

STATE OF FLORIDA
Ninth Judicial Circuit of Florida

DIEGO M. MADRIGAL III
Circuit Judge

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ORANGE COUNTY COURTHOUSE
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Hearing Room 1100.01 / Courtroom 18-C

REVISED AND EFFECTIVE January 12, 2026.

DIVISION 37 PROCEDURES

The following Guidelines are hereby adopted for those practicing in the Circuit Civil Division 37 in Orange County, Florida before Judge Diego M. Madrigal III.

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A. COMMUNICATIONS WITH THE JUDICIAL OFFICE

- **Method of Communication:** All communications to the judicial office must be submitted by e-mail to 37Orange@ninthcircuit.org. The subject line must contain the relevant matter, case number, and case name (e.g., 2-Hour Hearing Requested -2024 CA 001234 O – Doe v. Doe.)
- **Ex parte Communications:** All communications with the judicial office must comply with Canon 3 of the Code of Judicial Conduct, which prohibits a judge from initiating, permitting, or considering ex parte communications and from considering other communications outside the presence of the parties concerning a pending or impending proceeding, unless authorized by law. All parties must be copied on any e-mail directed to the judicial office, unless an ex parte communication is authorized by law.
- **Unsolicited Communications:** Unsolicited communications from non-parties will not be considered by the court. Parties may only contact the judicial office in accordance with these practices and procedures.
- **E-Filing Portal Contact Information:** All attorneys and self-represented litigants must provide an e-mail address to receive signed orders electronically, unless excused. Fla. R. Gen. Prac. & Jud. Admin. 2.516. It is the responsibility of attorneys and self-represented litigants to update their contact information using Form 2.603 any time there is a change in the e-mail account registered for electronic service.
- **Response to Inquiries:**
 - The Judicial Assistant is not authorized to provide legal advice or to interpret and documentations.
 - The Judicial Assistant makes every effort to respond to all inquiries. Due to the high volume of cases assigned to each division, and the high volume of emails received daily, it may take a few days before an email can be addressed. We ask for your patience, and we advise that there is no need for “follow up emails”.
- **Other Communication Procedures:** Please remember the Judge’s office cannot receive EX-PARTE communications from anyone. You MUST always copy ALL parties on ANY and ALL e-mails, correspondence and/or communications with this office.

B. MOTIONS

1. GENERAL

a. Mandatory Meet and Confer:

Before even filing a motion, parties must comply with the requirements of Florida Rule of Civil Procedure 1.202. Before seeking disposition of a filed motion, the mandatory meet and confer process in [Administrative Order 2012-03-01](#) must be followed. Counsel with full authority to resolve the matter must confer *before* submitting the motion to the Court to attempt to resolve or otherwise narrow the issues. The conferral must be meaningful and conducted in person or via the telephone.

The failure to comply with the “meet and confer” requirement will result in the Court declining to consider the motion. All motions must contain an accurate meet and confer certificate. Failure to include an accurate certificate may result in sanctions.

b. Submission of Motions to the Court:

After complying with the meet and confer requirement, a party seeking Hearing of a motion must email a courtesy copy of the motion to 37orange@ninthcircuit.org.

2. MOTIONS REQUIRING HEARING TIME

a. Securing Hearing Time

Regular (*i.e.*, non-Ex Parte and Short Matters hearing time) hearing time must be obtained by using the aiCalendar system:
<https://aicalendar.ocnjcc.net/Calendar/Orange/490>.

Once a hearing is coordinated by all sides. To secure hearing time, coordinate with opposing counsel, then email 37orange@ninthcircuit.org with the following in the body of the email:

1. Case No.
2. Full Case Style
3. Motion(s) to be heard
4. Date/Time Coordinated
5. Amount of time requested
6. Remote or In-person appearance
7. Date "meet & confer" completed
8. Whether the hearing is evidentiary

If your request is missing any of the above information, it will not be confirmed. Once the JA confirms the hearing, the moving party shall file a Notice of Hearing. 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. Cross-notices and any additional motions sought to be heard must follow the same procedure above or those additional motions will not be heard.

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.

b. Hearing Length

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. However, if seeking more than ninety (90) minutes of hearing time, you must get permission from the Court prior to setting the hearing.

c. Short Matter Hearings

Short matters hearings are for uncontested matters or contested matters that do not require more than ten minutes of the Court's time. The Court may determine a motion is better suited for a full hearing and cancel a short-matter hearing as a result.

During non-trial weeks, short-matters hearings are held Monday through Thursday from 8:30 a.m. until 9:30 a.m. If no matters remain pending at 9:00 a.m., short matters will conclude. During trial weeks, these hearings are held Monday through Thursday from 8:30 a.m. until 9:00 a.m.

