

STATE OF FLORIDA
Ninth Judicial Circuit of Florida

Vincent Falcone III
Circuit Judge

Maureen Michalski
Judicial Assistant

Counties of Orange and Osceola
425 N. Orange Avenue, Suite 815
Orlando, Florida 32801
Hearing Room 800.01 / Courtroom 18 B
39orange@ninthcircuit.org
407-836-1533

DIVISION 39 PROCEDURES

The following Procedures are hereby adopted for those practicing in the Circuit Civil Division 39 in Orange County, Florida before Judge Vincent Falcone.

These Procedures include temporary procedures in effect as a result of the COVID-19 pandemic. Please periodically review the Procedures for updates as circumstances change.

REVISED AND EFFECTIVE April 21, 2022.

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A. HEARINGS

1. Setting of Hearings.

- a. Hearing time may be obtained by using the [Judicial Automated Calendaring System \(JACS\)](#) as follows:
 - (i) Select Civil Division 39 from the menu at the bottom of the page. Choose from available hearing times. For requests exceeding 15 minutes, please combine consecutive timeslots. Any hearing requests for longer than one (1) hour must be approved by the Court by appearing during *ex parte*/short matters or by email to 39orange@ninthcircuit.org detailing the reason for the time.
 - (ii) Coordinate the date with opposing counsel and any *pro se* parties.
 - (iii) Contact the Judicial Assistant by email at 39orange@ninthcircuit.org with a copy to opposing counsel and any *pro se* parties for the hearing to be added to the docket.
 - (iv) The email to the Judicial Assistant must include one of the following, except in the case of hearings on motions for injunctive relief without notice, judgment on the pleadings, summary judgment, and certification of a class action:
 - (a) The manner (*i.e.*, in person, by telephone, or by videoconference) and date of the parties' "meet and confer" in accordance with Admin. Order 2012-03-01. An exchange of emails or letters is not a sufficient conferral.
 - (b) The dates of at least three unsuccessful attempts to confer.
 - (v) The hearing request must include:
Date and time being requested for the hearing
Case number
Style of the case
Names of the attorneys (or pro se litigants if applicable)
Title of the motion(s) to be heard and the date the motion was filed
Amount of time requested for the hearing
Date and manner of the meet and confer as set forth in item (iv) above
Any request for video or telephonic attendance
 - (vi) Your hearing time is not confirmed until you receive email confirmation from the Judicial Assistant.
 - (vii) If the matter is an emergency or is time-sensitive based on a pending deadline or other circumstances and suitable hearing time is not reflected on JACS, please refer to Section A(4) below.

- b. Your notice of hearing must comply with the various requirements of Administrative Order 2012-03-01. This order mandates a Certificate of Compliance as to the “meet and confer” requirement for most types of motions. *See* Admin. Order 2012-03-01 ¶ 6.
- c. For evidentiary hearings, the hearing request must indicate that an evidentiary hearing is being requested, and the notice of hearing must expressly state that the hearing will be evidentiary. The following additional procedures apply:
 - (i) If any party believes that an evidentiary hearing is required, the request for an evidentiary hearing must be made during the meet and confer process and when the hearing date and time are being coordinated.
 - (ii) If the parties dispute whether an evidentiary hearing is required or the amount of time necessary to complete the evidentiary hearing, they shall confer in good faith to attempt to resolve the dispute. If the parties are unable to resolve the dispute, they shall appear at short matters to obtain a resolution of the issue before the hearing is scheduled.
 - (iii) Failure to promptly request an evidentiary hearing or to address any dispute over whether an evidentiary hearing is required may result in the hearing proceeding on a non-evidentiary basis. The Court specifically discourages waiting until a scheduled hearing or shortly before a scheduled hearing to make requests for evidentiary hearings.
- d. In addition to filing the notice of hearing with the Clerk of Court, hearing materials must be furnished to the Judicial Assistant no later than five (5) business days prior to the hearing. *See* Section A(9) below.
- e. Additional motions must not be “piggy-backed” by cross-notice unless counsel first confirms with opposing counsel and the Judicial Assistant that sufficient additional time can be reserved in which to hear them. If an adverse party believes a motion or motions have been inappropriately “piggy-backed” by cross-notice, such adverse party must bring the matter before the Court via motion to strike the cross-notice in advance of the scheduled hearing; otherwise, the Court will hear the cross-noticed motion(s) if time permits. Only the party setting the hearing may cancel the hearing.

