



CITY OF CLEWISTON
115 West Ventura Avenue
Clewiston, Florida 33440

**SPECIAL COMMISSION MEETING
AGENDA**

Monday, March 23, 2020 – 4:00 p.m.

Call Special Commission Meeting to Order

Prayer and Pledge of Allegiance

Additions/Deletions/Changes and Approval of the Agenda

Public Comments

- 1. Attorney/Client Meeting (Shade Meeting)** – The meeting regarding the matter of City of Clewiston v. Johnson-Prewitt & Associates, Inc. was requested by City Attorney Gary Brandenburg at the March 16, 2020 City Commission Meeting.

Exhibit: Agenda Item No. 1

Recommendation: Commission Discretion

- 2. Consideration of Emergency Management Issues by the City Commission**

Adjournment

The City of Clewiston is an equal opportunity provider and employer.

City Hall is wheelchair accessible and accessible parking spaces are available. Accommodation requests or interpretive services must be made 48 hours prior to the meeting. Please contact the City Clerk's office at (863) 983-1484, extension 105, or FAX (863) 983-4055 for information or assistance.

If a person decides to appeal any decision made by the City Commission with respect to any matter considered at this meeting, the person will need a record of the proceedings, and that, for such purpose, the person may need to ensure a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

I, the undersigned authority, do hereby certify the above Notice of Meeting of the City Commission of the City of Clewiston is a true and correct copy of said Notice and that I posted a true and correct copy of said Notice at the front and rear entrances of City Hall, a place convenient and readily accessible to the general public at all times.

Mary K. Combass, City Clerk

CITY OF CLEWISTON
Special City Commission Agenda Item Report

AGENDA ITEM REPORT NO. 1
Commission Meeting Date: March 16, 2020

Subject: Attorney/Client Meeting (Shade Meeting)

- 1. Background/History:** The meeting regarding the matter of City of Clewiston v. Johnson-Prewitt & Associates, Inc. was requested by City Attorney Gary Brandenburg at the March 16, 2020 City Commission Meeting.
- 2. Financial Impact:** \$150,203 (proposed settlement amount)
- 3. Attachments:**
 - a. Memo dated March 11, 2020
 - b. Defendant, Johnson-Prewitt & Associates, Inc.'s Proposal for Settlement to Plaintiff
 - c. Joint Stipulation of Voluntary Dismissal with Prejudice
 - d. Agreed Order on Notice of Voluntary Dismissal
 - e. Chapter 768.79, Florida Statutes
 - f. Rule 1.442. Proposals for Settlement, Florida Rules of Civil Procedure
- 4. Actions/Options/Recommendations:** Commission Discretion

BRANDENBURG & ASSOCIATES, P.A.

421 SE Osceola Street, Suite B
Stuart, Florida 34994
(561) 799-1414
www.BrandenburgPA.com

Gary M. Brandenburg

Gary@BrandenburgPA.com

ATTORNEY AT LAW

TO: *Mayor Gardner and
Members of the City Commission*

FROM: *Gary M. Brandenburg, Esq.*

DATE: *March 11, 2020*

SUBJECT: *Request for item to be placed on March 16, 2020 Agenda
Scheduling of Attorney/Client Meeting During the Next
City Commission meeting re:
City of Clewiston v. Johnson-Prewitt & Associates*

Please schedule an Attorney / Client meeting during the next City Commission meeting. I will schedule a Court Reporter to attend, and coordinate advertising the meeting with the City Clerk.

In attendance at the meeting will be:

Mayor Mali Gardner
Vice Mayor Michael Atkinson
Commissioner Kristine Petersen
Commissioner Julio Rodriguez
Commissioner Melanie McGahee
Randy Martin, City Manager
Gary Brandenburg, City Attorney
Robert Shearman or Kyle Dudek, PRM attorney for City
Court Reporter

cc: Randy Martin



IN THE CIRCUIT COURT OF THE 20TH
JUDICIAL CIRCUIT IN AND FOR
HENDRY COUNTY, FLORIDA

CASE NO.: 19-CA-000415

CITY OF CLEWISTON, FLORIDA,
a municipal corporation,
Plaintiff,

v.

