

Judicial Practices and Procedures Probate, Guardianship, Mental Health Division 2

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A. Communications with the Judicial Office

• Method of Communication:

Division E-mail: All communications to the judicial office must be submitted by e-mail to 2Orange@ninthcircuit.org the dedicated division e-mail account. The subject line of any e-mail to the judicial office must contain the case number and case name.

Email communication is the most effective way to communicate with the Judicial Assistant. Emails greatly reduce misunderstandings and miscommunications that sometimes occur on phone conversations.

- **Telephone:** Any telephonic communications to the judicial office, including self-represented litigants and attorneys excused from e-mail service, may communicate with the judicial office by telephone call to 407-836-9580. The judicial office does not accept text messages.
- **Ex parte Communications:** All parties, including pro se/self-represented litigants must be copied on any e-mail directed to the judicial office. 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.

Furthermore, ex parte “letters” and other filings are not considered pleadings and the filing of items not in conformity with the Florida Rules of Procedure may be struck and not considered.

- **Unsolicited Communications:** Parties may only contact the judicial office in accordance with these practices and procedures. Unsolicited communications from non-parties will not be considered by the Court. Ex-parte letters, texts, or other correspondence that are not in conformity with the Florida Rules of Procedure do not protect a litigant's rights or prevent important timelines from lapsing.
- **E-Filing Portal Contact Information:** All attorneys and self-represented litigants must make and receive service by e-mail, which is generally through the Florida Courts E- Filing Portal, unless excused. Fla. R. Gen. Prac. & Jud. Admin. 2.516.

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.

A failure to participate in the e-filing portal when you are not excused may result in a litigant not receiving important communication and missing important deadlines.

- **Response to Inquiries:** The Judicial Assistant is not authorized to provide legal advice. The Judicial Assistant strives to substantively respond to all inquiries within one business day. If the Judicial Assistant is unable to substantively respond within one business day, your message will be acknowledged as received with an indication of when to expect a substantive response and alternate contact for immediate assistance.

When the Judicial Assistant is out of the office, your message will be acknowledged as received with an indication of when to expect a substantive response and an alternate contact for assistance.

- **Other Communication Procedures:** Any e-mail sent to or from the judicial office may be a public record subject to disclosure.

B. Scheduling Procedures: Hearings

- **Court Motion Schedule:** There is not a uniform motion schedule in this division. All hearings are scheduled through the online calendar system. The Court hears virtual and live hearings daily.

Ex-Parte/Short Matters are held each Monday and Thursday at 9:00 a.m. Ex Parte/Short Matters are considered uncontested matters or contested hearings requiring no evidence that can be conducted in ten minutes or less. Ex Parte/Short matter hearings must be confirmed by the Judicial Assistant. A Courtesy copy of the motion, notice of hearing with the video link, and proposed order must be provided to the Judicial Assistant, via email, at least seven (7) business days before the hearing. Failure to do so may result in the hearing not being held.

- **Scheduling Hearings:** Hearing time is viewable using the Court's online scheduling platform, JACS, which will be replaced in the upcoming months by "aiCalendar". All available hearing time and instructions are displayed on the scheduling platform. For requests exceeding fifteen (15) minutes, please combine consecutive timeslots. The JACS link is below.
- <https://apps.ninthcircuit.org/jacsatt/availableslotframe.asp>

After you have coordinated and secured an available date and time on the calendaring system, email a hearing request to the Judicial Assistant at 2Orange@ninthcircuit.org. Your hearing will not be docketed unless you receive written confirmation from the Judicial Assistant. In your email, please include the following information: (1) Date and time that has been agreed upon for hearing, (2) Case number and style of the case (3) Names of the

attorneys or self-represented if applicable, (4) Title of petition/motion to be heard (5) Amount of time that has been requested (6) Evidentiary or Non-Evidentiary, (7) Virtual or In Person hearing requested.

If parties are unable to identify a hearing date and time on the calendaring system, the scheduling party should e- mail the Judicial Assistant, copying opposing counsel and any self-represented litigant, for the Judicial Assistant to assist with locating an available date and time.

The failure of parties to effectively communicate and agree upon a hearing date and time will be resolved by the Court setting a virtual hearing and managing same. Please do not involve the Judicial Assistant in ongoing scheduling disputes between offices, instead set a virtual short matter hearing for the Court to address your dispute and calendar the hearing.

Any hearing requests for longer than one (1) hour must be approved by Judge Higbee. Email your request to the 2Orange email, detailing the reasons for the extended time. The Court will review your request and respond.

- **Notice of Hearing:** A notice of hearing must be filed and served immediately by the moving party after reserving hearing time and receiving a confirmation from the Judicial Assistant. If your notice of hearing is not filed promptly it may result in your hearing not making the docket.

