

# STATE OF FLORIDA

Ninth Judicial Circuit of Florida

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## DIVISION 35 PROCEDURES

The following Procedures<sup>1</sup> are hereby adopted for those practicing in the Circuit Civil Division 35 in Orange County, Florida before Judge Margaret H. Schreiber.

Please periodically review the Procedures for updates as circumstances change.

*REVISED AND EFFECTIVE March 15, 2023*

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<sup>1</sup> These Procedures are minimum standards. All counsel are also presumed to be familiar with and are expected to abide by the *Rules Regulating The Florida Bar*, and the *Guidelines for Professional Conduct* promulgated by the Trial Lawyers Section of The Florida Bar and adopted by the Conference of Circuit Judges. Copies of each of these documents may be obtained from The Florida Bar and/or are available on-line on its website <http://www.floridabar.org>. In addition, counsel must be aware of the *Ninth Judicial Circuit Courtroom Decorum Policy* promulgated on February 11, 2003 and Amended September 2014. (See <http://www.ninthcircuit.org>).

## TABLE OF CONTENTS

<b>A. HEARINGS</b>	<b>3</b>
1. Setting of Hearings.	3
2. Temporary Procedures for Telephonic and Videoconference Appearance.	4
3. Cooperation of Counsel in Setting of Hearings.	6
4. Emergency and Time-Sensitive Hearings.	7
5. <i>Ex Parte</i> /Short Matters.	7
6. Foreclosure Cases.	8
7. Discovery Motions.	8
8. Motions in Limine.	9
9. Hearing Notebooks, Exhibits, Legal Memoranda, and Citations.	10
10. Limitation on Hearings.	11
11. Orders and Rulings of the Court.	11
12. Default Final Judgments.	12
13. Hearings on Motions for Rehearing, Reconsideration or New Trial.	13
<b>B. SETTING TRIALS, CASE MANAGEMENT CONFERENCES, AND PRE-TRIAL CONFERENCES</b>	<b>13</b>
1. Notice for Trial.	13
2. Case Management Conferences / Complex Litigation.	14
3. Uniform Order.	14
4. Motions to Continue.	16
5. Pre-Trial Conferences.	16
<b>C. SETTLEMENT OR RESOLUTION</b>	<b>17</b>
<b>D. TRIALS</b>	<b>17</b>
1. Courtroom Etiquette and Decorum; Location.	17
2. Cell Phones, Communication Devices, and Cameras.	17
3. Trial Briefs.	18
4. <i>Voir Dire</i> .	18
5. Opening and Closing.	18
6. Exhibits.	19
7. Demonstrative Aids.	19
8. Objections.	19
9. Jurors.	19
10. Experts.	19

## 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 35 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 (a) appearing during *ex parte*/short matters to explain the need or (b) submitting a letter to the Judge explaining the need for the time. The letter may be submitted by email to [35orange@ninthcircuit.org](mailto:35orange@ninthcircuit.org).
  - (ii) Coordinate the date with opposing counsel and any *pro se* parties.
  - (iii) Contact the Judicial Assistant by email at [35orange@ninthcircuit.org](mailto:35orange@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 or by videoconference) and date of the parties' "meet and confer" in accordance with Administrative Order 2012-03-01. An exchange of emails or letters is not sufficient.
    - (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. A form Meet and Confer Certification may be found on the Division 35 website.
- c. For evidentiary hearings, the hearing request must indicate that an evidentiary hearing is being requested, and the notice of hearing must expressly be titled “Notice of Evidentiary Hearing.” The following additional procedures apply:
  - (i) 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, or to notice the hearing as an evidentiary hearing, 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 may 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. 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 for any proceeding shall be made by motion filed in advance of the proceeding. Any such motion requesting accommodation shall also be

contemporaneously emailed to 35orange@ninthcircuit.org.  
~~35orange@ninthcircuit.org.~~

