________________________________________________________________________________________________

If a suit for divorce has been previously filed by either spouse as to this marriage, please provide the date such was filed, the name of the primary attorney involved, the name or location of the court, and the reason the divorce was not finalized: __________________________________________________________

___________________________________________________________________________________________________________

___________________________________________________________________________________________________________

___________________________________________________________________________________________________________

___________________________________________________________________________________________________________

___________________________________________________________________________________________________________

5.11
D. CHILDREN'S INFORMATION (from this marriage):

<table>
<thead>
<tr>
<th>Name</th>
<th>SSNo.</th>
<th>Place of Birth</th>
<th>Date of Birth</th>
<th>Living With</th>
<th>Sex</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>M/F</td>
</tr>
<tr>
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<td>M/F</td>
</tr>
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<td>M/F</td>
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<td>M/F</td>
</tr>
<tr>
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<td></td>
<td></td>
<td>M/F</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>M/F</td>
</tr>
</tbody>
</table>

Are you currently pregnant? ______ No _____ Yes; date child is due: _______________________________

Is your spouse currently pregnant? ______ No _____ Yes; date child is due: _________________________

UCCJEA Information:

If any of the children have resided with anyone other than you and your spouse during the last five (5) years, please complete the following information:

<table>
<thead>
<tr>
<th>Name of Custodian</th>
<th>Address</th>
<th>Dates Resided with</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
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<td></td>
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<td></td>
</tr>
</tbody>
</table>

Have you participated as a party, witness or any other capacity in other litigation or custody proceedings, including divorce, separate maintenance, child neglect, dependency or guardianship, concerning custody or visitation of any child subject to this proceeding? ______ No _____ Yes - If Yes, please describe: __________________________________________________________________

Do you have any information of any custody or visitation proceeding currently pending in a court of this or any other state concerning any child subject to this proceeding ________ No ________ Yes - If Yes, please describe: __________________________________________________________________

5.12
Do you have any knowledge of any support order issued by a court of this or any other state concerning any child subject to this proceeding?  ______ No  _____ Yes - If Yes, please describe:  _____

Other Information:

Do you anticipate a dispute about the parenting plan (if so, please explain)?  __________________________

Who should have primary parental responsibility of the children, and why?  __________________________

Are any children adopted?  ___________________________________________________________________

Are any other children of prior marriages or other dependents living in your residence?  ___________________

Indicate if your, or your spouse's, career or education has been interrupted due to child rearing:  _____________

Are any of the children in private school (if yes, indicate the cost of the private school, how such cost has been paid, if you and your spouse both agree on the private school, any special reasons why the child needs private schooling, and if you desire to continue the child in the private school, your belief as to why it is in such child's best interest and the expected impact on the child's life if private school is not continued)?  ______________________________________________________________________________
APPENDIX A

Describe children's involvement in school activities: ________________________________

________________________________________

________________________________________

________________________________________

Describe the physical and mental health of the children: __________________________

________________________________________

________________________________________

________________________________________

Indicate if any child is being treated for any medical or psychological conditions (if so, indicate the name of the treating physician or counselor, the frequency of medical or psychological treatment, any medications prescribed, cost of medical or physiological care and medicines, portion of expense not covered by insurance, and the length of time you feel treatment will be necessary): _________________________

________________________________________

________________________________________

________________________________________

Describe the parties' understanding regarding your employment during marriage: ______________________

________________________________________

________________________________________

________________________________________

Describe the parties' understanding regarding your spouse's employment during marriage: ________________

________________________________________

________________________________________

________________________________________

Indicate if any child of the parties has separate assets or income, including trust or estate assets: __________

________________________________________

________________________________________

________________________________________

Indicate if any child of the parties has any special needs: __________________________

________________________________________

________________________________________

________________________________________
APPENDIX A

Describe the involvement of the other parent in the children's activities since separation: _____________________________
___________________________________________________________________________________________
___________________________________________________________________________________________
___________________________________________________________________________________________

Do you feel your spouse's contact with the children should be limited (if so, please explain)? _________________
___________________________________________________________________________________________
___________________________________________________________________________________________
___________________________________________________________________________________________

Do the children receive religious training (if so, indicate if there is any primary influence by you or your spouse in the religious training of the children)? ____________________________
___________________________________________________________________________________________
___________________________________________________________________________________________
___________________________________________________________________________________________

Are the children more likely to turn to you or to your spouse when they have problems? __________________________
___________________________________________________________________________________________
___________________________________________________________________________________________
___________________________________________________________________________________________

Describe your working hours (i.e., when you leave for work and arrive home, if your hours are flexible, if your work requires travel, and if so, the frequency of such travel, time involved and distance): _________________
___________________________________________________________________________________________
___________________________________________________________________________________________
___________________________________________________________________________________________

Describe your spouse's working hours (i.e., when your spouse leaves for work and arrives home, if your spouse's hours are flexible, if your spouse's work requires travel, and if so, the frequency of such travel, time involved and distance): _________________
___________________________________________________________________________________________
___________________________________________________________________________________________
___________________________________________________________________________________________

What are your plans for child care? ______________________________________________________________
___________________________________________________________________________________________
___________________________________________________________________________________________

What are your spouse's plans for child care? ______________________________________________________
___________________________________________________________________________________________
___________________________________________________________________________________________

Describe your housing arrangements, including number of bedrooms? _________________________________
___________________________________________________________________________________________

5.15
Describe your spouse's housing arrangements, including number of bedrooms? _____________________________

PARENTAL RESPONSIBILITIES: Indicate whether you, your spouse, and/or another person currently take or have taken responsibility for the various duties regarding the children. You may check more than one box for a particular item if two or more persons apply.

<table>
<thead>
<tr>
<th></th>
<th>You</th>
<th>Spouse</th>
<th>Other</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Helped children put on clothes</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gave children baths</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Took care of children during the day</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Put children to bed at night</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prepared food for children</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Made medical/dental appointments for children</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Took children to the doctor/dentist</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Took care of children when sick</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Made arrangements for outside child care</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Communicated with day care personnel</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Took children to day care or sitters</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Took children to school</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Participated in children's education</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Picked up children from school</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Met with teachers, principal</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Helped children with homework</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Took children to extracurricular activities</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Participated in outdoor activities with children</td>
<td></td>
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</tr>
<tr>
<td>Organized children's time with friends</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contacted parents of children's friends</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arranged children's birthday activities</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Shopped for children's clothes, shoes and other needs</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bought gifts for the children</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Taught money management to children</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Took children to church</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Disciplined the children</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Helped the children when they have &quot;problems&quot; or &quot;issues&quot;</td>
<td></td>
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<td></td>
<td></td>
</tr>
</tbody>
</table>

If you checked "Other" regarding any of the above, please identify each such person, and generally describe the extent of his or her involvement with the children:
Are the children in day care or with a sitter on a regular basis (if so, provide frequency, name, address and phone number of day care, or sitter)?

__________________________________________________________________________________________________________

Describe any other issue pertaining to the children that you feel should be noted in reference to this case that has not been provided through previous answers:

__________________________________________________________________________________________________________

__________________________________________________________________________________________________________

PRIOR MARITAL HISTORY

A. CLIENT'S PRIOR MARRIAGES:

Name of 1st Ex-spouse: ________________________________________________________________

How, When and Where Marriage Terminated: ____________________________________________

__________________________________________________________________________________

If there were any children born from this prior marriage, please list the name of each child, the date of birth and with whom such child is currently residing:

<table>
<thead>
<tr>
<th>Name of Child</th>
<th>Date of Birth</th>
<th>Currently residing with:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Indicate if you currently pay or receive any child support on behalf of these children? ____________________________

__________________________________________________________________________________

Name of 2nd Ex-spouse: ______________________________________________________________

How, When and Where Marriage Terminated: ____________________________________________

__________________________________________________________________________________

If there were any children born from this prior marriage, please list the name of each child, the date of birth and with whom such child is currently residing:

<table>
<thead>
<tr>
<th>Name of Child</th>
<th>Date of Birth</th>
<th>Currently residing with:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Indicate if you currently pay or receive any child support on behalf of these children? ____________________________

__________________________________________________________________________________

Name of 3rd Ex-spouse: ______________________________________________________________

How, When and Where Marriage Terminated: ____________________________________________

__________________________________________________________________________________

Indicate if you currently pay or receive any child support on behalf of these children? ____________________________
If there were any children born from this prior marriage, please list the name of each child, the date of birth and with whom such child is currently residing:

<table>
<thead>
<tr>
<th>Name of Child</th>
<th>Date of Birth</th>
<th>Currently residing with:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Indicate if you currently pay or receive any child support on behalf of these children? ____________________

**B. SPOUSE’S PRIOR MARRIAGES:**

Name of 1st Ex-spouse: _____________________________________________________________________

How, When and Where Marriage Terminated: ___________________________________________________

If there were any children born from this prior marriage, please list the name of each child, the date of birth and with whom such child is currently residing:

<table>
<thead>
<tr>
<th>Name of Child</th>
<th>Date of Birth</th>
<th>Currently residing with:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Indicate if your spouse currently pays or receives any child support on behalf of these children? __________

Name of 2nd Ex-spouse: _____________________________________________________________________

How, When and Where Marriage Terminated: ___________________________________________________

If there were any children born from this prior marriage, please list the name of each child, the date of birth and with whom such child is currently residing:

<table>
<thead>
<tr>
<th>Name of Child</th>
<th>Date of Birth</th>
<th>Currently residing with:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Indicate if your spouse currently pays or receives any child support on behalf of these children? __________

Name of 3rd Ex-spouse: _____________________________________________________________________

How, When and Where Marriage Terminated: ___________________________________________________

If there were any children born from this prior marriage, please list the name of each child, the date of birth and with whom such child is currently residing:

<table>
<thead>
<tr>
<th>Name of Child</th>
<th>Date of Birth</th>
<th>Currently residing with:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Indicate if your spouse currently pays or receives any child support on behalf of these children? ___

**MARITAL MISCONDUCT**

From the list below, select if you or your spouse has done any of the following:

<table>
<thead>
<tr>
<th>You</th>
<th>Spouse</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physically abused spouse</td>
<td></td>
</tr>
<tr>
<td>Verbally abused spouse</td>
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<tr>
<td>Sexually abused spouse</td>
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<tr>
<td>Abused a child</td>
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<tr>
<td>Engaged in an extramarital relationship</td>
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<tr>
<td>Spent marital funds on an extramarital relationship</td>
<td></td>
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<tr>
<td>Tried to commit suicide</td>
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<tr>
<td>Has an emotional or psychiatric condition</td>
<td></td>
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<tr>
<td>Committed a crime</td>
<td></td>
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<tr>
<td>Been arrested</td>
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<tr>
<td>Been detained in jail</td>
<td></td>
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<tr>
<td>Abused alcohol</td>
<td></td>
</tr>
<tr>
<td>Abused prescription drugs</td>
<td></td>
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<tr>
<td>Used illegal drugs</td>
<td></td>
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<tr>
<td>Been hospitalized for alcohol and/or drugs</td>
<td></td>
</tr>
<tr>
<td>Spent marital funds for drugs or excessive alcohol</td>
<td></td>
</tr>
<tr>
<td>Been arrested for driving while intoxicated</td>
<td></td>
</tr>
<tr>
<td>Engaged in fraud</td>
<td></td>
</tr>
<tr>
<td>Gambled</td>
<td></td>
</tr>
</tbody>
</table>

Other illegal activities: ____________________       ___

| Destroyed property or other items |       |
| Hidden, wasted or dissipated assets |       |
| Spent beyond means, or poorly managed finances |       |

Other not listed above: ____________________       ___
Other not listed above: ____________________       ___  ___
APPENDIX A

Describe when and how you first learned of spouse's marital misconduct, if spouse has admitted misconduct to you, and if you are aware of the frequency of the misconduct:

________________________________________________________________________________________________________________________________________

What effect has spouse's misconduct had on you?

________________________________________________________________________________________________________________________________________

Are children aware of misconduct? If so, how has it affected children?

________________________________________________________________________________________________________________________________________

Are you, or your children, currently in counseling, or planning to begin counseling regarding the misconduct? If so, what is the cost of the counseling?

________________________________________________________________________________________________________________________________________

When marital difficulties began, did you and/or your spouse seek counseling? If so, provide the name of the marriage counselor, the duration of counseling, whether the counseling was joint or individual, and your reasons to discontinue counseling.

________________________________________________________________________________________________________________________________________

Has any spousal or child abuse been reported to a law enforcement agency? If yes, provide name of agency and date of incident and attach a copy of any police report if available.

________________________________________________________________________________________________________________________________________

STANDARD OF LIVING:

Describe the family's standard of living during the last 2 years:

________________________________________________________________________________________________________________________________________

List any memberships to social clubs, including monthly dues, average club bill in addition to monthly dues, frequency of club use, and any particular use by each family member:

________________________________________________________________________________________________________________________________________
Describe regular family vacations: ____________________________

____________________________________________________________________

____________________________________________________________________

____________________________________________________________________

Describe separate adult vacations: ____________________________

____________________________________________________________________

____________________________________________________________________

____________________________________________________________________

Describe frequency, and manner of entertaining others: ____________________________

____________________________________________________________________

____________________________________________________________________

____________________________________________________________________

Describe use and frequency of maids or other help: ____________________________

____________________________________________________________________

____________________________________________________________________

____________________________________________________________________

Describe frequency of purchasing or leasing new cars: ____________________________

____________________________________________________________________

____________________________________________________________________

____________________________________________________________________

Have your children been provided with cars? ____________________________

____________________________________________________________________

____________________________________________________________________

____________________________________________________________________

Describe Community activities and involvement: ____________________________

____________________________________________________________________

____________________________________________________________________

____________________________________________________________________

Describe anything not mentioned above regarding your standard of living or social status you consider significant to the outcome of this case: ____________________________

____________________________________________________________________

____________________________________________________________________

____________________________________________________________________
FAMILY FINANCES:

Which spouse has primary responsibility for the finances? ______________________________________________

Did this responsibility shift (if so, please explain)? ________________________________________________

Was income consolidated? _______________________________________________________________________

Was any income or asset treated differently (if yes, please explain)? _________________________________

Describe the method of filing tax returns: __________________________________________________________

Describe any family savings plans or retirement plans: _______________________________________________

Describe anything unusual or significant about the handling of family finances not mentioned above: _________

Provide any information not already requested in the preceding questions that you consider important to a fair and equitable result in your case (add additional pages, if necessary): ________________________________________________
CLIENT'S NON-MARITAL ASSETS & LIABILITIES

Premarital Assets - Client:
List any assets that you owned prior to the marriage, that were brought into the marriage: ______________________

_________________________________________________________________________

_________________________________________________________________________

_________________________________________________________________________

_________________________________________________________________________

Premarital liabilities - Client:
List any liabilities owed by you prior to the marriage that were brought into the marriage, and indicate if any marital funds or assets have been used to pay for these liabilities: _____________________________

_________________________________________________________________________

_________________________________________________________________________

_________________________________________________________________________

Disposition of Assets - Client
During the last 3 years, or since significant marital problems first became apparent, have you disposed of any assets with a value greater than $500.00 (if yes, please explain)? ________________________________
**Inheritance, Gifts, & Trusts - Client**

Describe any inheritance you received during the marriage (include the date acquired, how acquired, where located, style of ownership, value at time of marriage, value when inherited, value when obtained, current market value, basis of valuation, date of valuation, average annual income derived from the asset, how income from this asset has been used during the marriage and if this asset or the income from the asset has been commingled with a joint account, used to defray normal family expenses or relied upon to obtain loans or credit):  

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Describe any major gifts you received during the marriage from someone other than your spouse (include the date acquired, how acquired, where located, style of ownership, value at time of marriage, value when obtained, current market value, basis of valuation, date of valuation, average annual income derived from the asset, how income from this asset has been used during the marriage and if this asset or the income from the asset has been commingled with a joint account, used to defray normal family expenses or relied upon to obtain loans or credit):  

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**APPENDIX A**

**Premarital liabilities - Spouse:**

List any liabilities that your spouse owed prior to the marriage that were brought into the marriage, and indicate if any marital funds or assets have been used to pay for these liabilities:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

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**Disposition of Assets - Spouse**

During the last 3 years, or since significant marital problems first became apparent, has your spouse disposed of any assets with a value greater than $500.00 (if yes, please explain)?

