

STATE OF FLORIDA
Ninth Judicial Circuit of Florida

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Circuit Judge

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DIVISION 12 PROCEDURES

The following Procedures are hereby adopted for those practicing in the Circuit Criminal Division 12 in Orange County, Florida before Judge Diego M. Madrigal III.

REVISED AND EFFECTIVE January 13, 2024.

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A. HEARINGS AND MOTIONS

1. Setting of Hearings.

- a. Hearings that are not set in open court shall be scheduled by emailing the Judicial Assistant at 12orange@ninthcircuit.org with all counsel¹ copied on the email.
- b. The parties must first coordinate a hearing by going to JACS (<https://apps.ninthcircuit.org/jacsatt/AttDocketFrame.asp>), selecting available times, and agreeing on a time with opposing counsel. Once the time is agreed to, you should seek a hearing confirmation via email from the judicial assistant.
- c. The hearing confirmation request must include:
 - i. **Case number and style**
 - ii. **Title of the motion(s) to be heard and the date the motion was filed**
 - iii. **File-stamped copy of the motion attached**
 - iv. **Amount of time requested for the hearing**
 - v. **Whether the Defendant is in custody**
 - vi. **Any request for virtual attendance**
- d. The movant must file a notice of hearing after the hearing confirmation is received from the Judicial Assistant.
- e. The Court will set bond hearings and plea hearings expected to release the defendant from custody on an expedited basis. If counsel believes in good faith that another motion or matter requires an expedited hearing, the request for an expedited hearing shall be noted in the hearing request to the Judicial Assistant.
- f. Hearings on bond motions, in-custody pleas, and other expedited matters may be set based on the Court's soonest availability without coordination. Counsel shall immediately notify the Court of any conflict or other unavailability to determine whether an alternate hearing date and/or time is available.

2. Bond Hearings.

- a. The Court will set bond hearings on an expedited basis in accordance with Section A(1) above and Administrative Order 2003-39-31.
- b. Although the State's position is sometimes helpful in bond determinations, bond is exclusively within the discretion of the Court. To allow for an expedited hearing, a hearing may be set without the State's position, and the State shall then promptly provide its position on the request to set or reduce bond to Chambers.

¹ References to "attorneys" or "counsel," as used throughout these Procedures, shall be construed to include *pro se* (unrepresented) defendants.

- c. When permitted by law, the Court may decide bond motions on the papers without a hearing if the parties agree that a hearing is not necessary. If neither party is requesting a hearing on a bond motion, defense counsel shall send a proposed order in Word format with the motion to 12orange@ninthcircuit.org.
- d. Generally, a bond hearing must be set in cases with a victim to afford an opportunity to be heard pursuant to Article I, Section 16(b) of the Florida Constitution. If defense counsel requests resolution of a bond motion without a hearing in a case with a victim, the motion or the State's response must (i) provide the victim's position on the request, or (ii) confirm that the victim has indicated that he or she does not wish to be heard on the issue.
- e. On capital offenses, life felonies, or cases punishable by life in prison, the State should indicate to the Court via email if they are pursuing findings pursuant to *Arthur*. The State should also provide the Court with information regarding the length of the hearing and provide any written materials for the Court to review PRIOR to hearing via email or jump drive delivered to chambers.

3. Videoconference Appearance.

- a. Videoconference appearance is permitted at non-evidentiary proceedings without the need for a formal motion or order to the extent allowed by law, provided that the attorney, party, or other participant notifies the Judicial Assistant by email to 12orange@ninthcircuit.org of the remote appearance in advance. For virtual appearance at pretrial conferences, please refer to Section B(2)(b) below.
- b. For evidentiary proceedings, counsel may appear by videoconference only upon filing a motion and obtaining an order allowing the remote appearance.
- c. Testimony by videoconference requires a motion and order in accordance with Florida Rule of Criminal Procedure 3.116(d). Counsel seeking to present remote witness testimony must make arrangements to ensure that an oath can properly be administered under Florida Rule of General Practice and Judicial Administration 2.530(b)(2)(B) and to coordinate a method by which witnesses can review any exhibits that will be addressed during their testimony.
- d. The following access information shall be used for virtual appearances:

Join by video

<https://ninthcircuit.webex.com/join/12orange>

- e. The Ninth Circuit uses a dedicated link for remote appearances in Jimmy Ryce proceedings, which may be obtained by emailing the Judicial Assistant.

