

STATE OF FLORIDA
Ninth Judicial Circuit of Florida

Chad K. Alvaro
Circuit Judge

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DIVISION 39 PROCEDURES

The following Guidelines are hereby adopted for those practicing in the Circuit Civil Division 39 in Orange County, Florida before Judge Chad K. Alvaro.

REVISED AND EFFECTIVE April 2024.

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A. HEARINGS

1. Setting of Hearings.

- a. Regular (*i.e.*, non-Ex Parte and Short Matters hearing time) hearing time may be obtained by using the aiCalendar system: <https://aicalendar.ocnjcc.net/Calendar/Orange/1520>. Detailed instructions regarding the setting of hearings appear on the aiCalendar page linked above and here.
- b. Prior to scheduling a hearing, the motion(s) must be filed and visible on the docket. True Ex Parte motions (*e.g.*, motions for injunctive relief without notice, motions in execution on a judgment) still must be filed and visible on the docket to be acted on by the Court.
- c. All counsel must comply with Admin. Order 2012-03's mandatory "meet and confer" requirements before securing hearing time.¹
- d. Matters requiring more than fifteen (15) minutes should request consecutive available time slots for the total duration of time needed. Matters requiring one (1) hour or more are to be scheduled in the afternoon.
- e. To secure hearing time, coordinate with opposing counsel, then email 39orange@ninthcircuit.org with the following in the body of the email:

Case No.

Full Case Style

Motion(s) to be heard

Date/Time Coordinated

Amount of time requested

Remote or In-person appearance

Date "meet & confer" completed

If your request is missing any of the above information, it will not be confirmed. Regularly set hearings must be confirmed by the JA before parties may file a notice of hearing. Hearings set by notice of hearing but not confirmed with the JA will not be heard.

- f. Hearing materials shall be emailed to chambers not less than three (3) days prior to the hearing. Hard copies and external drives are discouraged absent necessity.
- g. For evidentiary hearings, the hearing request must indicate that an evidentiary hearing is being requested, and the notice of hearing must expressly state that the hearing will be evidentiary (*e.g.*, "Notice of Evidentiary Hearing"). The following additional procedures apply:

¹ Administrative Order 2012-03 at <https://ninthcircuit.org/resources/admin-orders> .

- (i) If any party believes that an evidentiary hearing is required, 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 amongst counsel.
 - (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 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.
- h. 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. Videoconference Appearance.

- a. Videoconference appearances at hearings will be permitted as set forth in this Section.
- b. At the time of coordinating the hearing, any party wishing to appear by videoconference must indicate that appearance by videoconference is desired. The hearing notice must expressly state that the hearing will be by videoconference and contain the log-in information set forth in this Section. However, “hybrid” videoconference hearings where one party is in-person, and one party is remote, are not permitted absent leave of Court.
- c. Pretrial conferences may be in-person or by videoconference at the option of the parties; however, “hybrid” pretrial conferences where one party is in-person, and one party is remote, are not permitted absent leave of Court.
- d. Non-evidentiary videoconference hearings are conducted via Zoom. For all videoconference hearings, the notice of hearing shall contain the following information:

<https://us06web.zoom.us/j/9534919222>

Join by phone: 305-224-1968

Meeting ID: 953 491 9222

- e. Videoconference appearances are not permitted for evidentiary hearings or trials without motion, order, and a hearing to consider logistical issues. 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 and readily available 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 for use by the Clerk of Court. The exhibits shall be tagged and marked as required by Section D.7. 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 39orange@ninthcircuit.org (copied to all counsel) as separate files, or if the exhibits are voluminous, delivered to Chambers on an external drive with separate files for each exhibit. The electronic copies shall be provided not later than three (3) business days before the start of the hearing, along with a list of each of the exhibits as marked for identification.
- f. Telephonic appearances are discouraged given widespread availability of videoconferencing technology.