JOHNSON-PREWITT & ASSOCIATES, INC.
Defendant.

**DEFENDANT, JOHNSON-PREWITT & ASSOCIATES, INC.'S
PROPOSAL FOR SETTLEMENT TO PLAINTIFF**

Defendant, JOHNSON-PREWITT & ASSOCIATES, INC. ("JP"), by and through its undersigned counsel, hereby proposes a settlement to CITY OF CLEWISTON, FLORIDA ("City"), pursuant to Section 768.79 of the Florida Statutes, and Rule 1.442, Florida Rules of Civil Procedure.

1. The party or parties making the proposal is: JP. The party or parties to whom the proposal is being made is: City.

2. The proposal is attempting to resolve and settle the following claim or claims: All Counts and claims that have been or could have been brought between JP and City, on the subject project described in the pleadings, including all counts in JP's Counterclaim. The City's Complaint, Counts 1 and 2, have been dismissed with prejudice as of 3/3/20.

3. Relevant conditions stated with particularity: This Proposal expressly provides that this Proposal for Settlement is inclusive of claims for attorneys' fees and payment will be in exchange for an original executed Joint Stipulation of Voluntary Dismissal with Prejudice, approvals to submit an Agreed Order approving such Dismissal, and a Final Disposition Form (all attached as Composite Exhibit "A" and all filed following delivery of the funds below).

4. The total amount of the proposal and all non-monetary terms of the proposal stated with particularity: City will pay JP the total amount of ONE HUNDRED FIFTY THOUSAND TWO HUNDRED THREE DOLLARS (\$150,203.00), inclusive of attorneys' fees, costs, and interest, paid within twenty (20) days, in exchange for the receipt of the items set forth in ¶3 above, and the non-monetary terms are set forth in ¶3 above.

5. The amount proposed to settle a claim for punitive damages, if any, stated with particularity: No claims for punitive damages, not applicable.

6. The total amount of ONE HUNDRED FIFTY THOUSAND TWO HUNDRED THREE DOLLARS (\$150,203.00), includes attorneys' fees, costs, and interest, and attorneys' fees are part of the legal claim in the pleadings.

7. Pursuant to Fla. R. Civ. P. 1.442(f), this offer may be accepted by delivery of a written acceptance to undersigned counsel for Plaintiff at the address listed below within thirty (30) days of service of the offer.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been furnished to: **Gary M. Brandenburg, Esq.**, *Counsel for Plaintiff*, Brandenburg & Associates, PA, 421 SE Osceola Street, Suite B, Stuart, FL 34994, (561) 799-1414, gary@brandenburgpa.com, sandy@brandenburgpa.com, and to **Robert C. Shearman, Esq. and Kyle Dudek, Esq.**, *Co-Counsel for Plaintiff*, Henderson Franklin Starnes & Holt, P.O. Box 280, 1715 Monroe Street, Fort Myers, FL 33902-0280, 239.344.1346, Robert.shearman@henlaw.com, Courtney.ward@henlaw.com, Kyle.dudek@henlaw.com and Sarah.howie@henlaw.com by email on March 4, 2020.

CIKLIN LUBITZ
Counsel for Defendant Johnson-Prewitt
515 N. Flagler Drive, 20th Floor
West Palm Beach, FL 33401
Telephone: (561) 832-5900
Facsimile: (561) 833-4902
rchaves@ciklinlubitz.com
slombardo@ciklinlubitz.com
jking@ciklinlubitz.com (assistant)

/s/Richard R. Chaves
RICHARD R. CHAVES
FBN:0114375

IN THE CIRCUIT COURT OF THE 20TH
JUDICIAL CIRCUIT IN AND FOR
HENDRY COUNTY, FLORIDA

CASE NO.: 19-CA-000415

CITY OF CLEWISTON, FLORIDA,
a municipal corporation,
Plaintiff,

v.