4. **Plea Hearings**

- a. Before any plea hearing may be set, an offer must be accepted by the Defendant. Failure to complete a plea because of ongoing negotiations may result in the Court refusing to accept negotiated pleas on that matter going forward.
- b. Absent special permission by the Court, pleas will be set within the trial period. Failure to complete a plea hearing at the scheduled time also may result in the case being set for trial and/or waiver of speedy trial.
- c. Plea forms must be filled out prior to addressing the case in Court, and should be filled out prior to the time for which the plea hearing is set. Inmates generally will not be allowed to execute plea forms in the courtroom, and would be transported downstairs to the holding cell area for that task to be accomplished. On the occasion the Court allows a plea form to be filled out in court, a “jail pen” must be used.
- d. The State is required to provide a scoresheet on all cases and have such printed and signed prior to the calling of a plea.

5. **Discovery Motions.**

- a. Discovery motions, including, but not limited to, motions to compel, to quash, or for protective order, must be set for hearing, submitted with an agreed order, or submitted pursuant to Section A(4)(b) below to bring the matter to the Court’s attention. The mere filing of a discovery motion is insufficient to obtain the requested relief.
- b. If an opposing party has failed to respond to discovery in a timely manner and the failure is facially apparent from the record (*e.g.*, failure to file a written discovery response within the time frame specified in Florida Rule of Criminal Procedure 3.220), counsel may submit the file-stamped motion to compel and a proposed order to Chambers directing a response within 14 days and awarding no other relief. The Court may enter the order without the need for a hearing, may make appropriate modifications to the proposed order (including as to the time frame of the response), or may direct a hearing to be set. If other relief, such a finding of contempt or sanctions, is requested, a hearing on the motion must be scheduled with appropriate notice.

6. Pre-Motion Conferral.

- a. Counsel shall review Section IV(C) of the Uniform Trial Order as well as any Case Management Order for pre-motion or pre-hearing conferral requirements.
- b. The Court expects counsel to comply with their obligation to communicate in a good faith effort to resolve or narrow disputes before the hearing. If counsel needlessly consume hearing time or otherwise delay, frustrate, or obstruct the proceedings by failing to confer in good faith, the Court may cancel the hearing, summarily deny the motion, or impose appropriate sanctions on counsel.

7. Motions to Transfer.

- a. Motions to transfer to another division based on a related case shall be submitted to the Administrative Judge for consideration via email to 19orange@ninthcircuit.org. A proposed order in Word format should accompany the motion to transfer.

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

- a. Upon filing a motion for rehearing, reconsideration, or a new trial, the party filing the motion must immediately email a copy of the motion to 12orange@ninthcircuit.org.
- b. The Court will (i) rule without a hearing, (ii) direct that a written response be filed by opposing parties, or (iii) direct the Judicial Assistant to contact the moving party to schedule a hearing. No party may set a hearing on a motion for rehearing, reconsideration, or a new trial without court order. Any hearing scheduled on a motion for rehearing, reconsideration, or a new trial without an order authorizing the hearing may be summarily cancelled.

B. RECURRING SCHEDULED HEARINGS

1. General Schedule

- a. The division runs on a five (5) week cycle. The first and second week of the cycle are hearing weeks. The remaining three (3) weeks are trial weeks.
- b. Generally speaking, the Tuesday of the first hearing week will be a status day for serious cases and a competency day. The Thursday of the first week will be pretrial conference.
- c. Generally speaking, the Tuesday of the second hearing week will be a probation day. The Thursday will be Trial Case Management day.
- d. Every Tuesday, the Court will hold arraignment at 8:30 AM. Any waivers of arraignment filed less than 48 hours from that time should be provided to the Court via email to ensure a capias is not issued. At the time of arraignment, cases are typically set for a pretrial conference and trial, and a Uniform Trial Order is issued. If

arraignment is waived, the dates will typically be set at the time of the waived arraignment.

- e. In certain circumstances (such as rejection from pretrial diversion/pretrial intervention) or because of an administrative oversight, there may not be dates set. In that situation, the State shall promptly email 12orange@ninthcircuit.org, with defense counsel copied, to raise the need for new dates or shall file a motion requesting new dates.