A notice of hearing involving any remote appearance must list the judge's WEBEX credentials. Only the party setting a hearing or the Court may cancel a hearing.

All notices of hearing must contain the Americans with Disabilities Act (ADA) notification required by Florida Rule of General Practice and Judicial Administration 2.540.

- **Submission Deadlines:** The Court must receive all materials (statutes, caselaw, memoranda) for the hearing no later than five business days before the hearing. Do not submit items you intend to introduce into evidence as it is not appropriate for the Court to review unless those items are ultimately accepted into evidence.

Do not submit anything to the Court that you have not copied to opposing counsel(s)/party(ies).

Items submitted to the clerk of Court are not submitted to the

Court. Items accepted by the clerk of Court are not copied to the judge or Judicial Assistant and the judge and Judicial Assistant are unaware of these items unless they are Courtesy copied to the Court.

- **Order of Proceedings:** Matters will be heard in the order in which they appear on the docket.
- **Continuance Procedure:** Motions for continuance are disfavored and will be granted only upon good cause shown. Successive continuances are highly disfavored. Lack of due diligence is not grounds for granting a continuance. Except for good cause shown, the motion must be signed by the party requesting the continuance, as required by Florida Rule of General Practice and Judicial Administration 2.545(e).

Motions for continuance must state with specificity: (1) the basis of the need for the continuance, including when the basis became known to the movant; (2) whether the motion is opposed; (3) the action and specific dates for the action that will enable the movant to be ready, including, but not limited to, confirming the specific date any required participants are available; and (4) the proposed date by which the case will be ready to proceed and whether that date is agreed by all parties. Except for good cause shown, the motion must be signed by the party requesting the continuance, as required by Florida Rule of General Practice and Judicial Administration 2.545(e).

- **Cancelling Hearings:** You must cancel hearings by notifying the Judicial Assistant immediately. You must also immediately file and serve a notice of cancellation on opposing counsel and any self-represented litigant.
- **Cross Noticing:** You must e-mail the Judicial Assistant requesting to cross-notice a matter. Your email must indicate if the matter can be heard in the same allotted time the hearing is set for. The Court will address what was originally noticed first and will address what has been cross-noticed only if time permits. If added to the docket, counsel must follow the procedures for notice. If there is insufficient time for the cross-noticed matter to be heard, counsel must go through the normal scheduling procedures to re-notice the matter with the Judicial Assistant.

C. Remote Appearance

- **Remote Appearance Procedure:** The Court maintains a hybrid virtual Courtroom depending on the type of hearing, which allows parties to appear either in person or remotely, as provided by Florida Rule of General Practice and Judicial Administration 2.530. Requests to use communication technology for an appearance must be made by motion. Any objection to the use of communication technology must be filed no later than five business days after the filing of the notice of hearing stating the use of said technology.
- **Platform Used:** The Court uses WEBEX for remote appearances. Five minutes before the hearing all participants should connect to the video conference. At the time the case is called, the Judge will bring you into the video Courtroom from the lobby.
- **Platform Meeting ID#:** The video link used for all virtual hearings is:

<https://ninthcircuit.webex.com/meet/2orange>

- **Requirements:** Requests for remote appearance, if not addressed prior to the scheduling of the hearing, must be submitted five business days prior to the hearing.

Certain hearings are eligible for remote appearance. These include short matter hearings, and non-evidentiary hearings that are thirty minutes or less. If your hearing is designated “virtual” there are no in person appearances.

Any person appearing remotely must be in a private location that is quiet and free from distractions. Under no circumstances will a participant be permitted to appear remotely from a moving vehicle or other unsafe situation.

Any person appearing remotely must dress and behave professionally in the same manner as if physically present in the Courtroom.

Any person appearing remotely must enable the person’s camera when joining the proceeding and keep the camera turned on until instructed otherwise by the Court.

Any person appearing remotely must mute the person’s microphone when joining the proceeding and keep the microphone turned off until instructed otherwise by the Court.

If a witness appears remotely, the party calling the witness must ensure the witness has a functioning camera and microphone and has tested the internet connection before the hearing. The oath will be administered in accordance with Florida Rule of General Practice and Judicial Administration 2.530.

Participants must sign in using their full name so that the judge knows who they are and what hearing they are appearing for. If counsel is covering for counsel of record they should note who they are appearing for or the name of their firm so that the Court can properly identify and admit them.

Due to the confidentiality needs in this division, individuals with only a first name, nickname, phone number or other unidentified presence will not be admitted and will be removed from the lobby.

