

evidence showed that the insured's counsel did not receive timely notice, and that counsel tried to cancel the IME. As a result, the Third District reversed the judgment on the grounds that there was not "competent substantial evidence that the insured unreasonably refused to attend his first scheduled IME" and rejected Fortune's arguments that mere non-attendance was a satisfactory defense. *Id.*

We REVERSE the grant of the second summary judgment and final judgment in favor of Comprehensive, and this cause is REMANDED to the trial court for Trial. We would further note that this opinion should be confined to the unusual facts of this case and should be of limited precedential value, given the conflict between the operational pleadings and the language of the appellate rulings.

REVERSED and REMANDED. (BAILEY and WALSH, J.J., concur.)

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The prior panel (as well as the district court on second-tier certiorari review) noted that under Florida Rule of Civil Procedure 1.080(b), service to the attorney of the IME notice constitutes notice to the client. This action had not commenced when United sent this notice to the attorney. Florida Rule of Civil Procedure 1.010 indicates that the civil procedure rules apply to actions of a civil nature and special statutory proceedings. If it were the case that the civil rules did apply presuit, then the result in *Southern Group Indem., Inc. v. Humanitary Health Care, Inc.*, 975 So.2d 1247 (Fla. 3d DCA 2008) [33 Fla. L. Weekly D752a] would have been different: in *Humanitary Health Care*, another appellate panel of this circuit affirmed a trial court's grant of summary judgment on a declaratory judgment count seeking presuit discovery of an insurer's PIP payout logs. The Third District granted a petition for writ of certiorari and quashed the circuit court's decision, finding that the No-Fault statute did not provide for discovery of a PIP payout log presuit. *Humanitary Health Care*, 975 So. 2d at 1250.

**Municipal corporations—Code enforcement—Hearing—Continuance—Error to deny unopposed one-month continuance of hearing requested due to medical issues that prevented property owner from preparing for hearing—New hearing required**

MYRON ROSNER and SARAH ZABEL, Petitioners, v. CITY OF NORTH MIAMI BEACH, Respondent. Circuit Court, 11th Judicial Circuit (Appellate) in and for Miami-Dade County. Case No. 12-231 AP. July 12, 2013. On Petition for Writ of Certiorari from a decision by City of North Miami Beach, Code Enforcement Board. Counsel: Al Carbonel, for Petitioner. Darcee S. Siegel, for Respondent

(Before EIG, FINE, and PEREZ, JJ.)

(PER CURIAM.) Petitioners seek review of an administrative order rendered by the City of North Miami Beach Code Enforcement Board ("Board"), finding three separate violations of the City's Code. Petitioners raise several issues, alleging violations of due process. We grant the petition for certiorari, because the Board failed to afford Petitioners due process in denying their request for a continuance; with regard to all other issues raised, the petition is denied.

Petitioner Rosner is a former Mayor of the City of North Miami Beach and a former City of North Miami Beach Council Member. Petitioner Zabel, his wife, is a sitting Circuit Court Judge. Rosner is a paraplegic with corresponding physical limitations, disability, and medical complications resulting from his disability. He is bound to a wheelchair.

In 2004 Petitioners requested and obtained building permits to expand their driveway, install canvas awnings, and build a backyard swimming pool. These improvements were requested for the purpose of providing physical therapy and to facilitate Rosner's movement around the property. In 2011 Rosner was issued three notices of violations of the Code for the awning, pool, and driveway improvements.

An evidentiary code enforcement hearing was set for May 10, 2012. Rosner was personally served with notice of the hearing. On May 1<sup>st</sup> Rosner e-mailed the City, requesting a one month continuance of the hearing due to medical issues and resulting inability to prepare. He attached a letter from his doctor. The e-mail and the doctor's note were read into the record at the hearing. Neither Petitioners nor their lawyer were present.

