

Guidelines & Procedures

Civil Div. 35

Heather L. Higbee
Circuit Judge

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In Order to assist Counsel, the Litigants and the Court, the following Guidelines and Procedures are hereby adopted for Circuit Civil Division 35 in Orange County, Florida when practicing before Judge Heather L. Higbee.

As of July 1, 2015, foreclosures are heard by the assigned division judges. In Division 35, assigned Residential Foreclosure, Timeshare Foreclosure and HOA Lien Foreclosure Cases are scheduled and heard by Judge Heather L. Higbee. **All Hearings and Non Jury Trials are heard in Hearing Room 20B (unless otherwise noted). All Jury Trials are held in Courtroom 19B.**

1. How to Schedule a Hearing

Use JACS to coordinate your hearing date/time with opposing side before emailing the Judicial Assistant (ctjadi2@ocnjcc.org) (see below for further instruction on setting a hearing). Your hearing time **is not confirmed** until you receive a reply from the Judicial Assistant who will also give you a confirmation number to place on your notice. The Court expects that you will file the Motion before setting a hearing. The original notice of hearing must be promptly filed with the Orange County Clerk of Court. Failure to timely file the notice of hearing may cause your case not to be heard. Parties must comply with Mandatory Meet and Confer Process (see paragraph 5). **No Telephonic Appearances for Foreclosure Hearings/Trials. Attorneys must bring a proposed Order for the Court's signature with envelopes addressed and stamped for all parties.**

Please note, majority of all Foreclosure Motions that require a hearing are heard in 10 minutes or less, therefore should be scheduled and heard during *ex parte*/Short Matters (i.e. Monday through Thursday at 8:30 a.m. unless otherwise noted on JACS). Motions will be heard on a first come, first serve basis. These are not scheduled with the Judicial Assistant. Each counsel is limited to 5 motions at a time. **Attorneys must notice the matter and bring an order for the Court's signature.** Hearing times must be cleared with opposing counsel or pro se parties.

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Contested Hearings - Email the Judicial Assistant after you complete the following:

- (A) Comply with Mandatory Meet and Confer Process (see paragraph 5) prior to setting any hearing.
- (B) **Using the Judicial Automated Calendaring System (JACS), select an available hearing date and time.** Go to the court website, www.ninthcircuit.org. Click the “Circuit Judges” link. Find Judge Heather Higbee’s web page and click on “Hearing Times – Civil Division 35” link. This takes you to JACS and there you will be able to locate the available hearing times. Select the calendar for **Civil Division 35**. Click the retrieve button and available hearing times for approximately the next 60 days are displayed in fifteen minute increments. You can set hearings for more or less than 15 minutes. Any Hearing requests in excess of 30 minutes should be scheduled during the afternoon hours and no telephonic appearances will be allowed for these hearings. Hearing time in excess of 1 hour must be approved by Judge Higbee either by appearing during *ex parte*/Short Matters or by letter to the Judge detailing the reasons for the excessive time. Be mindful of the hearing time you set, the Court will anticipate that each party will take one half of the hearing time scheduled and will assume that both attorneys have thought through the length of their presentations prior to requesting the scheduled time.
- (C) **Coordinate the date and time with opposing counsel/pro se party and**
- (D) **Then, and only then, email the Judicial Assistant at ctjadi2@ocnjcc.org with a copy to opposing counsel/pro se litigants, for the hearing to be added to the docket.** When you send your email include all the necessary information (i.e. case number, style of the case, attorney names and phone number, etc.). Email must include Certificate that Meet and Confer requirement was complied with. Your hearing time is not confirmed until you receive a reply from the Judicial Assistant which will again include your confirmation number.

Civil Division 35 expects that you will file the Motion before setting a hearing. In addition to filing the Notice of Hearing with the Clerk of Court, copies of the Notice of Hearing and the Motion to be heard may be furnished to the Judicial Assistant via U.S. Mail or hand delivery (**do not email or fax**).

2. **Ex parte/Short Matters**

Majority of all Foreclosure Motions that require a hearing are heard in 10 minutes or less, and therefore should be scheduled and heard during *ex parte*/Short Matters (i.e. Monday through Thursday at 8:30 a.m. unless otherwise noted on JACS). Motions will be heard on a first come, first serve basis. These are not scheduled with the Judicial Assistant. Each counsel is limited to 5 motions at a time. **Attorneys must notice the matter and bring an order for the Court’s**

signature. Hearing times must be cleared with opposing counsel or pro se parties.