2. Temporary Procedures for Telephonic and Videoconference Appearance.

- a. The Orange County Courthouse has reopened for in-person proceedings. Any requests for social distancing, face coverings, or other accommodations as a result of COVID-19 issues for any proceeding shall be made by motion filed in advance of the proceeding. Any motion requesting such accommodations shall be contemporaneously emailed to 39orange@ninthcircuit.org.

- b. Videoconference and telephonic appearances at hearings will be permitted as set forth in this Section. At the time of coordinating the hearing, any party wishing to appear telephonically or by videoconference must indicate that appearance by telephone or videoconference is desired. The hearing notice must expressly state that the hearing will be telephonic or by videoconference and contain the dial-in or log-in information set forth in this Section.
- c. Pre-trial conferences shall occur in person unless the Court enters an order directing the conference to occur by Webex videoconference.
- d. Counsel and any *pro se* litigants may attend *ex parte*/short matters telephonically or by videoconference without the need for a motion or court order. **Webex is now being used for short matters as the previous conference line is no longer in use. For *ex parte*/short matters, either telephone or videoconference appearance is acceptable.** If any attorney or party will be attending an *ex parte*/short matters hearing by telephone, the notice of hearing shall indicate that one or all parties will attend by telephone and include the following information:

Join by videoconference

<https://ninthcircuit.webex.com/meet/ctjuvfl>

Join by phone

+1-904-900-2303 United States Toll (Jacksonville)

+1-408-418-9388 United States Toll

Access code: 179 341 6555

Videoconference/Teleconference Notes:

- *You will be entering a virtual “room” with other participants. There will be others on this conference call.*
 - *Please mute your device until your case is called.*
- e. Counsel and any *pro se* litigants may appear at special set non-evidentiary hearings by Webex videoconference without the need for a motion or court order. All persons in attendance must have their cameras turned on for the duration of the hearing unless technical difficulties prevent participation by videoconference and the Court’s permission for telephonic attendance is obtained before or during the hearing. The notice of hearing shall indicate that one or all parties will attend by videoconference and must include the following Webex information:

Join by videoconference

<https://ninthcircuit.webex.com/meet/ctjuvfl>

Join by phone

to be used only in the event of technical difficulties with videoconference

+1-904-900-2303 United States Toll (Jacksonville)

+1-408-418-9388 United States Toll

Access code: 179 341 6555

- *All parties should connect to the videoconference at least five (5) minutes before the scheduled hearing time. The Court will connect at the time of the hearing.*
- f. Evidentiary proceedings, including non-jury trials, may be conducted by videoconference in whole or for particular witnesses only by filing a motion and obtaining an order approving the appearance by videoconference. If prior court approval is not received, evidentiary proceedings must be conducted in person. For evidentiary proceedings conducted by videoconference with leave of Court, including non-jury trials, the following procedures shall apply:
- (i) Witnesses must have government-issued identification in their possession to provide to the person administering the oath.
 - (ii) All exhibits upon which a party intends to rely at the evidentiary hearing or non-jury trial shall be sent to Chambers via mail or commercial delivery service. The exhibits shall be tagged and marked as required by Section D(6) below, and each page of the exhibits shall be bates stamped.
 - (iii) In addition to the hard copies, all exhibits shall be e-mailed to 39orange@ninthcircuit.org (copied to all counsel) as separate files, or if the exhibits are voluminous, delivered to Chambers on a thumb drive with separate files for each exhibit. The electronic copies shall be provided not later than five (5) business days before the start of the hearing, along with a list of each of the exhibits as marked for identification.

3. Cooperation of Counsel in Setting of Hearings.

- a. Hearing times must be cleared with opposing counsel and *pro se* parties, and good faith cooperation is expected of all counsel, their staff, and *pro se* parties. All counsel, their staff, and *pro se* parties have an obligation to respond promptly to scheduling inquiries.
- b. Coordination of hearings must include any request that a hearing be evidentiary and any request for attendance by telephone or videoconference.
- c. Should counsel, their staff, or *pro se* litigants fail to respond to a request to coordinate hearing time within three (3) business days, or refuse to cooperate in setting a hearing, the requesting party may unilaterally set a hearing giving at

least two weeks' notice of the hearing to opposing parties. The notice of hearing must state that the opposing party refused to coordinate a hearing time in the Certificate of Compliance.

