



STATE OF FLORIDA
NINTH JUDICIAL CIRCUIT OF FLORIDA

Mark S. Miller
County Judge

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JUDGE MARK S. MILLER
Courtroom Guidelines, Procedures and Expectations
For Orange County Criminal Division 82, Courtroom 4F

IN ORDER TO ASSIST COUNSEL, THE LITIGANTS AND THE COURT, THE FOLLOWING GUIDELINES¹, PROCEDURES, PRACTICES AND EXPECTATIONS ARE HEREBY ADOPTED FOR THE COUNTY CRIMINAL DIVISION NUMBER 82, IN ORANGE COUNTY, FLORIDA WHEN PRACTICING BEFORE JUDGE MARK S. MILLER²

County Criminal Court Division Assignments: This division covers half of the County Criminal docket (including Domestic Misdemeanor cases).

Contact Information: The Division e-mail is 82ORANGE@NINTHCIRCUIT.ORG. Please use this e-mail when requesting hearing time, cancelling a hearing, to obtain general information and to forward a copy of a motion and/or a proposed order in **WORD** Format. When requesting hearing time, motion must already be e-filed and docketed by the Clerk. The Judicial Assistant's e-mail address is: TCHRISTOPHER@NINTHCIRCUIT.ORG (used for specific questions only).

Submitting Paperwork: After the Motion has been filed with the Clerk's office, you may send the Motion to the Division e-mail with a proposed order in **WORD** Format. If there is a party in the case who is not a participant with the Florida E-Portal, you must provide copies and self-addressed stamped envelopes for that party.

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 August 7, 2014. (See <http://www.ninthcircuit.org> [Research/Rules & Policies/Courtroom Decorum Policy](#).)

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

Bond Estreatures: When filing this type of Motion, you must send a copy to the State Attorney's Office and the Clerk of Court. A response from their office is required for all motions concerning bond estreatures. Hearing time is **NOT** required unless there is an objection from the State Attorney's Office and/or the Clerk of Court.

Discovery Matters: All parties are directed to Florida Rules of Criminal Procedure 3.220 and are ordered to comply with the deadlines and terms set forth in the rule. If a discovery dispute arises, the parties should first attempt to resolve the matter themselves. If a resolution is not possible, please e-file a Motion to Compel to the court. If necessary, a hearing will be scheduled.

Arraignments: Arraignments are scheduled Monday through Friday weekly. Please **DO NOT** fax your Notice of Appearance to the J.A. You must e-file your Notice of Appearance with the Clerk's Office. NOTE: If the Public Defender was already appointed, a Notice of Appearance will be stricken as improper. A Motion for Substitution of Counsel with the Defendant's signature and a proposed Order of Substitution of Counsel must be submitted.

Bond Hearings:

New Cases with a pending bond motion - Bond hearing requests will be handled in accordance with the timeframes set by law. Please contact the Judicial Assistant to schedule. The motion must be e-filed with the clerk before calling to schedule.

Violation of Probation Cases with a pending bond motion - The Judge will review the motion in chambers. The Judicial Assistant will contact the Attorney if the motion needs to be scheduled for a hearing.

Motion Hearings: All Motions must set forth the position of the other side, and be e-filed and docketed by the Clerk's Office prior to requesting hearing time. When calling or emailing the JA directly to schedule a hearing, please have the following information readily available: Case Number, Defendant's name, type of motion, amount of time needed and the date the case is set for a pre-trial conference date.

Hearings are secured on a first come/first served basis and are not secured until the JA has confirmation that all interested parties are available AND the moving party has received confirmation from the JA that the hearing time has been secured. *Notice of Hearing should NOT be filed with the Clerk's Office until the moving party has received written confirmation from the JA that the date and time requested has been secured.*

ALL MOTIONS MUST BE FILED, HEARD AND DISPOSED OF PRIOR TO PRE-TRIAL. MOTION HEARING TIME WILL NOT BE OFFERED AFTER A SCHEDULED PRE-TRIAL CONFERENCE DATE.