________________________________________________________________________

________________________________________________________________________

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________________________________________________________________________

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**Inheritance, Gifts, & Trusts - Spouse**

Describe any inheritance your spouse has received during the marriage (include the date acquired, how acquired, where located, style of ownership, value at time of marriage, value when inherited, value when obtained, current market value, basis of valuation, date of valuation, average annual income derived from the asset, how income from this asset has been used during the marriage and if this asset or the income from the asset has been commingled with a joint account, used to defray normal family expenses or relied upon to obtain loans or credit):

________________________________________________________________________

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Describe any major gifts your spouse received during the marriage from someone other than yourself (include the date acquired, how acquired, where located, style of ownership, value at time of marriage, value when obtained, current market value, basis of valuation, date of valuation, average annual income derived from the asset, how income from this asset has been used during the marriage and if this asset or the income from the asset has been commingled with a joint account, used to defray normal family expenses or relied upon to obtain loans or credit):

________________________________________________________________________

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________________________________________________________________________
APPENDIX A

Is your spouse a party in a trust agreement or a will currently being probated? (If yes, please explain): ________________

________________________________________________________________________________________________________

Describe any gifts your spouse has received from you during the marriage of significant economic value which are still in existence, including engagement and wedding gifts (include the purchase price and current value of each):

________________________________________________________________________________________________________

________________________________________________________________________________________________________

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CLIENT'S MEDICAL INFORMATION

Describe your current health condition: ______________________________________________________________________

________________________________________________________________________________________________________

Date of last physical examination: ______________________________________________________________________
Name, address and phone number of physician: ________________________________________________________________

________________________________________________________________________________________________________

If you have any physical disabilities, please describe the nature of the disability: ________________________________

________________________________________________________________________________________________________

________________________________________________________________________________________________________

If you have been hospitalized in the past 5 years, for each hospitalization, please describe the date you were hospitalized, the name of the hospital, the reason for hospitalization, the outcome of such hospitalization, and your treating physician:

________________________________________________________________________________________________________

________________________________________________________________________________________________________

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Describe any major health problems during the marriage not requiring hospitalization: ____________________________

________________________________________________________________________________________________________

Do you have any sexually transmitted disease (if so, please specify)? _________________________________

________________________________________________________________________________________________________

List any medications you are currently taking on a regular basis: _________________________________

________________________________________________________________________________________________________

________________________________________________________________________________________________________

If you are currently, or have ever been under the care of a mental health professional, please provide the name and address of the mental health professional and the dates and frequency of the therapy provided: _________________________________

________________________________________________________________________________________________________

________________________________________________________________________________________________________

5.26
SPOUSE'S MEDICAL INFORMATION

To the best of your knowledge, describe your spouse's current health condition: ______________________________________

____________________________________________________________________________________

If known, date of spouse's last physical examination: _________________________________________________
Name, address and phone number of physician: _____________________________________________________

If your spouse has any physical disabilities, please describe the nature of the disability: ______________________
____________________________________________________________________________________

If your spouse has been hospitalized in the past 5 years, for each hospitalization, please describe the date your spouse was hospitalized, the name of the hospital, the reason for hospitalization, the outcome of such hospitalization, and your spouse's treating physician:
____________________________________________________________________________________

____________________________________________________________________________________

Describe any major health problems during the marriage not requiring hospitalization: ______________________
____________________________________________________________________________________

Does your spouse have any sexually transmitted disease (if so, please specify)? ____________________________
____________________________________________________________________________________

List any medications your spouse is currently taking on a regular basis: _________________________________
____________________________________________________________________________________

If your spouse is currently, or has ever been under the care of a mental health professional, please provide the name and address of the mental health professional and the dates and frequency of the therapy provided: __________________________
____________________________________________________________________________________

LIST OF APPRAISERS AND PROFESSIONAL ADVISORS

For each professional, indicate whether such professional is an advisor on behalf of yourself, your spouse, or both, by placing a check mark on the line under the appropriate column.

Accountant:

Name, Address and Phone Number: __________________________ Client Spouse

Stock Broker: __________________________

Insurance Agent: __________________________
APPENDIX A

______________________________
Appraiser:

______________________________
Family/Marriage Counselor/Psychiatrist:

______________________________
Family Physician:

______________________________
Family Medical Specialist:

Other: ______________________

Other: ______________________

WITNESS LIST

Identify all witnesses you think are important to your case. Possible witnesses might include neighbors, the children's teachers, babysitters, day care workers, friends, doctors, clergy, and family members or others. Also list witnesses who might testify on behalf of your spouse. If the witness would testify on behalf of your spouse, indicate such under the column entitled "Expected Testimony".

NAME, ADDRESS and PHONE NUMBER:  EXPECTED TESTIMONY:

________________________________________

________________________________________

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<th>RELIEF REQUESTED BY CLIENT</th>
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<tbody>
<tr>
<td>I.  Children</td>
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<tr>
<td>_______ Primary parental responsibility of the children</td>
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<tr>
<td>_______ Sole parental responsibility of the children</td>
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<tr>
<td>_______ Shared parental responsibility of the children</td>
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<tr>
<td>_______ Child support - $ _________ Monthly</td>
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<tr>
<td>_______ Continued medical insurance</td>
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<tr>
<td>_______ Provide for specific expenses (i.e., extracurricular activities, etc.)</td>
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<tr>
<td>_______ Provide for disabled child</td>
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<tr>
<td>_______ Agreement for college expenses</td>
</tr>
<tr>
<td>II. Alimony</td>
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<tr>
<td>_______ Permanent - $ _________ Monthly</td>
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<tr>
<td>_______ Rehabilitative - $ _________ Monthly</td>
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<tr>
<td>_______ Durational - $ _________ Monthly</td>
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<tr>
<td>_______ Lump sum - $ _________</td>
</tr>
<tr>
<td>_______ Continued medical insurance</td>
</tr>
<tr>
<td>III. Distribution of Real Estate</td>
</tr>
<tr>
<td>_______ Exclusive use of marital home</td>
</tr>
<tr>
<td>_______ Possession of marital home until children finish High School</td>
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<tr>
<td>_______ Title to marital home as lump sum alimony</td>
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<tr>
<td>_______ Claim for unequal distribution of marital home</td>
</tr>
<tr>
<td>_______ Claim of enhancement in value or appreciation of non-marital home</td>
</tr>
<tr>
<td>_______ Partition or sale of marital home</td>
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<tr>
<td>_______ Exclusive use of other real estate</td>
</tr>
<tr>
<td>_______ Title to other realty as lump sum alimony</td>
</tr>
<tr>
<td>_______ Claim for unequal distribution of other marital realty</td>
</tr>
<tr>
<td>_______ Claim of enhancement in value or appreciation of non-marital realty</td>
</tr>
<tr>
<td>_______ Partition of other realty</td>
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<tr>
<td>IV. Distribution of Personal Property</td>
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<tr>
<td>_______ Life insurance</td>
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<tr>
<td>_______ Exclusive use and title to contents of residence</td>
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<tr>
<td>_______ Return of removed property</td>
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<tr>
<td>_______ Division of joint checking/savings accounts</td>
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<tr>
<td>_______ Return of $ _________ joint funds removed by spouse</td>
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<tr>
<td>_______ Exclusive use and title to ____________________________ automobile</td>
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<tr>
<td>_______ Stocks</td>
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<tr>
<td>_______ Bonds</td>
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<tr>
<td>_______ C.D. or money market account</td>
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<tr>
<td>_______ Pension plan or retirement fund</td>
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<tr>
<td>_______ Profit sharing plan</td>
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<tr>
<td>V. Liabilities</td>
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<tr>
<td>_______ Mortgage payments</td>
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<td>_______ Charge accounts</td>
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</tbody>
</table>

5.29
APPENDIX A

VI. Other
   ________ Maintain confidentiality of financial information
   ________ Restoration of Maiden Name to ________________________________

VII. Temporary Orders
   ________ Temporary time-sharing schedule
   ________ Special provisions for upcoming holidays
   ________ Supervised time-sharing schedule
   ________ No time-sharing schedule
   ________ Restrictions on communications between parties
   ________ Prevent removal of child from state or country
   ________ Prevent passport services or surrender passport of children
   ________ Child Support $ _____ Monthly
   ________ Health Insurance for children
   ________ Parenting plan recommendation
   ________ Psychological exam
   ________ Exclusive use of home
   ________ Other party to pay mortgage or rent - $ ________________
   ________ Other party pay utilities
   ________ Exclusive use of vehicle
   ________ Operation of business
   ________ Exclusive use of other assets
   ________ Car payment and insurance $ __________________
   ________ Payment of other liabilities
   ________ Temporary spousal support $ __________________
   ________ Health insurance
   ________ Injunction to preserve assets, freeze accounts
   ________ Limit expenditures for living expenses, business
   ________ Injunction against domestic violence
   ________ Injunction against harassment
   ________ Temporary attorney's fees
IN THE CIRCUIT COURT OF THE ___________________________ JUDICIAL CIRCUIT,
IN AND FOR ___________________________ COUNTY, FLORIDA

Case No.: 
Division: 

_________________________________,
Petitioner,

and

__________________________________,
Respondent.

STANDARD FAMILY LAW INTERROGATORIES
FOR ORIGINAL OR ENFORCEMENT PROCEEDINGS

TO BE COMPLETED BY THE PARTY SERVING THESE INTERROGATORIES
I am requesting that the following standard questions be answered: [check all that apply]

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In addition, I am requesting that the attached # questions be answered.

The answers to the following questions are intended to supplement the information provided in the Financial Affidavits, Florida Family Law Rules of Procedure Form 12.902(b) or (c). You should answer the group of questions indicated in the above shaded box. The questions should be answered in the blank space provided below each separately numbered question. If sufficient space is not provided, you may attach additional papers with the answers and refer to them in the space provided in the interrogatories. You should be sure to make a copy for yourself. Each question must be answered separately and as completely as the available information permits. All answers are to be made under oath or affirmation as to their truthfulness.

AFTER YOU ANSWER THE INTERROGATORIES, DO NOT FILE THE ORIGINAL WITH THE CLERK OF THE COURT. ALL PERSONAL INFORMATION CONTAINED IN THE COURT FILE BECOMES PUBLIC RECORD. INSTEAD, SERVE THE ORIGINAL OF THE ANSWERS TO THE INTERROGATORIES ON THE OTHER PARTY AND FILE FORM 12.930(d), NOTICE OF SERVICE OF ANSWERS TO INTERROGATORIES, WITH THE CLERK.

I, (name of person answering interrogatories) __________________________________________________
being sworn, certify that the following information is true:

Florida Family Law Rules of Procedure Form 12.930(b), Standard Family Law Interrogatories for Original or Enforcement Proceedings (03/17)
1. **BACKGROUND INFORMATION:**
   a. State your full legal name and any other name by which you have been known.
   b. State your present residence and telephone numbers.

2. **EDUCATION:**
   a. List all business, commercial, and professional licenses that you have obtained.
   b. List all of your education including, but not limited to, vocational or specialized training, including the following:
      1. name and address of each educational institution.
      2. dates of attendance.
      3. degrees or certificates obtained or anticipated dates of same.

3. **EMPLOYMENT:**
   a. For each place of your employment or self-employment during the last 3 years, state the following:
      1. name, address, and telephone number of your employer.
      2. dates of employment.
      3. job title and brief description of job duties.
      4. starting and ending salaries.
      5. name of your direct supervisor.
      6. all benefits received, including, for example, health, life, and disability insurance; expense account; use of automobile or automobile expense reimbursement; reimbursement for travel, food, or lodging expenses; payment of dues in any clubs or associations; and pension or profit sharing plans.
   b. Other than as an employee, if you have been engaged in or associated with any business, commercial, or professional activity within the last 3 years that was not detailed above, state for each such activity the following:

Florida Family Law Rules of Procedure Form 12.930(b), Standard Family Law Interrogatories for Original or Enforcement Proceedings (03/17)
(1) name, address, and telephone number of each activity.
(2) dates you were connected with such activity.
(3) position title and brief description of activities.
(4) starting and ending compensation.
(5) name of all persons involved in the business, commercial, or professional activity with you.
(6) all benefits and compensation received, including, for example, health, life, and disability insurance; expense account; use of automobile or automobile expense reimbursement; reimbursement for travel, food, or lodging expenses; payment of dues in any clubs or associations; and pension or profit sharing plans.

c. If you have been unemployed at any time during the last 3 years, state the dates of unemployment. If you have not been employed at any time in the last 3 years, give the information requested above in question 3.a for your last period of employment.

4. ASSETS:

a. Real Estate. State the street address, if any, and if not, the legal description of all real property that you own or owned during the last 3 years. For each property, state the following:
   (1) the names and addresses of any other persons or entities holding any interest and their percentage of interest.
   (2) the purchase price, the cost of any improvements made since it was purchased, and the amount of any depreciation taken.
   (3) the fair market value on the date of your separation from your spouse.
   (4) the fair market value on the date of the filing of the petition for dissolution of marriage.

b. Tangible Personal Property. List all items of tangible personal property that are owned by you or in which you have had any interest during the last 3 years including, but not limited to, motor vehicles, tools, furniture, boats, jewelry, art objects or other collections, and collectibles whose fair market value exceeds $100. For each item, state the following:
   (1) the percentage and type interest you hold.
   (2) the names and addresses of any other persons or entities holding any interest.
   (3) the date you acquired your interest.

Florida Family Law Rules of Procedure Form 12.930(b), Standard Family Law Interrogatories for Original or Enforcement Proceedings (03/17)
(4) the purchase price.
(5) the present fair market value.
(6) the fair market value on the date of your separation from your spouse.
(7) the fair market value on the date of the filing of the petition for dissolution of marriage.

c. **Intangible Personal Property.** Other than the financial accounts (checking, savings, money market, credit union accounts, retirement accounts, or other such cash management accounts) listed in the answers to interrogatories 4.d and 4.e below, list all items of intangible personal property that are owned by you or in which you have had any ownership interest (including closed accounts) within the last 3 years, including but not limited to, partnership and business interests (including good will), deferred compensation accounts unconnected with retirement, including but not limited to stock options, sick leave, and vacation pay, stocks, stock funds, mutual funds, bonds, bond funds, real estate investment trust, receivables, certificates of deposit, notes, mortgages, and debts owed to you by another entity or person. For each item, state the following:

(1) the percentage and type interest you hold.
(2) the names and addresses of any other persons or entities holding any interest and the names and addresses of the persons and entities who are indebted to you.
(3) the date you acquired your interest.
(4) the purchase price, acquisition cost, or loaned amount.
(5) the fair market value or the amounts you claim are owned by or owed to you:
   a) presently, at the time of answering these interrogatories.
   b) on the date of your separation from your spouse.
   c) on the date of the filing of the petition for dissolution of marriage.