4. Emergency and Time-Sensitive Hearings.

- a. Counsel may contact the Judicial Assistant for an emergency hearing where the circumstances warrant it, and the following will apply:
 - (i) The body of the motion must contain a detailed explanation of the circumstances constituting the emergency.
 - (ii) The motion must contain a "Certificate of Emergency" in which counsel of record or the *pro se* litigant seeking relief certifies that he or she believes the facts and circumstances to constitute an emergency for which immediate hearing time is required and understands that designating a matter as an emergency may result in the Court cancelling or rescheduling other matters so as to accommodate the parties.
 - (iii) The motion must be emailed to 39orange@ninthcircuit.org before a hearing will be set. The Judicial Assistant will contact counsel to set a hearing if the Court determines that an emergency hearing is warranted based on the description and certification contained in the motion.
- b. Failure to include a Certificate of Emergency or certification of a matter as an emergency without a good faith basis may result in the imposition of sanctions.
- c. If a motion is time-sensitive because of a pending deadline or other circumstances, but does not qualify as an emergency, the movant shall attempt to coordinate a hearing from the time available on JACS (if more than 10 minutes is needed) or coordinate a short matters hearing (if 10 minutes or less is needed). If the motion is not appropriate for short matters and setting the hearing for the earliest available time on JACS would violate an applicable deadline, hinder or defeat the requested relief, or cause prejudice, counsel shall set a scheduling conference at short matters to determine whether earlier hearing time is available.

5. Ex Parte/Short Matters.

- a. *Ex Parte* and Short Matters are uncontested or very brief (10 minutes maximum) non-evidentiary hearings held Monday through Thursday at 8:30 a.m. If no matters remain pending at 9:00 a.m. during trial weeks and 9:30 a.m. during hearing weeks, *ex parte*/short matters will close. A list of dates on which the Court is unavailable for *ex parte*/short matters is located on JACS.
- b. Discrete case management issues requiring less than 10 minutes total to address may be scheduled for short matters without a formal request for a Case Management Conference. Before the hearing, the parties must file a joint report

describing the case management issue and their respective positions. The report must be emailed to 39orange@ninthcircuit.org at least three (3) business days prior to the hearing. If there are multiple case management issues to be addressed or the issues are complicated or require decisions on substantive legal matters so that more than 10 minutes will reasonably be required, a request for a Case Management Conference must be made in accordance with Section B(2) below.

- c. Matters to be heard at *ex parte*/short matters are not scheduled with the Judicial Assistant but must be coordinated with opposing counsel or *pro se* parties. Before setting a hearing at *ex parte*/short matters, the parties must satisfy the “meet and confer” requirement set forth in Admin. Order 2012-03-01 and include a Certificate of Compliance in the notice of hearing.
- d. Copies of motions to be heard, along with the notice of hearing and any hearing materials, must be emailed to 39orange@ninthcircuit.org at least three (3) business days prior to the hearing.

6. Foreclosure Cases.

- a. Most foreclosure hearings can be scheduled for *ex parte*/short matters. Longer hearings should be set in accordance with the procedures set forth in Section A(1) above.
- b. Motions to cancel or to reset foreclosure sales may be sent to Chambers for ruling on the papers. If the Court determines that a hearing on the motion is required, the Court will direct the movant to schedule a hearing.
- c. In timeshare foreclosure cases, counsel who handle a high volume of cases are encouraged to schedule as many motions for summary judgment and motions for default final judgment as are ready for hearing during a single block of hearing time. Counsel should contact the Judicial Assistant to obtain suitable blocks of hearing time.

7. Discovery Motions.

- a. Discovery motions (motions to compel, motions for protective order, motions to quash, etc.) must be set for hearing to bring the matter to the Court’s attention. The mere filing of a motion is insufficient to obtain the requested relief. Hearings shall not be set on discovery objections without a motion addressing the specific requests and objections at issue as set forth below.
- b. Discovery motions must identify the specific requests and objections that are in dispute, explain why the movant believes those requests or objections to be improper, and attach the responses and objections at issue. Motions that assert improper requests or objections generally, but do not identify the specific requests or objections at issue or fail to attach the applicable requests and objections, may be denied without prejudice subject to the filing of a motion in

compliance with this paragraph. **Hearings set on discovery objections without a motion to compel, for protective order, or to quash may be cancelled subject to the filing of a motion addressing the specific requests and objections at issue.**