3. Cooperation of Counsel/Unilateral 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. Motions to compel coordination of a hearing are not permitted given the availability of unilateral setting of hearings under the foregoing circumstances.

4. Emergency Hearings and Time Sensitive Hearings.

- a. Counsel may contact the Judicial Assistant for an emergency hearing where the circumstances warrant it, and the following will apply:
 - (i) 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" wherein counsel of record 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 both professional and personal so as to accommodate

the parties.

- (iii) The motion must be emailed to 39orange@ninthcircuit.org before a hearing will be set. 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.

5. Ex Parte and Short Matters.

- a. Ex Parte and Short Matters hearings are held Monday through Thursday at 8:30 a.m.
- b. Ex Parte and Short Matters hearings are for uncontested matters that can be heard in five (5) minutes or less, or contested matters than can be heard in ten (10) minutes or less. If it is apparent the matter set for hearing does not comport with the time constraints of Ex Parte and Short Matters hearings, the Court will decline to hear the matter so as to ensure that regularly-scheduled hearings and jury trials are not delayed.
- c. Matters to be heard at Ex Parte and 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 and 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. If appearing by videoconference, counsel are encouraged to be present in the Ex Parte and Short Matters videoconference space promptly at 8:30 a.m. or earlier. If no matters remain pending at 9:00 a.m., Ex Parte and Short Matters will conclude.
- e. Case Management Conferences may be heard at Ex Parte and Short Matters without a formal request for a Case Management Conference, but to enable the Court to be prepared to address the particular case management issue, the parties must describe the case management issue and their respective positions in either the notice of hearing or a separately filed case management report. In the latter event, the report must be emailed to 39orange@ninthcircuit.org no later than three (3) days prior to the date of the hearing.
- f. A list of dates on which the Court is unavailable for Ex Parte and Short Matters hearings is located at <https://aicalendar.ocnjcc.net/Calendar/Orange/1520>
- g. Motions to be heard, along with the notice of hearing and any hearing materials, must be emailed to 39orange@ninthcircuit.org no later than three (3) days prior to the date of the hearing.

6. Foreclosure Cases.

- a. Most foreclosure hearings can be scheduled for Ex Parte and Short Matters. Longer hearings should be set in accordance with the procedures set forth in Section A.1.

- b. The Court enters final summary judgments of foreclosure and cancels original notes contemporaneously at the hearing. Therefore, in advance of the hearing of a motion for summary judgment, Plaintiff's counsel shall file the original note and mortgage with the Clerk. Additionally, Plaintiff's counsel shall contact the Clerk in advance of the hearing to request the Clerk to retrieve the original note and mortgage so that the original note is available for cancellation at the time of the hearing in the event the motion is granted. Failure to do so will result in a delay of entry of the final summary judgment and consequently a delay in the conduct of any foreclosure sale.
- c. Agreed upon motions to cancel foreclosure sales do not require a hearing and may be considered in chambers with a proposed order. However, all proposed orders canceling a foreclosure sale must also include a new date for sale, even if a borrower is in loan modification. The Court will entertain further sale cancellations as appropriate.
- d. Not later than three (3) days prior to the commencement of a non-jury foreclosure trial, the parties shall complete and file an Attorney Worksheet for Foreclosure Trial, the form for which is available on the [Division 39 webpage](#).

7. Discovery Motions.

- a. Discovery motions (motions to compel, motions for protective order, 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.
- b. An application to a court for an order "must be by motion." Fla. R. Civ. P. 1.100(b); *see also* Fla. R. Civ. P. 1.351(d) ("...the party desiring production may file a motion with the court seeking a ruling on the objection..."). Accordingly, noticing "objections" to discovery without an accompanying motion is prohibited.
- c. Discovery motions shall include with the motion or as an attachment, the specific discovery request and the specific objection thereto, along with argument regarding same.
- d. Any motions filed but not set for hearing within a reasonable time will be considered abandoned.
- e. All such motions must comply with the Florida Rules of Civil Procedure including, but not limited to, a certification of a good faith attempt to resolve that matter without court action. *See* Fla. R. Civ. P. 1.380(a)(2) and Admin. R. 2012-03.
- f. The filing of a motion for protective order, without attempting to set it for immediate hearing, is insufficient to protect from any discovery requested.
- g. The Court will make itself available for telephonic hearings on ore tenus motions and objections made during the course of depositions so that depositions do not need to be terminated prior to their conclusions in order to obtain rulings.