You may comply with this interrogatory (4.c) by providing copies of all periodic (monthly, quarterly, semi-annual, or annual) account statements for each such account for the preceding 3 years. DO NOT FILE THESE DOCUMENTS IN THE COURT FILE. However, if the date of acquisition, the purchase price and the market valuations are not clearly reflected in the periodic statements which are furnished then these questions must be answered separately. You do not have to resubmit any periodic statements previously furnished under rule 12.285 (Mandatory Disclosure).

d. **Retirement Accounts:** List all information regarding each retirement account/plan, including but not limited to defined benefit plans, 401k, 403B, IRA accounts, pension plans, Florida Retirement System plans (FRS), Federal Government plans, money purchase plans, HR10 (Keogh) plans, profit sharing plans, annuities, employee savings plans, etc. that you have
established and/or that have been established for you by you, your employer, or any previous employer. For each account, state the following:

1. the name and last 4 digits of the account number of each account/plan and where it is located.
2. the type of account/plan.
3. the name and address of the fiduciary plan administrator/service representative.
4. the fair market value of your interest in each account/plan.
   a. present value.
   b. value on the date of separation.
   c. value on the date of filing of the petition for dissolution of marriage
5. whether you are vested or not vested; and if vested, in what amount, as of a certain date and the schedule of future vesting.
6. the date at which you became/become eligible to receive some funds in this account/plan.
7. monthly benefits of the account/plan if no fair market value is ascertained.
8. beneficiary(ies) and/or alternate payee(s).

e. **Financial Accounts.** For all financial accounts (checking, savings, money market, credit union accounts, or other such cash management accounts) listed in your Financial Affidavit, in which you have had any legal or equitable interest, regardless of whether the interest is or was held in your own name individually, in your name with another person, or in any other name, give the following:

1. name and address of each institution.
2. name in which the account is or was maintained.
3. the last 4 digits of account numbers.
4. name of each person authorized to make withdrawals from the accounts.
5. highest balance within each of the preceding 3 years.
6. lowest balance within each of the preceding 3 years.

*You may comply with this interrogatory (4.e) by providing copies of all periodic (monthly, quarterly, semi-annual, or annual) account statements for each such account for the preceding 3 years. DO NOT FILE THESE DOCUMENTS IN THE COURT FILE. You do not have to resubmit account statements previously furnished pursuant to rule 12.285 (Mandatory Disclosure).*

f. **Closed Financial Accounts.** For all financial accounts (checking, savings, money market, credit union accounts, or other such cash management accounts) closed within the last 3 years, in which you have had any legal or equitable interest, regardless of whether the interest is or was held in your own name individually, in your name with another person, or in any other name, give the following:

Florida Family Law Rules of Procedure Form 12.930(b), Standard Family Law Interrogatories for Original or Enforcement Proceedings (03/17)
(1) name and address of each institution.
(2) name in which the account is or was maintained.
(3) the last 4 digits of account numbers.
(4) name of each person authorized to make withdrawals from the accounts.
(5) date account was closed.

g. **Trust.** For any interest in an estate, trust, insurance policy, or annuity, state the following:
   (1) If you are the beneficiary of any estate, trust, insurance policy, or annuity, give for each one the following:
      (a) identification of the estate, trust, insurance policy, or annuity.
      (b) the nature, amount, and frequency of any distributions of benefits.
      (c) the total value of the beneficiaries' interest in the benefit.
      (d) whether the benefit is vested or contingent.
   (2) If you have established any trust or are the trustee of a trust, state the following:
      (a) the date the trust was established.
      (b) the names and addresses of the trustees.
      (c) the names and addresses of the beneficiaries.
      (d) the names and addresses of the persons or entities who possess the trust documents.
      (e) each asset that is held in each trust, with its fair market value.

h. **Canceled Life Insurance Policies.** For all policies of life insurance within the preceding 3 years that you no longer hold, own, or have any interest in, state the following:
   (1) name of company that issued the policy and last 4 digits of policy number.
   (2) name, address, and telephone number of agent who issued the policy.
   (3) amount of coverage.
   (4) name of insured.
   (5) name of owner of policy.
   (6) name of beneficiaries.
   (7) premium amount.
   (8) date the policy was surrendered.
   (9) amount, if any, of monies distributed to the owner.
i. **Name of Accountant, Bookkeeper, or Records Keeper.** State the names, addresses, and telephone numbers of your accountant, bookkeeper, and any other persons who possess your financial records, and state which records each possesses.

**Safe Deposit Boxes, Lock Boxes, Vaults, Etc.** For all safe deposit boxes, lock boxes, vaults, or similar types of depositories, state the following:

1. The names and addresses of all banks, depositories, or other places where, at any time during the period beginning 3 years before the initiation of the action, until the date of your answering this interrogatory, you did any of the following:
   (a) had a safe deposit box, lock box, or vault.
   (b) were a signatory or co-signatory on a safe deposit box, lock box, or vault.
   (c) had access to a safe deposit box, lock box, or vault.
   (d) maintained property.
2. The box or identification numbers and the name and address of each person who has had access to any such depository during the same time period.
3. All persons who have possession of the keys or combination to the safe deposit box, lock box, or vault.
4. Any items removed from any safe deposit boxes, lock boxes, vaults, or similar types of depositories by you or your agent during that time, together with the present location and fair market value of each item.
5. All items in any safe deposit boxes, lock boxes, vaults, or similar types of depositories and fair market value of each item.

5. **LIABILITIES:**

   a. **Loans, Liabilities, Debts, and Other Obligations.** For all loans, liabilities, debts, and other obligations (other than credit cards and charge accounts) listed in your Financial Affidavit, indicate for each the following:
      (1) name and address of the creditor.
      (2) name in which the obligation is or was incurred.
      (3) last 4 digits of the loan or account number, if any.
      (4) nature of the security, if any.
      (5) payment schedule.
      (6) present balance and current status of your payments.
      (7) total amount of arrearage, if any.
      (8) balance on the date of your separation from your spouse.
      (9) balance on the date of the filing of the petition for dissolution of marriage.
You may comply with this interrogatory (5.a) by providing copies of all periodic (monthly, quarterly, semi-annual, or annual) account statements for each such account for the preceding 3 years. DO NOT FILE THESE DOCUMENTS IN THE COURT FILE. You do not have to resubmit account statements previously furnished under rule 12.285 (Mandatory Disclosure).

b. **Credit Cards and Charge Accounts.** For all financial accounts (credit cards, charge accounts, or other such accounts) listed in your Financial Affidavit, in which you have had any legal or equitable interest, regardless of whether the interest is or was held in your own name individually, in your name with another person, or in any other name, give the following:
   (1) name and address of the creditor.
   (2) name in which the account is or was maintained.
   (3) names of each person authorized to sign on the accounts.
   (4) last 4 digits of account numbers.
   (5) present balance and current status of your payments.
   (6) total amount of arrearage, if any.
   (7) balance on the date of your separation from your spouse.
   (8) balance on the date of the filing of the petition for dissolution of marriage.
   (9) highest and lowest balance within each of the preceding 3 years.

You may comply with this interrogatory (5.b) by providing copies of all periodic (monthly, quarterly, semi-annual, or annual) account statements for each such account for the preceding 3 years. DO NOT FILE THESE DOCUMENTS IN THE COURT FILE. You do not have to resubmit account statements previously furnished under rule 12.285 (Mandatory Disclosure).

c. **Closed Credit Cards and Charge Accounts.** For all financial accounts (credit cards, charge accounts, or other such accounts) closed with no remaining balance, within the last 3 years, in which you have had any legal or equitable interest, regardless of whether the interest is or was held in your own name individually, in your name with another person, or in any other name, give the following:
   (1) name and address of each creditor.
   (2) name in which the account is or was maintained.
   (3) last 4 digits of account numbers.
   (4) names of each person authorized to sign on the accounts.
   (5) date the balance was paid off.
   (6) amount of final balance paid off.

You may comply with this interrogatory (5.c) by providing copies of all periodic (monthly, quarterly, semi-annual, or annual) account statements for each such account for the preceding 3 years.
3 years. DO NOT FILE THESE DOCUMENTS IN THE COURT FILE. You do not have to resubmit account statements previously furnished under rule 12.285 (Mandatory Disclosure).

6. MISCELLANEOUS:
   a. If you are claiming an unequal distribution of marital property or enhancement or appreciation of nonmarital property, state the amount claimed and all facts upon which you rely in your claim.
   b. If you are claiming an asset or liability is nonmarital, list the asset or liability and all facts upon which you rely in your claim.
   c. If the mental or physical condition of a spouse or child is an issue, identify the person and state the name and address of all health care providers involved in the treatment of that person for said mental or physical condition.
   d. Detail your proposed parenting plan for the minor child(ren), including your proposed timesharing schedule. Alternatively, attach a copy of your proposed parenting plan.
   e. If you are claiming that the other parent's time-sharing with the minor child(ren) should be limited, supervised, or otherwise restricted, or that you should have sole parental responsibility for the minor child(ren), with or without time-sharing with the other parent, or that you should have ultimate responsibility over specific aspects of the child(ren)’s welfare or that these responsibilities should be divided between you and the other parent, state your reasons and all facts which you rely upon to support your claim.

7. LONG FORM AFFIDAVIT: If you filed the short form affidavit, Florida Family Law Rules of Procedure Form 12.902(b), and you were specifically requested in the Notice of Service of Standard Family Law Interrogatories to file the Long Form Affidavit, Form12.902(c), you must do so within the time to serve the answers to these interrogatories.
I certify that a copy of this document was [check all used]: ( ) emailed ( ) mailed ( ) faxed ( ) hand delivered to the person(s) listed below on (date) ________________________________

Other party or his/ her attorney:
Name: ________________________________
Address: ________________________________________________
City, State, Zip: ________________________________
Fax Number: ________________________________
Email Address(es): ________________________________

I understand that I am swearing or affirming under oath to the truthfulness of the answers to these interrogatories and that the punishment for knowingly making a false statement includes fines and/or imprisonment.

Dated: ________________________________

Signature of Party
Printed Name: ________________________________
Address: __________________________________________
City, State, Zip: ________________________________
Telephone Number: ________________________________
Fax Number: ________________________________
Email Address(es): ________________________________

STATE OF FLORIDA
COUNTY OF ________________________________

Sworn to or affirmed and signed before me on __________________ by ________________________________

NOTARY PUBLIC or DEPUTY CLERK

[Print, type, or stamp commissioned name of notary or deputy clerk.]

Personally known

Produced identification

Type of identification produced ________________________________

IF A NONLAWYER HELPED YOU FILL OUT THIS FORM, HE/ SHE MUST FILL IN THE BLANKS BELOW:
[fill in all blanks] This form was prepared for the: {choose only one} ( ) Petitioner ( ) Respondent
This form was completed with the assistance of:
{name of individual} ________________________________,
{name of business} ________________________________,
{address} ________________________________,
{city} ________________________________ , {state} ________________________________ , {telephone number} ________________________________

Florida Family Law Rules of Procedure Form 12.930(b), Standard Family Law Interrogatories for Original or Enforcement Proceedings (03/17)
IN THE CIRCUIT COURT OF THE _____________________________ JUDICIAL CIRCUIT, IN AND FOR __________________________ COUNTY, FLORIDA

Case No.: _____________________________
Division: _____________________________

__________________________
Petitioner,

and

__________________________
Respondent.

STANDARD FAMILY LAW INTERROGATORIES
FOR MODIFICATION PROCEEDINGS

TO BE COMPLETED BY THE PARTY SERVING THESE INTERROGATORIES

I am requesting that the following standard questions be answered: [check all that apply]

1 Background
2 Education
3 Employment
4 Assets
5 Liabilities
6 Miscellaneous
7 Long Form Information
8 Affidavit

In addition, I am requesting that the attached {#} ____________________ questions be answered.

The answers to the following questions are intended to supplement the information provided in the Financial Affidavits, Florida Family Law Rules of Procedure Form 12.902(b) or (c). You should answer the group of questions indicated in the above shaded box. The questions should be answered in the blank space provided below each separately numbered question. If sufficient space is not provided, you may attach additional papers with the answers and refer to them in the space provided in the interrogatories. You should be sure to make a copy for yourself. Each question must be answered separately and as completely as the available information permits. All answers are to be made under oath or affirmation as to their truthfulness.

AFTER YOU ANSWER THE INTERROGATORIES, DO NOT FILE THE ORIGINAL WITH THE CLERK OF THE COURT. ALL PERSONAL INFORMATION CONTAINED IN THE COURT FILE BECOMES PUBLIC RECORD. INSTEAD, SERVE THE ORIGINAL OF THE ANSWERS TO THE INTERROGATORIES ON THE OTHER PARTY AND FILE FORM 12.930(d), NOTICE OF SERVICE OF ANSWERS TO INTERROGATORIES, WITH THE CLERK.

I, {name of person answering interrogatories} ____________________________
being sworn, certify that the following information is true:

Florida Family Law Rules of Procedure Form 12.930(c), Standard Family Law Interrogatories for Modification Proceedings (03/17)
1. BACKGROUND INFORMATION:
   a. State your full legal name and any other name by which you have been known.
   b. State your present residence and telephone numbers.

2. EDUCATION:
   a. List all business, commercial, and professional licenses that you have obtained since the entry of the Final Judgment sought to be modified.
   b. List all of your education since the entry of the Final Judgment sought to be modified including, but not limited to, vocational or specialized training, including the following:
      (1) name and address of each educational institution.
      (2) dates of attendance.
      (3) degrees or certificates obtained or anticipated dates of same.

3. EMPLOYMENT:
   a. For each place of your employment or self-employment since the entry of the Final Judgment sought to be modified, state the following:
      (1) name, address, and telephone number of your employer.
      (2) dates of employment.
      (3) job title and brief description of job duties.
      (4) starting and ending salaries.
      (5) name of your direct supervisor.
      (6) all benefits received, including, for example, health, life, and disability insurance; expense account; use of automobile or automobile expense reimbursement; reimbursement for travel, food, or lodging expenses; payment of dues in any clubs or associations; and pension or profit sharing plans.
b. Other than as an employee, if you have been engaged in or associated with any business, commercial, or professional activity since the entry of the Final Judgment sought to be modified that was not detailed above, state for each such activity the following:
   (1) name, address, and telephone number of each activity.
   (2) dates you were connected with such activity.
   (3) position title and brief description of activities.
   (4) starting and ending compensation.
   (5) name of all persons involved in the business, commercial, or professional activity with you.
   (6) all benefits and compensation received, including, for example, health, life, and disability insurance; expense account; use of automobile or automobile expense reimbursement; reimbursement for travel, food, or lodging expenses; payment of dues in any clubs or associations; and pension or profit sharing plans.

c. If you have been unemployed at any time since the entry of the Final Judgment sought to be modified, state the dates of unemployment. If you have not been employed at any time since the entry of the Final Judgment sought to be modified, give the information requested above in question 3.a for your last period of employment.