- c. All discovery motions must comply with the Florida Rules of Civil Procedure and the Administrative Orders governing this division including, but not limited to, the requirement of certifying a good faith attempt to resolve the matter without court action. *See Fla. R. Civ. P. 1.380(a)(2) and Admin. Order 2012-03-01.*
- d. Where necessary, and when possible, the Court will make itself available for telephonic hearings during the course of depositions so that depositions do not need to be terminated before their conclusion in order to obtain rulings.
- e. If no timely response or objection to discovery requests has been served or filed and the lack of any response continues for ten (10) days after the filing of a motion to compel, the moving party may send the motion to compel with a proposed order compelling a response within ten (10) days and granting no other relief to 39orange@ninthcircuit.org. The proposed order shall be accompanied by a cover letter and both the letter and order shall be contemporaneously sent to all other parties. The Court may enter the order without the need for a hearing or may direct a hearing on the objections. If additional relief (such as fee, costs, sanctions, or waiver of objections) is requested, a hearing on the motion must be scheduled.

8. Motions in Limine.

- a. Before setting any motion in limine for hearing, counsel must meet and confer by phone, videoconference, or in-person meeting on each and every item in the motion in limine. The motion in limine may not be scheduled for a hearing unless the hearing notice contains a certification of a good faith attempt to resolve the matter without court action as to each item. The hearing notice must identify the specific items in dispute in any multi-part motion in limine.
- b. Within seven (7) days of any unsuccessful meet-and-confer, the movant must file a memorandum of law specifically describing the basis for the requested evidentiary ruling with argument and supporting authority.
- c. At least five (5) business days before the scheduled hearing on any motion in limine, the opposing party must file a memorandum in opposition specifically describing the basis for the opposition with argument and supporting authority.
- d. If the meet and confer results in an agreement on any portion of any motion in limine, the moving party shall prepare and file a stipulation signed by the movant and opposing party indicating in writing which of the items in the motion in limine are agreed to by the opposing party. The stipulation shall be filed within seven (7) days of the meet and confer, and an agreed order may be submitted for entry.

- e. Unless the order on the motion in limine states otherwise, all rulings on the motion in limine are non-final orders subject to modification during trial as evidence is presented. *See* Fla. Stat. § 90.104.
- f. Hearing time on motions in limine is reserved for truly disputed evidentiary rulings applicable to the case. Counsel are specifically discouraged from using hearing time to argue or reargue matters appropriately resolved on summary judgment or to address form omnibus motions, general questions of evidence law not tied to the case, or matters not in genuine dispute.

9. Hearing Notebooks, Exhibits, Legal Memoranda, and Citations.

- a. All legal memoranda, briefs, affidavits, notices of filing, and other materials that a party intends to rely on at a hearing must be filed at least five (5) business days before the hearing. Hearing notebooks or other materials submitted for the Court's review must be provided at least five (5) business days before the hearing.
- b. Because the Court has ready access to timely filed materials and electronic legal research databases, counsel generally need not provide materials in the court file or legal authority to chambers. However, counsel should submit the following materials via email or thumb drive at least five (5) business days before the hearing: (a) any videos, photographs, or printed or scanned color documents; (b) materials filed ten (10) or fewer business days before the hearing; (c) filings that are more than 250 pages, inclusive of exhibits; (d) materials submitted for *in camera* review; and (e) legal authority that is unavailable on Westlaw or Lexis.
- c. Hearing materials must be submitted electronically via email to 39orange@ninthcircuit.org, unless the Court requests a paper submission. Voluminous submissions should be delivered to Chambers on a thumb drive.
- d. Exhibits for evidentiary proceedings, including non-jury trials, must be submitted in both hard copy and electronic format as provided in Section A(2)(f) above.
- e. All materials provided to the Court must be contemporaneously provided to all other parties in the same form provided to the Court, including any highlighting.
- f. Case law and memoranda provided to the Court and opposing parties for the first time during the hearing may not be considered.
- g. The Court, on occasion, may rule on motions without a hearing. Therefore, counsel are encouraged to timely file written argument supporting and opposing their positions with the Court.

10. Limitation on Hearings.

- a. All motions related to discovery or trial matters must be filed and heard by the time specified in the Trial Order or prior to the pre-trial conference if the Trial

Order does not specify a deadline.

