I. State the general circumstances under which the jurisdiction will treat a
communication as attorney-client privileged, including identification of all
required elements/circumstances.

The contours of the attorney-client privilege are set forth in the Florida Evidence Code,
codified at Florida Statutes § 90.502 (2019). The purpose of the privilege is to “encourage full and
frank communication between attorneys and their clients and thereby promote broader public
interests in the observance of law and administration of justice.” Am. Tobacco Co. v. State, 697
So. 2d 1249, 1252 (Fla. 4th DCA 1997).

“The attorney-client privilege is widely recognized and applies to all confidential
communications between a client and its attorney ‘made in the rendition of legal services,’ unless
the communication falls within a statutory exception to the privilege.” Butler, Pappas, Weihmuller,
Katz, Craig, LLP v. Coral Reef of Key Biscayne Developers, Inc., 873 So. 2d 339, 341 (Fla. 3d
2d 297, 298 (Fla. 5th DCA 1996) (holding that confidential communications are not subject to
disclosure, unless one of the statutory exceptions to the privilege applies).

In Florida, attorney-client privilege is only available when all the following elements are
present: (1) where legal advice of any kind is sought, (2) from a professional legal advisor in their
capacity as such, (3) the communications relating to that purpose, (4) made in confidence, (5) by
the client, (6) are at their instance permanently protected (7) from disclosure by themselves or by
the legal advisor, and (8) the protection has not been waived. Hoch v. Rissman, Weisberg, Barrett
et al., 742 So. 2d 451, 458 (Fla. 5th DCA 1999) (citing Provenzano v. Singletary, 3 F. Supp. 2d
1353, 1366 (11th Cir. 1997)).

A communication between a lawyer and his or her client is “confidential” if it is not
intended to be disclosed to third persons other than: (1) those to whom disclosure is in furtherance
of the rendition of legal services to the client; and (2) those reasonably necessary for the
transmission of the communication. Fla. Stat. § 90.502(1)(c); see also Neu v. Miami Herald Pub. Co., 462 So. 2d 821, 825 (Fla. 1985) (holding the attorney-client privilege belongs to the client). Accordingly, no communication, notwithstanding how confidential or relevant to the client’s business or personal affairs, is privileged unless it facilitates the rendition of legal services by an attorney. State v. Branham, 952 So. 2d 618, 621 (Fla. 2d DCA 2007) (citing Modern Woodmen of America v. Watkins, 132 F.2d 352, 354 (5th Cir. 1942) (applying Florida law and providing that “[t]he privilege . . . does not extend to every statement made to a lawyer. If the statement is about matters unconnected with the business at hand, or in general conversation, or to the lawyer merely as a personal friend, the matter is not privileged.”)).

The privilege protects oral, written, and electronic confidential communications between the lawyer and the client. 1 Fla. Prac., Evidence § 502.5 (2019 ed.). Moreover, “the communication does not have to be verbal in nature in order to be privileged.” Anderson v. State, 297 So. 2d 871, 872 (Fla. 2d DCA 1974). “A confidential communication may be made by acts as well as by words . . . .” Id. (quoting 1 McCormick On Evid. § 89 (7th ed.)). However, the privilege does not protect disclosure of the underlying facts of confidential communications. Upjohn Co. v. U.S., 449 U.S. 383, 395 (1981); Brookings v. State, 495 So. 2d 135, 139 (Fla. 1986); Mobley v. Homestead Hosp., Inc., 202 So. 3d 868, 870–71 (Fla. 3d DCA 2016) (“The contents of confidential communications between the attorney and client are privileged and not discoverable, whereas dates, places, and names of consulted counsel are generally not privileged and are discoverable.”).

Attorney-client privilege may be claimed by: the client; a guardian or conservator of the client; the personal representative of a deceased client; a successor, assignee, trustee in dissolution, or any similar representative of an organization, corporation, association or other entity, whether public or private and whether or not in existence; and the lawyer, but only on behalf of the client. Fla. Stat. § 90.502(3).

There is no attorney-client privilege in the following five circumstances: (1) when a client seeks or retains a lawyer for aid in an ongoing crime or in planning future criminal activity; (2) when the communication is relevant to an issue on a claim between two or more parties regarding the same deceased client; (3) when the issue relates to a breach of a lawyer’s duties to his or her client; (4) when a lawyer witnesses a legal document and an issue arises concerning the intention or competence of the client who executed it; and (5) when a lawyer represents two or more parties with common interests, neither client may assert privilege relating to communications with the lawyer in a subsequent action where the clients are adverse parties. See Fla. Stat. § 90.502(4).

