

GUIDELINES & PROCEDURES FOR HEARINGS

Judge Kevin B. Weiss Ninth Judicial Circuit – Orange County Circuit Civil Division 35

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Courtroom: 19-B

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 Kevin B. Weiss.

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.

HOW TO SCHEDULE A HEARING

Due to COVID-19 and pursuant to Florida Supreme Court Administrative Order No. AOSC20-23, **all hearings are conducted remotely (Zoom or telephone)** unless the Court enters an order permitting an in-person hearing.

1. **Complete the mandatory meet and confer process** outlined in the Ninth Judicial Circuit Administrative Order No. 2012-03-01. 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 in the Notice of Hearing filed with the Court. Review Exhibit A in the Administrative Order.

Failure to comply with the “meet and confer” requirement will result in either the Court cancelling the scheduled hearing or the Judicial Assistant not providing hearing time to the parties.

2. **Determine which type of hearing you need.**

There are 3 types of hearings available:

- A. *Ex Parte*: defined as a purely uncontested matter and/or non-evidentiary matters which are very brief (5 minutes)
- B. *Short Matters*: defined as a contested matter that requires less than 10 minutes of the Court’s time and non-evidentiary

C. Contested Hearings

3. For Ex parte and Short Matters Hearings

- These hearings are held Monday through Thursday at 8:30 a.m. Agreed upon and uncontested matters will be handled first, followed by short contested matters. If no matters remain pending at 9:00 a.m., ex parte/short matters will close.
- Types of motions suitable for hearing at short matters are simple motions to dismiss, to strike affirmative defenses, for more definite statement, to amend pleadings, short discovery motions, protective orders, objections to CMEs, Motion for Summary Judge after Default, Motions for Summary Judgment of Foreclosure, etc.
- **Scheduling:** These hearings are **not scheduled** with the Judicial Assistant, but must be coordinated with opposing counsel on a date that Judge Weiss is available. A list of dates that the Court is unavailable for ex parte/short matters is located on JACS (see below).

PROCEDURES FOR REMOTE APPEARANCE DURING LIMITED COURTHOUSE ACCESS	
Ex parte/ Short Matters	Ex parte and Short matters will be heard with the parties/attorneys/court reporters appearing via the Court's conference call only . Court reporters shall not be permitted in the courtroom or hearing room.
Notice of Hearing	The Court's conference call number and code shall be included in the Notice of Hearing. The attorney noticing the hearing must provide at least 5-days notice of the hearing to all parties, including pro se litigants. The Notice must contain the meet and confer language.
Courtesy Copies	A courtesy copy of the motion, notice of hearing (with the conference call number), and proposed order (with addressed, stamped envelopes for non-e-filing parties) must be provided to the Court at least 3 business days before the hearing. Any copies delivered after this deadline may not be reviewed and

	<p>may cause the hearing to be cancelled. Courtesy copies must be provided for ex parte and short matters.</p> <ul style="list-style-type: none"> • If all parties participate in e-filing, courtesy copies in pdf/Word along with the proposed order may be provided by email to 35Orange@ninthcircuit.org • If all parties are not on e-filing, the hearing packet must be <i>received</i> by the Court with copies and envelopes at least 3 business days prior to the hearing.
<p>To call in for Ex Parte and Short Matters:</p>	<p style="text-align: center;">Conference Call Telephone Number: 407-836-5646 or 1-800-346-8020</p> <p style="text-align: center;">Participant Code: 640441#</p> <p>You will be entering a virtual room with other participants on the conference call line. Please mute your telephone until your case is called.</p>

4. **For CONTESTED HEARINGS** → Find available hearing time on Judge Weiss's docket using this link: [JACS \("Judicial Automated Calendaring System"\)](#).

- Available hearing time for approximately the next 60 days is displayed in fifteen minute increments.
- Any hearing requests for longer than 1 hour must be approved by Judge Weiss either by appearing during ex parte or by letter to the Judge detailing the reasons for the excessive time. The letter may be emailed to 35orange@ninthcircuit.org. After review, you will receive a response to the request.
- Coordinate the date and time with opposing counsel/pro se party. Hearing times must be cleared with opposing counsel and pro se party.
- Good faith cooperation is expected both from counsel, their support staff and pro se litigants. If after 3 attempts on separate days to coordinate a hearing, counsel does not cooperate or respond, the requesting party may unilaterally set a hearing giving at least two weeks' notice to the opposing counsel who failed to cooperate or respond. Efforts to coordinate the hearing should be noted on the Notice of Hearing. See, Admin. Order 2012-03 ¶6.

JACS[®] Judicial Automated Calendaring System

9th Judicial Circuit Available Timeslots

Please Select Calendar and Duration Range Below

Solutions for Docket Management by Infocom Systems Services, Inc.
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infocom

Select Calendar: BUSINESS COURT CIVIL DIV 43

Minimum Duration: min. Maximum Duration: min.