C. PRETRIAL CONFERENCE.

- a. Pretrial conferences are typically scheduled for an all-day docket. The Court first addresses cases with private defense counsel, regional conflict counsel, and court-appointed attorneys in private practice beginning at 9 AM. A sign in sheet is provided for those attorneys arriving prior to 9 AM to be given priority. The sign in sheet will be picked up at 9, and once the Court calls cases on the list, the Court will proceed to be called in alphabetical order.
- b. The cases of counsel appearing virtually will generally be called after the Court has addressed all counsel who have appeared in person. Thus, those appearing virtually need not do so before 9:45 AM.
- c. Cases with the Public Defender's Office are generally called commencing at 1:30 p.m., and attorneys with the Public Defender's Office are not expected to appear before that time. The time at which Assistant Public Defenders must appear may change based on varying caseloads, in which case the Court will provide notice of the time at which attorneys with the Public Defender's Office are expected to appear.
- d. Attorneys may appear virtually for pretrial conference Attorneys shall use the Webex link in Section A(3) above.
- e. Unless otherwise ordered by the Court, appearance of the defendant at pretrial conference may be waived. In-custody defendants will not be transported for pretrial conference unless transport is specifically requested in advance.
- f. Given the high volume of cases set for pretrial conference, the Court generally cannot address matters that require substantive argument or discussion, address trial-related issues in detail, or take pleas. The purpose of the pretrial conference is primarily to briefly determine whether a continuance is being requested, the case is proceeding to trial case management, a plea hearing or conference is being requested, or other hearing time is needed before trial. Matters requiring more substantive or detailed argument or discussion will generally be deferred to be addressed at another proceeding.
- g. Motions to continue must be made in writing, and forms are available for completion if the continuance is being requested at pretrial conference. Because of the volume of cases set for pretrial conference, the Court greatly appreciates and will promptly rule on motions to continue submitted by noon the day before the pretrial conference. However, Motions to Continue filed less than 48 hours before pre-trial may not be ruled

on prior to the hearing, and parties must attend or arrange coverage. The motion must include the opposing party's position and describe the good cause for the continuance in appropriate detail based on the number of prior continuances. A proposed order in Word format should accompany the motion to continue.

- h. The Court does not generally set victim-less third-degree felonies for Trial Case Management. Attorneys seeking to set those cases should be prepared to set their case directly for trial. Failure to inform the Court of unavailability at the time of setting the trial may result in waiver of good cause for a continuance.
- i. Most cases in which the parties represent to the Court that they are ready for trial are set for Trial Case Management, which generally occurs one week after pre-trial conference.

D. TRIAL CASE MANAGEMENT CONFERENCES.

- a. Trial case management conferences are typically scheduled for an all-day docket. At the pretrial conference, the Court will set a time during the all-day trial case management docket when counsel and the defendant are required to appear.
- b. At trial case management, the Court will colloquy the defendant regarding his or her options (including acceptance or rejection of any plea offer) and will address matters relating to the trial setting and any appropriate pretrial proceedings. This will include the number of jurors needed, interpreter issue, and any other matter dealing with an efficient trial presentation.
- c. Absent a change in circumstances, trial case management is the deadline for the Court to accept negotiated pleas. Counsel are expected to conduct any plea negotiations before trial case management, and the State is expected to bring complete and accurate scoresheets to trial case management. Generally, unless there is a change in circumstances, after Trial Case Management, if the case proceeds, it would proceed to trial, or a plea to the bench.
- d. During trial case management, the Court will take negotiated pleas and may conduct plea conferences requiring a short amount of time.
- e. The defendant and counsel are required to appear in person at trial case management, and the defendant's appearance may not be waived absent court order. Virtual appearance by the defendant or counsel will be permitted only if a motion is filed and an order granting leave is entered in advance.

E. TRIALS

1. Trial Call.

- a. Cases are not special set unless specifically ordered by the Court and will be called as part of a docket at the date and time designated by the Court, generally at Trial Case Management after input of the parties. The Court will attempt, but does not guarantee, that it will alert the parties of what order it plans to call cases in at trial call. Generally, the Court will address cases in the following order: Specially set cases; cases with demands for speedy or notices of expiration; in custody defendants from oldest to newest; and out of custody defendants from oldest to newest.
- b. At trial call, the Court will set a final order of cases to be called for trial. The case selected by the Court will proceed to trial. Other judges may be available to try cases that are not reached by the division judge, and any case set for trial may be called to trial before any available judge during the assigned trial docket. If a particular case is not reached, it may be reset for trial at another time during the assigned docket or may be continued to a future docket, or the parties may be placed on standby for call during the assigned docket.

2. Courtroom Etiquette and Decorum.

- a. The [Ninth Judicial Circuit Courtroom Decorum Policy](#) is incorporated herein in its entirety. All counsel and *pro se* parties must comply with the Policy.