Claims of attorney-client privilege in the corporate context are subject to a heightened level of scrutiny. Southern Bell Tel. & Tel. Co. v. Deason, 632 So. 2d 1377, 1383 (Fla. 1994). The Florida Supreme Court rationalized that

Because the nature of the corporation differs significantly from the individual person, the attorney-client privilege will also differ in its application to the corporation and to the natural person. First, a corporation can only act through its agents, whereas a
natural person can seek legal advice and then directly act (or not act) upon that advice. Second, a corporation relies on its attorney for business advice more than the natural person. Thus, it is likely that the “zone of silence” will be enlarged by virtue of the corporation's continual contact with its legal counsel.

Discovery facilitates the truth-finding process, and although this process constitutes the core of any litigation, it must be tempered by the established interest in the free flow of information between an attorney and client. Any standard developed, therefore, must strike a balance between encouraging corporations to seek legal advice and preventing corporate attorneys from being used as shields to thwart discovery. Thus, to minimize the threat of corporations cloaking information with the attorney-client privilege in order to avoid discovery, claims of the privilege in the corporate context will be subjected to a heightened level of scrutiny.

Am. Tobacco Co., 697 So. 2d at 1253 (quoting Southern Bell, 632 So. 2d at 1383) (emphasis omitted).

Thus, successful claims of attorney-client privilege in the corporate context must set forth the following elements:

(1) the communication would not have been made but for the contemplation of legal services;

(2) the employee making the communication did so at the direction of his or her corporate superior;

(3) the superior made the request of the employee as part of the corporation's effort to secure legal advice or services;

(4) the content of the communication relates to the legal services being rendered, and the subject matter of the communication is within the scope of the employee's duties; and

(5) the communication is not disseminated beyond those persons who, because of the corporate structure, need to know its contents.

Southern Bell, 632 So. 2d at 1383; see also Nemours Foundation v. Arroyo, 262 So. 3d 208, 211 (Fla. 1st DCA 2018); Las Olas River House Condominium Ass'n, Inc. v. Lorh, LLC, 181 So. 3d 556, 558 (Fla. 4th DCA 2015).

Moreover, “when the corporation asserting attorney-client privilege is an insurance company, the requirements and burden on the carrier become even more stringent.” Id. at *3. In the insurance context, the attorney-client privilege only attaches when an attorney performs acts
for an insurer in a professional capacity and in anticipation of litigation. *Seacoast 5151 Condominium Ass’n*, 2018 WL 66653342 at *3; see, e.g., *Bankers Ins. Co. v. Florida Dept. of Ins.*, 755 So. 2d 729, 729 (Fla. 1st DCA 2000) (affirming district court finding that no attorney-client privilege exists where attorney is merely “a conduit” for the insurer on the grounds that there was no evidence that the investigation was undertaken by general counsel in his professional capacity).

II. **Does the jurisdiction recognize/preserve the attorney-privilege for communications among co-defendants in joint-defense or common-interest situations? If so, what are the requirements for establishing two or more co-defendants’ communications qualify?**

Florida recognizes “[a]n exception to the general waiver rule, variously referred to as the ‘common interests,’ ‘joint defense,’ or ‘pooled information’ exception, [which] enables litigants with unified interests to exchange privileged information in preparation of their cases without forfeiting the protection afforded by attorney-client privilege.” *Visual Scene Inc. v. Pilkington Bros.*, 508 So. 2d 437, 440 (Fla. 3d DCA 1987). The *Visual Scene* Court reasoned that “[s]ince persons with common litigation interests are likely to have an equally strong interest in keeping confidential this exchanged information, the common interests exception to waiver is entirely consistent with the policy underlying the privilege, that is, to allow clients to communicate freely and in confidence when seeking legal advice.” *Id.* at 440.

In determining whether shared information should be protected by privilege, Florida courts consider first, “whether the communication was ‘made and maintained in confidence under circumstances where it is reasonable to assume that disclosure to third parties was not intended,’ and [second] whether the information was exchanged ‘for the limited purpose of assisting in their common cause . . . .’” *Id.* at 441 (quoting *In re LTV Securities Litigation*, 89 F.R.D. 595, 603–04 (N.D. Tex. 1981)).