8. Motions in Limine ("MIL").

- a. Form omnibus motions in limine requiring the parties to simply comply with well-established law and the rules of professional conduct are disfavored and may be summarily denied without prejudice to a timely trial objection.
- b. Before setting any MIL for hearing, counsel must meet either and confer on each and every requested Motion in Limine. See Admin Order 2012-03.
- c. Subsequent to the meeting referred to above, counsel filing the MIL shall prepare and file a stipulation indicating in writing which of the items in the MIL is agreed to by the opposing party and signed by the opposing party.
- d. Counsel filing the MIL shall submit to the Court a written memorandum of law, with supporting case law, (1) identifying each item in the MIL that has not been agreed to by opposing counsel at the meet and confer, and (2) setting forth any arguments and case law in support of the disputed items in the MIL.
- e. Opposing counsel will have five (5) business days to file a written response if they wish.
- f. No additional case law will be considered that has not been set forth in the previously submitted memoranda or responses unless that case law was decided subsequent to the submittal of the memoranda or responses.
- g. Any MIL not timely filed and timely set for hearing will be considered denied without prejudice to a timely trial objection.
- h. The party filing the MIL will prepare the proposed order after any contested hearing reflecting the Court's rulings.
- i. All rulings on MIL are non-final orders subject to modification during trial as evidence is presented. *See* Fla. Stat. § 90.104.
- j. MIL may not be scheduled for a hearing unless they contain a certification of a good faith attempt as to each item to resolve the matter without court action. Notices of hearing on MIL must specifically identify the specific issues which remain in controversy after counsel has conferred.
- k. All of the foregoing is designed to avoid the parties taking valuable hearing time only to stipulate at the hearing to the majority of the items for which rulings in limine have been sought. Hearing time on MIL is reserved for truly disputed evidentiary rulings.

9. Hearing Materials, Exhibits, Legal Memoranda.

- a. Hearing materials must be submitted electronically via email to 39orange@ninthcircuit.org.
- b. Hearing materials must be provided to the Court at least three (3) business days before the hearing.
- c. 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.

- d. Case law and memoranda provided to the Court for the first time during the hearing may not be considered.
- e. Exhibits for evidentiary proceedings, including non-jury trials, must be submitted in both hard copy and electronic format.
- f. 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 hearings 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. No motions 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 by email to 39orange@ninthcircuit.org. The email submitting a proposed order must be copied to all parties to the case, and should specifically indicate whether the form and/or content of the order is agreed or not.
- 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) setting forth the date of the hearing, 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. Proposed orders and cover letters submitted electronically to 39orange@ninthcircuit.org must be in Word format. The Word file name must: (a) include the case number [*e.g.*, 20**-CA-*****], (b) abbreviated case style [*e.g.*, Doe v. Jones], and (c) whether the file is a “Proposed Order” or “Cover Letter”.
- d. 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)(1). If “agreed orders” are provided, the title must indicate the substance of the order in addition to the indication that it is an “agreed order.”
- 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. If there are parties not receiving service through the Florida Courts e-Filing Portal, the proposed order must contain the following language: “Counsel for Movant(s) 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.”