4. **ASSETS:**
   a. **Real Estate.** State the street address, if any, and if not, the legal description of all real property that you own or owned during the last 3 years, or since the entry of the Final Judgment sought to be modified, if shorter. For each property, state the following:
      (1) the names and addresses of any other persons or entities holding any interest and their percentage of interest.
      (2) the present fair market value.

   b. **Tangible Personal Property.** List all items of tangible personal property that are owned by you or in which you have had any interest during the last 3 years, or since the entry of the Final Judgment sought to be modified, if shorter, including, but not limited to, motor vehicles, tools, furniture, boats, jewelry, art objects or other collections, and collectibles whose fair market value exceeds $100. For each item, state the following:
(1) the percentage and type interest you hold.
(2) the names and addresses of any other persons or entities holding any interest.
(3) the present fair market value.

c. **Intangible Personal Property.** Other than the financial accounts (checking, savings, money market, credit union accounts, retirement accounts, or other such cash management accounts) listed in the answers to interrogatories 4.d and 4.e below, list all items of intangible personal property that are owned by you or in which you have had any ownership interest (including closed accounts) within the last 3 years, or since the entry of the Final Judgment sought to be modified, if shorter, including but not limited to, partnership and business interests (including good will), deferred compensation accounts unconnected with retirement, including but not limited to stock options, sick leave, and vacation pay, stocks, stock funds, mutual funds, bonds, bond funds, real estate investment trust, receivables, certificates of deposit, notes, mortgages, and debts owed to you by another entity or person. For each item, state the following:

(1) the percentage and type interest you hold.
(2) the names and addresses of any other persons or entities holding any interest and the names and addresses of the persons and entities who are indebted to you
(3) the present fair market value or the amounts you claim are owned by or owed to you, at the time of answering these interrogatories.

You may comply with this interrogatory (4.c) by providing copies of all periodic (monthly, quarterly, semi-annual, or annual) account statements for each such account for the preceding 3 years, or since the entry of the Final Judgment sought to be modified, if shorter. **DO NOT FILE THESE DOCUMENTS IN THE COURT FILE.** However, if the date of acquisition, the purchase price and the market valuations are not clearly reflected in the periodic statements which are furnished, then these questions must be answered separately. You do not have to resubmit any periodic statements previously furnished under rule 12.285 (Mandatory Disclosure).

d. **Retirement Accounts:** List all information regarding each retirement account/plan, including but not limited to defined benefit plans, 401k, 403B, IRA accounts, pension plans, Florida Retirement System plans (FRS), Federal Government plans, money purchase plans, HR10 (Keogh) plans, profit sharing plans, annuities, employee savings plans, etc. that you have established and/or that have been established for you by you, your employer, or any previous employer. For each account, state the following:

(1) the name and last 4 digits of the account number of each account/plan and where it is located.
(2) the type of account/plan.
(3) the name and address of the fiduciary plan administrator/service representative.
(4) the present fair market value of your interest in each account/plan.
(5) whether you are vested or not vested; and if vested, in what amount, as of a certain date and the schedule of future vesting.
(6) the date at which you became/become eligible to receive some funds in this account/plan.
(7) monthly benefits of the account/plan if no fair market value is ascertained.
(8) beneficiary(ies) and/or alternate payee(s).

e. **Financial Accounts.** For all financial accounts (checking, savings, money market, credit union accounts, or other such cash management accounts) listed in your Financial Affidavit, in which you have had any legal or equitable interest, regardless of whether the interest is or was held in your own name individually, in your name with another person, or in any other name, give the following:
   (1) name and address of each institution.
   (2) name in which the account is or was maintained.
   (3) last 4 digits of account numbers.
   (4) name of each person authorized to make withdrawals from the accounts.
   (5) highest balance within each of the preceding 3 years, or since the entry of the Final Judgment sought to be modified, if shorter.
   (6) lowest balance within each of the preceding 3 years, or since the entry of the Final Judgment sought to be modified, if shorter.
   
   You may comply with this interrogatory (4.e) by providing copies of all periodic (monthly, quarterly, semi-annual, or annual) account statements for each such account for the preceding 3 years, or since the entry of the Final Judgment sought to be modified, if shorter.

   DO NOT FILE THESE DOCUMENTS IN THE COURT FILE. You do not have to resubmit account statements previously furnished pursuant to rule 12.285 (Mandatory Disclosure).

f. **Closed Financial Accounts.** For all financial accounts (checking, savings, money market, credit union accounts, or other such cash management accounts) closed within the last 3 years, or since the entry of the Final Judgment sought to be modified, if shorter, in which you have had any legal or equitable interest, regardless of whether the interest is or was held in your own name individually, in your name with another person, or in any other name, give the following:
   (1) name and address of each institution.
   (2) name in which the account is or was maintained.
   (3) last 4 digits of account numbers.
   (4) name of each person authorized to make withdrawals from the accounts.
   (5) date account was closed.
g. **Trust.** For any interest in an estate, trust, insurance policy, or annuity, state the following:

1. If you are the beneficiary of any estate, trust, insurance policy, or annuity, give for each one the following:
   (a) identification of the estate, trust, insurance policy, or annuity.
   (b) the nature, amount, and frequency of any distributions of benefits.
   (c) the total value of the beneficiaries' interest in the benefit.
   (d) whether the benefit is vested or contingent.

2. If you have established any trust or are the trustee of a trust, state the following:
   (a) the date the trust was established.
   (b) the names and addresses of the trustees.
   (c) the names and addresses of the beneficiaries.
   (d) the names and addresses of the persons or entities who possess the trust documents.
   (e) each asset that is held in each trust, with its fair market value.

h. **Name of Accountant, Bookkeeper, or Records Keeper.** State the names, addresses, and telephone numbers of your accountant, bookkeeper, and any other persons who possess your financial records, and state which records each possesses.

5. **LIABILITIES:**

a. **Loans, Liabilities, Debts, and Other Obligations.** For all loans, liabilities, debts, and other obligations (other than credit cards and charge accounts) listed in your Financial Affidavit, indicate for each the following:

1. name and address of the creditor.
2. name in which the obligation is or was incurred.
3. last 4 digits of loan or account number, if any.
4. nature of the security, if any.
5. payment schedule.
6. present balance and current status of your payments.
7. total amount of arrearage, if any.

You may comply with this interrogatory (5.a) by providing copies of all periodic (monthly, quarterly, semi-annual, or annual) account statements for each such account for the preceding 3 years, or since the entry of the Final Judgment sought to be modified, if shorter. **DO NOT FILE THESE DOCUMENTS IN THE COURT FILE.** You do not have to resubmit account statements previously furnished under rule 12.285 (Mandatory Disclosure).
b. **Credit Cards and Charge Accounts.** For all financial accounts (credit cards, charge accounts, or other such accounts) listed in your Financial Affidavit, in which you have had any legal or equitable interest, regardless of whether the interest is or was held in your own name individually, in your name with another person, or in any other name, give the following:

(1) name and address of the creditor.
(2) name in which the account is or was maintained.
(3) names of each person authorized to sign on the accounts.
(4) last 4 digits of account numbers.
(5) present balance and current status of your payments.
(6) total amount of arrearage, if any.
(7) highest and lowest balance within each of the preceding 3 years, or since the entry of the Final Judgment sought to be modified, if shorter.

You may comply with this interrogatory (5.b) by providing copies of all periodic (monthly, quarterly, semi-annual, or annual) account statements for each such account for the preceding 3 years, or since the entry of the Final Judgment sought to be modified, if shorter. DO NOT FILE THESE DOCUMENTS IN THE COURT FILE. You do not have to resubmit account statements previously furnished under rule 12.285 (Mandatory Disclosure).

c. **Closed Credit Cards and Charge Accounts.** For all financial accounts (credit cards, charge accounts, or other such accounts) closed with no remaining balance, within the last 3 years, or since the entry of the Final Judgment sought to be modified, in which you have had any legal or equitable interest, regardless of whether the interest is or was held in your own name individually, in your name with another person, or in any other name, give the following:

(1) name and address of each creditor.
(2) name in which the account is or was maintained.
(3) last 4 digits of account numbers.
(4) name of each person authorized to sign on the accounts.
(5) date the balance was paid off.
(6) amount of final balance paid off.

You may comply with this interrogatory (5.c) by providing copies of all periodic (monthly, quarterly, semi-annual, or annual) account statements for each such account for the preceding 3 years, or since the entry of the Final Judgment sought to be modified, if shorter. DO NOT FILE THESE DOCUMENTS IN THE COURT FILE. You do not have to resubmit account statements previously furnished under rule 12.285 (Mandatory Disclosure).
6. **MISCELLANEOUS:**
   a. If you are claiming a diminished earning capacity since the entry of the Final Judgment sought to be modified as grounds to modify alimony or deviate from the child support established in your case, describe in detail how your earning capacity is lowered and state all facts upon which you rely in your claim. If unemployed, state how, why, and when you lost your job.
   b. If you are claiming a change in mental or physical condition since the entry of the Final Judgment sought to be modified as grounds to modify alimony or change the child support established in your case, describe in detail how your mental and/or physical capacity has changed and state all facts on which you rely in your claim. Identify the change in your mental and/or physical capacity, and state the name and address of all health care providers involved in the treatment of this mental or physical condition.
   c. If you are requesting a change in shared or sole parental responsibility, ultimate decision-making, the time-sharing schedule, the parenting plan, or any combination thereof, for the minor child(ren), describe in detail the change in circumstances since the entry of the Final Judgment sought to be modified that you feel justify the requested change. State when the change of circumstances occurred, how the change or circumstances affects the child(ren), and why it is in the best interests of the child(ren) that the Court make the requested change. Attach your proposed parenting plan.
   d. If you do not feel the requested change in shared or sole parental responsibility, ultimate decision-making, the time-sharing schedule, the parenting plan, or any combination thereof, for the minor child(ren) is in their best interests, or if you feel there has not been a change in circumstances since the entry of the Final Judgment sought to be modified, describe in detail any facts since the entry of the Final Judgment sought to be modified that you feel justify the Court denying the requested change. State what requested change, if any, in shared or sole parenting responsibility, ultimate decision-making, the time-sharing schedule, or of the parenting plan is justified or agreeable to you and why it is in the best interests of the child(ren).

7. **LONG FORM AFFIDAVIT:** If you filed the short form affidavit, Florida Family Law Rules of Procedure Form 12.902(b), and you were specifically requested in the Notice of Service of Standard Family Law Interrogatories to file the Long Form Affidavit, Form 12.902(c), you must do so within the time to serve the answers to these interrogatories.
I certify that a copy of this document was [check all used]: ( ) emailed ( ) mailed ( ) faxed ( ) hand delivered to the person(s) listed below on {date} ________________________________

Other party or his/ her attorney:
Name: ________________________________
Address: ________________________________
City, State, Zip: ________________________________
Fax Number: ________________________________
Email Address(es): ________________________________

I understand that I am swearing or affirming under oath to the truthfulness of the answers to these interrogatories and that the punishment for knowingly making a false statement includes fines and/or imprisonment.

Dated: ________________________________

Signature of Party
Printed Name: ________________________________
Address: ________________________________
City, State, Zip: ________________________________
Telephone Number: ________________________________
Fax Number: ________________________________
Email Address(es): ________________________________

STATE OF FLORIDA
COUNTY OF ________________________________

Sworn to or affirmed and signed before me on ________________________________ by ________________________________

NOTARY PUBLIC or DEPUTY CLERK

[Print, type, or stamp commissioned name of notary or deputy clerk.]

Personally known
Produced identification
Type of identification produced ________________________________

IF A NONLAWYER HELPED YOU FILL OUT THIS FORM, HE/ SHE MUST FILL IN THE BLANKS BELOW: [fill in all blanks] This form was prepared for the: {choose only one} ( ) Petitioner ( ) Respondent
This form was completed with the assistance of:
{name of individual} ________________________________ ,
{name of business} ________________________________ ,
{address} ________________________________ ,
{city} ________________________________ , {state} _____ , {telephone number} ________________________________ .
TIMESHARING INTERROGATORIES

1. Do you believe there should be shared parental responsibility of your minor child(ren) in all areas except, of course, primary physical residence?

   a. If not, please state specific reasons why.

2. The traditional "custody" dispute will now be couched in terms of with which parent the child(ren) should maintain his/her/their "primary physical residence." Section 61.13(3) Fla.Stat. states that "for purposes of shared parental responsibility and primary physical residence, the best interest of the child(ren) shall be determined by the Court's consideration and evaluation of all factors affecting the best welfare and interest of the child(ren), including, but not limited to:

   a. The parent who is more likely to allow the child(ren) frequent and continuing contact with the non-residential parent.

   b. The love, affection and other emotional ties existing between the parent and the child(ren).

   c. The capacity and disposition of the parents to provide the child(ren) with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in lieu of medical care and other material needs.

   d. The length of time the child(ren) has/have lived in a stable, satisfactory environment and the desirability of maintaining continuity.

   e. The permanence, as a family unit, of the existing or proposed custodial home.

   f. The moral fitness of the parents.

   g. The mental and physical health of the parents.

   h. The home, school and community record of the child(ren).

   i. The reasonable preference of the child(ren), if the Court deems the child(ren) to be of sufficient intelligence, understanding and experience to express a preference.

   j. Any other factor considered by the Court to be relevant to a particular child custody dispute.
As to each of the factors listed above, please give detailed statements both as to yourself and as to the mother/father as to what your and the mother's/father's strengths and weaknesses are. In giving your answers, set forth those facts you will rely upon in your pursuit at primary residential custody.

a. Mother:
   Father:

b. Mother:
   Father:

c. Mother:
   Father:

d. Mother:
   Father:

e. Mother:
   Father:

f. Mother:
   Father:

g. Mother:
   Father:

h. Mother:
   Father:

i. Mother:
   Father:

j. Mother:
   Father:

k. Mother:
   Father:
3. You must remember that, as stated above, the Court will now consider, in determining where the child(ren)'s primary physical residence should be "the parent who is more likely to allow the child(ren) frequent and continuing contact with the non-residential parent." Therefore, please set forth, in detail, what "contact" (visitation) you sincerely believe should be allowed to the mother/father. Keep in mind, in providing your answer, that such criteria may very well be used to allow your visitation if the mother/father is determined to be the party with whom the child(ren) should maintain his/her/their "primary physical residence." In stating your answer, set forth the type of contact during week days, during weekends, religious and secular holidays, three day weekends, school holidays, extended school holidays such as winter break, spring break and summertime. Please also state why you think any other arrangement than the one you propose may be detrimental to your child(ren).

4. If there will be a custody contest, list the names, addresses and telephone numbers of all friends, neighbors, relatives and others who can state that you are the better custodian for your child(ren), setting forth what they might say, whether or not they would be willing to testify and describe their relationship to you (i.e., friend, neighbor, etc.)

5. What is, if you know, the residential preference of your child(ren)? Upon what do you base this (i.e., the child(ren) has/have so stated, etc.)?