“Courts have recognized the common interest exception where the group members were criminal co-defendants, . . . civil co-defendants, . . . companies that had individually been summoned before a grand jury, . . . co-parties to potential litigation, . . . members of a class of plaintiffs pursuing separate litigation in state and federal courts, . . . and defendants being sued in separate actions . . . .” *Visual Scene*, 508 So. 2d at 440; see also *Tundidor v. State*, 221 So. 3d 587, 602 (Fla. 2017) (communications between co-defendants and counsel regarding issues of joint defense are protected by privilege); *Volpe v. Conroy, Simberg & Ganon, P.A.*, 720 So. 2d 537, 539 (Fla. 4th DCA 1998) (“Where . . . co-parties communicate regarding issues of common interest to their joint defense to adequately prepare their case, the sharing of information with their co-parties’ attorneys implies no waiver of privilege.”).

Generally, attorney-client privilege protects communications between counsel and two or more clients so long as the situation presented does not involve litigation between one client and the other. *See Hamilton v. Hamilton Steel Corp.*, 409 So. 2d 1111, 1113–14 (Fla. 4th DCA 1982).
If, however, co-defendants “later became antagonists in the litigation—aligned in part on opposite sides—they would nonetheless be able to protect their prior shared confidences from disclosure to third parties.” *Visual Scene*, 508 So. 2d at 441 (emphasis added).

Florida courts have also extended the joint defense exception in some situations where parties with common interests are aligned on opposite sides of the litigation. In *Visual Scene*, the court held that information shared between two parties on opposite sides of the litigation in furtherance of their joint theory of liability was protected by privilege. *Id.* at 441–42. The court reasoned that “extend[ing] the common interests privilege to parties aligned on opposite sides of the litigation for another purpose is not inconsistent with any policy underlying the attorney-client privilege and merely facilitates representation of the sharing parties by their respective counsel.” *Id.* Although the court conceded that sharing parties on opposite sides of litigation “run a greater than usual risk that one may use the information against the other should subsequent litigation arise between them,” the court found “no sound reason not to protect . . . information intended . . . to kept confidential and to be used to further the common litigation interests” as “evidenced by an affidavit attesting to a before-the-exchange agreement stating their intention to maintain confidentiality and to use the information only in preparation for trial on those issues common to both.” *Id.*

**III. Identify key pitfalls/situations likely to result in the loss of the ability to claim the protections of the privilege – e.g., failure to assert, waiver, crime-fraud exception, assertion of advice of counsel, transmittal to additional non-qualifying recipients, etc.**

There are several exceptions to the general rule that private communications between lawyers and clients are protected by attorney-client privilege. See Fla. Stat. § 90.502(4); *see also Tundidor*, 221 So. 3d at 602 (citing *McWatters v. State*, 36 So. 3d 613, 636 (Fla. 2010)).

**A. Waiver**

“[A]s in all confidential and privileged communications, ‘[t]he justification for the privilege lies not in the fact of communication, but in the interest of the persons concerned that the subject matter should not become public.’” *Savino v. Luciano*, 92 So. 2d 817, 819 (Fla. 1957) (quoting Judge Learned Hand in *United States v. Krulewitch*, 145 F.2d 76, 79 (2d Cir. 1944)). Consequently, even if a communication satisfies all the requirements of Florida Statutes § 90.502, a client may waive the attorney-client privilege. *Coates v. Akerman, Senterfitt & Edison, P.A.*, 940 So. 2d 504, 508 (Fla. 2d DCA 2006) (“[A]ll personal privileges may be waived by the client.”).

When a party ceases to treat a matter as confidential, it loses its confidential character. *Savino*, 92 So. 2d at 819. Accordingly, “if the communication is voluntarily made in the presence of a third-party, the privilege will typically be lost.” *Tundidor*, 221 So. 3d at 602 (citing *Nova Se. Univ., Inc. v. Jacobson*, 25 So. 3d 82, 86 (Fla. 4th DCA 2009)).
The same is true for communications preserved by the joint defense exception. “[W]hen a member of the common interest group discloses this information to a non-member, a waiver of the privilege, as in the ordinary case, occurs.” *AG Beaumont I, LLC v. Wells Fargo Bank, N.A.*, 160 So. 3d 510, 512 (Fla. 2d DCA 2015) (quoting *Visual Scene*, 508 So. 2d at 440).

