

**Orange County
Guardianship/Mental Health Division 02
Judge Heather L Higbee**

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Courtroom 1

***** As guardianship/mental health cases are confidential, you will not see
an On-line Docket for this division. *****

In Order to assist counsel, the litigants and the Court, the following guidelines¹, procedures, practices and expectations are hereby adopted for Guardianship/Mental Health Division 02 in Orange County, Florida, when practicing before Judge Higbee.² **These procedures have been separated into sections to help counsel and litigants efficiently find information.**

SECTION ONE – Is the hearing Virtual or In-Person?

Hearings are conducted both in-person and remotely. Specific matters require in-person appearance, and others, the Court will permit the hearing to be conducted virtually. Please refer to the breakdown below of types of hearings that are permitted to be set virtually and those that require in-person appearance:

Permitted Virtual Hearings: Telephone hearings are not permitted. The parties must appear virtually, through the Webex link, and turn on their cameras so that the Court can identify the speaker.

1. Short matters (**matters that are uncontested and 10 minutes or less**, such as requests to approve minor settlement, requests to withdraw, petitions to sell property, petitions to authorize funds, etc). These matters may also be set during

¹The above standards, procedures, practices and guidelines are minimum standards. All counsel are 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> for Attorneys/Information/Rules & Policies/Courtroom Decorum Policy) as well as the local administrative rules.

²This Court is held to the additional standards set forth in *Code of Judicial Conduct* and the *Principles of Professionalism for Judges*.

regular hearing time, if available.

2. Uncontested petitions to appoint guardian/determine incapacity.
3. Request for DNR orders, with medical testimony from the treating physician.
4. Annual review hearings under Florida Statutes 393.11(8)(b), unless a trial is required.
5. Uncontested petitions for appointment of emergency temporary guardian.
6. Petitions for medical intervention, if uncontested, and require medical testimony.
7. Uncontested suggestion/restoration of capacity.
8. Petitions for Pooled Trust.
9. Virtual testimony is permitted for Doctors in most cases, absent a valid objection.

***** IF YOU ARE UNSURE IF YOUR PETITION IS A MATTER THAT CAN BE SET VIRTUALLY, PLEASE EMAIL 2ORANGE@NINTHCIRCUIT.ORG. *****

Hearings where in-person appearance is required:

1. Compliance hearings for Risk Protection Orders.
2. Return hearings for Adult Protective Services (appearance of the AIP may be excused).
3. TB cases (the affected patient is excused).
4. Return hearings for Injunction for Protection Against Exploitation of a Vulnerable Adult.
5. Petitions for Habeas Corpus.
6. Orders to Show Cause or Rules to Show Cause hearings.
7. Case management hearings, unless otherwise indicated when scheduled.
8. Petitions for Attorney or Guardian fees.
9. Petitions for medical intervention that are contested.

10. Petitions for Appointment of Guardian/Determination of Incapacity or Appointment of Emergency Temporary Guardian if contested or involve lengthy testimony.
11. Contested suggestions/restoration of capacity.
12. Trial or evidentiary hearings (anything that is contested, involves testimony or argument from counsel).

***** IF YOU ARE UNSURE IF YOUR PETITION IS A MATTER THAT MUST BE HELD IN PERSON, PLEASE EMAIL 2ORANGE@NINTHCIRCUIT.ORG. *****

SECTION TWO – Instructions For Setting Hearings

1. SETTING OF HEARINGS (not including short matters):

Until the Court's new calendaring system is running, all available hearing time is listed on the circuit's JACS Calendaring System (JACS) in real-time. If JACS does not accommodate your request, or you require more hearing time than available, email the Judicial Assistant at 2Orange@ninthcircuit.org, as afternoons are reserved for lengthy/special set/emergency hearings. When the calendaring system changes new procedures will be posted.

- Click on [Judicial Automated Calendaring System \(ninthcircuit.org\)](http://www.ninthcircuit.org) or Go to the court website at <http://www.ninthcircuit.org>. Click the "Services" link or click on the box that says JACS. Click on the Judicial Automated Calendaring System (JACS) link.
- Select the calendar for Probate Division 02 and hit "Retrieve." For requests exceeding 15 minutes, please combine consecutive timeslots.
- Any hearing requests for longer than one (1) hour must be approved by Judge Higbee, either by appearing during short matters or by email request to the J.A., detailing the reasons for the excessive time. The request may be emailed to 2Orange@ninthcircuit.org. After review, you will receive a response to the request.
- Hearings that are 10 minutes or less and non-evidentiary should be heard at short matters. (See section 1 for video/in person appearance hearings.)

Coordinate the date and time with opposing counsel/pro se party. Hearings times must be cleared with opposing counsel and/or pro se parties. Because others are also coordinating hearing time, you should coordinate up to 3 alternate times in case the time requested is booked. Hearings that are not coordinated will not be allowed to proceed.