In all cases, good faith cooperation is expected both from counsel, their support staff and pro se litigants. Should counsel, their staff, or pro se litigants fail to respond within 3 business days, or refuse to cooperate in obtaining or in setting a hearing, the difficulty should be specifically set forth either in the motion or in the notice of hearing.

Ex parte and Short Matters are held Monday through Thursday at 8:30 a.m. in Hearing Room 20B (**Do not notice hearings for Courtroom 20B**). An *ex parte* matter is defined as a purely uncontested matter and a **Short Matter** is defined as a contested matter that requires less than ten (10) minutes of the Court's time. Matters will be handled in the order in which the attorneys appear and there will be a sign up sheet outside the hearing room.

Therefore, attorney's for *ex parte* matters should arrive early. During non-trial weeks, if no *ex parte*/short matters remain pending at 9:00 a.m., *ex parte*/Short Matters are deemed closed. During trial weeks all hearings close at 9:00 a.m. *Ex parte* and Short Matters are not scheduled with the JA. **There are no telephonic appearances during *ex parte*/Short Matters.**

3. **Emergency Hearings**

An Emergency Hearing to Reset/Cancel Foreclosure Sale must be e-filed directly to the Clerk's Office. A courtesy copy of the Motion with proposed Orders and addressed and stamped envelopes may be sent to the Judge to consider and will be reviewed in chambers. **If the sale of the property is scheduled within 72 hours of filing, the Motion with proposed Order must be brought in person or before the Court during *ex parte* / Short Matters to be timely considered by the Judge.** (DO NOT send a courtesy copy to the Court if appearing during *ex parte* as this may cause a duplicate sale date to be assigned).

For all other emergency situations, counsel may request that a hearing be set on short notice. The Motion must be designated as "EMERGENCY" in the heading and the body of the motion must contain a detailed explanation of the circumstances constituting the emergency as well as the substance of the motion. A copy of the motion must be received by the Court (US Mail or Hand Delivery) *before* a hearing will be set. The Court will review the motion and, if it is determined an emergency exists, the Judicial Assistant will contact counsel to set the hearing.

4. **Cooperation of Counsel**

Hearing times must be cleared with opposing counsel or pro se parties. Good faith cooperation is expected both from counsel, their support staff and pro se litigants. Should counsel, their staff, or pro se litigants fail to respond within 3 business days, or refuse to cooperate in obtaining or in setting a hearing, the difficulty should be specifically set forth either in the motion or in the notice of hearing. See mandatory meet and confer process below. If counsel/pro se litigant does not cooperate in scheduling a hearing, the requesting party may unilaterally set a hearing giving at least 14 days written notice (plus 5 days if mailed) to the opposing counsel/litigant who

failed to cooperate. Notice of Hearing must state that opposing counsel/litigant refused to coordinate a hearing time and include Certificate of Compliance, second option (see attached “Exhibit A”).

After filing any motions or notices with the Clerk, a courtesy copy of any and all motions and notices of hearing may be forwarded to the Judicial Assistant via U.S. Mail or hand delivery (**no emails or faxes**).

5. **Mandatory Meet and Confer Process**

Pursuant to Administrative Order 2012-03, a mandatory meet and confer process is established **for all motions** (including motions on foreclosure actions) to be *set for hearing* in the circuit civil division and to occur *before* scheduling the hearing **except** for the following motions: injunctive relief without notice; judgment on the pleadings; summary judgment; or to permit maintenance of a class action.

Counsel with full authority to resolve the matter shall confer *before* scheduling the hearing on the motion to attempt to resolve or otherwise narrow the issues raised in the motion, and **include a Certificate of Compliance** (attached hereto as “Exhibit A”) that the conference has occurred **in the Notice of Hearing** filed with the court. It shall be the responsibility of counsel who schedules the hearing to arrange the conference.

The term “**confer**” requires a substantive conversation in person or by telephone in a good faith effort to resolve the motion without the need to schedule a hearing, and does not envision an exchange of ultimatums by fax, e-mail or letter. Counsel who merely attempt to confer have not conferred for purposes of this Order.