Participants must have a good connection and be familiar with their technology to avoid delay. If you are not skilled with virtual technology conducting a practice session with your attorney is advisable or requesting a live hearing may be a better option.

- **Technology Needs:** All participants in a remote hearing must have audio and video capability Technology assistance may be found at <https://ninthcircuit.org/programs-services/technology-support>
- **Other Remote Appearance Procedures** Telephonic hearings are not permitted due to the confidential and private nature of the matters addressed in this division as telephonic verification of identity is unreliable.

D. Submission of Orders to Chambers

- **Format:** All proposed orders must be accompanied by a cover letter either (1) certifying that all parties agree to the order or (2) containing a statement identifying any disagreement of the parties as to the proposed order. If there remains disagreement between parties as to what the form and content of the order should read, submit a “red line” version making it clear to the Court where the discrepancies are. Do not submit two different orders. Routine pleadings and proposed orders in probate must be sent to the Court, via e-mail for the Court to review and sign in chambers. All Orders must describe in the caption/title, the subject and ruling of the Court (i.e. “Order Granting Motion to Strike Claim of Creditor Truist Bank”) not just the word “Order”.

- **Submission Method:** Via e-mail to 2orange@ninthcircuit.org
Self-represented litigants excused from e-mail service may submit proposed orders to the Court by U.S. mail.
- **Deadline for Submissions:** Proposed orders must be submitted no later than ten (10) days after any hearing unless the Judge gives a different time frame at the conclusion of the hearing. The failure to submit a proper order after hearing may have a negative effect on the ultimate ruling or cause scheduling issues. When there are opposing counsel or other parties, the order should be drafted and circulated within three (3) working days and must be submitted to the Court with a copy to opposing counsel.
- **Routine Pleadings in Probate Cases:** Routine petitions and proposed orders must be e-mailed to the Court for the Court to review and sign in chambers. These include, but are not limited to the following:
 - Petition to Appoint Personal Representative & Letters
 - Order to Admit Will (original and ancillary)
 - Orders to Appoint Commissioners and Issue Commissions
 - Preliminary Order to Inventory Safety Deposit Box
 - Petition to Determine Exempt Property (uncontested)
 - Disposition of Personal Property without Administration
 - Petitions to Sell Real Estate
 - Petition for Opening Subsequent Administration
 - Establishment and Probate of Lost or Destroyed Will (uncontested)
 - Order of Summary Administration
 - Order of Discharge
 - Other agreed or uncontested Petitions or Motions that are non evidentiary and that do not require giving notice to interested parties pursuant to the requirements of due process
- **Letters of Guardianship:** When submitting *Letters of Guardianship* for the Court to execute, please include the following language at the base of the letters prior to the line “Done and Ordered”

These Letters are initially valid for fifteen (15) months from the date of issue. After that, per sec. 744.369(8), Fla. Stat., these Letters are ONLY current and valid when accompanied by a certified copy of an Order Approving Annual Plan that has been signed and dated by a judge within the last twelve (12) months.

E. Other Procedures Relating to Submission of Orders:

- **Viewable:** Please be sure that documents necessary to review the submission, including the motion, is viewable on the clerk of Court system before submitting.
- **Clerk Audits:** If you are submitting proposed orders in a probate matter, please note that the clerk of Court is charged with auditing homestead, summary administration, and discharge orders before the Court reviews them.

Additionally the Clerk of Court is charged with auditing all routine probate filings by self-represented litigants. This may cause a delay and should be taken into account when submitting orders. Once audited, the Court will read and consider your matter and enter the proposed order or will issue further instructions on how to proceed if there is an issue. Please allow at least fourteen days before following up on probate submissions.

- **Withdrawals:** If you are submitting an order on a motion to withdraw, please make sure that the order is in compliance with the Rules of Administration and that the last known address, phone number, and email address of the former client are in the order.

F. Courtesy Copies of Case Law and Other Documents

- **When Required:** Submitting Courtesy copies of case law and/or memoranda to the Court is suggested in high conflict or complex legal matters but are not required unless ordered by the Court. See item **H** below for other instructions.

G. Emergency and Other Urgent Matters

- **Requirements:** If a party believes there is a factual basis for setting an emergency hearing, a detailed motion setting forth the following must be filed: (1) the issues to be resolved, (2) reasons why an emergency hearing is necessary, and (3) the amount of time needed for each party's presentation. Please email the 2orange email address above to alert the Court that there is a petition or motion for emergency consideration.
- **Scheduling:** If the Court determines that an emergency exists, a hearing may be scheduled unilaterally by the Court. All parties shall make themselves available for the emergency hearing, barring exigent circumstances.

H. Exhibits for Evidentiary Proceedings

- **Submission Method:** Submit all exhibits electronically by e-mail to the 2Orange email.