Parties will follow the same procedures for the setting of short matter hearings as for all other hearings.

d. Evidentiary Hearings:

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:

- 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.
- iv. The Notice of Hearing will be conducted in Hearing Room 1100.01. That location must be included in the Notice of Hearing.

3. VIDEOCONFERENCE APPEARANCES

- 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 are conducted by videoconference; however, in-person or “hybrid” pretrial conferences (where one party is in-person, and one party is remote) are permitted only by leave of Court.

d. Non-evidentiary videoconference hearings are conducted via WebEx. For all videoconference hearings, including Ex Parte and short matters, the notice of hearing shall contain all of the following information:

Join from the meeting link:

<https://ninthcircuit.webex.com/join/37orange>

Join by phone: +1-904-900-2303 United States Toll
Access code: 2346 589 8852

Use QR Code below:



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.

f. Telephonic appearances are discouraged given widespread availability of videoconferencing technology.

4. MOTIONS NOT REQUIRING HEARINGS

- a.** The Court may, in some instances resolve motions without hearing. Should the moving party feel it is appropriate, they can indicate such to the Court when providing the Motion. If the Court determines a hearing is not necessary, it will take one of two actions: 1) rule on the motion; or 2) direct that a written response be filed by the opposing party.

b. Written Responses

When the Court directs that a written response to a motion be filed, the party filing the response must email a courtesy copy of the response to 37Orange@ninthcircuit.org, preferably as a reply email to the original submission of the motion. If the Court directs a response within a particular time and no response is timely filed, the moving party must email the Court to advise that no response was timely filed. At that time, the Court will consider the motion fully briefed and proceed to issue a ruling on the motion.

5. MOTIONS IN LIMINE

See the Standing Procedures for Motions in Limine available on Judge Madrigal's page.

6. EMERGENCY HEARINGS

If an emergency situation arises, counsel may request that a hearing be set on short notice. The body of the motion must contain a detailed explanation of the circumstances constituting the emergency. The motion must be e-mailed to the Court before a hearing will be set. The Court will review the motion and, if it is determined a sufficient basis for an expedited hearing exists, the JA will contact counsel to set the hearing.

7. MOTIONS TO WITHDRAW AS COUNSEL

Withdrawal motions must be set during short matters with notice to all parties if the client's consent has not been obtained. If the client has provided written consent (attached to the motion), the lawyer may submit a copy of the motion along with a proposed order via email to chambers. The body of the proposed order and the certificate of service must include the name, address, telephone number, and email address of the client.

8. CASE MANAGEMENT CONFERENCES

The Court may schedule certain cases for a Case Management Conference (“CMC”) and issue an order setting forth the matters to be covered at the conference. Parties may set CMCs during the Court’s short matters hearings.

9. HEARING MATERIALS

Hearing materials shall be emailed to chambers not less than five (5) days prior to the hearing. Hard copies and external drives are discouraged absent necessity. Any hearing materials must be indexed. Please ensure the index contains a hyperlink to the document/exhibit/case indexed. For technical assistance, please visit:

<https://helpx.adobe.com/acrobat/using/creating-pdf-indexes.html>

C. ORDERS AND RULINGS

1. PROPOSED ORDERS

- a. Proposed orders must be submitted electronically in Word format by email to 37orange@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. The Court prefers proposed orders to reflect that the order is proposed and for the proposed order to be submitted prior to a hearing.
- 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 37orange@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.”

D. PRETRIALS

1. SETTING CASES FOR TRIAL

- a. Pursuant to the Florida Rules of Civil Procedure, cases are given a trial date via the Case Management Order. For cases predating the rule change, 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.

In cases where 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.

- b. 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

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.

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.

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. Three (3) days prior to the pretrial conference, parties shall email to 37orange@ninthcircuit.org a completed and signed "Pretrial Check List and Order Controlling Trial." Blank forms are available on the [Division 37 Page](#). Failure to submit a completed Pretrial checklist may result in the Court setting a subsequent in-person show cause hearing.
- 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.

E. 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. The parties shall follow the same procedures for setting this hearing as they do for all other hearings. 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.

F. TRIALS

1. LOCATION.

- a. Trials will take place in Courtroom 18-C 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. ELECTRONIC DEVICES

- 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 37orange@ninthcircuit.org no later than five (5) business days before the trial is to commence.

5. VOIRE 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 and demonstrative aides 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. Any item shown to the jury must be marked for identification regardless of whether it is entered into evidence or not.
- d. Audiovisual equipment questions should be addressed to the Ninth Circuit's Technology Support department at <http://ninthcircuit.org/services/technology-support>. Any questions regarding access to the Courtroom for set up purposes, should be directed to the Judicial Assistant.

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 37orange@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 is 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 is 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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