JOHNSON-PREWITT & ASSOCIATES, INC.
Defendant.

JOINT STIPULATION OF VOLUNTARY DISMISSAL WITH PREJUDICE

CITY OF CLEWISTON, FLORIDA and JOHNSON-PREWITT & ASSOCIATES, INC., by and through undersigned counsel, and pursuant to Rule 1.420, *Fla. R. Civ. P.*, and Rule 2.505(d), *Fla. R. Jud. Admin.*, and a written *Settlement* between the parties hereby stipulate and voluntarily dismiss all claims and counts by Plaintiff against Defendants, with each party agreeing to bear its own attorneys' fees and costs. The below parties agree an immediate Agreed Order on Notice of Voluntary Dismissal with Prejudice may be entered to this effect.

CIKLIN LUBITZ
Counsel for Defendant
515 North Flagler Drive, 20th Floor
West Palm Beach, FL 33401
Tel: (561) 832-5900
Dated: _____

Richard R. Chaves, Esq.
Fla. Bar No.: 0114375
rchaves@ciklinlubitz.com

Counsel for Plaintiff
ADDRESS

Dated: _____

By: / _____, Esq.

Florida Bar No. _____

Email address: _____

COMPOSITE EXHIBIT "A"

IN THE CIRCUIT COURT OF THE 20TH
JUDICIAL CIRCUIT IN AND FOR
HENDRY COUNTY, FLORIDA

CASE NO.: 19-CA-000415

CITY OF CLEWISTON, FLORIDA,
a municipal corporation,
Plaintiff,

v.

JOHNSON-PREWITT & ASSOCIATES, INC.
Defendant.

AGREED ORDER ON NOTICE OF VOLUNTARY DISMISSAL

UPON agreement and stipulation of the parties to dismiss certain claims which were brought, it is hereby **ORDERED AND ADJUDGED** that the Counterclaim and all counts and claims between Plaintiff and Defendant are dismissed with prejudice, with each party bearing its own attorneys' fees and costs. Defendant shall submit a Final Disposition Form.

DONE AND ORDERED in Chambers in Hendry County, Florida this ____ day of _____, 2020.

Honorable James D. Sloan
Circuit Court Judge

Copies furnished to:

Gary M. Brandenburg, Esq., *Counsel for Plaintiff*, Brandenburg & Associates, PA, 421 SE Osceola Street, Suite B, Stuart, FL 34994, (561) 799-1414, gary@brandenburgpa.com sandy@brandenburgpa.com, and to **Robert C. Shearman, Esq. and Kyle Dudek, Esq.**, *Co-Counsel for Plaintiff*, Henderson Franklin Starnes & Holt, P.O. Box 280, 1715 Monroe Street, Fort Myers, FL 33902-0280, 239.344.1346, Robert.shearman@henlaw.com, Courtney.ward@henlaw.com, Kyle.dudek@henlaw.com and Sarah.howie@henlaw.com
Richard R. Chaves, Esq., *Counsel for Defendant*, Ciklin Lubitz, 515 N. Flagler Drive – 20th Floor, West Palm Beach, FL 33401, (561) 832-5900, service@ciklinlubitz.com and rchaves@ciklinlubitz.com

Form 1.998 Final Disposition Form

This form shall be filed by the prevailing party for the use of the Clerk of Court for the purpose of reporting judicial workload data pursuant to Florida Statutes section 25.075.

IN THE CIRCUIT COURT OF THE 20TH
JUDICIAL CIRCUIT IN AND FOR HENDRY
COUNTY, FLORIDA

CASE NO.: 19-CA-000415

CITY OF CLEWISTON, FLORIDA,
a municipal corporation,
Plaintiff,

v.

JOHNSON-PREWITT & ASSOCIATES, INC.
Defendant.