6. If your child or children are over the age of 12 years, will you permit him/her to speak to the Judge concerning his/her preference? If so, why? If not, why not?

7. If you are employed or work, what arrangements, if any, are being made for care of your child(ren) when they are not in school, and if none, state why no arrangements have been made.

8. Do you have any immediate prospects for re-marriage? If so, give the name, address, and telephone number of said person. Describe your future spouse's relationship with the child(ren) who will reside with you.

9. If your future spouse has children, with whom do your future stepchildren reside? Set forth the names and addresses of your future stepchildren.

10. State the name and address of your parents and state whether or not you believe they will become involved in this case to assert their visitation rights now allowed under Florida law.
11. Is there a difference in the religious beliefs (or other important beliefs) of you and the mother/father which must be given special attention by the Court and by Court Order? If so, please explain in detail and set forth your desires.

12. Is there a need for any immediate relief from the Court? If so, please explain in detail.

13. Do you think the Mediation Services of the Court can help you and the mother/father resolve the problems of parental responsibility and visitation? Why or why not?

14. If the Court decides that there should be shared parental responsibility in all categories (except, of course, residential care) and thereafter you and the mother/father disagree as to certain things, do you think that the Mediation Unit of the Court can help solve the differences? If not, can you suggest how disagreements might be resolved?

15. As to each of the following, state whether any of the following apply to you and state why you believe it will or will not be important for the Court to consider in the determination of primary physical residence:

   a. Drug or alcohol abuse
   b. Occasional acts of adultery prior to or after separation
   c. Cohabitation with another of the opposite sex
   d. Acts of homosexuality
   e. Sexual promiscuity
   f. Conviction of serious crime
   g. Gambling
   h. Regular church attendance
   i. Objectionable business practices
   j. Objectionable social practices
   k. Martial behavior, such as verbal or physical abuse of the mother/father
   l. Mental disorder, such as manic-depression, schizophrenia, etc.
   m. Serious physical disease or handicap
16. If you were granted the primary residence of the child(ren), will you keep the
child(ren) in his/her/their present school? Explain your reasons for your answer.

17. What transportation arrangements do you propose for your child(ren) to get to
and from school (i.e., would you be amenable to transporting the child(ren) to
school on Monday morning if the child(ren) is/are with you on the weekend)?

18. Will you assume all the financial support of the child(ren)? If not, why?

19. List specifically, and with particularity, the grounds upon which you think the
primary residence should be vested, taking into consideration the provisions of
the Shared Parental Responsibility Act.

20. Is there anything in the mother's/father's parenting skills or living circumstances
that you think are detrimental to the child(ren)? If so, explain in detail.

21. Have you taken your child(ren) to any psychologists, psychiatrists, or
counselors? If so, give the person's name, address and phone number, and the
specific dates the child(ren) was/were seen by that professional and the reason
for taking the child(ren) to said mental health professional.

I understand that I am swearing or affirming under oath to the truthfulness
of the Answers to these Interrogatories and that the punishment for knowingly
making a false statement includes fines and/or imprisonment.

________________________________________
Affiant

STATE OF FLORIDA
COUNTY OF ST. JOHNS

SWORN TO AND SUBSCRIBED before me this______ day of
2017, by ________________________________, who is personally known to me or
who has produced ________________________________, as identification.
Affix Notary Commission

Signature of Notary Public
Notary Public, State of Florida
APPENDIX E

EXPERT INTERROGATORIES

Pursuant to Rule 1.340, Florida Rules of Civil Procedure, as made applicable by Rule 12.340, Florida Family Law Rules of Procedure, the Husband/Wife, ____________, is required to answer each of the following interrogatories in writing and under oath within thirty (30) days of service thereof:

1. State the name, present address and telephone number of each and every witness you expect to call at the hearing in this matter and identify the subject matter to which the witness will testify.

2. Give the following information concerning any experts who are expected to be called as witnesses at the hearing in this matter:
   a. Name and address of expert;
   b. State the subject matter on which the expert is expected to testify;
   c. State the substance of the facts and opinions to which the expert is expected to testify; and
   d. Give a summary of the grounds for each opinion of the experts described.

3. Please state the following information in regard to each expert witness identified in Answer to Interrogatory Number 2:
   a. His or her profession or occupation, and the field in which he or she is allegedly an expert;
   b. The name and address of each educational institution he or she attended and a description of each degree received, giving the date of each degree;
   c. The names and addresses of any professional or trade associations of which each expert is a member, stating his or her status with each such association and the inclusive dates of such status;
   d. The names and addresses of any institutions with which he or she is associated;
   e. The title, name of publication, subject matter, publisher and date of publication of any books, papers or articles written by each expert on subjects in his or her field;
f. The number of years each has practiced or worked in his or her field;

g. His or her places of employment for the past ten years, giving the names and addresses for each employer;

h. Any other experience of the expert in his or her profession and field not covered in the answers to the preceding subsections, indicating dates and places; and

i. State whether a report, letter, document or memorandum was generated for any of the opinions expressed herein or in which said expert is expected to testify and if so, describe the nature of the writing, when it was written and all persons who are in custody of the writing.

4. For each expert witness listed in Answer to Interrogatory Number 2, please provide the following:

   a. The scope of employment in the pending case and the compensation for such services;

   b. The expert's general litigation experience, including the percentage of work performed for plaintiffs and defendants;

   c. The identity of other cases, within a reasonable time period, in which the expert has testified by deposition or at trial; and

   d. An approximation of the portion of the expert's involvement as an expert witness, which may be based on the number of hours, percentage of hours, or percentage or earned income derived from serving as an expert witness.

I understand that I am swearing or affirming under oath to the truthfulness of the Answers to these Interrogatories and that the punishment for knowingly making a false statement includes fines and/or imprisonment.
STATE OF FLORIDA  
COUNTY OF ________

SWORN TO AND SUBSCRIBED before me this ______ day of ______________ 2017, by ______________________________, who is personally known to me or who has produced ___________________________________________________________ as identification.

_____________________________ ________________________________
Affix Notary Commission Signature of Notary Public
Notary Public, State of Florida
SCHEDULE A

PARTY INFORMATION


3. Financial Affidavit Supporting Documents. Any documents relied upon by you in preparing your Financial Affidavit, not otherwise produced pursuant to this Schedule.

4. Tax Returns and Information.
   a. Federal Income Tax Returns. Copies of all returns, including amended returns, for the last four years whether the same be in your name individually or jointly with anyone else, in your possession or under your control, including W-2 Forms.
   b. Partnership Tax Returns. Copies of all partnership tax returns of any and all partnerships in which you hold an interest.
   c. Corporate Tax Returns. Form 1120 and copies of all federal and state income tax returns and profit and loss statements for any and all private and closely held corporations, joint ventures, business entities, or other corporations where you have a shareholder’s interest of ten percent of the issued capital stock or professional associations in which you hold an interest.
   d. Income Records. Records reflecting gross income and net income received by you either directly or indirectly since the last produced tax return, to the present, as well as your employee earning records prepared by your employer for the last twelve months.
   e. Deferred Income Records. All records in regard to any deferred income, deferred salary, and/or deferred commissions.
   g. Federal Gift Tax Returns. Copies of all Federal Gift Tax Returns filed by you, and worksheets in connection therewith for the past four years.
   h. Personal Property Tax Returns (intangible). Copies of all returns in Florida or any other jurisdiction for or by you and worksheets in connection therewith, for the last four years.
   i. Personal Property Tax Returns (tangible). Copies of all returns filed in Florida or any other jurisdiction for or by you and worksheets in connection therewith, for the last four years.
   j. Real Estate Tax Notices. The most recent Real Estate Tax Notice indicating the assessed values for tax purposes of any and all real property held by you either individually, jointly with any other person or entity, or under your control.

5. Financial Statements. Any and all financial statements prepared within the last four years, in your possession or under your control, whether in your name individually or jointly with anyone else.
6. Banking Information. Any and all of the following items which are in your possession or under your control, whether held individually or jointly with anyone else, or in which you have an interest, or any account in which you have the right to withdraw any funds, whether or not your name appears on said account, during the last four years, involving any financial institutions:
   a. Accounts. Including but not limited to the following accounts:
      1. Checking Accounts
      2. Savings Accounts
      3. Certificates of Deposit
      4. Money Market Funds
      5. Ready Cash Accounts
      6. Credit Union Accounts
      7. Any other similar accounts
   b. Records. All records and documents involving the above accounts, including but not limited to the following:
      1. All Monthly Statements
      2. All Deposit Slips
      3. All Withdrawal Slips
      4. All Canceled Checks
      5. Check Stubs and Check Registers
      6. All Savings Account Books
      7. All Credit Union Account Books
      8. Copies of all Certificates of Deposit
      9. All other similar records
   c. Checks and Money Orders. All cashier’s checks, money orders, or certified checks, in your possession or under your control, whether in your name individually or jointly with anyone else.

7. Investment and Obligation Information.
   a. Brokerage Account Statements. All records, including but not limited to statements and other documents involving any stock, bond, mutual fund, and note or security ownership in which you either individually or jointly with anyone else (including your spouse) have or had an interest in during the last four years.
   b. Bonds. All Bonds of any description in your possession or under your control, whether in your name individually or jointly with anyone else, for the last four years.
   c. Notes or Securities. All Notes or other securities either in your possession or under your control, whether in your name individually or jointly with anyone else, for the last four years.
   d. Account Records. All records in regard to any investment accounts in your possession or under your control, whether in your name individually or jointly with anyone else, for the last four years.
   e. Obligation Records. All records in regard to any current outstanding obligations upon which you are individually or jointly liable with anyone else, in your possession or under your control, for the last four years.

8. Insurance.
   a. Life Insurance. All life insurance policies.
   b. Medical Insurance. All medical, dental and hospitalization policies.
c. Other Insurance. All insurance policies held by, obtained by or for the benefit of you in any way, including but not necessarily limited to all policies of all motor vehicles or boats driven or used by you, all policies covering in any way casualty, liability, theft or otherwise, all property including real or personal, all jewelry floaters, all hospital, medical, income, or disability policies.

9. Monies Owed to You/Monies Owed by You. All correspondence, promissory notes, contract, or other writings, or copies thereof, that show or document any monies owed to you or monies that you presently owe or have owed any other person or entity regardless of whether said monies are still due and owing.

10. Judgments You Hold/Judgments Against You. Copies of all judgments you presently hold against any other person or entity which you held against any other person or entity and judgments that have been or are now held by any other person or entity against you, regardless of whether said judgments have been satisfied.

11. Credit Cards. All receipts, records of payments, bills, invoices, checks evidencing payments, as well as any other documents, correspondence or memoranda in your possession or under your control involving all credit cards which you might have used within the last year, whether or not the specific charges were authorized or signed by you or by any other party, including but not limited to the following: Visa, American Express, MasterCard, Diner’s Club, all gasoline credit cards, and all department store credit cards.

12. Pension Plans. All records and documents in regard to any retirement fund, trust fund, profit sharing plan, pension plan, IRA account, KEOGH Plan, or any other similar plan involving you, including but not limited to the following documents:
   a. A copy of all of the plan and trust documents with all amendments, modifications and changes.
   b. Copies of 5500/500-C, 500-B and 5500-SSA, if applicable, for the past four years.
   c. Copy of the trust asset statement as of the most recent plan anniversary.
   d. Copy of the most recent Summary Plan Description.
   e. If there are individual insurance or annuity contracts in force in the plan, a copy of the actual contracts.
   f. If this is a profit sharing or defined contribution plan, a copy of the record of the individual account balance as of the last valuation date.
   g. If this is a defined benefit pension plan, a copy of the latest actuarial valuation specifying cost methods and all actuarial assumptions being used.
   h. If there have been any loans made from the plan, a copy of the Note signed in support of the loans.

13. Real Estate. All records in regard to any real property, either owned or leased, either individually or jointly with anyone else, during the last five years, including the Deed or an accurate copy of the same, all Closing Statements in regard to the purchase or sale of said property and all copies of any Notes and/or Mortgages, as well as all records in regard to any real property during the last four years in which you were involved in the purchase in any way that was placed in someone else’s name. Also all records and other documents of any appraisals or evaluations of any of the above real property, including any appraisals done for ad valorem tax purposes by any governmental body.
14. Surveillance Records. All records of any person (including but not limited to a detective) who had your spouse or any other person who is or might be involved in this lawsuit under surveillance at any time during your marriage, together with their names, addresses, and telephone numbers. Further, any and all written documents, including reports or memoranda or documentary evidence of any kind, together with a list of the names and addresses of the person or persons who have possession of the same. Further, any movies, video tapes, and/or recordings of any sort, involving your spouse or any other person who is or might be involved in this lawsuit, taken at any time during your marriage, along with the necessary equipment to listen to or observe or watch the same.

15. Personal Property. Documents of title, including Bills of Sale, for all personal property, owned individually or with other persons, including automobiles, boats, airplanes, furniture, antiques, stamps and coin collections, during the current year and past five years.
   a. All records, inventories and particularly any appraisals of any collections, such as but not limited to coin collections, stamp collections, gem collections, etc.
   b. All records, inventories and particularly any appraisals of any gold, silver or platinum in your possession or under your control whether the same be held in your name individually or jointly with anyone else.
   c. Schedule of all personal furniture, fixtures, furnishing and equipment owned individually or jointly during the current year and past five years.

16. Mortgages and Notes. All records, including notes, mortgages or any other evidence of any security or collateral, in regard to any obligations which are owing to you either individually or jointly with any person, firm or corporation.

17. Fictitious Names. A list of any and all fictitious names under which you are presently doing business or have been doing business and the states and counties where said names are registered.

18. Partnership and Joint Venture Agreements. Any and all agreements to which you have been a party.

19. Employment Records/Contracts. All correspondence, documents, statements, contracts or other writings showing the amounts you have received as salary or dividends from any business that has employed you or in which you have an interest within the last five years, and all employment contracts under which you are performing services and/or merchandise and materials already finished, including a list or description of any oral contracts.

20. Fringe Benefits. All records evidencing any benefits available to you from any company that has employed you or business entity in which you have a legal or equitable ownership interest, including, without limitation to auto, travel, entertainment, educational, and personal living expenses.

21. Legal Services Rendered. Produce copies of all statements for services rendered to you in connection with these proceedings and copies of all canceled checks in payment of your legal fees in this cause, together with any contract or memoranda setting forth your agreement as to payment of legal fees.

22. Passport. Your original passport or passports which you have held in the last four years.

23. Trusts.
   a. Documents. Any Trust, along with any amendments and modifications thereto, in which you individually or jointly with anyone else have an interest or in which you are a
Trustee, along with the most up-to-date financial records in regard to said trust which lists the assets, liabilities and income.

b. Records. All of the following records in regard to any Trust in which you have been a Trustee, Co-Trustee, to-wit:
   i. Records of all accounts in any financial institutions, money market funds, ready cash accounts, or other similar accounts, including monthly statements, deposit slips, withdrawal slips, canceled checks, savings accounts, certificates of deposit, and all other similar records for the last three years.
   ii. All financial statements, all annual accountings, all lists of inventories of assets, and Federal and State tax returns involving said Trust for the last three years.