Counsel must respond promptly to inquiries and communications from opposing counsel who notices the hearing and is attempting to schedule the conference. If counsel who notices the hearing is unable to reach opposing counsel to conduct the conference after three (3) good faith attempts, counsel who notices the hearing must identify in the Certificate of Compliance the dates and times of the efforts made to contact opposing counsel.

Counsel shall include in the Notice of Hearing the Certificate of Compliance certifying that the meet and confer occurred (or did not occur and setting out the good faith attempts to schedule the conference) and identifying the date of the conference, the names of the participating attorneys, and the specific results obtained. If there is no Certificate of Compliance the hearing will not be set.

Counsel who notices the hearing shall ensure that the court and the court’s judicial assistant are aware of any narrowing of the issues or other resolution as a result of the conference.

The attorneys who participate in the Meet and Confer are required to be the same attorneys who appear and attend the hearing for which the Meet and Confer was held for.

6. **Attorney Telephonic Appearances**

Attorneys may appear by phone (on non-foreclosure cases) if there is no testimony or evidence and the hearing is less than thirty (30) minutes. **No motion or order for telephonic appearance is necessary.** When setting a hearing, please inform the Judicial Assistant at that time if an attorney wishes to appear telephonically so it may be noted on the docket. The party appearing telephonically shall contact the Judicial Assistant at the time of the scheduled hearing and will be transferred to the hearing room when the parties in person are in the hearing room. It is the responsibility of the attorney appearing by telephone to initiate the call.

If multiple parties are appearing by telephone, it is the scheduling attorney's responsibility to arrange and place the conference call. **No cell phones are allowed** (the connection is generally insufficient to be heard properly on the Court's equipment).

Please note that the Court has complete discretion when it comes to telephonic appearances of attorneys, parties, and witnesses. There is no right to appear by use of the Court's phone system. Likewise, the Court may require personal attendance of attorneys, parties and witnesses at all hearings/trials. **There are no telephonic appearances for *Ex Parte*/Short Matters, Lack of Prosecution hearings or Pre-Trial Conferences. Pursuant to Administrative Order No. 2008-01-01, no telephonic foreclosure hearings/trials are allowed.**

7. **Witnesses Appearing by Audio/Video Communication Equipment**

Parties seeking to have a witness appear by audio/video equipment must review Rule 1.451 of the Florida Rules of Civil Procedure. Witnesses appearing by audio/video communication equipment **must be sworn in at their location** by a notary or other person authorized to administer oaths in the witness's jurisdiction. **There are no audio/video appearances on foreclosure cases. Parties must contact Orange County Audio/Visual Services (407-836-0534) in advance of hearing/trial to coordinate equipment requirements.**

8. **Cross Noticing**

Additional motions shall not be "piggy-backed" by cross notice unless counsel first confirms with opposing counsel that there is no objection to the cross-notice. Then counsel must email the JA to confirm that it can be heard in the same time frame or that sufficient additional time is available for all matters to be heard. **It is cross noticing counsel's responsibility to make sure the matter is placed on the Judge's court calendar or same may not be heard even if cross-notice has been filed.**

9. **Cancellation of Hearings**

When cancelling a previously scheduled hearing with the Court, the scheduling party **must email** the Judicial Assistant (**ctjadi2@ocnjcc.org**) with the necessary information (i.e. date and time hearing was scheduled, reason for cancellation, et al). The Court expects the email regarding the cancellation to be timely as this will allow the hearing time to be utilized by others.

If you settle a case, file a dismissal/stipulation for settlement with the Clerk's Office, **email copy** to the Judicial Assistant.

10. **Court Reporter**

If you want a record of hearing/trial you must make arrangements for a Court Reporter. Parties, Witnesses and/or Attorneys shall not record the proceedings except through a court reporting service present in the hearing room/courtroom. Recording equipment is not permitted in the hearing or courtroom unless through an official court reporter. Any recording devices utilized without permission from the court are subject to being forfeited.

11. **Interpreters**

Unlike criminal court, circuit civil court does not provide language interpreters for litigants. You must make your own arrangements. Caveat - Under the ADA, Court Administration will provide sign language interpreter in civil matters. Contact Court Administration no later than 2 working days in advance to arrange accommodation for hearing or voice impairment. See Administrative Order 07-97-32-04.

