

**Courtroom Guidelines and Procedures  
and  
Expectations  
for Orange County Circuit Civil Division 34  
Judge John Marshall Kest**

\*\*NOTE: EFFECTIVE 1/04/2010\*\*

IN ORDER TO ASSIST COUNSEL, THE LITIGANTS AND THE COURT, THE FOLLOWING GUIDELINES<sup>1</sup>, PROCEDURES, PRACTICES AND EXPECTATIONS ARE HEREBY ADOPTED FOR THE CIRCUIT CIVIL DIVISION NUMBER 34 IN ORANGE COUNTY, FLORIDA WHEN PRACTICING BEFORE JUDGE JOHN MARSHALL KEST.<sup>2</sup>

**HEARINGS**

Hearing time may be obtained by first checking on the website at <http://www.ninthcircuit.org> Please go to the Attorney Page and access the Judicial Automated Calendaring System (JACS) and look for available times for Orange Civil Division 34. Next, please contact the Judicial Assistant by telephone (407-836-0443) or by e-mail at [ctjadi1@ocnjcc.org](mailto:ctjadi1@ocnjcc.org) after coordinating hearing time(s) with opposing counsel. In addition to filing the Notice of Hearing with the Clerk of Court, a copy of the Notice of Hearing must be furnished to the Judicial Assistant via U. S. Mail or fax at 407-835-5127.

For the convenience of everyone, the following rules apply to the setting and handling of hearings:

- 1- **Setting of hearings:** Hearings times must be cleared with opposing counsel or *pro se* parties. Good faith cooperation is expected both from counsel, their support staff and *pro se* litigants. Should counsel, their staff, or *pro se* litigants fail to respond within 3 business days, or refuse to cooperate in obtaining or in setting a hearing, the difficulty should be specifically set forth either in the motion or in the notice of hearing. After filing any motions or notices with the Clerk, a copy of any and all motions and notices of hearing must be immediately forwarded to the Judicial Assistant **either** by **U. S. Mail** **or** fax at 407-835-5127. The Court is agreeable to setting early morning hearings when congested calendars make it difficult for attorneys to find available hearing time.

Additional motions should not be “piggy-backed” by cross-notice unless counsel first confirms with opposing counsel, and the Judge’s Judicial Assistant, that sufficient additional time can be reserved in which to hear them.

Telephone hearings are permitted as long as there is no testimony to be offered or evidence submitted. **No motion and order to appear by phone is necessary.** If two or more attorneys are to appear by telephone, one of them must arrange to connect the other attorney or attorneys by conference call.

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<sup>1</sup>The 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 February 11, 2003. (See <http://www.ninthcircuit.org> [For Attorneys/Information/Rules & Policies/Courtroom Decorum Policy.](#))

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

- 2- Cooperation of counsel: If counsel does not cooperate, the requesting party may unilaterally set a hearing giving at least two weeks notice to the opposing counsel who failed to cooperate.
- 3- 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 as well as the substance of the motion. The motion must be faxed to the Court before a hearing will be set. The Court will review the motion and, if it is determined an emergency exists, the Judicial Assistant will contact counsel to set the hearing. In light of the short setting, opposing counsel may attend the hearing via telephone if their schedule will not allow them to appear in person.
- 4- Ex Parte - *Ex Parte* is held Monday through Thursday at 8:15 a.m. Please furnish your Motion and Notice of Hearing to the Court at least 48 hours prior to the hearing so that the Court can prepare for the hearing. **No telephone hearings are permitted during *Ex Parte*.**
- 5- Foreclosure Cases – Motions for Summary Judgment and Final Judgment After Default in Foreclosure are heard **only during hearing weeks** on Monday – Thursday from 8:30 to 9:00 a.m. in Hearing Room 17A. Please check JACs for dates the Judge will be unavailable. Out of town firms must retain local counsel and must personally appear prepared with all necessary paperwork. The local counsel is responsible for handling all paperwork. Attorneys shall provide the entire original Foreclosure packet to the Judge complete with all financial figures completed. Residential Foreclosure Sales for Div. 34 are on Tuesday. Timeshare Foreclosure Sales are held on Wednesdays. All sales are at 11:00 a.m. Please Note: Original Notices of Hearing, Cancellations, etc., should NOT be sent to the Judge’s Chambers. *These documents should be filed with the Clerk of Court. Copies of Notices of Hearing should be sent to the Court.*