Retrieve

To select Judge Weiss's calendar, click the drop down menu for **DIVISION 35** & hit "Retrieve"

All available hearing time will appear on the next screen.

5. **Reach out to Judge Weiss's Judicial Assistant via email at 35orange@ninthcircuit.org** and copy opposing counsel/pro se litigants for the hearing to be added to the docket.

- The emailed hearing request to the JA must include all of the following:
 - ✓ Date and time of the "meet and confer" conference
 - ✓ Date and time being requested for the hearing
 - ✓ Case number
 - ✓ Style of the case
 - ✓ Names of the attorneys (or pro se if applicable)
 - ✓ Title of the motion(s) to be heard
 - ✓ Amount of time being requested for the hearing

6. **Receive confirmation time for your hearing.** Your hearing time is **not confirmed** until you receive a reply from the Judicial Assistant.

- At the time of the emailed hearing confirmation, **the JA will provide telephonic or video hearing information** (ZOOM OR TEAMS LINK).
- The video hearing information **must** be included in the Notice of Hearing.

7. Miscellaneous Issues re: Hearings

- **Cross-notice Motions.** Please do not **cross-notice motions** without prior approval of opposing counsel and the Judicial Assistant. If permitted, counsel must email the JA to confirm 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 Court's calendar or it may not be heard despite the filing of the cross-notice.
- **Canceling a Hearing.** Please note that only the party setting the hearing may cancel the hearing.

The party cancelling the hearing **must**:

1. Call or email the Judicial Assistant to notify the Court of the cancelled hearing. (filing the Notice of Cancellation with the Clerk is not sufficient as the Clerk does not notify the Court), and
2. File a **Notice of Cancellation** and email a copy of the notice of cancellation to the Judicial Assistant

If the hearing is cancelled less than 4 hours beforehand, and counsel cancelling the hearing has not been able to confirm the Judge has been informed, counsel shall appear or have someone appear on counsel's behalf to so inform the Judge.

- **Emergency Hearings.** If an emergency situation arises, counsel may request that a hearing be set on short notice. The body of the motion must contain a detailed explanation of the circumstances constituting the emergency as well as the substance of the motion. The motion must be hand delivered (when permitted during current COVID procedures per the Chief Judge) or e-mailed to the Court 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. Opposing counsel **must** be copied on any correspondence to the Court.
- **Motions to Withdraw as counsel.** Motions should be set during ex-parte with notice to all parties if client consent cannot be obtained.
 - If you have written client consent (attached to the motion) you may submit a copy of the motion along with a proposed order to chambers. Addressed, stamped envelopes must be provided for all

parties not receiving service through the ePortal.

- The body of the proposed order and certificate of service must include the name, address, telephone number and e-mail address of the party to whom the pleadings will be sent. If the party is a corporation or other legal entity, no more than thirty (30) days will be allowed for the party to obtain substitute counsel.
- **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 involving medical malpractice, complex commercial litigation, multiple party litigation, voluminous records or exhibits, as well as other types of cases may be set by the Court, without request.

A party may request any case be submitted for a CMC by filing a written request to the JA. Once submitted, the action will be controlled, not only by the Pre-Trial Order, but also by the Case Management Order.

COURTESY COPIES REQUIRED

1. Motion(s), supporting memoranda and/or case law to be heard **must be received**, by email or hard copy to chambers at least **five (5) business days prior** to the hearing to ensure an opportunity for the Court to review. Copy opposing counsel with the same information provided to the Court.
2. Copies sent to the Court should:
 - A. Be send in pdf or Word (not in a zip file or shared folder)
 - B. Copies over 50 pages should be provided electronically on a flash drive or via email to the JA.
 - C. If provided electronically, counsel must index the materials and ensure the index contains a hyper-link to the document/exhibit/case indexed. For technical assistance, please visit: <https://helpx.adobe.com/acrobat/using/creating-pdf-indexes.html>
 - D. Cases should be highlighted.

Failure to provide courtesy copies may result in the hearing being cancelled.

ORDERS AND RULINGS

1. **Rulings.** The Court will 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.

2. **Proposed Orders.** If counsel are asked to prepare an order, the order should be:

- A. Drafted and circulated within three (3) working days, and
- B. Submitted to the Court within seven (7) days of the hearing, with a copy to opposing counsel.
- C. All Orders must describe, in the caption, the subject and ruling of the court, *i.e.* “*Order Granting Plaintiff’s Motion for Partial Summary Judgment on Liability.*” See Fla.R.Civ.P. 1.100(c)(2).
- D. Counsel must advise the Court of any objection to, or agreement on, the form of the proposed order when the order is submitted.
- E. If the parties are **unable to agree** on the form of the order, both sides shall email their proposed Order in Word to the Court for consideration within the seven (7) days. All parties must be copied on all email submissions.