Waiver may occur unintentionally or inadvertently. Whether inadvertent disclosure of a privileged document results in waiver of privilege, is determined on a case-by-case basis. The majority of Florida courts apply a “relevant circumstances test” to determine whether inadvertent disclosure amounts to a waiver of privilege, weighing the following factors: (1) the reasonableness of the precautions taken to prevent inadvertent disclosure in view of the extent of the document production; (2) the number of inadvertent disclosures; (3) the extent of the disclosure; (4) any delay and measures taken to rectify the disclosures; and (5) whether the overriding interests of justice would be served by relieving a party of its error. *Abamar Hous. & Dev., Inc. v. Lisa Daly Lady Decor, Inc.*, 698 So. 2d 276, 278–79 (Fla. 3d DCA 1997) (quoting *United States v. Pepper’s Steel & Alloys, Inc.*, 742 F. Supp. 641, 643 (S.D. Fla. 1990)).

Waiver may also occur when a party bases its claim on the very matters that it later claims are privileged. *Genovese v. Provident Life and Accident Ins. Co.*, 74 So. 3d 1064, 1069 (Fla. 2011); see, e.g., *Savino*, 92 So. 2d at 819 (finding an express or implied waiver of accountant-client privilege by client seeking an accounting of money due under an employment contract).

In some cases, failure to file a detailed privilege log pursuant to Florida Rule of Civil Procedure 1.280(b)(6) may result in loss of attorney-client privilege. *DLJ Mortg. Capital, Inc. v. Fox*, 112 So. 3d 644, 645–46 (Fla. 4th DCA 2013) (“A trial court has discretion to find a waiver of privilege from the failure to file a privilege log .... However, the failure to file a log should not be applied to categorical assertions of privilege.”); see also *Kaye Scholer LLP v. Zalis*, 878 So. 2d 447, 449 (Fla. 3d DCA 2004). However, “that general rule is subject to an exception: The finding of a waiver ‘should not apply where assertion of the privilege is not document-specific, but category specific and the category itself is plainly protected.’” *GKK, etc. v. Cruz*, 251 So. 3d 967, 969 (Fla. 3d DCA 2018) (quoting *Nevin v. Palm Beach Cty. Sch. Bd.*, 958 So. 2d 1003, 1008 (Fla. 1st DCA 2007)).

**B. Statutory Exceptions to Attorney-Client Privilege**

Aside from a situation where a client effectively waives privilege, otherwise privileged communications will not be protected if the communication falls within a statutory exception to the privilege.” *Butler*, 873 So. 2d at 341 (citing Fla. Stat. § 90.502(2)); see also *Haskell Co.*, 684 So. 2d at 298 (holding confidential communications are not subject to disclosure unless one of the statutory exceptions to privilege applies).

Under Florida law, there is no attorney-client privilege when:
(a) the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew was a crime or fraud;

(b) a communication is relevant to an issue between parties who claim through the same deceased client;

(c) a communication is relevant to an issue of breach of duty by the lawyer to the client or by the client to the lawyer, arising from the lawyer-client relationship;

(d) a communication is relevant to an issue concerning the intention or competence of a client executing an attested document to which the lawyer is an attesting witness, or concerning the execution or attestation of the document; or

(e) a communication is relevant to a matter of common interest between two or more clients, or their successors in interest, if the communication was made by any of them to a lawyer retained or consulted in common when offered in a civil action between the clients or their successors in interest.

Florida Statutes § 90.502(4).

i. Crime-Fraud Exception

It is well settled that there is no attorney-client privilege concerning communications which a lawyer knowingly enables or aids the perpetuation of crime or fraud. Fla. Stat. § 90.502(4)(a); see, e.g., Kneale v. Williams, 30 So. 2d 284, 287 (Fla. 1947) (reasoning that perpetuation of crime or fraud is outside the scope of an attorney’s professional duty).

