

Orange County Probate Division 02 Judge Heather L Higbee

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Courtroom 1**

Email communication is the most effective way to communicate with the Judicial Assistant. Emails can be accessed remotely by the Judicial Assistant, and emails greatly reduce misunderstandings and miscommunications that sometimes occur on phone conversations. Additionally, emails reduce improper ex-parte communications with the court.

***** As guardianship/mental health cases are mixed on the docket and 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 adopted for Probate Division 02 in Orange County, Florida when practicing before Judge Higbee.² However, prior to the guidelines, please find a list of common mistakes that interfere with the orderly process of the case.

The following are the most common mistakes that delay paperwork:

1. Documents that are not properly verified.
2. Failure to explain why the nominated personal representative is not the instant Petitioner seeking to be personal representative (if the nominated person pre-deceased the successor, then state so in the petition. If the nominated person divorced, say so in the Petition.)
3. In intestate cases, where the father has died and the child(ren) were born out of wedlock, the failure of the Petition or other documents in the court file demonstrating paternity.

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*.

4. Failure to properly complete and file the appropriate checklists.
5. Failure to explain the factual basis to establish property is exempt property.
6. Failure to include out-of-state statutory authority to establish a foreign will is self-executing.
7. Failure of the property description in the homestead petition, and proposed order to match the original petition and inventory. For example, the petition lists the physical address and then the homestead petition or proposed order only uses legal description and no additional reference to physical address. (The Court is not permitted to conduct its own investigation online to determine if an address listed on the petition matches the legal description on the proposed order.)
8. In Summary Administration proceedings, the failure of the correct people to either sign the Petition, or join in, or consent to the proposed distribution.
9. In Summary Administration proceedings, the proposed order may include property that is exempt; but only after a finding that the property is exempt.
10. In Summary Administration proceedings, if there is a valid will, the will must be admitted prior to the Court granting Summary Administration or the Order Granting Summary Administration must include a line where the will is admitted.

The following are the most common mistakes that prevent productive hearings:

1. Failure of the Notice of Hearing to include language that the hearing is an evidentiary hearing.
2. Failure to coordinate the hearing.
3. Failure to provide a courtesy copy of the Notice of Hearing to the Judicial Assistant for all matters including short matters and ex parte hearings.
4. Failure to comply with meet and confer requirements.
5. Failure of the moving party to bring an electronic or paper version of a proposed order to the hearing.

ROUTINE PLEADINGS IN PROBATE CASES:

Routine petitions and proposed orders must be sent to the Court, via email, for the Court to review and sign in chambers. These include, but are not limited to, the following:

- Petition to Appoint Personal Representative and Letters of Administration
- Order to Admit Will (original and ancillary) including the admission of authenticated copies of foreign wills
- Orders to Appoint Commissioners and Issue Commissions
- Preliminary Order to Inventory Safety Deposit Box
- Petition to Determine Homestead (uncontested)
- Petition to Determine Exempt Property (uncontested)

- Disposition of Personal Property without Administration
- Petitions to Sell Real Estate
- Petition for Opening Subsequent Administration
- Establishment and Probate of Lost or Destroyed Will (uncontested)
- Order of Summary Administration
- Order of Discharge
- Any agreed or uncontested Petitions or Motions that are non-evidentiary and any other Petition or Motion that does not require giving notice to interested parties pursuant to the requirements of due process

Attorneys must submit the Petition or Motion, together with an appropriate cover letter (see below) and a proposed Order in Word format (see below) and any required checklist (see below), to 2orange@ninthcircuit.org.

Please note that the Clerk of Court is charged with auditing Homestead, Summary Administration, and Discharge orders before the Court reviews them. Additionally, the Clerk of the Court performs this function for all routine pro se filings. This may cause a delay and should be taken into account when submitting orders. Once audited, the Court will read and consider your matter and enter the proposed order or will issue further instructions on how to proceed if there is an issue.

SUBMITTING ORDERS TO CHAMBERS:

Proposed agreed and unopposed orders should be emailed to 2orange@ninthcircuit.org. Orders must be in Word.doc format only (not rtf, pdf or any other version), as the Court can only upload a Word.doc document for electronic signature.

- Please ensure the correct case number and decedent's name are on the order, as well as in the subject line of the email.
- Along with the proposed order, an e-filed cover letter must be attached to the email. Please include any appropriate information in the cover letter that will assist that court in understanding why the order is ready for entry.
- Be sure that documents necessary to review the submission, including motion, can be viewed on the Clerk's system before submitting.
- A copy of the required e-filed checklist, which includes the e-filing information across the top, must be attached to your email, along with your e-filed cover letter and proposed orders in Word. Please be sure you are using the most current version of the checklist, which may be found on the Court's Probate page at <https://ninthcircuit.org/divisions/probate-court>.

- 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 must state 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 entry the order.
- Please allow at least 14 days before following up on submissions.

EMERGENCY CONSIDERATION:

If you have a matter that you believe needs emergency consideration by the Judge, please email the 2orange email address above, to alert the Court that there is a Petition or Motion for emergency consideration. A telephone call may not be received if the Judicial Assistant is unavailable by phone.