_____ /

II. MEANS OF FINAL DISPOSITION (Place an "x" in one box for major category and one subcategory, if applicable, only)

- Dismissed Before Hearing
- Dismissed Pursuant to Settlement –Before Hearing
- Dismissed Pursuant to Mediated Settlement –Before Hearing
- Other –Before Hearing
- Dismissed After Hearing
- Dismissed Pursuant to Settlement –After Hearing
- Dismissed Pursuant to Mediated Settlement –After Hearing
- Other After Hearing –After Hearing
- Disposed by Default
- Disposed by Judge
- Disposed by Non-jury Trial
- Disposed by Jury Trial
- Other

DATE: _____

SIGNATURE OF ATTORNEY FOR SUBMITTING PARTY

Richard R. Chaves, Esq.
CIKLIN LUBITZ
515 North Flagler Drive, 20th Floor
West Palm Beach, FL 33401
Tel: (561) 832-5900
rchaves@ciklinlubitz.com

Richard R. Chaves, Esq.
Fla. Bar No.: 0114375

Select Year:

The 2019 Florida Statutes

[Title XLV](#)
TORTS

[Chapter 768](#)
NEGLIGENCE

[View Entire Chapter](#)

768.79 Offer of judgment and demand for judgment.—

(1) In any civil action for damages filed in the courts of this state, if a defendant files an offer of judgment which is not accepted by the plaintiff within 30 days, the defendant shall be entitled to recover reasonable costs and attorney's fees incurred by her or him or on the defendant's behalf pursuant to a policy of liability insurance or other contract from the date of filing of the offer if the judgment is one of no liability or the judgment obtained by the plaintiff is at least 25 percent less than such offer, and the court shall set off such costs and attorney's fees against the award. Where such costs and attorney's fees total more than the judgment, the court shall enter judgment for the defendant against the plaintiff for the amount of the costs and fees, less the amount of the plaintiff's award. If a plaintiff files a demand for judgment which is not accepted by the defendant within 30 days and the plaintiff recovers a judgment in an amount at least 25 percent greater than the offer, she or he shall be entitled to recover reasonable costs and attorney's fees incurred from the date of the filing of the demand. If rejected, neither an offer nor demand is admissible in subsequent litigation, except for pursuing the penalties of this section.

(2) The making of an offer of settlement which is not accepted does not preclude the making of a subsequent offer. An offer must:

- (a) Be in writing and state that it is being made pursuant to this section.
- (b) Name the party making it and the party to whom it is being made.
- (c) State with particularity the amount offered to settle a claim for punitive damages, if any.
- (d) State its total amount.

The offer shall be construed as including all damages which may be awarded in a final judgment.

(3) The offer shall be served upon the party to whom it is made, but it shall not be filed unless it is accepted or unless filing is necessary to enforce the provisions of this section.

(4) An offer shall be accepted by filing a written acceptance with the court within 30 days after service. Upon filing of both the offer and acceptance, the court has full jurisdiction to enforce the settlement agreement.

(5) An offer may be withdrawn in writing which is served before the date a written acceptance is filed. Once withdrawn, an offer is void.

(6) Upon motion made by the offeror within 30 days after the entry of judgment or after voluntary or involuntary dismissal, the court shall determine the following:

(a) If a defendant serves an offer which is not accepted by the plaintiff, and if the judgment obtained by the plaintiff is at least 25 percent less than the amount of the offer, the defendant shall be awarded reasonable costs, including investigative expenses, and attorney's fees, calculated in accordance with the guidelines promulgated by the Supreme Court, incurred from the date the offer was

served, and the court shall set off such costs in attorney's fees against the award. When such costs and attorney's fees total more than the amount of the judgment, the court shall enter judgment for the defendant against the plaintiff for the amount of the costs and fees, less the amount of the award to the plaintiff.

(b) If a plaintiff serves an offer which is not accepted by the defendant, and if the judgment obtained by the plaintiff is at least 25 percent more than the amount of the offer, the plaintiff shall be awarded reasonable costs, including investigative expenses, and attorney's fees, calculated in accordance with the guidelines promulgated by the Supreme Court, incurred from the date the offer was served.