12. **Discovery Disputes**

Attempt to resolve discovery disputes in good faith prior to scheduling a hearing. All Circuit Civil Judges follow the guidelines set out in the Florida Handbook on Civil Discovery Practice.

13. **Discovery Motions and Motions to Compel**

The mere filing of a Discovery Motion, Motion to Compel or Motion to Stay or Limit Discovery is insufficient. Motions must be set for hearing to bring the matter to the Court's attention. Any motions filed but not set for hearing will be considered abandoned. must comply with the Florida Rules of Civil Procedure including, but not limited to, a certification of a good faith attempt to resolve that matter without court action. *See* Fla.R.Civ.P 1.380(a)(2). If no timely response or objection has been filed to initial Supreme Court approved discovery requests (e.g. Fact Information Sheet, Interrogatories, etc.), the moving party may submit proposed order (including stamped addressed envelopes) with the Motion. No hearing will be necessary.

14. **Motions for Protective Orders**

The filing of a Motion for Protective Order, without presenting it before the Court, is

insufficient. The Court will make itself available for hearings on said motions where the motion could not have been filed and heard in the due course of discovery. Where necessary, and when possible, the Court will hear and, if possible, rule by telephone on motions that occur during depositions where a failure to do so would require the conclusion of a deposition and the resetting of same depending on the Court's ruling.

15. **Hearing Notebooks, Legal Memorandum and Citations, Flash Drive**

Bring proposed Order with copies/stamped addressed envelopes; copies of case law/Statutes for Judge and opposing counsel; and copies of Motion, in case missing from Clerk System. If you highlight case law/exhibit, all copies must be highlighted. Bench notebooks or preferably flash drives with copies of pertinent pleadings, case law and Proposed Order, are welcome. Make sure opposing counsel receives the same notebook. If you want the Court to review the notebook before the hearing, make sure to deliver at least three (3) business days before the Hearing (hard copy or removable storage device using Word or PDF). Pursuant to Florida law all Motions/Orders must be in English. Materials delivered after three (3) business days may not be reviewed by the Court as insufficient time will be available prior to hearing for a thorough and thoughtful review of provided materials.

The Court will attempt to review the motion/memorandum, timely provided and read the cases cited therein, prior to the hearing so that an immediate ruling may be rendered. Brevity is appreciated and Memorandums should be kept to no more than five pages in length. Case law and Memorandums provided to the Court during the hearing may not be considered.

The Court, on occasion, may rule on motions without a hearing. Therefore, both counsel filing the motion and opposing parties are encouraged to timely file written argument with the Court.

16. **Orders and Rulings of the Court**

The Court will strive to issue Orders and rulings in a timely manner. Every effort will be made to rule the day of the hearing. If it is necessary to take an issue under advisement, the Court will attempt to set a date by which the Court will issue its ruling. If counsel is asked to prepare an Order, the Order must be submitted within 7 days of the hearing, after first submitting a copy to opposing counsel. Opposing counsel must advise the Court of any objection to the form of the proposed Order within 3 days thereafter. Additionally, after hearing, the Court would appreciate a copy of any proposed Order on a removable storage device in addition to hard copy (via US Mail or hand delivery). If the parties disagree as to the content of the Order, they are to submit ONE redlined version of the Order. The attorney preparing the order shall send it to opposing party, any areas of disagreement shall be identified and discussed and upon the parties being unable to agree on the form and/or content of the Order a removable storage device with the redlined version shall be provided, or the red lined version may be emailed to the Judicial Assistant. DO NOT send two hard copies of two different orders to the Court.

When the parties bring proposed Orders to the hearing, please make certain that (1) a copy is provided to opposing counsel; (2) the court has stamped, addressed envelopes for all pro se parties; (3) a copy is provided to the Court on a removable storage device; and, (4) the caption contains more than the word “Order.” All Orders must describe, in the caption, the subject and ruling of the court, *e.g.* “Order Granting Plaintiff Motion for Partial Summary Judgment on Liability.” *See* Fla.R.Civ.P. 1.100(c)(1). For agreed upon Orders without hearing, the Court requires confirmation from opposing counsel in writing. This confirmation may be a faxed note to Plaintiff that is included when submitting the Order. Please ensure that sufficient copies for all parties as well as self-addressed stamped envelopes for all pro se parties are included.