- b. 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. All notices of hearing shall indicate that one or more parties will attend by videoconference and must include the following Webex information:

**Join by videoconference:**

<https://ninthcircuit.webex.com/meet/division35>

**Join by telephone (through Webex only):** (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: 2344 322 8983 #

**Videoconference/Teleconference Notes:**

- *You will be entering a virtual "room" with other participants.*
- *Please mute your device until your case is called.*
- *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 or shortly thereafter.*

- c. Notwithstanding the language in the Uniform Trial Order, all pre-trial conferences will continue to occur via Webex videoconference unless the Court enters an order directing the conference to occur in person. Counsel and *pro se* litigants shall deliver a copy of the pre-trial statement to Judge Schreiber's chambers as required in the Uniform Trial Order; counsel and *pro se* litigants shall deliver or email a completed and signed pre-trial Checklist to 35orange@ninthcircuit.org  
~~35orange@ninthcircuit.org~~ no later than 48 hours prior to the start of the pre-trial conference.
- d. Counsel and any *pro se* litigants may attend *ex parte*/short matters by videoconference or telephone (through Webex) 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 (both through Webex) is acceptable.
- 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.

- f. Evidentiary proceedings, including non-jury trials, will typically be held in person. They may, however, be conducted by videoconference in whole or for particular witnesses **by filing a motion and obtaining a prior court order** approving the appearance by videoconference. **Without prior court approval, the evidentiary proceeding shall 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 [35orange@ninthcircuit.org](mailto:35orange@ninthcircuit.org) ~~35orange@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 no later than five (5) business days before the start of the hearing, along with a list of each of the exhibits 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, and the following will apply:
  - (i) The title of the motion shall contain the word “Emergency” and 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 [35orange@ninthcircuit.org](mailto:35orange@ninthcircuit.org) before a hearing will be set. The email must be sent marked “high importance” and the word “Emergency” shall appear in the subject line. 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.

- 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 [35orange@ninthcircuit.org](mailto:35orange@ninthcircuit.org) ~~35orange@ninthcircuit.org~~ at least forty-eight (48) business hours 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 Division 35 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 [35orange@ninthcircuit.org](mailto:35orange@ninthcircuit.org). ~~35orange@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 fees, costs, sanctions, or waiver of objections) is requested, a hearing on the motion must be scheduled.
- f. As provided in Rule 1.380(a)(4), Florida Rules of Civil Procedure, the Court shall award expenses which may include attorneys' fees if you prevail on a motion to compel. Please review the *2021 Florida Handbook on Civil Discovery Practice*, a copy of which can be found on the Court's website.
- g. For compulsory medical examinations, read and follow the Guidelines for Counsel Regarding Compulsory Medical Examinations found on the Court's website.
- h. All hearings related to discovery or trial matters must be **filed and heard prior to the pre-trial conference**.

**8. Motions in Limine.**

- a. Before setting any motion in limine for hearing, counsel must meet and confer by phone, videoconference, or in-person 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; not to (i) reargue matters appropriately resolved on summary judgment, (ii) argue omnibus motions, (iii) argue general questions of law not tied to the case, or (iv) argue matters not in genuine dispute.

**9. Hearing Notebooks, Exhibits, Legal Memoranda, and Citations (collectively “Materials”)**

- a. All Materials that a party intends to rely on at a hearing must be filed at least five (5) business days before the hearing. Materials submitted electronically or on a thumb drive must be “electronically bookmarked.”
- b. The following materials shall be submitted via email or thumb drive at least five (5) business days before the scheduled 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 electronically bookmarked and electronically submitted via email to [35orange@ninthcircuit.org](mailto:35orange@ninthcircuit.org), ~~35orange@ninthcircuit.org~~, unless the Court requests a paper submission. Voluminous submissions should be timely 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 (in the Court’s discretion) 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. Joint stipulations to extend the discovery cut-off or the motions cut-off dates set forth in the Uniform Trial Order are subject to summary denial, in the Court's discretion.
- c. 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 [35orange@ninthcircuit.org](mailto:35orange@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 as to the form of order. The “Agreed” designation shall not be used when opposing counsel or the opposing *pro se* party 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) (or Movant, as appropriate) 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) (or Movant) 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.