For purposes of the determination required by paragraph (a), the term "judgment obtained" means the amount of the net judgment entered, plus any postoffer collateral source payments received or due as of the date of the judgment, plus any postoffer settlement amounts by which the verdict was reduced. For purposes of the determination required by paragraph (b), the term "judgment obtained" means the amount of the net judgment entered, plus any postoffer settlement amounts by which the verdict was reduced.

(7)(a) If a party is entitled to costs and fees pursuant to the provisions of this section, the court may, in its discretion, determine that an offer was not made in good faith. In such case, the court may disallow an award of costs and attorney's fees.

(b) When determining the reasonableness of an award of attorney's fees pursuant to this section, the court shall consider, along with all other relevant criteria, the following additional factors:

1. The then apparent merit or lack of merit in the claim.
2. The number and nature of offers made by the parties.
3. The closeness of questions of fact and law at issue.
4. Whether the person making the offer had unreasonably refused to furnish information necessary to evaluate the reasonableness of such offer.
5. Whether the suit was in the nature of a test case presenting questions of far-reaching importance affecting nonparties.
6. The amount of the additional delay cost and expense that the person making the offer reasonably would be expected to incur if the litigation should be prolonged.

(8) Evidence of an offer is admissible only in proceedings to enforce an accepted offer or to determine the imposition of sanctions under this section.

History.—s. 58, ch. 86-160; s. 48, ch. 90-119; s. 1175, ch. 97-102.

1972 Amendment. All references to the pretrial conference are deleted because these are covered in rule 1.200.

1980 Amendment. Subdivision (b) is amended to specify whether the trial will be on the original pleadings or subsequent pleadings under rule 1.110(h).

1988 Amendment. Subdivision (c) was amended to clarify a confusion regarding the notice for trial which resulted from a 1968 amendment.

2012 Amendment. Subdivision (c) is amended to reflect the relocation of the service rule from rule 1.080 to Fla. R. Jud. Admin. 2.516.

Court Commentary

1984 Amendment. Subdivision (a) is amended by adding a sentence to emphasize the authority given in rule 1.270(b) for the severing of issues for trial.

Subdivision (c) is amended to delete the reference to law actions so that the rule will apply to all actions in which unliquidated damages are sought.

RULE 1.442. PROPOSALS FOR SETTLEMENT

(a) Applicability. This rule applies to all proposals for settlement authorized by Florida law, regardless of the terms used to refer to such offers, demands, or proposals, and supersedes all other provisions of the rules and statutes that may be inconsistent with this rule.

(b) Service of Proposal. A proposal to a defendant shall be served no earlier than 90 days after service of process on that defendant; a proposal to a plaintiff shall be served no earlier than 90 days after the action has been commenced. No proposal shall be served later than 45 days before the date set for trial or the first day of the docket on which the case is set for trial, whichever is earlier.

(c) Form and Content of Proposal for Settlement.

(1) A proposal shall be in writing and shall identify the applicable Florida law under which it is being made.

(2) A proposal shall:

(A) name the party or parties making the proposal and the party or parties to whom the proposal is being made;

(B) state that the proposal resolves all damages that would otherwise be awarded in a final judgment in the action in which the proposal is served, subject to subdivision (F);

(C) state with particularity any relevant conditions;

(D) state the total amount of the proposal and state with particularity all nonmonetary terms of the proposal;

(E) state with particularity the amount proposed to settle a claim for punitive damages, if any;

(F) state whether the proposal includes attorneys' fees and whether attorneys' fee are part of the legal claim; and

(G) include a certificate of service in the form required by Florida Rule of Judicial Administration 2.516.

(3) A proposal may be made by or to any party or parties and by or to any combination of parties properly identified in the proposal. A joint proposal shall state the amount and terms attributable to each party.

(4) Notwithstanding subdivision (c)(3), when a party is alleged to be solely vicariously, constructively, derivatively, or technically liable, whether by operation of law or by contract, a joint proposal made by or served on such a party need not state the apportionment or contribution as to that party. Acceptance by any party shall be without prejudice to rights of contribution or indemnity.