17. **Hearings on Motions for Re-hearing, Reconsideration or New Trial**

Upon filing said motion, moving party shall send a copy to the Court for review. The Court will either rule without a hearing or the JA will contact the moving attorney to schedule a hearing. Do not attempt to schedule a Motion for Re-Hearing/Reconsideration or New Trial through the JACS system.

18. **Attorney Fees – Discovery Disputes**

If you are seeking attorney fees you must, before filing a Motion to Compel pursuant to Fla.R.Civ.P 1.380, **confer with counsel** for the opposing party in a **good-faith effort** to resolve by agreement the issues raised, and **shall file** with the court at the time of filing of the motion, a statement certifying that he/she has conferred or attempted to confer with opposing counsel and that counsel have been unable to resolve the dispute.

As provided in Section (a)(4) of Rule 1.380, if the motion is granted, the court shall award expenses which may include attorney’s fees. Review the Florida Handbook on Civil Discovery Practice, which is available on the Ninth Judicial Circuit website, www.ninthcircuit.org.

19. **Compulsory Medical Examinations**

See **Division 35** Guidelines for Counsel Regarding Compulsory Medical Examinations at Court’s web page or email the Judicial Assistant at ctjadi2@ocnjcc.org for a copy.

20. **Setting of Trials**

When a Foreclosure case is at issue, either party may file a Notice for Trial. A courtesy copy for the Court of the Notice for Trial shall include the length of time anticipated to try the case and a **current service list (include all parties) along with sufficient self-addressed, stamped envelopes for all parties** shall be sent to the Judicial Assistant. If more than 15 minutes are requested for a trial, counsel making the request must clearly state in detail the reasons for the request of additional time.

For all other cases, counsel may request in their Notice for Trial, after consultation with

opposing counsel, a trial period that will allow sufficient time to complete discovery and facilitate out of court resolution. Counsel may additionally request from the Judicial Assistant information on when the Court is currently scheduling trials. When filing the Notice for Trial, please also include the length of time anticipated to try the case.

The Court issues a *Uniform Order Setting Case for Trial; Pre-Trial Conference and Requiring Pre-trial Matters to be Completed* in every case when setting the Trial and Pre-Trial Conference pursuant to Fla.R.Civ.P 1.440. Please remember that the fact that a case is still in the discovery stage does not prevent the filing of a Notice for Trial or prevent the Court from setting the pre-trial and trial. However please evaluate the Court's current scheduling time in determining readiness for trial.

21. **Case Management Conference**

The Court may schedule certain cases for a formal Case Management Conference (CMC) and issue an order setting forth the matters to be covered at the conference. Cases such as some medical malpractice, complex commercial litigation, multiple party litigation, cases with voluminous records or exhibits, as well as other types of cases will be set by the Court, without request, for a Case Management Conference.

However, any case can be submitted for a Case Management Conference by simply filing a written request with the Judicial Assistant. Once submitted, the action will be controlled, not only by the Pre-Trial Order, but also by the Case Management Order.

22. **Prior to Pre-Trial**

As noted above, a *Uniform Order Setting Case for Trial; Pre-Trial Conference and Requiring Pre-trial Matters to be Completed* will be issued when the dates are set for pre-trial and trial. The Uniform Order should be reviewed in detail and the dates for completion of various items calendared. The Court will presume that each attorney and each party is familiar with the requirements of that Order. Compliance of time limits is not optional nor extendable by stipulation. **THE COURT EXPECTS STRICT COMPLIANCE WITH THE ORDER ABSENT A TIMELY MOTION AND ORDER OF COURT MODIFYING THE CONDITIONS THEREIN.**

Motions to Continue: If counsel believes the trial date is not workable, an immediate request for continuance should be made. All motions to continue must be (1) in writing; (2) signed by the attorney and the parties requesting same; (3) identify the position of opposing counsel on the motion; (4) set forth when the parties will be ready for trial, if granted; and (5) comply with Fla. R. Civ. P. 1.460. Stipulated motions to continue will not result in the trial being continued unless and until the Court reviews the motion and enters an Order on same. The Court may require a hearing on the motion or conduct a case management conference.