“It is the purpose of the crime-fraud exception to the attorney-client privilege to assure that the ‘seal of secrecy,’ . . . between lawyer and client does not extend to communications ‘made for the purpose of getting advice for the commission of a fraud’ or crime.” United States v. Zolin, 491 U.S. 554, 563 (1989). Florida is in accord. See Am. Tobacco Co., 697 So. 2d at 1253; see, e.g., Kneale, 30 So. 2d at 287. Similarly, the Law Revision Council reasoned, “[s]ince the modern justification for the privilege is to promote the administration of justice, the privilege should not be used to obstruct justice.” Note to § 90.502(4)(a) (1976) (citing Prop. Fed. R. Evid. 503).

The attorney-client privilege likewise does not apply when a client seeks legal advice to aid in the commission of a crime or for purposes of planning future criminal activity. See First Union Nat. Bank v. Turney, 824 So. 2d 172, 187 (Fla. 1st DCA 2001). “Under the statute, it is immaterial whether the lawyer knows that the client intends to commit a crime or perpetrate a fraud, so long as the client has the intention to do so sometime in the future.” Id.
However, the crime fraud exception does not apply to communications about a client’s criminal or fraudulent acts that occurred in the past, nor to crimes or frauds that are ongoing or continuous. *First Union Nat. Bank of Fla. v. Whitener*, 715 So. 2d 979, 983 (Fla. 5th DCA 1998) (“If the legal advice concerns a wrongdoing to be carried out in the future, no privilege would exist. On the other hand, a client who in the past has committed a wrongdoing is entitled to confidential communications and advice from an attorney.”).

**ii. Testamentary**

Second, there is no attorney-client privilege when “[a] communication is relevant to an issue between two or more parties who claim through the same deceased client.” Fla. Stat. § 90.502(4)(b); see also *Vasallo v. Bean*, 208 So. 3d 188, 189 (Fla. 3d DCA 2016). “To allow any or all parties to invoke the lawyer-client privilege prevents the swift resolution of the conflict and frustrates the public policy of expeditiously distributing estates in accordance with the testator's wishes.” Law Revision Council Note to § 90.502(4)(b) (1976) (citing McCormick, *Evidence* § 94 (2nd ed. 1972)).

The Law Revision Council reasoned that “[i]n denying the privilege to questions of testate or intestate succession involving parties claiming through an estate, the desired goal is full disclosure of the facts to facilitate distribution in accordance with the testator’s wishes. On these same grounds, this section denies the privilege to communications relevant to an *inter vivos* transaction which is challenged through the estate after the decedent’s death.” Note to § 90.502(4)(b) (1976) (citing Prop. Fed. R. Evid. 503).

**iii. Breach of Duty**

Third, there is no attorney-client privilege when “[a] communication is relevant to an issue of breach of duty by the lawyer to the client or by the client to the lawyer, arising from the lawyer-client relationship.” Fla. Stat. § 90.502(4)(c).

This exception to attorney-client privilege excludes otherwise privileged information between a client who is suing a lawyer for legal malpractice. *Shafnaker v. Clayton*, 680 So. 2d 1109, 1111 (Fla. 1st DCA 1996).

This exclusion has been interpreted narrowly, applying only to the particular transaction which resulted in the malpractice action, and not to any other aspects of the relationship between client and attorney. *Shafnaker*, 680 So. 2d at 1111 (citing *Procacci v. Seitlin*, 497 So. 2d 969 (Fla. 3d DCA 1986)); see also *Reed v. State*, 640 So. 2d 1094, 1097 (Fla. 1994) (holding privilege was waived only as to particular communications at issue before the court); *In re Estate of Marden*, 355 So. 2d 121,127 (Fla. 3d DCA 1978) (“waiver is limited to the communications or subjects in question.”).
iv. Lawyer as Attesting Witness

Fourth, there is no attorney-client privilege when “[a] communication is relevant to an issue concerning the intention or competence of a client executing an attested document to which the lawyer is an attesting witness, or concerning the execution or attestation of the document.” Fla. Stat. § 90.502(4)(d); see also Kranias v. Tsiogas, 941 So. 2d 1173, 1175 (Fla. 2d DCA 2006).

The Law Revision Council reasoned, “[i]f the privilege included these communications, it would prevent a lawyer from performing the task he undertook when he witnessed the document.” Note to § 90.502(4)(d) (1976). In other words, “the purpose of having an attesting witness is to have someone who can testify to the intention of the client. The privilege should not be invoked to defeat the intention of the client.” Ehrhardt, 1 Fla. Prac., Evidence § 502.7 (2019 ed.) (discussing exceptions to attorney-client privilege).

v. Joint Representation

Lastly, there is no attorney-client privilege when “[a] communication is relevant to a matter of common interest between two or more clients . . . if the communication was made by any of them to a lawyer retained or consulted in common when offered in a civil action between the clients or their successors in interest.” Fla. Stat. § 90.502(4)(e).