24. Charts, Graphs, etc. Any and all charts, graphs, records, documents, ledgers, drawings, or any other similar items, which have either been prepared by you or prepared by someone else, that you have in your possession or under your control, involving any of the issues involved in this action, including but not limited to any such items indicating the amount of personal expenses or costs incurred by you or your spouse during the last five years.

25. Disability Pension. All records and documents in regard to any disability pension or other income or any other similar plan involving you, including but not limited to the following documents:
   a. A copy of all of the plan and trust documents with all amendments, modifications and changes.
   b. A copy of all documents which you initially signed, as well as any similar documents or amendments thereto involving any disability plan or income.
   c. If there are individual insurance or annuity contracts in force in the plan, a copy of the actual contracts.
   d. A copy of the most recent account balances as of the last valuation date.
   e. If there have been any loans made from the plan, a copy of all documents, including Notes signed in support of the loan.
   f. If you have cashed in, or received any lump sum payment, or any other similar type action involving any disability plan or income, a copy of all documents relating to the same.
   g. A copy of all documents indicating whether you did or did not elect to provide survivor benefits to any person, as well as any amendments thereto.
   h. All documents evidencing your rights in regard to providing survivor benefits.

26. Powers of Attorney. A copy of all Powers of Attorney or similar instruments involving you or your spouse and any rescission, amendments or cancellation of the same.

27. Witnesses and Evidence. A list setting forth the names and addresses of all persons who were witnesses to or who have knowledge or information of any relevant facts relating to this action or who possess proof of the incidents or acts involved, their relationship to you and indicating which were eyewitnesses; all written memoranda and reports and photographs submitted to you or your attorney by any such person; and all tape recordings or other evidence prepared from tape recordings made in connection with any wiretapping or other electronic surveillance conducted by you or others on your behalf.

28. Expert Witnesses. A list of the names and addresses of all proposed expert witnesses and copies of all written reports rendered to you or your attorney by any such proposed expert witness.
29. Safe Deposit Box. Copies of all records concerning any safe deposit box used or maintained by the husband or wife during the current year and the past five years, and all records of the contents of such box(es).

30. Gifts. Records pertaining to any gifts received by you or your spouse during the marriage (limit to gifts with a value of $1,000 or more).

31. Inheritance. Records pertaining to any inheritance received by you or your spouse during the marriage.

32. Appraisals. Any appraisal made within the last three years.
APPENDIX F

SCHEDULE B

ALL RECORDS WITH REGARD TO YOUR CORPORATIONS, PROFESSIONAL ASSOCIATIONS (P.A.), JOINT VENTURES, AND/OR PARTNERSHIPS

1. Tax Returns. Entire Federal and/or State Income Tax Returns, Form 1065 and Schedule K-1, and Form 1120-S and Schedule K-1 for the past five years.
2. Financial Records. All financial records of the business from inception to the present including, but not limited to:
   a. Financial Statements. Audited, compiled, or reviewed financial statements, including income statements, balance sheets, profit and loss statements, statements of changes in financial position, or cash flow, including those submitted to any financial institution for any purpose.
   b. Interim Financial Statements. Any interim financial statements for the most recently ended interim accounting period for which such statements are available, and the comparable financial statements for the corresponding period of the preceding year.
   c. Financial Forecasts. Any copies of financial forecasts or projections prepared either internally or by someone else.
   d. Ledgers. General ledgers, accounts receivable and accounts payable ledgers and any interim period ledgers through and including the date of production.
   e. Cash Journals. Cash receipts “day sheets” journals and cash disbursements journals.
   f. Payroll Journals. All payroll journals.
   g. Repeat and Adjusting Journal Entries. All repeating journal entries and adjusting journal entries.
3. Appraisals. Copies of any appraisals that have been made of the business or of any of its properties or assets, including all projections involving the value of the same in the future.
4. Employment Agreements. Copies of employment agreements with officers or other key employees.
5. Leases. Copies of all leases in which the business is lessor or lessee.
7. Credit Cards and Charge Accounts. Copies of all credit cards and charge accounts held by the business and all statements, receipts, and individual charge slip records received by you in connection with the use of such credit cards and charge accounts, together with a list of all businesses where you are authorized to charge purchases to the account of another person or entity.
8. Membership Cards. Membership cards or documents identifying participation rights in any country clubs, private clubs, associations, or fraternal group organizations.
10. Banking Information. Any and all of the following items which are in your possession or under your control, whether held individually or jointly with anyone else, or in which you have an interest, or any account in which you have the right to withdraw any funds, whether or not your name appears on said account, during the last four years, involving any financial institutions:
   a. Accounts. Including but not limited to the following accounts:
      1. Checking Accounts
      2. Savings Accounts
      3. Certificates of Deposit
APPENDIX F

4. Money Market Funds
5. Ready Cash Accounts
6. Credit Union Accounts
7. Any other similar accounts

b. Records. All records and documents involving the above accounts, including but not limited to the following:
   1. All Monthly Statements
   2. All Deposit Slips
   3. All Withdrawal Slips
   4. All Canceled Checks
   5. Check Stubs and Check Registers
   6. All Savings Account Books
   7. All Credit Union Account Books
   8. Copies of all Certificates of Deposit
   9. All other similar records

c. Checks and Money Orders. All cashier’s checks, money orders, or certified checks, in your possession or under your control.

11. Stocks, Notes, Securities Documents. All stock certificates, notes or other securities for the past three years.

12. Expense Account. Your expense account or other similar account for the last two years.

13. Stock Ledger and Corporate Minutes. If a corporation, the stock ledger book and the corporate minutes or record book.

14. Ownership Agreement. Any written agreement or other writing setting forth the ownership and organization of the business or professional interest.

15. Employment Contract. Contract or agreement for current or future employment.


17. Purchase Agreements. Buy-sell agreements.

18. Ownership Records. All records for the past three years reflecting the persons or firms which have a stock ownership interest in, or any ownership interest in any of your corporations, professional associations, joint ventures and/or partnerships.

19. Deferred Income. All records with regard to any income earned, but as of now, unpaid to you (deferred income, commissions, etc.).

20. Non-Cash Commissions. All records with regard to any sale in which a commission was taken in some form, such as interest in the property being sold, as opposed to cash, for the past three years.

21. Bonds. All Bonds of any description in your possession or under your control, whether in your name individually or jointly with anyone else, for the past three years.

22. Notes and Securities. All records with regard to Notes or other securities, as well as all records with regard to security accounts involving any of your corporations, professional associations, joint ventures and/or partnerships.

23. Pension Funds. All records and documents in regards to any retirement fund, trust fund, profit sharing plan, pension plan, IRA account, KEogh plan, or any other similar plan involving you, including but not limited to the following documents:
   a. A copy of all of the plan and trust documents with all amendments, modifications and changes.
   b. Copies of 5500/500-C, 500-B and 5500-SSA, if applicable, for the past four years.
c. Copy of the trust asset statement as of the most recent plan anniversary.
d. Copy of the most recent Summary Plan Description.
e. If there are individual insurance or annuity contracts in force in the plan, a copy of the actual contracts.
f. If this is a profit sharing or defined contribution plan, a copy of the record of the individual account balance as of the last valuation date.
g. If this is a defined benefit pension plan, a copy of the latest actuarial valuation specifying cost methods and all actuarial assumptions being used.
h. If there have been any loans made from the plan, a copy of the Note signed in support of the loan.

24. Real Property. All records in regards to any real property, either owned or leased, either individually or jointly with anyone else, during the last five years, including the Deed or an accurate copy of the same, all Closing Statements in regards to the purchase or sale of said property and all copies of any Notes and/or Mortgages, as well as all records in regard to any real property during the last four years in which you were involved in the purchase in any way that was placed in someone else’s name. Also all records and other documents of any appraisals or evaluations of the above real property, including any appraisals done for ad valorem tax purposes by any governmental body.

25. Real Estate Taxes. The most recent real estate tax notices indicating the assessed values for tax purposes of any and all real property held by you either individually or jointly with any other person or entity.

26. Printed Materials. Copies of any catalogs or brochures or other sales literature of the business that have been printed, published, or circulated at any time from inception to the present.

27. Legal Proceedings. Copies of any pleadings, documents, or correspondence for any legal proceedings in which the business is currently involved or which have been threatened by the business or against the business.

28. Judgments. Copies of any final judgments, settlement agreements, or stipulations for settlement for any lawsuit in which the business has been involved from inception to the present.

29. Insurance Policies. All insurance policies, including schedules and riders, of the business from inception to the present, including, but not limited to:
   a. Assets. Copies of all policies of insurance covering any assets of the business including, but not limited to inventory, fixed assets, loss of business, including appraisal reports, inventory lists, and insurance application forms.
   b. Life. Life insurance or certificates of insurance currently in existence, whether owned by you or the business and agreements affecting life insurance proceeds or policies.
   c. Other. All insurance policies held by, obtained by or for the benefit of the business in any way, including, but not limited to all policies of all motor vehicles or boats driven or used by the business, all policies covering in any way, casualty, liability, theft, or otherwise, all property including real or personal, all hospital, medical, income, or disability policies.

30. Sale Offers. Written offers to sell the business or professional interest.

31. Inventory Purchase and Sale. Each bill, receipt, or contract for the purchase and sale of inventory and ledger books or journals recording those purchases or sales from inception of the business to the present.
32. Monies Owed to the Business. All correspondence, promissory notes, contracts, or other writings or copies thereof, which show or document any monies owed to the business by any other person or entity regardless of whether said monies are still due and owing from the inception of the business to the present.

33. Monies the Business Owes. All correspondence, promissory notes, contracts, or other writings or copies thereof, which show or document any monies the business presently owes to any other person or entity or monies the business owed to another person or entity regardless of whether said monies are still due and owing from the inception of the business to the present.

34. Sales Tax Reports. Copies of all sales tax reports filed in the current year and the past five years.

35. Business Property Schedule. Schedule of all business furniture, fixtures, furnishings and equipment owned individually or jointly during the current year and the past five years.
CHILD TESTIMONY

By

Travis Mydock, St. Augustine
CHILD TESTIMONY

1. Florida rules and statutes relevant to the child witness
2. Hearsay exception for the child victim

YLD Basic Skills CLE – December 2017
Travis Mydock, B.C.S.
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3.9 WEIGHING THE EVIDENCE

• It is up to you to decide what evidence is reliable. You should use your common sense in deciding which is the best evidence and which evidence should not be relied upon in considering your verdict. You may find some of the evidence not reliable, or less reliable than other evidence. ...

• **Child witness:** You have heard the testimony of a child. No witness is disqualified just because of age. There is no precise age that determines whether a witness may testify. The critical consideration is not the witness’s age, but whether the witness understands the difference between what is true and what is not true, and understands the duty to tell the truth.
Florida Rules of Criminal Procedure
RULE 3.220 - DISCOVERY

(h) (4) Depositions of Sensitive Witnesses.
Depositions of children under the age of 16 shall be videotaped unless otherwise ordered by the court. The court may order the videotaping of a deposition or the taking of a deposition of a witness with fragile emotional strength to be in the presence of the trial judge or a special magistrate.
(h) **Subpoena of Minor.**

Any minor subpoenaed for testimony shall have the right to be accompanied by a parent or guardian at all times during the taking of testimony notwithstanding the invocation of the rule of sequestration of section 90.616, Florida Statutes, except upon a showing that the presence of a parent or guardian is likely to have a material, negative impact on the credibility or accuracy of the minor’s testimony, or that the interests of the parent or guardian are in actual or potential conflict with the interests of the minor.
No minor child shall be deposed or brought to a deposition, brought to court to appear as a witness or to attend a hearing, or subpoenaed to appear at a hearing without prior order of the court based on good cause shown unless in an emergency situation. This provision shall not apply to uncontested adoption proceedings.
Florida Family Law Rules
RULE 12.407 - TESTIMONY AND ATTENDANCE OF MINOR CHILD

Commentary (1995 Adoption): This rule is intended to afford additional protection to minor children by avoiding any unnecessary involvement of children in family law litigation. While due process considerations prohibit an absolute ban on child testimony, this rule requires that a judge determine whether a child’s testimony is necessary and relevant to issues before the court prior to a child being required to testify.

See Fla. Supreme Court Approved Family Law Form 12.944(a)
• Motion for Testimony and Attendance of Minor Child (ren)
Motion for Minor Children to Testify at Hearing

Trial court granted the motion and instructed Hickey's counsel to arrange a date and time for the children to testify.

We do not question the motives of the trial court. Judges in domestic cases often struggle mightily to foreclose parents from placing children in the midst of marital strife. The children of divorcing or divorced parents experience enough psychological trauma without the parents exacerbating the situation.

Trial courts are given great leeway to minimize the involvement of children in these circumstances. The children in this case were older and this, no doubt, factored into the trial court's decision to allow their attendance and testimony. Having granted the motion to allow the testimony of the children, the trial court erred in not allowing the recording of the children's in camera testimony.
Monteiro v. Monteiro, 55 So.3d 686 (Fla. 3rd DCA 2011)

• The Trial Court evaluated whether or not the children would be permitted to testify in camera (with the judge present without parties or witnesses) over the husband’s objection.

• There, the Court held: “In addition, the father’s request in this case for submission of the minor children to examination in the presence of counsel and/or parties, effectively superimposes his right to due process upon the best interests of the children. This is impermissible. The father’s request is particularly at odds with the truth-finding process where, as here, he is the subject of the minor children’s testimony.”
Monteiro v. Monteiro, 55 So.3d 686 (Fla. 3rd DCA 2011)

• Thus, the only way to obtain the truth from the minor children is to conduct the interview outside the presence of the father. Clearly, the Florida Legislature has recognized that in situations such as the one before us today, the best interests of the minor children are paramount. As such, we find that the trial court’s decision was not a departure from the essential requirements of law. On remand, the father can request that a court reporter be present so that the children’s testimony is transcribed, thus permitting judicial review.”

• Courts have wide discretion in considering a party’s request for children to testify in a dissolution or time-sharing matter. As appellate courts have noted, the best interests of the minor children are paramount.
Florida Family Law Rules
RULE 12.363. EVALUATION OF MINOR CHILD

• (a) Appointment of Mental Health Professional or Other Expert.

• (1) When the issue of visitation, parental responsibility, or residential placement of a child is in controversy, the court, on motion of any party or the court's own motion, may appoint a licensed mental health professional or other expert for an examination, evaluation, testing, or interview of any minor child or to conduct a social or home study investigation. The parties may agree on the particular expert to be appointed, subject to approval by the court. If the parties have agreed, they shall submit an order including the name, address, telephone number, area of expertise, and professional qualifications of the expert. If the parties have agreed on the need for an expert and cannot agree on the selection, the court shall appoint an expert.
Florida Family Law Rules
RULE 12.363. EVALUATION OF MINOR CHILD

• (2) After the examination, evaluation, or investigation, any party may file a motion for an additional expert examination, evaluation, interview, testing, or investigation by a licensed mental health professional or other expert. The court upon hearing may permit the additional examination, evaluation, testing, or interview based on good cause shown that further examinations, testing, interviews, or evaluations would be in the best interests of the minor child.

• (3) Any order entered under this rule shall specify the issues to be addressed by the expert.
Florida Family Law Rules
RULE 12.363. EVALUATION OF MINOR CHILD

• (4) Any order entered under this rule may require that all interviews of the child be recorded and the tapes be maintained as part of the expert's file.