12. Hearings on Motions for Rehearing, Reconsideration, or New Trial.

- a. Upon the filing of a motion for rehearing, reconsideration, or new trial, the party filing the motion must email a copy of the motion to 39orange@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 counsel, or (iii) direct the Judicial Assistant to contact the moving counsel to schedule a hearing. No party may set a motion for rehearing, reconsideration, or a new trial for hearing 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 OF TRIALS

1. Setting Cases for Trial.

- a. A case is set for trial when a party files a notice for trial that complies with Fla. R. Civ. P. 1.440. Plaintiffs are required under the terms of the form case management orders to notice a case for trial within ten (10) days of the date of the case being at issue.
- b. The Court will issue a Trial Order in every case when setting the trial and pretrial conference pursuant to Fla. R. Civ. P. 1.440. 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 case for pretrial and trial.
- c. 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 to determine a potential alternate trial date. 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. Continuances of Trials.

- a. Motions for continuance of a trial will not be considered unless accompanied by a written consent signed by the client or unless the motion specifically states good cause as to why such a consent could not be obtained.
- b. Any motion for continuance must specifically set forth good cause justifying the continuance. If additional discovery is required, the motion should specifically describe the incomplete discovery that forms the basis for the requested continuance. Generalized statements that more time is needed, or mere agreement of the parties, will not support the granting of a continuance.
- c. Motions to continue should be set during Ex Parte and Short Matters before the date of the pretrial conference. The Court may not entertain a motion for continuance at the pretrial conference if there was sufficient opportunity to bring the case before the Court before the date of the pretrial conference.

3. Pretrial Conferences.

- a. Pretrials will be utilized to set the order of the trial docket, and to discuss witness problems, the size of the venire, audiovisual equipment needs, need for interpreters, time allotment for voir dire, opening and closing, responsibility for obtaining the court reporter, and other trial related issues.
- b. Motions will generally not be heard at the pretrial conference.
- c. Pursuant to both the Trial Order and most case management orders, discovery closes the day prior to the pretrial conference. Parties should be ready to try their cases by the time of the pretrial conference.
- d. Prior to the pretrial conference, parties shall email to 39orange@ninthcircuit.org a completed and signed Pretrial Check List and Order Controlling Trial. Blank forms are available on the [Division 39 webpage](#).
- e. Attendance at the pretrial conference by the attorneys who will try the case (lead trial counsel) is mandatory. Substituted appearance by counsel other than trial counsel at the pretrial conference is not permitted absent leave of Court for good cause shown.

C. SETTLEMENT OR RESOLUTION

1. Notice of Settlement.

- a. Plaintiff's counsel has the duty to immediately notify the Court of the settlement of any matter on the trial docket. Filing a notice of settlement does not, in and of itself, remove the case from a trial docket or excuse counsel from appearance at trial call.
- b. Parties having filed a notice of settlement of a case set for trial are only relieved from personal appearance at trial call upon: (1) providing to chambers a file-stamped copy of a joint stipulation for dismissal or voluntary dismissal prior to the first day of trial; or, (2) submitting a proposed Order Setting Status Hearing Regarding Settlement setting the case for a status hearing at 8:30 a.m. on any of the following dates: June 14, 2024; November 22, 2024; and, January 10, 2025. Absent either of the foregoing, failure to appear at trial call, even where a notice of settlement has been filed, may result in entry of an order to show cause directed towards the non-appearing party or parties.

D. TRIALS

1. Location.

- a. Trials will take place in Courtroom 18-B unless otherwise indicated. Attorneys should check with the Judicial Assistant the day before the trial to confirm the actual courtroom that will be used.
- b. Counsel and their clients are to be in the courtroom and ready for trial no later than 9:00 a.m. Depending on the number of Ex Parte and Short Matters hearings, trial will

commence at 9:00 a.m. or as soon thereafter as possible.

2. Courtroom Decorum.

- a. The [Ninth Judicial Circuit Courtroom Decorum Policy](#) is incorporated herein in its entirety.
- b. Water is permitted at counsel's table.