**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 a 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 a 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 [35orange@ninthcircuit.org](mailto:35orange@ninthcircuit.org) for review by the Court.
- b. The Court will either (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 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. **THE COURT EXPECTS**

**STRICT COMPLIANCE WITH THE UNIFORM ORDER ABSENT A TIMELY MOTION AND ORDER OF COURT MODIFYING THE CONDITIONS THEREIN.** Joint stipulations to extend times set forth therein will not be enforced in the event of a dispute between the parties: the Court will enforce the Uniform Order.

- 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. *Rolle v. Gary A. Birken, M.D.*, 994 So. 2d 1129 (Fla. 3<sup>rd</sup> DCA 2008).
- 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 / Complex Litigation.**

- a. Any party may request a Case Management Conference.
  - i. Case Management Conferences for the sole purpose of selecting a trial date may be set for ex parte hearing upon notice and without written request.
  - ii. Case Management Conferences requiring ten minutes or longer shall be specially set by submitting a request via email to [35orange@ninthcircuit.org](mailto:35orange@ninthcircuit.org), [35orange@ninthcircuit.org](mailto:35orange@ninthcircuit.org) —describing the case management issues the parties seek to have addressed. 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 be completed before the Case Management Conference, such as a conferral and the filing of a case management report.
- b. 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.
- 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. Uniform Order.**

- a. *A Uniform Order Setting Case for Trial; Pre-Trial Conference and Requiring Pre-trial Matters to be Completed (Uniform Order)* 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.

- B. The Court will presume that each attorney and each party is familiar with the requirements of that order(s). THE COURT EXPECTS STRICT COMPLIANCE WITH THE ORDER ABSENT A TIMELY MOTION AND ORDER OF COURT MODIFYING THE CONDITIONS THEREIN. **JOINT STIPULATIONS TO EXTEND TIMES SET FORTH THEREIN ARE TYPICALLY NOT PERMITTED. PLEASE REVIEW THE PRE-TRIAL ORDER.**
- c. **Mediation:** Mediation **MUST BE COMPLETED** substantially prior to pre-trial. The Plaintiff is charged with timely submitting the mediation order. The parties must make certain that the mediator files a final report with the Court.
- d. **Witnesses, Exhibits and Experts:** The pre-trial order requires disclosure of witnesses, exhibits and experts with specificity in a timely manner. Exhibits must be (I) presented for review, (II) initialed by opposing party, and (III) annotation of objections noted lest said objections be deemed waived. Retained experts must be disclosed and must be made available for discovery by the retaining party without the necessity of a subpoena for the retained expert. Opinions rendered at trial will be limited to those disclosed to opposing counsel in either a written report prior to the depositions or in response to deposition or written discovery questions prior to the close of discovery, subject to certain limitations.
- e. **Joint Meeting of Counsel:** Plaintiff is charged with arranging a meeting of all counsel at least ten (10) days prior to pre-trial. **Attendance is mandatory by the attorneys who will actually be trying the case.**
- f. **Joint Pretrial Statement:** Following the joint meeting, Plaintiff is charged with preparing the joint pre-trial statement. If disagreements exist among the attorneys, the statement must set forth all versions.

#### 4. 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 the parties are in agreement will not support the granting of a continuance.
- b. Except in emergency circumstances, the Court will typically not grant motions to continue 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.