3. Cell Phones, Communication Devices, and Cameras.

- a. Cell phones must be turned off or placed in silent mode when in the courtroom or when attending a hearing by videoconference. If it is necessary to make or take phone calls, please step out of the courtroom.
- b. Witnesses will not be permitted to possess any type of communication device while on the witness stand or while testifying by videoconference except with the permission of the Court.
- c. No photographs or recordings (audio, video, or otherwise) are permitted within the courtroom or while virtually attending a proceeding unless specifically permitted by the Court after a formal request is made.

4. Voir Dire.

- a. The Court will conduct a preliminary voir dire of prospective jurors regarding qualifications, familiarity with participants in the proceedings, language barrier issues, changes to questionnaire answers, health or medical issues, hardships, and similar matters. The Court will also conduct a preliminary voir dire regarding criminal law concepts, which will include the right to remain silent if requested by the defendant.

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. After the Court concludes the preliminary voir dire, the parties will be permitted to question the venire. The parties are reminded to be considerate of the jurors' personal lives during their inquiries as well as the jurors' time constraints.
- c. While the Court will afford counsel latitude in questioning, the Court will limit repetitive questions as well as Counsel repeating questions already asked by the Court. Counsel shall not attempt to explore the facts or pre-try their case, curry favor with the venire, or otherwise engage in improper voir dire.

5. Opening and Closing.

- a. The Court will enforce time limits for opening statements and closing arguments that are agreed to by the parties.

6. Exhibits.

- a. All exhibits must be marked for identification using the tags provided by the Clerk of Court before trial. Exhibits must be marked for identification alphabetically ("Ex. A", "Ex. B", "Ex. C", etc.). Once admitted into evidence, the exhibits will be marked numerically by the clerk ("Ex. 1", "Ex. 2", "Ex. 3", etc.).
- b. Once exhibits are marked in evidence or are offered but not admitted, they become the property of the Clerk of Court and may not be altered or removed from the courtroom without order of the Court. No exhibits are to be published or exhibited to the jury until admitted into evidence or otherwise authorized by the Court. Audiovisual and/or equipment questions should be addressed to the Ninth Circuit's Technology Support department at <http://ninthcircuit.org/services/technology-support>.

7. Demonstrative Aids.

- a. Demonstrative aids or exhibits must be provided to opposing counsel so that there is an opportunity to object a reasonable time before their anticipated use. Any dispute over the use of a demonstrative aid or exhibit must be brought to the Court's attention and resolved before the aid or exhibit is displayed at trial.

8. Objections.

- a. The Court will not allow speaking objections in front of the jury; only the legal basis for the objection shall be stated (*e.g.*, "relevance," "hearsay," "authenticity"). If elaboration or a response is necessary, the Court will call counsel to the bench for a bench conference out of the presence of the jury.
- b. Once the Court has ruled, no further argument shall be permitted. Matters addressed at sidebar are not to be repeated in front of the jury.

F. VIOLATION OF PROBATION PROCEEDINGS

1. **Status Hearings.**

- a. Violation of probation proceedings are typically set for status hearings during a half-day docket on the Tuesday morning of the second hearing week. Inmates are generally NOT transported unless the attorneys specifically request so, in writing, via email to the judicial assistant at 12orange@ninthcircuit.org.
- b. Out of custody defendants and counsel are required to appear in person at status hearings, and the defendant's appearance may not be waived without permission of the Court. Virtual appearance by the defendant or counsel will be permitted only if approved in advance.
- c. The Court will address requests for continuances, recommendations for dismissal, and the setting of final evidentiary hearings at the status hearing.
- d. At the status hearing, the Court will take negotiated admissions and may conduct plea conferences requiring a short amount of time. Counsel should be aware of, and should account for, the need to conduct danger hearings involving defendants who fall within the statutory category of a violent felony offender of special concern.
- e. As with pretrial conference, the Court greatly appreciates and will promptly rule on motions to continue submitted 48 hours before the status hearing. The motion must include the opposing party's position and describe the good cause for the continuance. A proposed order in Word format should accompany the motion.
- f. Notices to appear are generally scheduled during the status hearing docket. For notices to appear, the Court will address the appointment of counsel at the initial status hearing and determine the need for, and the timing of, any further proceedings.

2. **Final Evidentiary Hearing.**

- a. Final evidentiary hearings are typically set for a half-day docket on the Tuesday afternoon of the second hearing week. Any dates for final evidentiary hearings will be provided at a status hearing and is ordinarily thirty-five days after the status hearing.