Contested foreclosure motions filed by the Defendant shall be set on the Judge’s “*regular motion calendar*” in a 15 minute time slot, and the parties may appear via phone. If no motion has been filed by the defendant, the matter should be set as set forth in the previous paragraph.
- 6- Uniform Motion Calendar - Uniform Motion Calendar will be held **during hearing weeks** on Monday - Thursday from 9:00 – 10:00 a.m. Hearings must be scheduled with the JA as regularly scheduled hearings. Types of motions suitable for hearing on the motion calendar are simple motions to dismiss, strike affirmative defenses, for more definite statement, to amend pleadings, discovery motions, protective orders, objections to CME, Motions for Summary Judgment after default (not foreclosures) etc. Hearings must be cancelled no later than noon the day before the hearing is scheduled.
- 7- Discovery Motions and Motions to Compel: The mere filing of a Motion is insufficient. The motions must be set for hearing to bring the matter to the Court’s attention. Motions to Compel, as well as all discovery motions must comply with the Florida Rules of Civil Procedure including, but not limited to, a certification of a good faith attempt to resolve that matter without court action. *See* Fla.R.Civ.P 1.380(a)(2). If no response or objection has been filed to initial Supreme Court approved discovery requests, the moving party may submit proposed order with the Motion. No hearing will be necessary.
- 8- Motions for Protective Orders: The filing of a Motion for Protective Order, without presenting it before the Court, is insufficient. The Court will make itself available for immediate hearings on said

motions where the motion could not have been filed and heard in the due course of discovery. Where necessary, and when possible, the Court will hear and, if possible, rule by telephone on motions or substantive objections that occur during depositions where a failure to do so would require the stopping of a deposition and the resetting of same depending on the Court's ruling.

- 9- **Motions in Limine** - Motions in Limine may not be scheduled for a hearing unless they contain a certification of a good faith attempt to resolve the matter without court action. Notices of hearing on Motions in Limine must specifically identify the specific issues which remain in controversy after counsel has conferred. **Motions in Limine will not be heard during the week of trial or at trial.**
- 10- **Legal Memorandum and Citations**: Any legal memorandums or briefs, along with hard copies of the significant cited authorities, **must be provided to the Court at least 3 business days before the hearing.** The Court will attempt to review the motion and the memorandums, and read the cases cited therein, prior to the hearing so that an immediate ruling may be rendered. Highlighting pertinent sections of case law is appreciated. Brevity is **also** appreciated. Case law and Memorandums provided to the Court during the hearing may not be considered. **The Court, on occasion, may rule on motions without a hearing. Therefore, both counsel filing the motion and opposing parties are encouraged to timely file written argument with the Court.**
- 11- **Limitation on Hearings**: All hearings related to discovery or trial matters must be filed and heard prior to the pre-trial conference. Motions in Limine must be filed prior to pre-trial, but may be set to be heard after the pre-trial conference, however no later than **3** days prior to the first day of the trial docket. **NO HEARINGS DIRECTED TOWARDS MATTERS INVOLVING THE TRIAL WILL BE HEARD DURING THE ACTUAL TRIAL PERIOD absent unanticipated events occurring.**
- 12- **Orders and Rulings of the Court**: The Court will strive to issue orders and rulings in a timely manner. Every effort will be made to rule the day of the hearing. If it is necessary to take an issue under advisement, the Court will attempt to set a date by which the Court will issue its ruling. If counsel are asked to prepare an order, the order **should be** drafted and circulated within 2 working days and must be submitted **to the Court** within 7 days of the hearing, with a copy to opposing counsel. Opposing counsel must advise the Court of any objection to the form of the proposed order within 3 days thereafter. The Court would appreciate a copy of any proposed order via e-mail in addition to hard copy so necessary changes can be made by the Court. If the parties bring proposed orders to the hearing, please make certain that (1) a copy is provided to opposing counsel; (2) the party has stamped, addressed envelopes; (3) a copy is provided to the Court on a removable storage device or via e-mail; and, (4) the caption contains more than the word "Order." All Orders must describe, in the caption, the subject and ruling of the court, *i.e.* "Order Granting Plaintiff Motion for Partial Summary Judgment on Liability." *See* Fla.R.Civ.P. 1.100(c)(1) If parties are unable to agree on the form of the order, both side shall present their proposed Order to the Court for consideration.
- 13- **Hearings on 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 be filed by opposing counsel, or the JA will contact the moving counsel to schedule a hearing.