After completing the first two steps, you may contact the Judicial Assistant by e-mail at 2Orange@ninthcircuit.org, **copying opposing counsel/pro se litigants**,

for the hearing to be added to the docket. The emailed 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 if applicable)
- Title of the motion(s) to be heard
- Amount of time being requested for the hearing
- Virtual or In Person

Your hearing time is not confirmed until you receive a reply from the Judicial Assistant. If set in person, the courtroom location must be included or if set virtually, the video hearing information **must** be included in the Notice of Hearing. Hearing time is assigned on a first come, first serve basis.

2. **SETTING OF SHORT MATTERS HEARINGS:**

Short Matters are uncontested hearings held on Tuesdays and Thursdays from 9:00a.m. - 9:30 a.m. Blocked dates are listed on JACS. Short matters may be in-person or via video. (See video appearance link instructions below under setting of virtual hearings and refer to Section One, number 1 of permitted virtual hearings for types for short matters.) The Court will not hear contested or evidentiary hearings at short matters.

Because of the confidential nature of many proceedings in guardianships, these short matters hearings **are** scheduled with the Judicial Assistant so the Court can admit those parties that are not attorneys into the hearing. All short matters hearings must be coordinated with opposing counsel on a date that Judge Higbee is available. A list of dates that the Court is unavailable for short matters is located in the instruction header for the division on JACS. The Court does not arrange for coverage by other judges on dates that the Court is unavailable. Any hearings scheduled on a posted unavailability date will not be heard and will need to be rescheduled.

The attorney noticing the hearing must provide, at least, three (3) days notice of the hearing to all parties, including pro se litigants.

Courtesy Copies Required: An electronic courtesy copy of the motion, notice of hearing (with the video link information or court/hearing room location), and proposed order (must be provided to the Judge at least 3 business days before the hearing. **Failure to do so shall result in the hearing not being held.** Courtesy copies in .pdf or Word of the motion and **the proposed order in Word only**, may be provided by email to 2Orange@ninthcircuit.org. The body of the email shall include the case number, style and date/time of the hearing. Courtesy copies

should not be sent any sooner than 10 days prior to the hearing. **If a party is not on the service list for e-filing, it is the attorney's responsibility to include language in the certificate of service of submitted orders that the attorney will send a copy of the entered Order(s) to the party via U.S. Mail and then shall file a certificate of service afterwards in the court file. The Court does not mail copies of Orders to parties.**

3. **SETTING LONGER HEARINGS:**

As set forth under number 2 above (in this section), all hearings will be scheduled with the Judicial Assistant, whether they are in-person appearance or a virtual appearance. Longer hearings are those that are 15 minutes or more, include either virtual or in-person appearance, involve attorney argument or testimony, or are evidentiary. Notices of hearing must be provided to all parties, at least three (3) days prior to the hearing. All steps, under "Courtesy Copies Required" section above, must be followed, along with the following additional requirement: copies provided by email should be sent in .pdf or Word, (not in a zip folder or share folder as they are moved to a queue for the Judge to review, and the zip folder or share folder format cannot be moved properly). Courtesy copies over 50 pages should be provided electronically on a flash drive or email. Cases should be highlighted. Counsel must insure that the electronic copy is indexed and that the index contains a hyper-link to the document/exhibit/case indexed. The body of the email shall include the case number, style and date/time of the hearing. Courtesy copies shall not be sent any sooner than 10 days prior to the hearing. Failure to provide courtesy copies may result in the hearing being cancelled. **The Judge prefers electronic copies.**

4. **INSTRUCTIONS FOR VIRTUAL APPEARANCE:**

Video Conference Instructions: Five minutes before the hearing, all participants should connect to the video conference. At the time the case is called, the judge will connect to the video conference.

Judge Higbee's video link: The following link will be used for all Guardianship Ex-Parte/Short Matters, and any other virtual Guardianship hearing:

<https://ninthcircuit.webex.com/meet/ctjuhh1>

Because many hearings are confidential by statute, telephonic appearance is very limited and permission is required for any party to appear via conference call. You must give the reason for a teleconference appearance when requesting hearing time. **Your hearing will not be scheduled as a teleconference hearing UNTIL permission has been granted.**

Video Conference Note:

- *You will be entering a virtual waiting room before the hearing. The judge will admit you to the hearing when the hearing begins.*

It is the responsibility of the attorneys to provide the link to the necessary parties. All parties must have their name clearly displayed to be allowed into the hearing. If it is a call in, the attorney must be able to identify the number for the Court.

5. **MISCELLANEOUS:**

Please do not cross-notice motions without prior approval of opposing counsel and the Judicial Assistant. Only the party setting the hearing may cancel the hearing. The party cancelling the hearing **must** email the Judicial Assistant to notify the Court of the cancelled hearing. The party cancelling the hearing must also file a Notice of Cancellation and email a copy of the notice of cancellation to the Judicial Assistant (filing the Notice of Cancellation with the Clerk is not sufficient as the Clerk does not notify the Court). If the hearing is cancelled less than four (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.

6. **EMERGENCY HEARINGS:**

If an emergency 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 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 email to the Court.