3. Cell Phones, Communication Devices, and Cameras.

- a. Cell phones must be turned off or in the silent mode when in the courtroom. 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.
- c. No photographs or recording, video or otherwise is permitted within the courtroom unless specifically permitted by the Court after formal request is made.

4. Trial Briefs.

- a. If a trial brief is to be filed with the Court it must be submitted via email to 39orange@ninthcircuit.org no later than three (3) business days before the trial is to commence.

5. Voir Dire.

- a. The Court will conduct a preliminary voir dire of the venire regarding qualifications, familiarity with participants in the proceedings, language barrier issues, changes to questionnaire answers, health or medical issues, hardships, and similar matters. 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 venirepersons' personal lives during their inquiries as well as the venirepersons' time constraints.
- c. While the Court will afford counsel significant latitude in questioning, the Court will limit repetitive questions.
- d. Time limits agreed to by the parties during the pretrial will be enforced.

6. Opening Statements and Closing Arguments.

- a. The Court will discuss with counsel the time requirements for both opening and closing at the pretrial 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 statements or closing arguments.

- c. If a Power Point presentation is to be used in opening statements or closing arguments, a hard copy must be filed with the Court to create an appellate record. Any PowerPoint or similar presentation must be provided to opposing counsel a reasonable time before being displayed to the jury to allow an opportunity for objections to be raised and resolved. If a Power Point has not been shown to opposing counsel sufficiently in advance of its intended use to permit objections to be raised and resolved, well-taken objections may result in slides being deleted in real time thereby delaying the progress of the trial.

7. Exhibits.

- a. All exhibits are to be marked for identification by the Clerk with tags provided by the Clerk prior to the day of trial. Exhibits are marked for identification alphabetically ("Ex. A", "Ex. B", "Ex. C", etc.). Once admitted into evidence, they are marked numerically ("Plaintiff's Ex. 1", "Plaintiff's Ex. 2", "Plaintiff's Ex. 3", etc.). Multiple page exhibits should be consecutively numbered by Bates stamp. Counsel should ensure that adequate copies of exhibits are available for the witness, the Court, and opposing parties.
- 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.
- c. No exhibits are to be published to the jury until admitted into evidence and the Court has granted permission to publish.
- d. Audiovisual equipment questions should be addressed to the Ninth Circuit's Technology Support department at <http://ninthcircuit.org/services/technology-support>.

8. Demonstrative Aids.

- a. Any demonstrative aid that is to be used at trial must be marked by the Clerk and exhibited to opposing counsel and the Court prior to the week of trial.
- b. The Court will hear argument of any counsel opposing the use of the demonstrative aids prior to the trial week.

9. Objections.

- a. The Court will not allow speaking objections in front of the jury; only the legal basis for the objection should be stated. The Court will request a response from the non-objecting party only if necessary. If elaboration is necessary the Court will call counsel to the Bench for a Bench Conference outside 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.

10. Jury Instructions.

- a. Joint Proposed Jury Instructions and Verdict Form must be emailed to the Judicial Assistant at 39orange@ninthcircuit.org in Word format no later than the day before the trial. The parties shall designate which instructions are agreed and which instructions, if any, are in dispute.
- b. Jury instructions must include a cover page with the case style and be formatted with 1" margins at the top and bottom, and not less than 1.25" margins at the left and right, in 12-Point New Roman font, single-spaced. The parties' names must be filled in where appropriate. "Notes for Use" must be deleted. Any blanks or bracketed terms contained in the standard jury instructions must be filled in or deleted if inapplicable. Failure to comply with the foregoing results in substantial trial delays.

11. Jury Deliberations.

- a. Counsel are advised that jury deliberations past 8:00 p.m. require the consent of the Chief Judge and such consent is often denied out of consideration for the time of both the jurors and courtroom staff. Counsel are advised to tailor the presentation of their cases to avoid sending jurors into deliberations at the end of the day, particularly on Fridays.

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