• (5) The order appointing the expert shall include an initial allocation of responsibility for payment.

• (6) A copy of the order of appointment shall be provided immediately to the expert by the court unless otherwise directed by the court. The order shall direct the parties to contact the expert or investigator appointed by the court to establish an appointment schedule to facilitate timely completion of the evaluation.
Florida Family Law Rules
RULE 12.363. EVALUATION OF MINOR CHILD

• (b) Providing of Reports.

• (1) Unless otherwise ordered, the expert shall prepare and provide a written report to the attorney for each party or the party, if unrepresented, and the guardian ad litem, if appointed, a reasonable time before any evidentiary hearing on the matter at issue. The expert also shall send written notice to the court that the report has been completed and that a copy of the written report has been provided to the attorney for each party or the party, if unrepresented, and the guardian ad litem, if appointed. In any event, the written report shall be prepared and provided no later than 30 days before trial or 75 days from the order of appointment, unless the time is extended by order of the court.
(2) On motion of any party, the court may order the expert to produce the expert's complete file to another qualified licensed mental health professional, at the initial cost of the requesting party, for review by such qualified licensed mental health expert, who may testify.

(c) Testimony of Other Professionals. Any other expert who has treated, tested, interviewed, examined, or evaluated a child may testify only if the court determines that good cause exists to permit the testimony. The fact that no notice of such treatment, testing, interview, examination, or evaluation of a child was given to both parents shall be considered by the court as a basis for preventing such testimony.
Florida Family Law Rules
RULE 12.363. EVALUATION OF MINOR CHILD

• (d) **Communications with Court by Expert.** No expert may communicate with the court without prior notice to the parties and their attorneys, who shall be afforded the opportunity to be present and heard during any such communication between the expert and the court. A request for communication with the court may be informally conveyed by letter or telephone. Further communication with the court, which may be conducted informally, shall be done only with notice to the parties.

• (e) **Use of Evidence.** An expert appointed by the court shall be subject to the same examination as a privately retained expert and the court shall not entertain any presumption in favor of the appointed expert's findings. Any finding or report by an expert appointed by the court may be entered into evidence on the court's own motion or the motion of any party in a manner consistent with the rules of evidence, subject to cross-examination by the parties. The report shall not be considered by the court before it is properly admitted into evidence.
Florida Family Law Rules
RULE 12.363. EVALUATION OF MINOR CHILD

• Committee Note

• 1997 Adoption. This rule should be interpreted to discourage subjecting children to multiple interviews, testing, and evaluations, without good cause shown. The court should consider the best interests of the child in permitting evaluations, testing, or interviews of the child. The parties should cooperate in choosing a mental health professional or individual to perform this function to lessen the need for multiple evaluations.

• This rule is not intended to prevent additional mental health professionals who have not treated, interviewed, or evaluated the child from testifying concerning review of the data produced pursuant to this rule.

• This rule is not intended to prevent a mental health professional who has engaged in long-term treatment of the child from testifying about the minor child.
Fla. Stat. § 90.612
MODE AND ORDER OF INTERROGATION AND PRESENTATION

• (1) The judge shall exercise reasonable control over the mode and order of the interrogation of witnesses and the presentation of evidence, so as to:

(a) Facilitate, through effective interrogation and presentation, the discovery of the truth.

(b) Avoid needless consumption of time.

(c) Protect witnesses from harassment or undue embarrassment.
Fla. Stat. § 90.612
MODE AND ORDER OF INTERROGATION AND PRESENTATION

• (2) Cross-examination of a witness is limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in its discretion, permit inquiry into additional matters.

(3) Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness's testimony. Ordinarily, leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.
Fla. Stat. § 90.612
MODE AND ORDER OF INTERROGATION AND PRESENTATION

• The judge shall take special care to protect a witness under age 14 from questions that are in a form that cannot reasonably be understood by a person of the age and understanding of the witness, and shall take special care to restrict the unnecessary repetition of questions.
Fla. Stat § 92.53
VIDEOTAPING THE TESTIMONY OF A VICTIM OR WITNESS UNDER AGE 18 OR WHO HAS AN INTELLECTUAL DISABILITY.

• (1) On motion and hearing in camera and a finding that there is a substantial likelihood that a victim or witness who is under the age of 18 or who has an intellectual disability as defined in s. 393.063 would suffer at least moderate emotional or mental harm due to the presence of the defendant if such victim or witness is required to testify in open court, or is unavailable as defined in s. 90.804(1), the trial court may order the videotaping of the testimony of the victim or witness in a case, whether civil or criminal in nature, in which videotaped testimony is to be used at trial in lieu of trial testimony in open court.
The motion may be filed by:

(a) The victim or witness, or the victim’s or witness’s attorney, parent, legal guardian, or guardian ad litem;

(b) A trial judge on his or her own motion;

(c) Any party in a civil proceeding; or

(d) The prosecuting attorney or the defendant, or the defendant’s counsel.
Fla. Stat. § 92.53
VIDEOTAPING THE TESTIMONY OF A VICTIM OR WITNESS UNDER AGE 18 OR WHO HAS AN INTELLECTUAL DISABILITY.

(3) The judge shall preside, or shall appoint a special master to preside, at the videotaping unless:

(a) The child or the person who has the intellectual disability is represented by a guardian ad litem or counsel;

(b) The representative of the victim or witness and the counsel for each party stipulate that the requirement for the presence of the judge or special master may be waived; and

(c) The court finds at a hearing on the motion that the presence of a judge or special master is not necessary to protect the victim or witness.
(4) The defendant and the defendant’s counsel must be present at the videotaping unless the defendant has waived this right. The court may require the defendant to view the testimony from outside the presence of the child or the person who has an intellectual disability by means of a two-way mirror or another similar method that ensures that the defendant can observe and hear the testimony of the victim or witness in person, but the victim or witness cannot hear or see the defendant. The defendant and the attorney for the defendant may communicate by any appropriate private method.
(6) The motion referred to in subsection (1) may be made at any time with reasonable notice to each party to the cause, and videotaping of testimony may be made any time after the court grants the motion. The videotaped testimony is admissible as evidence in the trial of the cause; however, such testimony is not admissible in any trial or proceeding in which such witness testifies by use of closed-circuit television pursuant to s. 92.54.

(7) The court shall make specific findings of fact, on the record, as to the basis for its ruling under this section.
USE OF CLOSED-CIRCUIT TELEVISION IN PROCEEDINGS INVOLVING A VICTIM OR WITNESS UNDER THE AGE OF 18 OR WHO HAS AN INTELLECTUAL DISABILITY.

... (4) During the victim’s or witness’s testimony by closed-circuit television, the court may require the defendant to view the testimony from the courtroom. In such a case, the court shall permit the defendant to observe and hear the testimony of the victim or witness, but must ensure that the victim or witness cannot hear or see the defendant. The defendant’s right to assistance of counsel, which includes the right to immediate and direct communication with counsel conducting cross-examination, must be protected and, upon the defendant’s request, such communication must be provided by any appropriate electronic method.
Fla. Stat § 92.55
JUDICIAL OR OTHER PROCEEDINGS INVOLVING VICTIM OR WITNESS UNDER THE AGE OF 18, A PERSON WHO HAS AN INTELLECTUAL DISABILITY, OR A SEXUAL OFFENSE VICTIM OR WITNESS; SPECIAL PROTECTIONS; USE OF THERAPY ANIMALS OR FACILITY DOGS.
Fla. Stat. § 92.55

(4) In addition to such other relief provided by law, the court may enter orders limiting the number of times that a child, a person who has an intellectual disability, or a sexual offense victim or witness may be interviewed, prohibiting depositions of the victim or witness, requiring the submission of questions before the examination of the victim or witness, setting the place and conditions for interviewing the victim or witness or for conducting any other proceeding, or permitting or prohibiting the attendance of any person at any proceeding. The court shall enter any order necessary to protect the rights of all parties, including the defendant in any criminal action.
The chief judge of each judicial circuit, after consultation with the state attorney and the public defender for the judicial circuit, the appropriate chief law enforcement officer, and any other person deemed appropriate by the chief judge, shall order reasonable limits on the number of interviews which a victim of a violation of s. 794.011, s. 800.04, s. 827.03, or s. 847.0135(5) who is under 16 years of age or a victim of a violation of s. 794.011, s. 800.02, s. 800.03, or s. 825.102 who has an intellectual disability as defined in s. 393.063 must submit to for law enforcement or discovery purposes. To the extent possible, the order must protect the victim from the psychological damage of repeated interrogations while preserving the rights of the public, the victim, and the person charged with the violation.
Fla. Stat § 914.17

APPOINTMENT OF ADVOCATE FOR VICTIMS OR WITNESSES WHO ARE MINORS OR INTELLECTUALLY DISABLED.

(1) A guardian ad litem or other advocate shall be appointed by the court to represent a minor in any criminal proceeding if the minor is a victim of or witness to child abuse or neglect, a victim of a sexual offense, or a witness to a sexual offense committed against another minor. The court may appoint a guardian ad litem or other advocate in any other criminal proceeding in which a minor is involved as a victim or a witness. The guardian ad litem or other advocate shall have full access to all evidence and reports introduced during the proceedings, may interview witnesses, may make recommendations to the court, shall be noticed and have the right to appear on behalf of the minor at all proceedings, and may request additional examinations by medical doctors, psychiatrists, or psychologists.
Fla. Stat. § 914.17

APPOINTMENT OF ADVOCATE FOR VICTIMS OR WITNESSES WHO ARE MINORS OR INTELLECTUALLY DISABLED.

The guardian ad litem or other advocate shall:

(a) Explain, in language understandable to the minor, all legal proceedings in which the minor is involved;

(b) Act, as a friend of the court, to advise the judge, whenever appropriate, of the minor’s ability to understand and cooperate with any court proceeding; and

(c) Assist the minor and the minor’s family in coping with the emotional effects of the crime and subsequent criminal proceedings in which the minor is involved.

...
HEARSAY EXCEPTION
STATEMENT OF CHILD VICTIM

As part of a legislative package dealing with the involvement of children in judicial proceedings, the 1985 session of the Florida legislature attempted to balance the need for reliable out-of-court statements of child abuse victims against rights of the accused, and enacted an exception that will apply only if the enumerated foundation requirements have been shown to exist.
Fla. Stat. § 90.803 HEARSAY EXCEPTIONS; AVAILABILITY OF DECLARANT IMMATERIAL

THE PROVISION OF S. 90.802 TO THE CONTRARY NOTWITHSTANDING, THE FOLLOWING ARE NOT INADMISSIBLE AS EVIDENCE, EVEN THOUGH THE DECLARANT IS AVAILABLE AS A WITNESS:

(23) HEARSAY EXCEPTION; STATEMENT OF CHILD VICTIM.

(a) Unless the source of information or the method or circumstances by which the statement is reported indicates a lack of trustworthiness, an out-of-court statement made by a child victim with a physical, mental, emotional, or developmental age of 16 or less describing any act of child abuse or neglect, any act of sexual abuse against a child, the offense of child abuse, the offense of aggravated child abuse, or any offense involving an unlawful sexual act, contact, intrusion, or penetration performed in the presence of, with, by, or on the declarant child, not otherwise admissible, is admissible in evidence in any civil OR criminal proceeding if:

Note: prior to 2013 amendment - age 11 or less
1. The court finds in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability. In making its determination, the court may consider the mental and physical age and maturity of the child, the nature and duration of the abuse or offense, the relationship of the child to the offender, the reliability of the assertion, the reliability of the child victim, and any other factor deemed appropriate; and

2. The child either:
   a. Testifies; or
   b. Is unavailable as a witness, provided that there is other corroborative evidence of the abuse or offense. Unavailability shall include a finding by the court that the child’s participation in the trial or proceeding would result in a substantial likelihood of severe emotional or mental harm, in addition to findings pursuant to s. 90.804(1).
HEARSAY EXCEPTION; STATEMENT OF CHILD VICTIM.

T.S. v. State, 623 So.2d 603, 605 (Fla. 2d DCA 1993): State cannot argue for first time on appeal that child’s out of court statement was admissible under 90.803(23) since none of the safeguards contained in that section were followed at trial.

Salter v. State, 500 So.2d 184, 185 (Fla. 1st DCA 1986): Error to admit statement to CPT counselor without proving the foundation requirements.

Weatherford v. State, 561 So.2d 629, 633 (Fla. 1st DCA 1990): Trial court’s failure to make the necessary findings was reversible error.
Fla. Stat. § 90.803(23)(a) (1) - Reliability

Before a statement may be admitted under 90.803(23), the trial court is required by 90.803(23)(a)(1) to hold a hearing out of the presence of the jury to determine whether the circumstances surrounding the making of the statement demonstrate that the statement is reliable.

Perez v. State, 536 So. 2d 206 (Fla. 1988): Before the child’s out-of-court statements may be admitted the court must find in a hearing that the time, content, and circumstances of the statement provide sufficient safeguards of reliability.

Luszczyn v. Department of Health and Rehabilitative Services, 576 So.2d 431 (Fla. 5th DCA 1991): In dependency proceeding, the failure of the trial judge to conduct a hearing to determine the reliability of a statement offered under 90.803(23) was error.

Griffin v. State, 526 So. 2d 752, 757-58 (Fla. 1st DCA 1988): Reversible error for court to admit out-of-court statements under 90.803(23) where court failed to make specific findings of fact on the record indicating the basis for determining the admissibility.
Factors indicating reliability include:

• child was still emotionally affected by the situation when the child reported
  • Distefano v. State, 526 So 2d 110 (Fla. 1st DCA 1988)
• statement was spontaneous and made in response to questions from adults
  • State v. Townsend, 635 So.2d 949 (Fla. 1994)
• statement was made at the 1st available opportunity & consisted of a child-like description of the act
  • Perez v. State, 536 So.2d 206, 211 (Fla. 1988)
• use of terminology unexpected of a child of similar age
  • Idaho v. Wright, 497 U.S. 805 (1990)
• lack of motive to fabricate
  • Idaho v. Wright, 497 U.S. 805 (1990)
• making of the statement to a number of people and not only to the mother
  • Perez v. State, 536 So.2d 206, 211 (Fla. 1988)
• mental competence of the child
  • State v. Townsend, 635 So.2d 949 (Fla. 1994)
• ability of the child to distinguish reality from fantasy
  • State v. Romanez, 543 So.2d 323 (Fla. 3d DCA 1989)
• whether the statements were vague and partially contradictory
  • State v. Romanez, 543 So.2d 323 (Fla. 3d DCA 1989)
• possibility of improper influence on the child by participants in a domestic dispute
  • State v. Townsend, 635 So.2d 949 (Fla. 1994)
• time of the incident relative to the time of the statement
  • Jaggers v. State, 536 So. 2d 321 (Fla. 2d DCA 1988): The time of the out-of-court statements relative to the time of the incident charged and the circumstances of the statement are critical to a determination of reliability
Reliability

The initial clause of 90.803(23)(a) provides “unless the source of information or the method or circumstances by which the statement is reported indicates a lack of trustworthiness,” the exception will not be recognized.

Although this may be a restatement of the reliability requirement, it was included by a Senate committee to ensure careful examination where the circumstances involve marital discord between the child’s parents and the possibility of one spouse using the child to seek some advantage over the other spouse.
Certiorari is available to review a pre-trial order excluding statements offered under 90.803(23). See State v. Romanez, 543 So. 323 (Fla. 3d DCA 1989).