The Law Revision Council noted that “[t]his exception is an extension of existing Florida law as expressed in Dominguez v. Citizen’s Bank & Trust Co., where the Florida Supreme Court held that an attorney who represents adverse parties to an action may not refuse to testify as to matters discussed in a joint conference. In such circumstances, the critical factor of confidentiality is missing and the defendant should be able to utilize in his defense the relevant statements made by the plaintiff.” Note to § 90.502(4)(e) (1976); see also Progressive Exp. Ins. Co. v. Scma, 975 So. 2d 461, 466–70 (Fla. 2d DCA 2007); see, e.g., Dominguez v. Citizen’s Bank & Trust Co., 56 So. 682, 683 (Fla. 1911).

This exception preserves an additional holding of Dominguez, “that an attorney may refuse to testify to matters relevant to issues which one of the parties told him in confidence, in the absence of the other party.” Law Revision Council Note to § 90.502(4)(e); see, e.g., Dominguez, 56 So. at 683.

IV. Identify any recent trends or limitations imposed by the jurisdiction on the scope of the attorney-client privilege.

On January 25, 2018, the Florida Supreme Court adopted Florida law, to the extent it is procedural, which created a fiduciary lawyer-client privilege. In re Amendments to Fla. Evidence Code 2017 Out-of-Cycle Report, 234 So. 3d 565, 566 (Fla. 2018) (“the fiduciary lawyer-client privilege in section 90.5021, Florida Statutes, applies with respect to the personal representative and any attorney employed by the personal representative.”); see also Fla. Stat. § 90.5021.
Florida Statutes § 90.5021 provides:

(1) For the purpose of this section, a client acts as a fiduciary when serving as a personal representative or a trustee as defined in §§ 731.201 and 736.0103, an administrator ad litem as described in § 733.308, a curator as described in § 733.501, a guardian or guardian ad litem as described in § 744.102, a conservator as defined in § 710.102, or an attorney in fact as described in chapter 709.

(2) A communication between a lawyer and a client acting as a fiduciary is privileged and protected from disclosure under § 90.502 to the same extent as if the client were not acting as a fiduciary. In applying § 90.502 to a communication under this section, only the person or entity acting as a fiduciary is considered a client of the lawyer.

(3) This section does not affect the crime or fraud exception to the lawyer-client privilege provided in § 90.502(4)(a).

Recently, the Second District held that clients, as insured, did not waive their right to claim attorney-client privilege when a legal assistant reported their loss to the insurer. *Dominguez v. Citizens Prop. Ins. Corp.*, No. 2D18-768, 2019 WL 1781199, at *2–3 (Fla. 2d DCA Apr. 24, 2019) (remanding for in camera inspection to determine whether specific documents that homeowners contend are privileged). The court reasoned that, “[d]epending on the circumstances, some functions undertaken by lawyers might constitute the rendering of legal services for the purposes of invoking the attorney-client privilege, even though such function could have been undertaken by a nonlawyer (e.g., negotiating a complex real estate transaction or a collective bargaining agreement).” *Id.* at *3. “And attorney-client privilege might attach to some communications made in the rendering of legal services, even though the same lawyer might have provided additional nonlegal services related to the same matter.” *Id.*

Finally, Florida’s appellate courts have recently held that trial courts must make specific detailed findings addressing each privilege claim before ordering production because “[s]uch findings are necessary for meaningful appellate review.” *Nemours Found.*, 262 So. 3d at 211 (reversing trial court order finding documents at issue did not fall under attorney-client privilege and holding if “trial court again determines that these five documents do not come within the attorney-client privilege, it must make specific, detailed findings to support its ruling.”) (quoting *State Farm Mut. Auto. Ins. Co. v. Knapp*, 234 So. 3d 843, 849 (Fla. 5th DCA 2018); see also *East Bay NC, LLC v. Estate of Djadjich by & Through Reddish*, No. 2D18-3604, 2019 WL 2306601, at *2 (Fla. 2d DCA May 31, 2019).