#### 5. Pre-Trial Conferences.

- a. Pre-trial conferences will be utilized to set the order of the trial docket<sup>2</sup> 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. There is no entitlement to a language interpreter for litigants in civil court. Accordingly, no language interpreters will be provided. *Caveat – Under the ADA, Court Administration will provide a sign language interpreter for civil matters. Please contact Court Administration no later than five (5) business days in advance of the hearing (30 days prior to a trial) to arrange accommodation for hearing or voice impairment. See Administrative Order 07-97-32-04.*
- c. Motions, including motions to continue, will generally **not** be heard during the pre-trial conference.
- d. Pursuant to both the Uniform Trial Order and most Case Management Orders, discovery closes the day prior to the pre-trial conference. **Parties should be ready to try their cases by the time of the pre-trial conference.**
- e. Parties shall bring to the pre-trial conference a completed and signed copy of the Pre-Trial Check List and Order Controlling Trial which is available on the division website. For virtual pre-trial conferences, the Pre-Trial Checklist **shall** be delivered or emailed to [35orange@ninthcircuit.org](mailto:35orange@ninthcircuit.org) no later than 48 hours prior to the pre-trial conference.
- f. 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 prior leave of Court.

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<sup>2</sup> While the Court will attempt to provide a specific date for trial, all cases are presumed to be ready on the first day of the trial docket and are subject to advancement on the docket to an earlier date (within that trial period) than given at pretrial.

## **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 of voluntary dismissal, an order of dismissal based on a joint stipulation for stipulation, or a final judgment as to all parties and claims is required.

## **D. TRIALS**

### **1. Courtroom Etiquette and Decorum; Location**

- a. Counsel are referred to and must be familiar with the (1) Oath of Admission to the Florida Bar, (2) The Florida Bar Creed of Professionalism, (3) The Florida Bar Ideals and Goals of Professionalism, (4) the Rules Regulating The Florida Bar, and (5) the decisions of the Florida Supreme Court. See for reference *In Re: Code for Resolving Professionalism Complaints*, SC13-688 (June 6, 2013).
- b. The [Amended Ninth Judicial Circuit Courtroom Decorum Policy](#) is incorporated herein in its entirety. The Policy can also be found on the Division 35 website.
- c. All trials will take place in Courtroom 19 B unless otherwise indicated. Counsel and *pro se* parties shall check with the judicial assistant the day prior to the trial to confirm the location. All counsel and parties shall be in the courtroom and ready for trial no later than 9:00 a.m. The Court will start at 9:00 or as soon thereafter as able given other docket matters.

### **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. Pertinent sections of case authority shall be highlighted.

**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.
- d. 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:

*Prospective jurors are examined on their voir dire for the purpose of ascertaining if they are qualified to serve, and it is not proper to propound hypothetical questions purporting to embody testimony that is intended to be submitted, covering all or any aspects of the case, for the purpose of ascertaining from the juror how he will vote on such a state of testimony. Such questions are improper, regardless of whether or not they correctly epitomize the testimony intended to be introduced.*

*Dicks v. State*, 93 So. 137, 137 (Fla. 1922).

- e. 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 (excluding presentations to be

used during closing argument) 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 prior to the day of trial 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.

**9. Jurors.**

The Court will generally allow jurors to take notes and to ask questions. See Section 40.50, *Florida Statutes*. If any party objects to these procedures, the objection should be addressed prior to the day of trial.

**10. Experts.**

- a. The Court will not accept or qualify a witness as an expert in front of the jury. Challenges to an expert’s qualifications and the expert’s ability to testify must be addressed prior to the start of the trial period and therefore outside of the presence

of the jury. Experts shall be cautioned by counsel who calls the expert of the effect of *'in limine'* rulings, as well as the effect of the Rule of Sequestration.

- b. If any issues or motions arise as to the expert's qualifications, opinions or ability to testify, those matters must be addressed well in advance of the pre-trial conference. Hearing time is limited: failure to have filed and heard challenges as to experts and their opinions in a timely manner may result in the challenge not being addressed, the trial continued, sanctions being imposed or other action by the Court.