Once hearing time has been obtained from the JA, please forward a copy of your Notice of Hearing to the State Attorney's Office as soon as possible so subpoenas may be issued timely, if necessary. The State needs at least ten (10) business days notice prior to a hearing in order to have subpoenas issued and served in a timely manner.

It is not necessary to send the Judge copies of Motions and/or Notices of Hearings.

When providing case law to the court for review, please submit the same at least three (3) business days prior to the hearing/trial and provide a courtesy copy to the opposing party.

Motions for Rehearing, Reconsideration or New Trial: Upon filing said Motion, please send a copy directly to the Judge for review. The Court will either rule without a hearing, direct a written response to be filed by opposing counsel or the JA will contact the moving counsel to schedule a hearing.

Motions to Quash Capias: A response from the State Attorney's Office is required. If the motion is scheduled for a hearing, the defendant **MUST** be present.

Motions to Continue: A response from the Opposing Attorney's Office is required for Motions to Continue. A Waiver of Speedy Trial signed by the Defendant must be filed with the court, if applicable. If you have contacted the opposing counsel and he/she has no objection to your motion, please recite this in your Motion and email or hand-deliver a copy of the Motion to the Judge for review only once it has been filed, along with the Opposing Counsel's position in writing attached along with a proposed Order, sufficient amount of copies to be conformed and self-addressed stamped envelopes if necessary. If you have filed your Motion, the opposing party may email the Judicial Assistant with their position.

All motions which have no response from the opposing party will be filed pending a hearing to be scheduled by the movant party.

Paper Pre-Trial Conference: A supplemental order for pre-trial conference along with pre-trial status sheet will be provided in each case. Counsel shall fill out the Pre-Trial Status Sheet in its entirety and this form SHALL be electronically filed by counsel (or by all pro-se defendants) by 4:00pm on the Friday before the scheduled Pre-Trial Conference date.

Trials: At pre-trials, Trials are set for a trial date during a three (3) week trial period. If you would like to move your case to a different trial day (during the same trial period); you must contact the opposing party to get their position prior to contacting the Judicial Assistant. As long as Opposing Counsel has no objection, the case may be moved to another day, if the Judge's schedule permits. The Judicial Assistant must receive written confirmation from the State.

Cancellation Policy: Please immediately notify the Judicial Assistant via e-mail of all cancellations or settlements so that the calendar may be opened up for other matters. You must attach to the e-mail a copy of the Notice of Cancellation. It is the responsibility of the moving party to file a Notice of Cancellation in the court file and submit a courtesy copy to Chambers as well as the responsibility to contact the opposing party to notify them of the cancellation.

Violations of Probation: Please contact the Judicial Assistant if you require specific information regarding a VOP. When scheduling a VOP Plea Date Certain, Defendants who have an active “Violation of Probation Warrant,” must turn themselves in, be processed, and go to Initial Appearances first, and then you may contact the Judicial Assistant for hearing time.

Early Termination of Probation: Motions **MUST** contain the positions of the State Attorney and the Probation Officer (P.O.). The Court also requires a written document from the supervising P.O. indicating what conditions, if any, are outstanding. Generally, the Court will not consider early termination if there are any outstanding obligations.

Requests for Court Interpreter: If the Court will require an interpreter to speak to and understand your client, please inform the Judicial Assistant of specific interpreter requests at the time you schedule your hearing or at least two (2) business days prior to the scheduled hearing for Spanish and at least ten (10) business days for any language other than Spanish.

Courtroom Etiquette and Decorum: Counsel shall stand when addressing the Court or the jury. Counsel should seek permission of the Court to approach the bench, the clerk, the witness or the jury. All parties and attorneys shall avoid contact with the venire and jury and counsel shall so instruct their clients and witnesses. Counsel shall address all arguments to the Court and not opposing counsel. Counsel shall admonish their clients and witnesses that gestures, facial expressions or any manifestations of approval or disapproval of anything occurring in the courtroom is absolutely prohibited. Please see the ***Ninth Judicial Circuit Courtroom Decorum Policy*** available at <http://www.ninthcircuit.org>.