EX-PARTE/SHORT MATTERS HEARINGS:

Ex-Parte/Short Matters are held each Monday and Thursday at 9 am. Blocked dates are listed on JACS.

During Ex-Parte/Short Matters time, the Court will hear:

- Ex-parte hearings, defined as uncontested matters not listed as routine pleadings above
- Short matters defined as contested hearings requiring no evidence and that can be concluded in 10 minutes or less

Important Information Regarding Short Matter Hearings:

☐ Short matters hearings are to be confirmed by the Judicial Assistant. A courtesy copy of the motion, notice of hearing with the video link and reason for the necessity of the hearing, and proposed order must be provided to the Judicial Assistant, via email, at least seven (7) business days before the hearing. Failure to do so may result in the hearing not being held. Courtesy copies of the Notice of Hearing, Petition/Motion being addressed in .pdf or Word, and the proposed order in Word.doc format, must be provided by email to 2orange@ninthcircuit.org. The subject line of the email must include the case number, style, and date/time of the hearing. Courtesy copies should not be sent any sooner than seven (7) days prior to the hearing.

☐ The Judge does prepare for these hearings in advance. If a courtesy copy is not received, the Judge may not go forward with the hearing.

☐ Orders pertaining to the routine pleadings listed above are to be submitted electronically for consideration and may not be set at Ex-Parte/Short Matters without the Court's permission.

☐ A list of dates, that the Court is unavailable for Short Matters, is located in the instructions found at the top on JACS. (Select the calendar for Probate Division 02, select "Retrieve.") Any hearings scheduled and not confirmed by the judicial assistant will not be heard and will need to be rescheduled by counsel.

☐ The Party noticing the hearing must provide notice of the hearing to all parties, including self-represented litigants.

SETTING OF CONTESTED HEARINGS, OTHER THAN SHORT MATTERS:

All available hearing time is listed on the Judicial Automated Calendaring System ("JACS") in real-time.

- Click on Judicial Automated Calendaring System ([ninthcircuit.org](http://www.ninthcircuit.org)) or go to the court website at <http://www.ninthcircuit.org>. Select "Services" link or select the box that says JACS. Select Judicial Automated Calendaring System (JACS) link. Select the calendar for Probate Division 02 and hit "Retrieve." All instructions for scheduling in Division 02 and available hearing times will be displayed. For requests exceeding 15 minutes, please combine consecutive timeslots.
- Any hearing requests for longer than one (1) hour must be approved by Judge Higbee, by email to the 2Orange email, detailing the reasons for the excessive time. After the Court reviews your request, you will receive a response.
- Coordinate the date and time with opposing counsel/self-represented party, as required by the Ninth Circuit's Administration Meet-and-Confer Order. Hearing times must be cleared with opposing counsel and/or self-represented parties. Be aware other attorneys are also coordinating hearing time, so you should coordinate up to three (3) alternate times, in case the time you request is booked.

Email 2orange@ninthcircuit.org, copying opposing counsel/self-represented litigants for the hearing to be added to the docket. The hearing request must include:

- 1-Date and time being requested for the hearing
- 2-Case number and style of the case
- 3-Names of the attorneys (or self-represented if applicable)

- 4-Title of the petition(s)/motion(s) to be heard
- 5-Amount of time requested for the hearing
- 6-Evidentiary or Non-Evidentiary
- 7-Virtual or In Person

If any of the above information is not included in your email, the Judicial Assistant will email you back to inquire, which may result in your hearing time being taken by another case, so please be sure to include all information in order to assist in getting your requested hearing time.

Your hearing time is not confirmed until you receive a reply from the Judicial Assistant. If set in person, the courtroom or hearing room location must be included in the Notice of Hearing. If set virtually, the video hearing information **must** be included in the Notice of Hearing. Hearing time is assigned on a first-come, first-served basis. Please include the filing date of each motion to be heard on your Notice of Hearing. Your notice of hearing shall be filed within three (3) business days of the Judicial Assistant confirming your hearing time.

VIRTUAL APPEARANCE 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 Probate Ex-Parte/Short Matters, and any other virtual probate hearing:

Microsoft Teams meeting

Join on your computer or mobile app

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

Counsel must be prepared at the time of the hearing to:

- Be fully familiar with the estate case.
- Assist the Court in a review of the matters necessary, to determine that the requested order is legally ready for entry.
- Answer the Court's questions regarding the estate.

CHECKLISTS:

A checklist must be filed with the following:

- Opening a Formal Administration
- Closing a Formal Administration
- Filing a Summary Administration
- Filing a Petition for Determining Homestead Status of Real Property in Formal and Summary Administration cases

The forms for the checklists are established in Administrative Order 2021-09-04, effective on August 1, 2021, and can be found here: <https://ninthcircuit.org/divisions/probate-court>. All checklists were revised on July 25, 2022. Please only use the most recent version. The applicable checklist must be fully completed, or it will not be considered.