Mediation **MUST BE COMPLETED** prior to pretrial. The Plaintiff is charged with timely

submitting the mediation order. Please review the Pre-Trial Order if you have any questions. The parties also must make certain that the mediator files a final report with the Court.

23. **Pre-Trials**

Pre-trials will be utilized to set the order of the trial docket, discuss witness problems, jury instructions issues, audio/visual equipment needs, need for interpreters, responsibility for obtaining the court reporter and other trial related issues. Pre-trial is NOT the time to handle Motions to Continue or discovery issues as these matters must have been raised and heard well before the pre-trial conference. **PARTIES SHOULD ESSENTIALLY BE READY TO TRY THEIR CASES AS OF THE PRE-TRIAL CONFERENCE. Parties shall bring to the Pre-Trial Conference a completed copy of the Pre-Trial Check List and Order Controlling Trial.**

24. **Settlement or Resolution**

The Court must be notified immediately of any settlement or resolution of any matter on the trial docket. However, the trial will not be removed from the actual docket, is subject to trial call, and the attorneys must appear, until such time as the Court receives written notice of dismissal, Notice of Settlement or the Court has signed an Order that the matter has been resolved.

25. **Trials**

Trials will take place in Courtroom 19B unless otherwise indicated.

Courtroom Etiquette and Decorum: Counsel shall stand when addressing the Court or the jury. Counsel should seek permission of the Court to approach the bench, the clerk, the witness or the jury. All parties and attorneys shall avoid contact with the venire and jury and counsel shall so instruct their clients and witnesses. Counsel shall address all arguments to the Court and not opposing counsel. Counsel shall admonish their clients that gestures, facial expressions or any manifestations of approval or disapproval of anything occurring in the courtroom is absolutely prohibited. Please see *Amended Administrative Order No. 2003-07-12 – Establishing Ninth Circuit Courtroom Decorum Policy* available at www.ninthcircuit.org.

Exhibits: All exhibits are to be marked for identification by the clerk with tags provided by the clerk of court prior to the day of trial. Arrangements must be made directly with the trial clerk. Exhibits which will be stipulated into evidence, or which are not objected to, may be marked into evidence as exhibits. Once exhibits are marked in evidence or are offered but not admitted, they become the property of the Clerk of Court and may not be altered or removed from the courtroom without order of the Court. No exhibits are to be published or exhibited to the jury until admitted into evidence and/or authorized by the Court.

26. **Information not covered**

If any matters concerning the conduct of the pre-trial or trial procedures of Civil Division 34 are not covered herein, counsel is free to contact the Court. A status hearing can be set at which time the Court will attempt to answer any inquiries. The Court appreciates counsels' efforts to understand and comply with this Court's procedures.

Contact Information

Judge Heather L. Higbee
425 N Orange Ave., Ste. 2015
Orlando, FL 32801

ex parte/short matters/hearings heard in Room: 20B
lengthy Non Jury/Jury Trials heard in Ctr: 19B

Donna Isaacson
Judicial Assistant
425 N Orange Ave., Ste. 2015
Orlando, FL 32801

Phone Number: 407-836-0598
Fax Number 407-835-1512
Email Address: ctjadi2@ocnjcc.org

Orange County Clerk of the Court
425 N Orange Ave.,
Orlando, FL 32801

Phone Number: 407-836-2500
Website: www.myorangeclerk.org

“Exhibit A”

First Option

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that a lawyer in my firm with full authority to resolve this matter had a substantive conversation in person or by telephone with opposing counsel in a good faith effort to resolve this motion before the motion was noticed for hearing but the parties were unable to reach an agreement.

/S/ _____

Counsel for the party who noticed
the matter for hearing.

Second Option

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that a lawyer in my firm with full authority to resolve this matter attempted in good faith to contact opposing counsel in person or by telephone on:

1. _____ (Date) _____ at _____ (Time) _____ ;

2. _____ (Date) _____ at _____ (Time) _____ :
and

3. _____ (Date) _____ at _____ (Time) _____ ;

to discuss resolution of this motion without a hearing and the lawyer in my firm was unable to speak with opposing counsel.

/S/ _____

Counsel for the party who noticed
the matter for hearing.