(d) Service and Filing. A proposal shall be served on the party or parties to whom it is made but shall not be filed unless necessary to enforce the provisions of this rule.

(e) Withdrawal. A proposal may be withdrawn in writing provided the written withdrawal is delivered before a written acceptance is delivered. Once withdrawn, a proposal is void.

(f) Acceptance and Rejection.

(1) A proposal shall be deemed rejected unless accepted by delivery of a written notice of acceptance within 30 days after service of the proposal. The provisions of Florida Rule of Judicial Administration 2.514(b) do not apply to this subdivision. No oral communications shall constitute an acceptance, rejection, or counteroffer under the provisions of this rule.

(2) In any case in which the existence of a class is alleged, the time for acceptance of a proposal for settlement is extended to 30 days after the date the order granting or denying certification is filed.

(g) Sanctions. Any party seeking sanctions pursuant to applicable Florida law, based on the failure of the proposal's recipient to accept a proposal, shall do so by serving a motion in accordance with rule 1.525.

(h) Costs and Fees.

(1) If a party is entitled to costs and fees pursuant to applicable Florida law, the court may, in its discretion, determine that a proposal was not made in good faith. In such case, the court may disallow an award of costs and attorneys' fees.

(2) When determining the reasonableness of the amount of an award of attorneys' fees pursuant to this section, the court shall consider, along with all other relevant criteria, the following factors:

(A) The then-apparent merit or lack of merit in the claim.

(B) The number and nature of proposals made by the parties.

(C) The closeness of questions of fact and law at issue.

(D) Whether the party making the proposal had unreasonably refused to furnish information necessary to evaluate the reasonableness of the proposal.

(E) Whether the suit was in the nature of a test case presenting questions of far-reaching importance affecting nonparties.

(F) The amount of the additional delay cost and expense that the party making the proposal reasonably would be expected to incur if the litigation were to be prolonged.

(i) **Evidence of Proposal.** Evidence of a proposal or acceptance thereof is admissible only in proceedings to enforce an accepted proposal or to determine the imposition of sanctions.

(j) **Effect of Mediation.** Mediation shall have no effect on the dates during which parties are permitted to make or accept a proposal for settlement under the terms of the rule.

Committee Notes

1996 Amendment. This rule was amended to reconcile, where possible, sections 44.102(6) (formerly 44.102(5)(b)), 45.061, 73.032, and 768.79, Florida Statutes, and the decisions of the Florida Supreme Court in *Knealing v. Puleo*, 675 So. 2d 593 (Fla. 1996), *TGI Friday's, Inc. v. Dvorak*, 663 So. 2d 606 (Fla. 1995), and *Timmons v. Combs*, 608 So. 2d 1 (Fla. 1992). This rule replaces former rule 1.442, which was repealed by the *Timmons* decision, and supersedes those sections of the Florida Statutes and the prior decisions of the court, where reconciliation is impossible, in order to provide a workable structure for proposing settlements in civil actions. The provision which requires that a joint proposal state the amount and terms attributable to each party is in order to conform with *Fabre v. Marin*, 623 So. 2d 1182 (Fla. 1993).

2000 Amendment. Subdivision (f)(2) was added to establish the time for acceptance of proposals for settlement in class actions. “Filing” is defined in rule 1.080(e). Subdivision (g) is amended to conform with new rule 1.525.

2012 Amendment. Subdivision (c)(2)(G) is amended to reflect the relocation of the service rule from rule 1.080 to Fla. R. Jud. Admin. 2.516.

2013 Amendment. Subdivision (f)(1) was amended to reflect the relocation of the rule regarding additional time after service by mail or e-mail from rule 1.090(e) to Fla. R. Jud. Admin. 2.514(b).

2013 Amendment. Subdivision (c)(2)(B) is amended to clarify that a proposal for settlement must resolve all claims between the proponent and the party to whom the proposal is made except claims for attorneys’ fees, which may or may not be resolved in the proposal.