All Electronic Devices (other than hearing aids or visual aids): Cell phones and other electronic devices must be turned off when possessed in the courtroom. If necessary to make or take phone calls, please step out of the Courtroom. Witnesses will not be permitted to possess any type of communication device while on the witness stand.

Voir Dire: The Court will conduct a preliminary voir dire of the jury. Counsel are welcome to request that the Court explore certain areas of inquiry that may be important to the trial but sensitive in nature. Counsel are reminded to be considerate of the jurors’ personal lives during their inquiries as well as the jurors’ time constraints. While the Court will afford counsel significant latitude in questioning, the Court will limit repetitive questions. Counsel shall not attempt to either explore the facts of their case nor explain the law that may apply in the case, **nor attempt to carry favor with the venire.**

Jury Selection Process: After voir dire, the Court will first ask each side for any cause strikes. Upon completion of challenges for cause, the Court will move to pre-emptory challenges. The Court will start with the first juror and move sequentially as they are seated in the venire, alternating between counsel until a panel is chosen. Back striking during jury selection is permitted. The number of alternates will be determined by the type and length of the trial. Each party will have one additional strike as to each alternate.

Opening and Closing: 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 or closing. Counsel may move away from the podium, but shall remain mindful of the jury's space. Counsel should stay at least three feet back from the jury rail at all times. 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.

Exhibits: All exhibits are to be marked for identification by the clerk **prior to the day of trial.** Exhibits which will be stipulated into evidence may be marked into evidence as exhibits. 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 and/or authorized by the Court. **Audiovisual and/or equipment questions should be addressed with Court Administration:** <http://www.ninthcircuit.org/programs-services/audio-visual>.

Demonstrative Aids: 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. The Court will hear argument of any counsel opposing the use of the demonstrative aids prior to the trial week. No aids are to be shown to the jury without prior approval of the Court.

Experts: The Court will not accept or qualify a witness as an expert in front of the jury. Challenges to an expert's qualifications and his ability to testify must be addressed prior to the start of the trial period and therefore outside the presence of the jury. Experts are to be cautioned by the attorney who calls the expert of "in limine" rulings, and the effect of the invocation of the Rule of Sequestration.

Use of Depositions: If depositions are to be used at trial in any manner (impeachment, as video testimony, etc.) make certain a hard copy is available both for the Court and for the witness being questioned.³

Objections: The Court will not allow speaking objections in front of the jury. When counsel rises to object, only the legal basis for the objection should be stated. If elaboration is necessary, the Court will call counsel to the Bench for a Bench Conference or out of the presence of the jury.

³In Osceola County some documents electronically filed with the Court are imaged and may not be readily available in hard copy to the Court.

Counsel shall not interrupt opposing counsel or witness's questions or answers with an objection unless the answer or question is patently objectionable. Once the Court has ruled, no further argument shall be permitted.

Jurors: The Court generally will allow jurors to take notes and to ask questions where necessary. Section 40.50, Florida Statutes. If any counsel objects to these procedures such objection should be addressed to the Court prior to the day of trial.

Jury Instructions: Jury instructions are to be prepared by both sides and exchanged at the beginning of the trial. A hard copy must be provided to the Court as well as a copy via e-mail no less than three (3) days prior to the beginning of the trial. The Court intends to provide the jury with a written copy of all jury instructions when the jury retires to deliberate. In addition, the final instructions should not contain any citations, jury instruction titles or information as to who requested the instruction. In certain cases, the Court may provide some substantive law instructions to the jury during preliminary instructions and/or before closing arguments. Should any counsel wish to consider this option, this matter should be addressed with the Court prior to the day of the start of trial.