- b. No motion directed towards matters involving the trial will be heard during the actual trial period absent extraordinary circumstances.

11. Orders and Rulings of the Court.

- a. Proposed orders must be submitted electronically in Word format to 39orange@ninthcircuit.org.
- b. Proposed orders submitted after a hearing or in connection with unopposed or agreed motions must be accompanied by an e-filed cover letter (the cover letter must have the filing stamp across the top) with a copy to all counsel and *pro se* parties. The cover letter must indicate whether all parties agree to the content of the order. The cover letter but not the proposed order must be e-filed.
- c. All proposed orders must describe, in the caption, the subject and ruling of the court – e.g., “*Order Granting Plaintiff’s Motion for Partial Summary Judgment on Liability.*” See Fla. R. Civ. P. 1.100(c)(1). If the order is agreed to by all parties, the title must indicate the substance of the order and state that it is an “Agreed Order.”
- d. Cover letters may state that there is agreement to a form of order, and an order may be designated as “Agreed,” only if there is *express* agreement to the form of order. The “Agreed” designation shall not be used when opposing counsel or the opposing *pro se* party simply has not timely responded to a proposed order. In cases where there is not express agreement to a form of order, the cover letter shall specifically state the position of opposing counsel or the opposing *pro se* party, the lack of any response whatsoever, or the other circumstances surrounding the order. Inaccurately identifying an order as agreed, unopposed, or without objection may result in the imposition of sanctions.
- e. The proposed order must contain a complete certificate of service indicating service to all parties receiving service through the Florida Courts e-Filing Portal, together with the name, email address, and party represented for each person receiving e-service. If there are parties not receiving service through the Florida Courts e-Filing Portal, the following is required for proposed orders:
 - (i) Proposed orders other than final judgments – The proposed order must contain the following language: “Counsel for Plaintiff(s) shall serve a copy of this Order via U.S. Mail to all parties not receiving service of court filings through the Florida Courts e-Filing Portal and shall file a Certificate of Service within three (3) days from the date of this Order.” Counsel for Plaintiff(s) is responsible for promptly serving the order on all parties that are not registered for e-service through the Florida Courts e-Filing Portal.
 - (ii) Proposed final judgments – In addition to submission of an electronic copy, a hard copy of the proposed final judgment must be delivered to Chambers

with stamped addressed envelopes for the Court to mail copies of the judgment to all parties not receiving service of court filings through the Florida Courts e-Filing Portal. The certificate of service must contain the name and mailing address of all parties not receiving service of court filings through the Florida Courts e-Filing Portal.

- f. If a party wishes to submit a proposed order before a hearing, the proposed order must be included with the email or thumb drive containing the hearing materials in accordance with Section A(9) above, and copies must be provided to all opposing counsel and *pro se* parties.
- g. If counsel are asked to prepare a proposed order during or after a hearing, the order shall be drafted and sent to opposing counsel or *pro se* parties for review and approval within three (3) business days and must be submitted to the Court within seven (7) days of the hearing with a copy to all other counsel and *pro se* parties, unless the Court specifies a different deadline. If the parties are unable to agree on the form of the order, both sides shall present their proposed orders to the Court for consideration within seven (7) days of the hearing.
- h. If the parties are asked to submit competing proposed orders during or after a hearing, the orders shall be submitted within the timeframe established by the Court, with a copy to all other counsel and *pro se* parties. The competing orders need not be provided to opposing parties for prior review or approval.

12. Default Final Judgments.

- a. After proper service and entry of default, a party may seek entry of default judgment only in compliance with applicable law and procedural requirements.
- b. Parties seeking default judgment should review applicable law regarding liquidated and unliquidated amounts and the associated procedural requirements. Among other things, attorneys' fees and costs are generally unliquidated unless a statutory exception applies. *See, e.g., MacDonnell v. U.S. Bank N.A. as Tr. for Truman 2013 SC4 Title Tr.*, 293 So. 3d 585, 590 (Fla. 2d DCA 2020); *Williams v. Skylink Jets, Inc.*, 229 So. 3d 1275, 1279 (Fla. 4th DCA 2017).
- c. If default judgment may be entered without a hearing under applicable law, the party seeking entry of judgment may file a motion for default final judgment and submit the motion with a proposed final judgment and any supporting materials to chambers. The Court will determine whether default judgment can be entered without a hearing and may direct a hearing or other proceedings to occur.
- d. If applicable law requires a non-jury trial or final evidentiary hearing on damages, the party seeking entry of judgment shall file a notice for trial seeking to be placed on a trial docket if half a day or more is required or shall schedule hearing time pursuant to Section A(1) above if less than half a day is required.