#### SETTING OF TRIALS

The Judicial Assistant can advise counsel, upon inquiry, as to future trial dockets. Counsel should

request in their Notice for Trial, after consultation with opposing counsel, a trial period that will allow sufficient time to complete discovery and facilitate out of court resolution. If no trial period is requested in the Notice, the Court will issue an *Order Setting Status Hearing to Determine Date of Trial and/or Need for Case Management Conference*, setting a status hearing and providing upcoming available trial dockets. The parties may agree to a trial docket and notify the Court in writing and the hearing may be cancelled.

The Court issues a *Uniform Order Setting Case for Trial; Pre-Trial Conference and Requiring Pre-trial Matters to be Completed* in every case when setting the trial and pretrial conference pursuant to Fla. R. Civ. P 1.440. Please remember that the fact 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 pre-trial and trial.

In those rare cases wherein the Court issues an order setting a matter for trial pursuant to a Notice for Trial without agreement of the parties, and opposing party believes that the trial date will not allow sufficient time to complete discovery, counsel should immediately motion the Court for a status hearing and/or case management conference. Delays in advising the Court that there is not sufficient time to complete discovery may be considered a waiver of any objection to the setting of the trial date.

### **CASE MANAGEMENT CONFERENCE/COMPLEX LITIGATION**

The Court will schedule certain cases for a formal Case Management Conference (CMC) and issue an order setting forth the matters to be covered at the conference. Cases such as some medical malpractice cases, complex commercial litigation, multiple party litigation, cases with voluminous records or exhibits, as well as other types of cases will be set by the Court, without request, for a Case Management Conference. Certain cases may be deemed “Complex Litigation” pursuant to Fla. R. Civ. P. 1.201. Where so designated the procedures set forth under Rule 1.201 will apply.

Any case can be submitted for a Case Management Conference by the filing of a written request with the Judicial Assistant. Once submitted, the action will be controlled, not only by the Pre-Trial Order, but also by any resulting Case Management Order.

### **PRIOR TO PRE-TRIAL**

As noted above, a *Uniform Order Setting Case for Trial; Pre-Trial Conference and Requiring Pre-trial Matters to be Completed* will be issued when the dates are set for pre-trial and trial. The Uniform Order should be reviewed in detail and the dates for completion of various items calendared. The Court will presume that each attorney and each party is familiar with the requirements of that order. **THE COURT EXPECTS STRICT COMPLIANCE WITH THE ORDER ABSENT A TIMELY MOTION AND ORDER OF COURT MODIFYING THE CONDITIONS THEREIN.** Joint stipulations to extend time are not permitted. *Please review the Pre-trial Order.*

Mediation: Mediation **MUST BE COMPLETED** substantially prior to pre-trial. The Plaintiff is charged with timely submitting the mediation order. *Please review the Pre-trial Order.*

Witnesses, Exhibits and Experts: The pre-trial order requires disclosure of witnesses, exhibits and experts with specificity in a timely manner. Exhibits must be presented for review, initialed by opposing party, and annotation of objections lest said objections be deemed waived. Experts must be disclosed and must be made available for discovery by the retaining party without the necessity of a subpoena for the retained expert. Opinion rendered at trial will be limited to those disclosed to opposing counsel in either a written report or in response to deposition or written discovery questions prior to the close of Discovery. *Please review the Pre-trial Order*

