

EFFECTIVE 7/1/2024

**Orange County
Guardianship/Mental Health Division 02
Judge Heather L. Higbee
GUARDIANSHIP PRACTICE AND PROCEDURES
(including Risk Protection Orders and Injunctions)**

Judicial Assistant: Julie Salcedo

Email: 2orange@ninthcircuit.org

**Address: 2000 E Michigan St., Orlando, Florida 32806
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 Higbee². **These procedures have been separated into sections to help counsel and litigants efficiently find information.**

**SECTION ONE
(Most Common Topics)**

1. Notice of Hearing:

- a. The Notice must indicate whether the hearing is evidentiary or non-evidentiary. If the Notice does not indicate the hearing is evidentiary, the Court will not permit testimony without consent of all parties noticed.
- b. The Notice of Hearing must not only list the matter(s) to be addressed but must also include the date of the filed motion/petition.
- c. A courtesy copy of the Notice of Hearing must also be provided to the Judicial Assistant as provided in these procedures. Failure to provide a timely courtesy copy of the notice of hearing to the Judicial Assistant may result in the case not being included on the Judge's docket and may result in the case not being addressed.

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*.

- d. The *Notice of Hearing* must include the Ninth Judicial Circuit ADA notice even if the hearing is noticed as virtual.
 - e. The *Notice of Hearing* must also provide the link to this Court's Practice and Procedures.
 - f. The *Notice* must include the hearing date, time, location, the topic of the hearing, the name of the Judge, how long the hearing will take, and, if the hearing is virtual, the video link.
 - g. All video hearings are done through a WEBEX link. Please double check your notice to make sure the link is correct when you complete your Notice.
 - h. **The *Notice of Hearing* must be sent and filed at least three (3) days prior to the hearing and must be sent to all parties, including pro se litigants.** As stated elsewhere in these procedures, failure to file your *Notice of Hearing* timely will result in the Court cancelling your hearing.
 - i. Please remember that Judge Higbee's Courtroom is at the Thomas Kirk Justice Center which is located at 2000 East Michigan Street, Orlando, Florida. **Judge Higbee is not located at the downtown courthouse.**
2. **Evidentiary hearings:** These procedures include specific requirements for evidence exchange, bates stamping, and pre-hearing filing(s). If a party or parties require a case management or pre-trial conference to set deadlines for discovery cut-off and witness exchanges, the parties may either submit an agreed upon order or set the matter for a hearing for the Court to issue a case management order. (See **Section Four** for more details on extensive evidentiary hearings/trials)
3. **Virtual or In Person or Hybrid**
- a. All three hearings are permitted.
 - b. In person hearings or trials before the Judge are always at the Courthouse located at 2000 E. Michigan Street, Orlando, FL 32806.
 - c. Evidentiary hearings, when in person or hybrid, are conducted in Courtroom 1. (Note: Any matters noticed before the magistrate are typically noticed for the main courthouse downtown).
4. **Appointment of Guardians.** The failure of the Petitioner to make sure the background check of a proposed, non-professional guardian, has been completed and filed with the Court by 9am the day of the hearing will result in the denial of the *Petition* unless the hearing has previously been cancelled by the Petitioner.
5. **Contact with Judicial Assistant**
- a. We like an electronic "paper trail." As such, scheduling hearings with the JA is to be by email at 2orange@ninthcircuit.org. We of course remain available for questions should you wish to call our office.
 - b. Filings are with the clerk. Please do not email the JA attachments that are not already filed with the clerk, other than proposed editable orders.

- c. If you do not have the physical ability to e-mail due to a disability, contact the ADA Coordinator at 407-836-2303 to arrange for accommodations.
 - d. If you cannot connect virtually to a virtual hearing, please contact the JA first either by email or phone call, however if you are not able to reach the JA, you can contact the clerk through their call center at 407-836-2057. As virtual hearings are indeed—virtual—we will not be staffed for an in-person appearance and the Courtroom will be closed and locked.
6. **Orders:** Editable proposed orders may be provided to the Judicial Assistant (and to opposing counsel/party if there is one) 24 hours prior to the hearing. The Judge might not use the order and may direct you to prepare a new order; however, a proposed order should still be timely filed and exchanged. This way if no changes are needed the Judge can issue the order at the time of hearing.
7. **Relief from the Practice and Procedures:** Any party desiring to get relief from any of these practice and procedures may set the matter for short matters, as provided in these practice and procedures.

SECTION TWO

Is the hearing Virtual or In-Person?