3. **Submitting Orders to Chambers:**

1. Proposed agreed orders should be:

- ✓ emailed to 35orange@ninthcircuit.org in **Word** along with an
- ✓ **e-filed cover letter** indicating whether:
 - Opposing counsel agrees to the content and form of the order.
 - The cover letter (but not the proposed order) must be e-filed by the attorney with the Clerk.
 - Must indicate that opposing counsel has reviewed and approved the form of the order when submitting to the Court for review.

2. Certificate of Service: Please be sure that the certificate of service on the proposed Order complies with the Rules of Civil Procedure.

MOTIONS

1. **MOTIONS FOR REHEARING, RECONSIDERATION OR NEW TRIAL**

- A. Upon filing said Motion, you must send a copy directly to chambers for review as the Clerk does not provide them to the Court.
- B. The Court will either: (i) rule without a hearing, (ii) direct that a written response be filed by opposing counsel, or (iii) direct the JA to contact the moving counsel to schedule a hearing.

2. DISCOVERY MOTIONS AND MOTIONS TO COMPEL

- A. The mere filing of an Objection, Motion to Compel or Motion for Protective Order is insufficient. A Motion must be filed and set for hearing to bring the matter to the Court's attention. Motions to compel, as well as all discovery motions, 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)
- B. 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 a proposed order (including stamped addressed envelopes) with the Motion. Unless there is a written objection by the opposing party, no hearing will be necessary and the Court will rule in chambers.

3. ATTORNEY'S FEES IN DISCOVERY DISPUTES

- A. If you are seeking attorney's 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 counsel has conferred or attempted to confer with opposing counsel and that counsel have been unable to resolve the dispute.
- B. 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.

EVIDENTIARY HEARING/NON-JURY TRIAL PROCEDURES
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1. PREPARING EVIDENCE FOR THE VIDEOCONFERENCE

- A. **No later than 5 business days before the hearing**, counsel and/or pro se parties shall exchange any and all exhibits, which must be bates-stamped.
- B. The parties must have a substantive, good faith telephone conference to address stipulations and objections to the admissibility of any exhibits. If there are objections to the admissibility of any exhibits, the party raising the objection shall identify the exhibit by bates-stamped numbers and identify the ground(s) for any objection.

- C. The objections shall be filed with the Clerk and any objections not noted are waived.
- D. After the substantive, good faith telephone conference and **no later than 5 business days before the hearing**, the parties must
 - ✓ pre-mark the bates-stamped exhibits that they intend to use during the hearing,
 - ✓ provide a set of the exhibits to the other party and the witness(es), and
 - ✓ mail 2 hard copies of the exhibits and the filed objections (one for the Judge and one for the Clerk) to the Court for use at the hearing.

2. PREPARING WITNESSES FOR THE VIDEOCONFERENCE

- A. Pursuant to current COVID-19 CDC guidelines and orders from all levels of government, all participants must abide by social distancing requirements and limit in-person contact. As such, witnesses do not need to be present with the attorneys or self-represented parties during the videoconference hearing.
- B. Each party must arrange for a **notary** or other person qualified to administer an oath to swear in their witness(es) in accordance with Administrative Order of the Supreme Court 20-23.
- C. In the event the **rule of sequestration** is invoked, the witnesses will be instructed to hang up from the videoconference and counsel or self-represented party will be responsible for contacting the witness when it is time for their testimony.
- D. The witness must be provided copies of all pre-marked, bates-stamped exhibits prior to the hearing.
- E. The witness shall be instructed not to look or refer to any other document or device during his or her testimony.
- F. Counsel and/or self-represented party is responsible for providing these instructions to any witnesses and ensuring their compliance.
- G. Witness(es) are discouraged from being in the same physical space as the attorney or self-represented party unless safe to do so. However, in the event a witness or party testifying is in the same physical space as the attorney or pro se party questioning the

witness, the participants should be socially distant and the camera shall be directed at the witness. The attorney or self-represented party may not assist the witness with answers in any way, including but not limited to, gestures, notes, or facial expressions, or otherwise impact or influence the witness' testimony "off camera."

MISCELLANEOUS

- **Mediations** and required **meetings of counsel** (or of the parties), including the meeting in advance of the pre-trial conference, may be conducted telephonically or by videoconference. This temporary procedure supersedes any contrary provision in any order of referral to mediation or pre-trial order, and no motion or order permitting the telephonic or videoconference appearance is required.
- **Court reporters** shall not be permitted in the courtroom or hearing room. If any party wishes to have a court reporter transcribe the hearing, the party must make arrangements to have the court reporter attend the proceeding telephonically or by videoconference.
- 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. 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 or has signed an order that the matter has been fully resolved.
- 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.

INFORMATION NOT COVERED: If any matters concerning the conduct of the hearing procedures of the division are not covered herein, counsel is free to contact the Court by email at 35orange@ninthcircuit.org. The Court appreciates counsels' efforts to understand and comply with this Court's procedures.

Effective: February 15, 2021