If you have a complex case with numerous proposed evidentiary exhibits, procure evidence tags from the clerk of Court prior to the hearing/trial and pre mark them pursuant to the instructions provided by the clerk of Court.

For most cases, bringing your exhibits with you and having the clerk tag them as they are being introduced will be sufficient.

Unless exhibits are joint and/or stipulated for the Court to review prior to the hearing/trial, the Court will not review exhibits until they are admitted into evidence.

Do not send a zip folder or share folder as the Court may not be able to properly review/open same. If the materials are too big to e-mail contact the Judicial Assistant to arrange a physical delivery.

- **Deadline for Submissions:** Exhibits must be submitted to the Court at least five (5) business days prior to the hearing.

I. Pretrial Procedures and Conferences

- **Case Management Conference (CMC):** Any party may request a CMC when a case requires.
- **Status Conference:** Any party may request a status conference when a case requires.
- **Requirements:** Any request for a CMC or status conference must articulate the reasons for the necessity of the conference.

J. Setting Case for Non-Jury Trials

- **Procedure:** File a notice for trial to set the case for trial. This notice must include if the parties have attended mediation including the date and the amount of time needed for trial. After it is viewable in the Clerk's system, counsel shall email a copy to the Judicial Assistant.
- **In Person:** All trials take place in person. If you wish to set a case for trial, email the Judicial Assistant and request a (CMC) case management conference. This hearing may take place virtually (if

agreed) or in person. At this time the Court will assess the posture of the trial, conduct a case management hearing, and set the case for a pretrial hearing. At the pretrial hearing the Court will set a trial schedule and address any remaining matters that must be addressed prior to trial. You will be given a date certain trial date.

K. Probate Checklists and Forms

- **Access:** Division checklists and forms are available on the circuit's website at

<https://ninthcircuit.org/divisions/probate-Court>

- **Usage:** A checklist must be filed when opening a Formal Administration, closing a Formal Administration, filing Summary Administration and Petition for Determining Homestead Status of Real Property in Formal and Summary Administration cases.
- **Version:** The forms of the checklists are established in Administrative Order 2021-09-54, effective on October 31, 2022, and can be found here:

<https://ninthcircuit.org/divisions/probate-Court>

All checklists were revised on October 31, 2022. Please only use the most recent version. The applicable checklist must be fully completed or it will not be considered.

L. Court Reporting/Recording of Court Proceedings

- Only Guardianship and Mental Health cases are digitally recorded by the Court Reporter. Probate cases are not recorded.
- See Administrative Order 2019-01-03 for details and additional information.

M. Use of Artificial Intelligence in Papers: The Court does not prohibit the use of Artificial Intelligence ("AI") in its division. However, if any party or self-represented party has used AI in the preparation of any complaint, answer, motion, brief, or other paper filed with the Court, the party must in a clear and plain factual statement, disclose that AI has been used in the filing, and certify that each citation to the law or the record in the paper has been independently verified as accurate. Failure to comply may result in sanctions against the party including the striking of pleadings and dismissal.

- N. ADA ACCOMODATIONS:** The Ninth Judicial Circuit is committed to full compliance with the Americans with Disabilities Act (ADA). Reasonable accommodations are provided for qualified Court participants with disabilities, in accordance with the law. As required by the ADA, the determination of an individual's disability and the option for a reasonable accommodation for a disability is made on a case-by-case basis. If you are a person with a disability who needs any accommodation in order to participate in a Court proceeding or event, you are entitled, at no cost to you, to the provision of certain assistance.

Please contact: in Orange County, ADA Coordinator, Human Resources, Orange County Courthouse, 425 N. Orange Avenue, Suite 510, Orlando, Florida, (407) 836-2303, fax: 407-836-2204; and in Osceola County: ADA Coordinator, Court Administration, Osceola County Courthouse, 2 Courthouse Square, Suite 6300, Kissimmee, FL 34741, (407) 742-2417, fax 407-835-5079 at least 7 days before your scheduled Court appearance, or immediately if you receive less than a 7 day notice to appear. If you are hearing or voice impaired, call 711 to reach the Telecommunications Relay Service.

- O. INTERPRETER REQUESTS:** Interpreters are not provided by the Court in either Guardianship or Probate matters. If you need the assistance of an interpreter, please bring a certified interpreter with you when you appear for your hearing. If your hearing is virtual, the interpreter may appear virtually as well.

If there are any other matters concerning the procedures for this division please simply contact the Court at 2Orange@ninthcircuit.org and we will be happy to help you. In addition a status hearing can be set during short matters at which time the Court will be happy to answer any procedural questions that the ethical rules permit.