Joint Meeting of Counsel: Plaintiff is charged with arranging a meeting of all counsel at least 10 days prior to pre-trial. Attendance is mandatory by the attorneys that will actually be trying the case. *Please review the Pre-trial Order.*

Joint Pretrial Statement: Following the joint meeting, Plaintiff is charged with preparing the joint pre-trial statement. If disagreements exist among the attorneys, the statement **must** set forth both versions. *Please review the Pre-trial Order.*

**Motions to Continue: Trials are set with the agreement of all parties, but no earlier than 120 days from the original trial order. If counsel believes the trial date is not workable, an immediate request for continuance should be made. All Motions to Continue must be (1) in writing; (2) be signed by the attorney and the parties requesting same; (3) identify the position of opposing counsel on the motion; (4) set forth when the parties will be ready for trial, if granted; and, (5) comply with Fla.R.Civ.P. 1.460. Stipulated Motions to Continue will not result in the trial being continued unless and until the Court reviews the motion and enters an order on same. The Court may require a hearing on the Motion or conduct a Case Management Conference.**

#### **PRE-TRIALS**

Pre-trials will be utilized to set the order of the trial docket<sup>3</sup>, discuss witness problems, jury instructions issues, 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. Pre-trial is NOT the time to handle Motions to Continue or discovery issues as these matters must have been raised and heard well before the pre-trial conference. **PARTIES SHOULD ESSENTIALLY BE READY TO TRY THEIR CASES AS OF THE PRETRIAL CONFERENCE.**

#### **SETTLEMENT OR RESOLUTION**

The Court must be notified immediately of any settlement or resolution of any matter on the trial docket. However, the trial will not be removed from the actual docket, is subject to trial call, and the attorneys must appear, until such time as the Court receives written notice that the matter has been fully resolved.

#### **TRIALS**

Trials will take place in Courtroom 18B unless otherwise indicated. Counsel and their clients are to be in the courtroom and ready for trial no later than 8:30AM. Depending on other emergency matters, the Court will start as soon after 8:30AM as possible.

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 that gestures, facial expressions or any manifestations of approval or disapproval of anything occurring in the courtroom is absolutely prohibited. Please see *Ninth Judicial Circuit Courtroom Decorum Policy* available at <http://www.ninthcircuit.org>.

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<sup>3</sup>While the Court will attempt to provide a specific date for trial, all cases are presumed to be ready on the first day of the trial docket and are subject to advancement on the docket to an earlier date (within that trial period) than given at pretrial.

Cell Phones, PDA, Communication Devices: Cell phones must be turned off or in the silent mode when possessed in the courtroom. If necessary to make or take phone calls, please step out of the Courtroom. Witnesses while testifying will not be permitted to possess any type of communication device while on the witness stand.

Trial Briefs: If a trial brief is to be filed with the Court it **must** be submitted to the Judge's Chambers no later than three (3) working days before the trial is to commence. The Court appreciates hard copies of cases cited in the trial brief with appropriate highlighting of the pertinent sections. *Please review the Pre-trial Order.*

**Court Reporter - The same Court Reporter must report the entire trial to enable jury readbacks. At the pretrial conference, the parties will advise the Court who will retain the Court Reporter.**

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 curry 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 always 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. Counsel shall not read from, nor appear as if she/he is reading from, reports or depositions or transcripts.

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 as exhibits. Once exhibits are marked, either for identification or in evidence, 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 <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 start of trial. The Court will hear argument of any counsel opposing the use of the demonstrative aids prior to the start of trial. 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 will be handled 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.<sup>4</sup>

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

### **INFORMATION NOT COVERED**

If any matters concerning the conduct of the pre-trial or trial procedures of Orange Civil Division 34 are not covered herein, counsel is free to contact the Court. A status hearing can be set at which time the Court will attempt to answer any inquiries. The Court appreciates counsels' efforts to understand and comply with this Court's procedures.

Revised November 2009, *Effective January 1, 2010*

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<sup>4</sup>In Orange County some documents electronically filed with the Court are imaged and may not be readily available in hard copy to the Court.