Noteworthy is the fact that the City did not object to the continuance. The Code Compliance Officer stated, "The City does not object to this [continuance], and the reason we don't object is that there's a medical excuse. I don't—it's vague but we—the City would say that—our concern would be that if he appeals the case on not having due process, it will be back here in six months." It is also undisputed that Rosner had already received several continuances. The Board denied the continuance and proceeded with the hearing.

The standard of review that applies to a cert petition from an administrative or zoning authority is threefold. This Court must determine whether the agency afforded due process; whether the decision is supported by substantial, competent evidence; and whether the decision complies with essential requirements of the law. *See Miami-Dade County v. Omnipoint Holdings, Inc.*, 863 So. 2d 195, 198-99 (Fla. 2003) [28 Fla. L. Weekly S717a]; *Haines City Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995) [20 Fla. L. Weekly S318a]. Code enforcement proceedings are quasi-judicial in nature. *See Verdi v. Metropolitan Dade County*, 684 So. 2d 870, 874 (Fla. 3d DCA 1996) [22 Fla. L. Weekly D8a].

Generally, a motion for continuance is a discretionary matter, left to the sound judgment of the lower tribunal. *See SSJ Mercy Health Systems, Inc. v. Posey*, 756 So. 2d 177, 179 (Fla. 4th DCA 2000) [25 Fla. L. Weekly D918a]. However, when the 'undisputed facts reveal that the physical condition of either counsel or clients prevents fair and adequate presentation of a case, failure to grant a continuance is reversible error.' *Id.* (quoting *Ziegler v. Klein*, 590 So. 2d 1066, 1067 (Fla. 4th DCA 1991)). Certainly, we do not suggest by this opinion that the matter may be continued indefinitely, as Petitioners are adequately represented by counsel and reasonable accommodations may be made to ensure Rosner's full participation via electronic means.

Given the specific facts of the instant cause as well as the record below, we find that the Petitioners were denied due process. The lack of opportunity to participate in an evidentiary hearing and preserve a record, coupled with the admitted lack of prejudice to the City by the granting of a one month continuance, require remand a for a new hearing.

The Petition for Writ of Certiorari is GRANTED, in part, and DENIED, in part, and the matter REMANDED for a new hearing that comports with due process.

Petitioners' motion for attorney's fees is DENIED.

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**Licensing—Driver's license—Suspension—Refusal to submit to breath test—Lawfulness of stop—Speeding citation admitted into evidence was sufficient to establish that stop of licensee for speeding was lawful**

STACY EDGELL-GALLOWHUR, Appellant, vs. STATE OF FLORIDA, DEPARTMENT OF HIGHWAY SAFETY, etc., Appellee. Circuit Court, 11th Judicial Circuit (Appellate) in and for Miami-Dade County. Case No. 09-234 AP. L.T. Case No. 315-XEJ. July 24, 2013. On a Petition for a Writ of Certiorari. Counsel: Michael Catalano, The Law Offices of Michael Catalano, P.A., for Appellant. Jason Helefant, of the State of Florida, Department of Highway Safety and Motor Vehicles, for Appellee.

(Before TINKLER-MENDEZ, HIRSH, and GORDO, JJ.)

(PER CURIAM.) On second-tier review, the Third District Court of Appeal quashed our opinion in *Stacy Edgell-Gallowhur v. State of Florida, Department of Highway Safety and Motor Vehicles*, 19 Fla. L. Weekly Supp. 792a (Fla. 11th Cir. Ct. June 28, 2012). *See, State of Florida, Department of Highway Safety and Motor Vehicles v. Stacy Edgell-Gallowhur*, 2013 WL 2494701 (Fla. 3d DCA June 12, 2013) [38 Fla. L. Weekly D972a]. Accordingly, we issue this opinion. *State v. Budina*, 879 So. 2d 16, 19 (Fla. 2d DCA 2004) [29 Fla. L. Weekly D1062b] (all questions of law decided by the appellate court become the law of the case governing subsequent proceedings by the lower