Heuss v. State, 687 So. 2d 23 (Fla. 1996): In reviewing the insufficient finding of reliability, appellate court has the discretion to engage in a harmless error analysis without the point being argued by counsel.

Garcia v. State, 659 So. 2d 388, 392 (Fla. 2d DCA 1995): The standard of review of the reliability determination is one of abuse of discretion.

The child does not have to be testimonially competent for the child’s out of court statements to be admitted under the exception. Perez v. State, 536 So. 2d 206 (Fla. 1988).
Q: Is the child competent to testify?

Wade v. State,
586 So.2d 1200 (Fla. 1st DCA 1991)

In a child sexual abuse case, before finding a child competent to testify under 90.803(23)(a), the trial court must consider:

(1) Whether the child is capable of observing and recollecting facts,

(2) whether the child is capable of narrating those facts to the court or to a jury, and

(3) whether the child has a moral sense of the obligation to tell the truth.
Q: What if the child testifies that nothing happened?

If the victim’s trial testimony does not indicate that abuse occurred, the victim’s out-of-court statements that abuse occurred are not sufficient, by themselves, to support a conviction.

Ticknor v. State, 595 So. 2d 109, 110 (Fla. 2d DCA 1992): Attempted sexual battery conviction was reversed because testimony of detective who interviewed the victim was the only evidence of guilt and because unsworn, uncorroborated statements that are inconsistent with the victim’s trial testimony are insufficient as a matter of law to sustain a conviction.
(1) DEFINITION OF UNAVAILABILITY. “Unavailability as a witness” means that the declarant:

(a) Is exempted by a ruling of a court on the ground of privilege from testifying concerning the subject matter of the declarant’s statement;

(b) Persist in refusing to testify concerning the subject matter of the declarant’s statement despite an order of the court to do so;

(c) Has suffered a lack of memory of the subject matter of his or her statement so as to destroy the declarant’s effectiveness as a witness during the trial;

(d) Is unable to be present or to testify at the hearing because of death or because of then-existing physical or mental illness or infirmity; or

(e) Is absent from the hearing, and the proponent of a statement has been unable to procure the declarant’s attendance or testimony by process or other reasonable means.

However, a declarant is not unavailable as a witness if such exemption, refusal, claim of lack of memory, inability to be present, or absence is due to the procurement or wrongdoing of the party who is the proponent of his or her statement in preventing the witness from attending or testifying.
Unavailable

Peterson v. State, 810 So.2d 1095 (Fla. 5th DCA 2002): No error in allowing introduction of victim's tape-recorded interview with Child Protection Team where victim appeared in courtroom, began weeping, answered general questions put to her by prosecutor and testified that defendant came into her room and did something to her, but then continued to cry and refused to answer more questions about sexual acts involved in the case. The judge was correct in declaring her “unavailable.”

State v. Cherryhomes, 647 So.2d 841 (Fla. 1994): Does a finding of incompetency to testify because one is unable to recognize the duty and obligation to tell the truth satisfy the legislative "testify or be unavailable" requirement of section 90.803(23)(a)(2)? This certified question was answered in the affirmative.
State v. Contreras, 979 So.2d 896 (Fla. 2008)

Testimonial Statement

- Admissibility under the hearsay exception for child victims does not necessarily mean that the statements are properly admitted in evidence.
- An out-of-court statement is not admissible merely because it meets the statutory definition of child victim hearsay.
- The Sixth Amendment provides that in all criminal prosecutions, the accused shall enjoy the right to be confronted with the witnesses against him.
- The standard for determining whether the admission of a testimonial hearsay statement against a criminal defendant violates the right of confrontation was modified by Crawford v. Washington, 541 US 36 (2004).
- In Crawford, the Supreme Court dispensed with the Roberts reliability analysis for testimonial hearsay statements and held that admission of a hearsay statement made by a declarant who does not testify at trial violates the 6th Amendment if (1) the statement is testimonial, (2) the declarant is unavailable, and (3) the defendant lacked a prior opportunity for cross-examination of the declarant.
- Only testimonial statements cause a declarant to be a witness within the meaning of the Confrontation Clause. At a minimum, statements are testimonial if the declarant made them at a “preliminary hearing, before a grand jury, or at a former trial, and in police investigations.”
State v. Contreras, 979 So.2d 896 (Fla. 2008)
Testimonial vs. Non-Testimonial

- Statements are **nontestimonial** when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency.

- In contrast, such out-of-court statements are **testimonial** “when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.”

- Courts have concluded that a child’s **spontaneous statement to a friend** or family member is **not likely** to be testimonial.

- Courts have also concluded that a child victim’s statements to a **medical professional** are **not testimonial** when the statements regard the nature of the alleged attack or the cause of the child’s symptoms and pain.

- In contrast, courts have ruled that **statements by child victims to police officers or members of child protection teams** are **testimonial** in nature.
State v. Contreras, 979 So.2d 896 (Fla. 2008)

Unavailability of Declarant

• Where the State seeks to admit testimonial hearsay evidence, the Sixth Amendment demands what the common law required: unavailability and a prior opportunity for cross examination.

• ....
State v. Contreras, 979 So.2d 896 (Fla. 2008)
Prior Opportunity for Cross-Examination

• Discovery Deposition Sufficient?
  • Exercising the right to take a discovery deposition under Florida Criminal Rule of Procedure 3.220 is not the functional substitute of in-court confrontation of the witness because the defendant is usually prohibited from being present, the motivation for the deposition does not result in the “equivalent of significant cross-examination,” and the resulting deposition cannot be admitted as substantive evidence at trial.
  • In fact, for a discovery deposition pursuant to rule 3.220(h) to meet the Crawford requirement of an opportunity for cross-examination, it would have to be the functional equivalent of a rule 3.190(j) deposition to perpetuate testimony.
  • State v. Causey, 898 So.2d 1096 (Fla. 5th DCA 2005)(“Crawford does not require the defendant or his counsel to be present at the time the witness's statement is made or to be given an opportunity to cross-examine the witness at that time... The ruling in Crawford merely requires that a defendant have the opportunity at some time prior to trial to cross-examine the witness."
NOTICE REQUIREMENT IN CRIMINAL CASES

Fla. Stat § 90.803 (23)(b)

In a criminal action, the defendant shall be notified no later than 10 days before trial that a statement which qualifies as a hearsay exception pursuant to this subsection will be offered as evidence at trial.

The notice shall include a written statement of the content of the child’s statement, the time at which the statement was made, the circumstances surrounding the statement which indicate its reliability, and such other particulars as necessary to provide full disclosure of the statement.
The notice requirement is procedural in nature. The failure to give a timely notice, or failure to give notice which adequately apprises the opposing party of the content of the statement, the circumstances indicating reliability, or the other requirements of 90.803(23), should result in a Richardson-type hearing. This is a hearing similar to that required when a prosecutor fails to comply with discovery rules and requires the judge to first decide whether the violation prevented the defendant from properly preparing for trial, and if so, what sanction should be invoked. If the defendant has not been harmed by the violation because counsel is prepared to meet the evidence at trial, the evidence will not be excluded because of the defect in the notice.

NC v. State, 947 So.2d 1201 (Fla. 1st DCA 2007): State’s filing of notice six days before hearing did not preclude admission when defense conceded it knew of the statement made by child and could not explain how it was prejudiced by untimely notice.

William v. State, 627 So. 2d 1279 (Fla. 1st DCA 1993): Failure to give ten-day notice was not ground to exclude child statement when court conducted Richardson hearing and determined the defense was not prejudiced because counsel had deposed the hearsay witnesses who discussed the incident during their deposition.
STATE OF FLORIDA’S
NOTICE OF INTENT TO INTRODUCE CHILD HEARSAY

COMES NOW, RJ LARIZZA, State Attorney for the Seventh Judicial Circuit, State of Florida, by and through the undersigned Assistant State Attorney, pursuant to Florida Statute section 90.803(23), and hereby gives notice of intent to introduce hearsay statements of a child. In support thereof, the State would offer the following:

1. On or about 02/19/14, the victim in this case disclosed abuse by her [redacted] to her elementary school teacher Ms. Chelsea Welch. When the victim showed up to school that morning, she was not happy and was more withdrawn than usual. Ms. Welch pulled the victim aside and asked what was wrong. The victim began to cry and stated that her back was hurting. Ms. Welch asked the victim what happened and she said [redacted] hit her with a belt. Ms. Welch asked again what really happened and the victim again said that [redacted] hit her with a belt. The victim also disclosed that she didn’t do anything. Ms. Welch took the victim to the nurse’s office, at which time she saw bruising and marks on the victim’s body.
**90.803(23) does not apply to statements by children who are witnesses but not victims!**

State v. Dupree, 656 So.2d 430 (Fla. 1995)

**Hearsay statement of child who was a witness to defendant’s physical abuse of victim was inadmissible under 90.803(23).**

While we agree that a child can be abused by what the child witnesses, and thereby be a child victim, for hearsay statements of child to be admissible under 90.803(23), the prosecution of the defendant must be based on the victimization of the child whose statements are being related.
90.803(23) is not the exclusive method of admitting child hearsay in abuse cases; other hearsay exceptions may apply.

Doe v. Broward County School Bd.,
744 So. 2d 1068, 1073 (Fla. 4th DCA 1999)

Section 90.803(23) does not preempt all other hearsay exceptions when the out of court statements are made by a child victim of abuse.
... other hearsay exceptions may apply.

90.801: Hearsay; definitions; exceptions:

... 

(2) A statement is not hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement and the statement is:

(a) Inconsistent with the declarant’s testimony and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding or in a deposition;

(b) Consistent with the declarant’s testimony and is offered to rebut an express or implied charge against the declarant of improper influence, motive, or recent fabrication; or

(c) One of identification of a person made after perceiving the person.
...other hearsay exceptions may apply.

90.803: Hearsay exceptions; availability of declarant immaterial -

(1) SPONTANEOUS STATEMENT: A spontaneous statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter, except when such statement is made under circumstances that indicate its lack of trustworthiness.

(2) EXCITED UTTERANCE: A statement or excited utterance relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

...
APPELLATE LAW/EXPERTS

By

Nicholas Martino, Jacksonville
Preserving Issues for Appellate Review:

Trial Attorney’s Guide to Making the Record

by
Prof. Nicholas Martino, J.D., LL.M.
What’s the biggest indicator you’ll be successful on appeal?

WINNING AT THE TRIAL COURT!
What the second biggest indicator?

PROPER PRESERVATION OF ERROR!
Fundamental Error:

Error must be of such fundamental nature as to justify reversal in absence of preservation by counsel, so much so it reaches down into the legality of trial itself.

Hamilton v. State, 88 So. 2d 606 (Fla. 1956); Brown v. State, 124 So. 2d 481 (Fla. 1960); Farina v. State, 937 So. 2d 612 (Fla. 2006).
1. If it’s not in the Record it didn’t happen
2. Three “P’s”:
   a. Present
   b. Preserve
      i. Legal basis
      ii. Harm
   c. Persist
3. Don’t be afraid to request and repeat it
4. Timeliness
Preservation Tools

› Pleadings
› Pre-trial Motions
› Objections
  - Standing
  - Contemporaneous
› Motions
  - JOA + renewal
  - Directed Verdict + renewal
› Post-trial Motions
  - Motion for New Trial
Common Preservation Moments

- Compound objections
- Compound questions
- Lack of clear ruling
- Failure to request a ruling
- Failure to proffer
Common Preservation Moments

› Compound objections and questions
  - Attorney: “Objection, hearsay and relevance!”
  - Judge: “Overruled.”
  - Appellate Attorney (a few months later): “Come on!”

› Single topics on question/Single basis for objections
Lack of clear ruling

- Attorney: “Objection, the question was addressed in the pretrial Motion in Limine.”

- Opposing Counsel: “That’s not where the question is going, it’s simply relating to the actions of the Defendant at the time of the incident.”

- Sidebar or open court argument ensues

- Judge: “Okay. I understand the point of both sides, I think we’ve spent enough time on this. Let’s bring the jury back in and proceed.”
Common Preservation Moments

 › Failure to request a ruling
   - None clearly stated
   - Omission in a transcript

Johnson v. State, 752 So. 2d 61 (Fla. 2d DCA 2000).
Common Preservation Moments

- Failure to proffer
  - Argument
    - Legal basis
    - Harm
  - Evidence
    - Documents
    - Videos
    - Demonstrative Aids
    - Testimony
Evidence: Admission or Exclusion

- Motion in Limine does not remove need for a contemporaneous objection
- General references to excluded evidence are not sufficient, an “offer of proof” is required for preservation
  - Did you proffer the substance of the evidence?
  - If not, is the evidence obvious from the context of the record?
  - A trial court’s refusal to permit the proffer is reversible error.

Philip Morris, Inc. v. French, 897 So. 2d 480 (Fla. 3d D.C.A. 2004); Tucker v. Allstate Ins. Co., 842 So. 2d 1029 (Fla. 2d D.C.A. 2003); Horne v. Hudson, 772 So. 2d 556 (Fla. 1st D.C.A. 2000).
Objections

- Objections **should** be specific, but **must** be timely.

- Qualities of a proper objection:
  - Contemporaneous
  - States specific legal
  - Gets a ruling

Mistrial

- Following a sustained the objection you should still move for a mistrial regardless of a curative instruction if there is a belief the instruction has not remedied the problem.

- Timeliness matters! If it’s not timely it will be chalked up to “strategy.”

Misconduct of Counsel

- Object

- Timely move for a mistrial and/or a curative instruction

Weise v. Repa Film Int’l., Inc., 683 So. 2d 1128 (Fla. 4th D.C.A. 1996); Murphy v. International Robotic Systems, Inc., 766 So. 2d 1010, 1027 (Fla. 2000).
Motions in Limine

- Fla. Stat. §90.104(1)(b), provides that “[i]f the court has made a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal.”

- Most courts have held that absent a transcript they will affirm the trial court’s ruling.

SourceTrack, LLC v. Ariba, Inc., 958 So. 2d 523, 526 (Fla. 2d DCA 2007).
Closing Arguments

- Object
- Obtain a ruling
- If sustained:
  - Curative instruction and/or
  - Motion for mistrial

Common Preservation Moments

› Verdict Form
  - Object
  - Never acquiesce or show even tacit approval
  - Using alternative forms can render any preservation moot

Colonial Stores, Inc. v. Scarbrough, 355 So. 2d 1181, 1186 (Fla. 1977); Perry v. State, 362 So. 2d 460, 462 (Fla. 1st DCA 1978); Food Lion, L.L.C. v. Henderson, 895 So. 2d 1207, 1209 (Fla. 5th DCA 2005).
Expert Landmines

1. Testimony
   a. Hearings
   b. Trial

2. Evidence
   a. Reports, Reconstructions, Simulations
   b. Demonstrative
1. All testimony should be proffered live or in writing
   a. No attorney summary
   b. If attorney summary is the initial proffer, then following an adverse ruling request a full proffer by the expert

2. All paper reports should be included with transcripts of the hearing proffer

3. Physical evidence
   a. Videos
   b. Computer simulations
   c. Models