- e. If applicable law requires a jury trial on damages, a notice for trial must be filed, and the case will be placed on a jury trial docket.
- f. In accordance with uniform policies and procedures adopted in this Circuit, stipulations or settlement agreements providing for entry of a default or consent judgment upon a payment default must be scheduled for hearing with notice to the defaulting party, even if the parties have agreed to entry of judgment without notice. The hearing may be set at short matters, and if contested, the Court may direct further proceedings. *See* Uniform Admin. Policies & Procedures of the Civil Division of the Ninth Judicial Circuit Court (rev. May 2020), § 17(D).

13. Hearings on Motions for Rehearing, Reconsideration or New Trial.

- a. Upon filing a motion for rehearing, reconsideration, or a new trial, the party filing the motion must email a copy of the motion to 39orange@ninthcircuit.org for review by the Court.
- b. The Court will (i) rule without a hearing, (ii) direct that a written response be filed by opposing parties, or (iii) direct the Judicial Assistant to contact the moving party to schedule a hearing. No party may set a motion for rehearing, reconsideration, or a new trial without court order. Any notice of hearing without an order authorizing the hearing on the motion for rehearing, reconsideration, or a new trial will be summarily stricken.

B. SETTING OF TRIALS, CASE MANAGEMENT CONFERENCES, AND PRE-TRIAL CONFERENCES

1. Notice for Trial.

- a. A case will be set for trial when a party files a proper notice for trial in accordance with Fla. R. Civ. P. 1.440. The Court will issue a Uniform Order Setting Case for Trial; Pre-Trial Conference and Requiring Pre-Trial Matters to be Completed in most cases or a specialized trial order in limited categories of cases (“Trial Order”) setting the trial and pretrial requirements pursuant to Fla. R. Civ. P. 1.440.
- b. If there are parties not receiving service through the Florida Courts e-Filing Portal, a hard copy of the notice for trial must be delivered to Chambers with stamped addressed envelopes for the Court to mail copies of the Trial Order to all parties not receiving service through the Florida Courts e-Filing Portal.
- c. 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.
- d. If the Court issues a Trial Order pursuant to a notice for trial and either party believes that the trial date will not allow sufficient time to complete discovery, counsel should immediately request a status hearing or case management conference. Delays in advising the Court about inadequate time, conflicts, or other issues may be considered a waiver of any objection to the trial date.

2. Case Management Conferences.

- a. The Court will schedule certain cases for a formal Case Management Conference and issue an order setting forth the matters to be covered at the conference. Certain cases may be deemed “Complex Litigation” pursuant to Fla. R. Civ. P. 1.201. Where so designated the procedures set forth under Rule 1.201 will apply.
- b. Any case can be considered for a Case Management Conference by the filing of a written request for a Case Management Conference describing the case management issues the parties request to be addressed. The request must be emailed to 39orange@ninthcircuit.org, and the Court will notify the parties whether a Case Management Conference will be held and, if so, whether it should be set at short matters or scheduled via JACS. The Court may issue an order directing certain tasks to be completed before the Case Management Conference, such as a conferral and the filing of a case management report.
- c. After a Case Management Conference, the action will be controlled not only by the Trial Order, but also by any resulting Case Management Order(s).

3. Motions to Continue.

- a. Motions to continue will not be considered unless accompanied by a written consent signed by the client. The motion must specifically set forth good cause justifying the continuance. Generalized statements that more time is needed, or mere agreement of the parties, will not support the granting of a continuance.
- b. Except in emergency circumstances, the Court will usually not grant continuances without a hearing, even with agreement of all parties. Motions to continue should be set during *ex parte*/short matters before the pre-trial conference.

4. Pre-Trial Conferences.

- a. Pre-trials will be utilized to set the order of the trial docket and to discuss witness problems, jury instruction issues, audiovisual equipment needs, need for interpreters, time allotment for voir dire and opening and closing, responsibility for obtaining the court reporter, and other trial related issues.
- b. Motions, including motions to continue, will generally not be heard during the pre-trial conference.
- c. Pursuant to both the Uniform Trial Order and most Case Management Orders, discovery closes the day prior to the pre-trial conference. Parties should essentially be ready to try their cases by the time of the pre-trial conference.
- d. Parties shall bring to the pre-trial conference a completed copy of the Pre-Trial Check List and Order Controlling Trial which is available on the division website.