7. **COOPERATION OF COUNSEL TO COORDINATE HEARINGS:**

Good faith cooperation is expected both from counsel, their support staff and pro se litigants. If after three (3) attempts on separate days, to coordinate a hearing, opposing counsel does not cooperate or respond, the requesting party may unilaterally set a hearing giving at least two (2) 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.

SECTION THREE: Helpful Division Information

1. **ORDERS AND RULINGS:**

This division receives numerous of orders per week, and they are addressed as rapidly as possible in date order received. It is requested that you do not contact the Judicial Assistant to follow up on submitted orders unless 14 days have elapsed, OR your submitted order was time-sensitive. If time-sensitive, at the time

it was submitted, your communication to the Court should indicate this.

If counsel is asked to prepare an order, the order should be drafted and circulated within three (3) working days and must be submitted to the Court within seven (7) days of the hearing, with a copy to opposing counsel. 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). **Do not simply title the document Order. Counsel must advise the Court of any objection to, or agreement on, the form of the proposed order when the order is submitted.**

Submitting Orders to Chambers:

Proposed agreed orders should be emailed to 2Orange@ninthcircuit.org in **Word format**. Along with the proposed order, an e-filed cover letter indicating opposing counsel agrees to the content and form of the order must be included. 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.

If there are parties not receiving service through the Florida Courts e-filing Portal, the proposed order should state in the certificate of service that counsel will serve a copy of the order via U.S. mail to the non-e-filing parties and file a certificate of service in the court file no later than three days from the date of the order.

Other useful information about Orders:

The Court does not hold orders waiting for approval or objection. Please do not send proposed Orders to the Court until you have approval as to the form by opposing counsel.

E-filed cover letter: All proposed orders must be accompanied by an e-filed cover letter (the cover letter must have the filing stamp across the top) and must indicate that opposing counsel has reviewed and approved the form of the order when submitting to the Court for review. The cover letter (but not the proposed order) must be e-filed by the attorney with the Clerk.

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

Orders are processed as the Judge has time out of court. If the Judge is out of the office, the Order(s) will be processed upon her return in the order they were received. Additionally, there may be a delay if the JA is out of the office. If you want to know if a specific Order has been signed by the Judge, you should first check your e-service email as the Order may have been e-served. If not received by e-service, then check the Clerk’s system to see if it has been docketed before contacting the Judicial Assistant, as she may not be able to track the signing of a specific Order due to the high volume of Orders received by the Court.

If the Judge rejects an Order and directs the setting of a hearing or a change to the order, the proposed order will be deleted and will need to be resubmitted upon resolution of the issue.

2. **WITHDRAWAL OF COUNSEL:**

If you do not have signed consent of the client, Motions to Withdraw as counsel should be set for hearing (not during short matters) with notice to all parties. 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. The body of the proposed order and certificate of service must include the name, address, telephone number and e-mail address of the client to whom the pleadings will be sent. If the client is a guardian, allow no more than 30 days to obtain substitute counsel. The case will be stayed for 30 days while the guardian obtains counsel.

3. **MOTIONS FOR ATTORNEYS FEES:**

There must be either a filed written consent of the guardian, or proper service of notice to the appropriate parties.

4. **MOTIONS FOR GUARDIAN FEES:**

The approved rate without further Court permission for ORANGE COUNTY ONLY is \$70.00 per hour effective for work done after December 12, 2022.

5. **MOTIONS FOR REHEARING, RECONSIDERATION OR NEW TRIAL:**

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

6. **EVIDENTIARY HEARING/NON-JURY TRIAL PROCEDURES:**

a. **Preparing Evidence:**

After the substantive, good faith telephone conference and **no later than five (5) business days before the hearing**, the parties are to 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 either drop off or bring two (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.

b. **Preparing Witnesses:**

1. If your case involves witness testimony, and the witness cannot appear in person, or it would be hardship for in person appearance, you must file a notification of the issue and file the appropriate motion to request Court permission for virtual appearance. This notice must be provided to all counsel of record and counsel be given sufficient time to object. Failure to provide notice will result in a denial of the virtual appearance. If a witness is appearing

virtually, 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. Failure to object to a virtual appearance in a timely fashion waives the objection.

2. In the event the rule of sequestration is invoked, the witnesses will be instructed to leave the hearing/courtroom and counsel or self-represented party will be responsible for contacting the witness when it is time for their testimony.

3. The witness shall be instructed not to look or refer to any other document or device during his or her testimony.

4. Counsel and/or self-represented party is responsible for providing these instructions to any witnesses and ensuring their compliance.

7. **INFORMATION NOT COVERED:**

If any matters concerning the conduct of the hearing procedures of Orange Guardianship/Mental Health Division 09 are not covered herein, counsel is free to contact the Court by email at 2Orange@ninthcircuit.org. A status hearing can be set during short matters at which time the Court will attempt to answer any inquiries. The Court appreciates counsels' efforts to understand and comply with this Court's procedures.

January 4, 2024