As stated above, hearings are conducted in-person, virtually, and using hybrid combinations. 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: The parties must appear virtually, through the court's WEBEX link, and turn on their cameras so that the Court can identify and view the speaker. **Telephone hearings are not permitted**

1. Short matters (*matters that are uncontested and 10 minutes or less*, such as requests to withdraw, petitions to sell property, petitions to authorize funds, etc).
2. Uncontested Petitions to appoint guardian/determine incapacity and for Emergency Temporary Guardians
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 suggestion/restoration of capacity.
6. Petitions for Pooled Trust.
7. Virtual testimony is permitted for medical professionals and examining committee members in most cases, absent a valid objection.

VIRTUAL APPEARANCES:

1. Please do a “test run” if a party/participant is unfamiliar with the WEBEX process.
2. The Court expects that those appearing virtually will be in a quiet, private space consistent with the professional nature of a Court proceeding.
3. The connection must be consistent, with the party/participant prepared to address the Court on time, with their full name clearly displayed.
4. Late entries into the virtual courtroom are at the sole discretion of the Judge.
5. No unidentified participants will be allowed into the virtual courtroom.
6. Remember that while the Court can take judicial notice of a filing, physical evidence cannot be introduced at a virtual hearing.
7. If you or your client are uncomfortable with a virtual hearing in any way, feel free to use one of our live hearing slots.
8. At least five minutes before the hearing, all participants should connect to the video conference.
9. The Court’s WEBEX video link will be provided to you upon request. It is the responsibility of the attorneys to provide the link to the necessary parties. Unidentified individuals or those identified only by a phone number **will not be admitted**. It is also the attorneys’ responsibility to review these guidelines for virtual hearings with their clients and/or witnesses to ensure compliance.
10. If you cannot connect virtually to a virtual hearing and have not been able to reach the JA via email, you can contact the clerk through their call center at 407-836-2057 and ask the clerk to relay the message

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

LIVE APPEARANCES

Hearings where in-person appearance is required, unless the Court has authorized otherwise:

1. Compliance hearings and final 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. Evidentiary Hearings on Petitions for Attorney or Guardian fees. (Prior to Setting the evidentiary hearing counsel must set the matter for short matters. At the short matter hearing the Court will case manage the matter and an *Order Preliminary to*

Fees will be entered.) **Do not set an evidentiary hearing on attorney fees without advising the Court for entry of the *Order Preliminary to Attorney Fee Hearing*.**

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.

SECTION THREE: Instructions for Setting Hearings

1. **JACS SYSTEM:** 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 certain time slots are reserved for lengthy/special set/emergency hearings and will NOT appear on the JACS system as an available date/time. When the calendaring system changes new procedures will be posted.
 - A. 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.
 - B. Select the calendar for Probate Division 02 and hit "Retrieve." For requests exceeding one timeslot, please combine consecutive timeslots.
 - C. Any hearing requests for longer than ninety (90) minutes 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. Again, **slots for extensive hearings, and trials DO NOT appear on the JACS system as Court permission is required**. Please ask for approval **first** so that we can assist you with a time and date that works for all parties.
 - D. Hearings that are 10 minutes or less and non-evidentiary may be heard at short matters opposing counsel/pro se party.
 - E. 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.

2. **EMAIL:** After completing the steps above, 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 self-represented if applicable)
- Title of the petition(s)/motion(s) to be heard
- Evidentiary or Non-Evidentiary
- 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. Hearing time is assigned on a first come, first serve basis.

3. **SETTING OF SHORT MATTERS HEARINGS:** Short Matters for uncontested guardianship related hearings are held on Mondays and Thursdays from 9:00a.m. - 9:30 a.m. Blocked dates are listed on JACS. Short matters are held virtually unless a live hearing is specifically requested. Because of the confidential nature of many proceedings in guardianships, these short matters hearings **are** scheduled with the Judicial Assistant just like any other hearing.
4. **NOTICING A HEARING:** Every hearing requires a *Notice*. A *Notice of Hearing* must be prepared by the moving party or attorney noticing all hearings. Instructions on how to prepare a *Notice* are under Section 1.
5. **CANCELLATIONS:** 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. **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 must be noted on the *Notice of Hearing*.

SECTION FOUR:
Specific Topics and Helpful Division Information

1. CONTESTED FEES (Attorney or Guardian): Prior to Setting the evidentiary hearing counsel must set the matter for a virtual short matters hearing. At the short matter hearing the Court will case manage the matter an issue an Order Preliminary to Fee Hearing.