G. COMPETENCY PROCEEDINGS

1. **Motion for Examination.**

- a. Upon filing a motion for examination pursuant to Florida Rule of Criminal Procedure 3.210(b), counsel shall immediately send a copy of the motion to 12orange@ninthcircuit.org with opposing counsel copied.
- b. The attorney filing the motion for examination shall immediately contact opposing counsel to attempt to agree on an expert to evaluate the defendant and shall submit a proposed order if counsel are able to reach agreement.

- c. Counsel are expected to review and to be familiar with the administrative orders governing competency-related issues. *See, e.g.*, Admin. Order 2018-25 (governing multiple cases involving the same defendant); Admin. Order 2017-22-01 (governing appointment and payment of court-appointed mental health experts).

2. Competency Status Hearings.

- a. If a question as to competency has been raised, the Court will typically set a status hearing during a half-day docket. This will generally occur the Tuesday of the first hearing week. During the same docket, statuses may be set for commitment review hearings and other matters involving mental health issues. Generally, inmates will NOT be transported unless the attorney specifically requests so, in writing, via email.
- b. At the status hearing, the Court will address any pending issues regarding the appointment of an expert or experts and the status of evaluations and reports and may make findings of competency or incompetency and placement decisions if the parties stipulate to reliance on the report or reports. If an evidentiary hearing on competency is required, the Court will schedule the hearing at the competency status. Generally, the competency hearing will occur 35 days after the scheduling at the status hearing.
- c. Defense counsel should bring a proposed order regarding the appointment of a requested expert, any unopposed finding of incompetency (including information regarding placement and/or conditional release terms), any unopposed finding of competency, and any other relief that is expected to be requested at the status.
- d. If there is a finding that the defendant is competent to proceed, the case will be reset for pretrial, trial case management, and trial.

3. Competency Hearings.

- a. Evidentiary competency hearings are generally set the afternoon of the Tuesday of the first hearing week. Hearings are generally held 35 days after they are set.
- b. Counsel shall confer among themselves and with expert and lay witnesses regarding any request for virtual witness attendance and shall attempt to reach agreement and to resolve or narrow any dispute over any such request.

H. MISCELLANEOUS MATTERS

1. Calendar Calls on Speedy Trial Demands and Hearings on Notices of Expiration.

- a. Defense counsel shall send a courtesy copy of a demand for speedy trial or notice of expiration of the time for speedy trial to 12orange@ninthcircuit.org immediately upon filing the notice or demand.
- b. The Court's practice is to schedule calendar calls on demands for speedy trial and hearings on notices of expiration immediately upon receipt of the demand or notice to comply with the time periods specified in Florida Rule of Criminal Procedure 3.191.
- c. Defendants are required to appear, in person, at any calendar calls pursuant to Speedy Trial Demands or Notices of Expiration.

2. Other Case Management Conferences.

The Court may schedule additional case management conferences for particular cases or categories of cases when determined to be beneficial. If any party believes that a further case management conference would assist in the progress of the case towards trial, the party may submit an email request for a case management conference to 12orange@ninthcircuit.org identifying the matters to be addressed at the case management conference.

3. Transport Orders.

- a. The Assistant State Attorney shall submit a proposed transport order when the presence of a defendant in the custody of another county is required for a proceeding.
- b. The Assistant State Attorney shall submit a proposed writ of habeas corpus ad prosequendum when the presence of a defendant in federal custody is required for a proceeding. The Assistant State Attorney shall make reasonable efforts to communicate with the Federal Bureau of Prisons, the Assistant United States Attorney, and/or any other appropriate personnel in the federal system to address issues that may preclude transport and to coordinate measures that may facilitate transport.
- c. Transport orders shall be submitted sufficiently far in advance to allow for transport, to permit the Court to address conflicts in other jurisdictions, and if necessary, to reschedule the proceeding for a time based on a transport issue or conflict. Failure to do so may result in the Court's inability to arrange for transport for the proceeding.

4. Interpreters.

- a. Counsel shall notify the Judicial Assistant at 12orange@ninthcircuit.org of requests for interpreters for defendants or witnesses for trial, hearings, or other proceedings as soon as the need for an interpreter or interpreters becomes known.

- b. If a proceeding is time-sensitive (*e.g.*, a trial or pretrial proceeding with speedy trial issues), counsel should be especially sensitive to the impact of interpreter availability issues. The Court will consider special setting trial to accommodate interpreter needs.
- c. If a case is expected to proceed to trial with a known need for an interpreter in a language other than Spanish, counsel shall set a case management conference at least a month before trial case management to address the issue.
- g. Counsel are expected to review and to be familiar with any administrative order(s) governing interpreter-related issues. *See* Am. Admin. Order 2008-01-02.