- e. Attendance at the pre-trial conference by the attorneys who will try the case is mandatory. Substituted appearance by counsel other than trial counsel at the pre-trial conference is not permitted without leave of Court.

C. SETTLEMENT OR RESOLUTION

1. Notice of Settlement.

- a. Plaintiff's counsel has the duty to immediately notify the Court of any settlement or resolution as to any matter or as to any parties to any matter on the trial docket.
- b. The case will not be removed from the actual trial docket, is subject to trial call, and the attorneys must appear, until such time as the Court receives a file-stamped notice or stipulation of dismissal, enters an order that the matter has been fully resolved, or has expressly advised the parties that they are excused.
- c. A Notice of Settlement is not sufficient to close the case. A notice or stipulation of dismissal or a final judgment as to all parties and claims is required.

D. TRIALS

1. Courtroom Etiquette and Decorum.

- a. The [Ninth Judicial Circuit Courtroom Decorum Policy](#) is incorporated herein in its entirety.

2. Cell Phones, Communication Devices, and Cameras.

- a. Cell phones must be turned off or placed in silent mode when in the courtroom or when attending the videoconference. If it is necessary to make or take phone calls, please step out of the courtroom.
- b. Witnesses will not be permitted to possess any type of communication device while on the witness stand or while testifying by videoconference.
- c. No photographs or recording, audio, video, or otherwise, is permitted within the courtroom or while attending the videoconference unless specifically permitted by the Court after formal request is made.

3. Trial Briefs.

- a. If a trial brief is to be filed with the Court, it must be submitted to chambers no later than five (5) business days before the trial is to commence.

4. Voir Dire.

- a. The Court will conduct a preliminary voir dire of the jury. Counsel are welcome to request that the Court initially explore certain areas of inquiry that may be important to the trial but sensitive in nature.
- b. Counsel are reminded to be considerate of the jurors' personal lives during their inquiries as well as the jurors' time constraints.
- c. While the Court will afford counsel significant latitude in questioning, the Court will limit repetitive questions. Counsel shall not attempt to explore the facts of their case, nor explain the law that may apply in the case, nor attempt to curry favor with the venire.
- d. Time limits agreed to by the parties during pre-trial will be enforced.

5. Opening and Closing.

- a. The Court will discuss with counsel the time requirements for both opening and closing at the pre-trial conference and will expect that a reasonable estimate be provided by counsel. Counsel are expected to adhere to these time constraints.
- b. Only demonstrative aids or exhibits marked by the clerk, agreed to by all counsel or approved by the Court, may be used in either opening or closing.
- c. Any PowerPoint or similar presentation must be provided to opposing counsel a reasonable time before being displayed to the jury to allow an opportunity for objections to be raised and resolved. In addition, a copy of the presentation must be filed to create an appellate record.

6. Exhibits.

- a. All exhibits must be marked for identification by the parties with tags provided by the Clerk of Court prior to the day of trial. Exhibits are marked for identification alphabetically ("Ex. A", "Ex. B", "Ex. C", etc.), and each page of the exhibit shall be bates stamped. Once admitted into evidence, exhibits are marked numerically by the clerk ("Plaintiff's Ex. 1", "Plaintiff's Ex. 2", "Plaintiff's Ex. 3", etc.).
- b. 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. Audiovisual and/or equipment questions should be addressed to the Ninth Circuit's Technology Support department at <http://ninthcircuit.org/services/technology-support>.

7. Demonstrative Aids.

- a. Demonstrative aids or exhibits must be provided to opposing counsel so that there is an opportunity to object a reasonable time before their anticipated use. The Court will hear argument of any counsel opposing the use of the

demonstrative aids prior to trial.

8. Objections.

- a. The Court will not allow speaking objections in front of the jury; only the legal basis for the objection should be stated. If elaboration is necessary the Court will call counsel to the Bench for a Bench Conference out of the presence of the jury.
- b. Once the Court has ruled, no further argument shall be permitted. Matters addressed at sidebar are not to be repeated in front of the jury.