2. REQUESTS FOR SALE OF REAL PROPERTY

- a. All Petitions involving a request to sell or encumber real property must include in the Petition a statement that the Ward is or is not a veteran. If the Petition does not affirmatively state that the Ward is not a veteran than the Court will apply the statutes as if the Ward is a veteran.
- b. All Petitions involving a request to sell or encumber real property must include a copy of the most recent title showing the Ward's interest in the property **as well as** a print-out from the Orange County Property Appraiser's website located at: <https://ocpaweb.ocpafl.org/advancedsearch> showing the current property card for the property.
- c. All Petitions to sell must include independent proof of the value of the property. If the ward is not a veteran, a Zillow print out may be sufficient, other times market comparables will be required.
- d. All Petitions to sell must include the names of all next of kin and whether or not the next of kin have been contacted, and if so, their position.
- e. Hearings for non-veterans are typically not required so long as the sale value of the property is market value **and** the next of kin has consented in writing or the Petition indicates there is no next of kin.
- f. Any hearings involving the sale of property must include a notice to any known next of kin.

3. REQUESTS FOR DNR ORDERS:

- a. If the guardian is a professional guardian:
 - i. The Petition must comply with Fla. Stat. 744.4431.
 - ii. The Petition must be served as required by Fla. Stat. 744.4431(4).
 - iii. A courtesy copy of the Petition must be filed with the JA
 - iv. The Court will hold a full evidentiary hearing if required by Fla. Stat. 744.4431 subsection (5) and (6)
- b. If the guardian is not a professional guardian:
 - i. A courtesy copy of the Petition must be filed with the JA along with the legal authority showing that now that former Fla. Stat. 744.441(2) has been deleted, whether or not a non-professional guardian can file the request.
 - ii. The Petition must comply with Fla. Stat. 744.4431.

- iii. The Petition must be served as required by Fla. Stat. 744.4431(4).
 - iv. After receipt of the courtesy copy of the Petition by the JA, the Court will determine if a hearing must be held within 72 hours.
4. **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. Remember, just because it is titled an emergency does not mean that the Clerk of Court will notify the Court; the Court will only know an emergency exists if you advise the Court directly.
5. **COURT APPROVAL OF MINOR SETTLEMENTS:** A request for approval of a minor settlement in the probate division may require the establishment of a guardianship. See *Berges v. Infinity Ins., Co.*, 896 So.2d 665 (Fla. 2004). As the civil rules differ, per the 9th Circuit Administrative Order 07-93-43-02, the civil division judge may approve a minor settlement without the necessity of a guardianship. Thus, if counsel elects to proceed in the probate division a guardianship shall be required prior to the court approving a settlement if the net amount to the Ward is over \$15,000. If you have questions regarding this process, set your matter for a short matter virtual hearing to see how your particular case fits with the statutory scheme.
6. **ORDERS AND RULINGS:**
- a. This division receives numerous orders per week, and they are addressed as rapidly as possible in date order received. It is suggested 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.
 - b. 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.**

- c. 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, a red-lined proposed Order in Word shall be submitted by email to the Court for consideration within the seven (7) days. All parties must be copied on all email submissions and the areas of disagreement should be clearly delineated.

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 physically mail copies of Orders to parties.

Other useful information about Orders:

The Court does not hold orders waiting for approval or objection in contested matters. Please do not send proposed Orders to the Court until you have approval as to the form by opposing counsel or you follow the process detailed above.

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 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.

7. WITHDRAWAL OF COUNSEL:

If you do not have signed consent of the client, Motions to Withdraw as counsel should be set for hearing 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. Absent an objection or previously scheduled hearing, the case will be stayed for 30 days while the guardian obtains counsel.

8. **UNCONTESTED MOTIONS FOR ATTORNEY FEES:**

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

9. **UNCONTESTED MOTIONS FOR GUARDIAN FEES:**

The approved rate without further Court permission for ORANGE COUNTY ONLY is \$70.00 or less per hour effective for work done after December 12, 2022. ***All motions for guardian fees must include a statement by counsel that counsel has reviewed the motion and attachment and certifies that the guardian is not seeking reimbursement for noncore, delegable tasks that are better performed by others, such as clerical and secretarial work, at the same rate as for guardianship activities.*** See *In re Guardianship of Shell*, 978 So. 2d 885, 889 (Fla. 2d DCA 2008).

10. **MOTIONS FOR DISCHARGE:**

These motions must comply with Rule 5.680 of the Florida Probate Rules and for guardianship of property, there must be proof of service and the passage of the statutory amount of time or a waiver(s) in the file prior to the Court considering the discharge.

11. **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.

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

a. **Preparing Evidence:**

After a substantive, good faith telephone/live 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.

Courtesy copies of materials **you agree** that the Court may review prior to the hearing should be forwarded to the Court no later than five (5) business days prior to the hearing. Courtesy copies over 50 pages should be hand delivered

on a flash drive. Case citations should be searchable. Counsel must ensure that the electronic copy is indexed and that the index contains a hyper-link to the document/exhibit/case indexed.

13. INFORMATION NOT COVERED:

If any matters concerning the conduct of the hearing procedures of Orange Guardianship/Mental Health Division 02 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.

Effective 7/1/2024