ORDERS AND RULINGS:

1. If counsel is asked to prepare an order, without opposing counsel or parties, the order must be submitted to the court within three (3) working days of the hearing. If counsel, are asked to prepare an order, where there are opposing counsel or other parties, 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 or to the other parties. Failure to object within seven (7) days is deemed approval of the order.
2. All Orders must describe, in the caption, the subject and ruling of the Court, (i.e. "Order Granting Motion to Strike Claim of Creditor Truist Bank.")
3. If there are any objections to the order counsel may submit either competing orders or a red-lined copy clearly noted the objection and basis.
4. 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, if applicable, has reviewed and approved the form of the order, or that there is no opposing counsel, when submitting to the court for review. The cover letter must be e-filed, by the attorney, with the Clerk, and is required on all cases to document in the court file why the order was received by the Court.
5. 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, if applicable.

ORDERS ON MOTIONS TO WITHDRAW:

On motions to withdraw as counsel, please make sure that your order is in compliance with the Rules of Administration and that **the last known address, phone number and email address are in the order**. The Court highly recommends that if there is an upcoming hearing on any matter that the motion and order include that information so there is no confusion on the part of the litigants. If formal administration, the proposed order must clearly state, **in bold**, that the PR has 30 days to obtain new counsel, or the case will be dismissed. If the client is a corporation or other legal entity, allow no more than 30 days to obtain substitute counsel.

REQUESTS FOR AMENDED ORDERS:

If an error is made on an order, and an amended order is needed to correct a scrivener's error, please send a cover letter, with a copy to the court file, specifically indicating what needs to be corrected so there is documentation in the court file why the amended order is being signed. Please do not use the same cover letter as when the order was originally submitted.

HEARINGS AND NON-JURY TRIALS:

All evidentiary hearings must be noticed as such and are in person hearings. Any request for a remote appearance must be approved by the Court at an evidentiary hearing must be approved by the Court prior to the hearing.

Contested hearings, involving only argument of counsel (no evidence being introduced), may be conducted either virtually or in person.

All non-jury trials are in person.

PROCEDURES FOR HEARINGS:

Notice of Hearing: You must include, in the Notice of Hearing: (1) the exact title of each matter, the date the motion was received by the Clerk of the Court, and the name of the party that filed the motion. (For example, Personal Representative's Motion to Strike filed on March 1, 2023); and (2) whether or not the hearing is evidentiary or not. Failure to indicate the hearing is evidentiary means the hearing is not evidentiary subject to consent by the other party. If the party filing a notice of hearing indicates the hearing is non-evidentiary, the other party can file, within 24 hours or receipt of the original notice, a notice of intent to produce evidence to make the matter evidentiary on both sides.

Courtesy Copies Required: Please only send electronic copies, via email. Please do NOT send a hard copy, unless directed otherwise by the Court. In addition to filing the Notice of Hearing with the Clerk of Court, a copy of the Notice of Hearing, motion(s), supporting memoranda and/or case law to be heard, **must be received**, via email at 2Orange@ninthcircuit.org, at least five (5), but no more than ten (10) business days prior to the hearing, to ensure an opportunity for the court to review. 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 other formats cannot be moved properly. Counsel must insure that the electronic copy is indexed and that the index contains a hyper-link to the document/exhibit/case indexed. The subject line of the email must include the case number, style and date/time of the hearing. Failure to provide courtesy copies to all parties may result in the hearing being cancelled.

MISCELLANEOUS INFORMATION:

CROSS-NOTICING:

You may cross-notice a matter, with the opposing parties consent, with the understanding that the Court will address what was originally noticed first and will address what has been cross-noticed, only if time permits. If there is not sufficient time for the cross-noticed matter to be heard, counsel must go through the normal scheduling procedure to schedule it with the Judicial Assistant.

CANCELLATIONS:

Only the party setting the hearing may cancel the hearing. The party cancelling the hearing must file a Notice of Cancellation and email a copy of the notice of cancellation to 2orange@ninthcircuit.org (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 must appear or have someone appear on counsel's behalf to so inform the Judge.

EVIDENTIARY HEARING/NON-JURY TRIAL PROCEDURES:

1. PREPARING EVIDENCE

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

not noted are waived. If a party fails to comply with the five (5) day requirement, the other party may file a notice of non-compliance, and if the party that failed to timely comply fails to comply within 12 hours of the notice of non-compliance, the non-complying party shall not be permitted to call the non-timely disclosed witnesses or present the non-timely disclosed evidence.

b. 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). An electronic copy must also be sent to 2Orange@ninthcircuit.org, with the case number, and date and time of the hearing appearing in the subject line. The hard copy being introduced must be brought to the hearing itself.

MOTIONS FOR REHEARING, RECONSIDERATION OR NEW TRIAL:

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

FOR ANY INFORMATION NOT COVERED ABOVE:

If any matters concerning the conduct of the procedures of Orange Probate Division 09 are not covered herein, counsel is free to contact the Court by email at 2Orange@ninthcircuit.org. In addition, a status hearing can be set during short matters at which time the Court will attempt to answer any questions.

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