

Guidelines & Procedures

Orange Civil- Division 33

Judge Kevin B. Weiss
Circuit Judge

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In Order to assist Counsel, the Litigants and the Court, the following Guidelines and Procedures are hereby adopted for Circuit Civil Division 33 in Orange County, Florida when practicing before Judge Kevin B. Weiss.

HEARINGS

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

1. How to Schedule a Hearing

For Contested Hearings - Do Not call the Judicial Assistant to set a hearing until you do the following:

(A) Using the Judicial Automated Calendaring System (JACS), select an available hearing date and time. Go to the court website, www.ninthcircuit.org. Click the "Attorney" link. Near the bottom of the Information column click the "Hearing Schedules" link. This takes you to JAC's. Select the calendar for Orange Civil Division 33. Click the retrieve button and available hearing time for approximately the next 60 days is displayed in fifteen minute increments. You can set hearings for less than 15 minutes. Any hearing requests for more than 1 hour must be approved by Judge Weiss either by appearing during exparte or by letter to the Judge detailing the reasons for the additional time.

(B) Coordinate the date and time with opposing counsel/pro se party and then email the Judicial Assistant at ctjaig1@ocnjcc.org with a copy to opposing counsel/pro se litigants, for the hearing to be added to the docket. When you send your email, your hearing time is not confirmed until you receive a reply from the Judicial Assistant. All emails are processed before phone messages.

If you are requesting more than 30 minutes for a hearing, contact the Judicial Assistant for further instructions. Orange Civil Division 33 expects that you will file the Motion before setting a hearing.

In addition to filing the Notice of Hearing with the Clerk of Court, a copy of the Notice of Hearing with a copy of the Motion to be heard must be furnished to the Judicial Assistant via mail or hand delivery.

2. Ex Parte/Short Matters

Ex Parte/Short Matter time is normally held Monday through Thursday from 8:30 a.m. to 9:30 a.m. in Judge Weiss's hearing room, 1100.02. During Judge Weiss's trial weeks, ex/parte/short matters will be held in Courtroom 19B from 8:30 a.m. to 9:00 a.m.

Please check the JACS hearing calendar for our division or email the Judicial Assistant prior to scheduling to ascertain ex parte dates. We will first hear Uncontested/Non-Evidentiary Matters that are no more than 5 minutes. Next, we will hear time sensitive matters related to cases already set for trial. **There are no telephonic appearances during ex parte/short matters.**

3. Emergency Hearings

If an emergency situation arises, counsel may request that a hearing be set on short notice. The Motion must be designated as "EMERGENCY" in the heading and 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 received by 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. Cooperation of Counsel

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. See mandatory meet and confer process below.

If counsel/pro se litigant does not cooperate in scheduling a hearing, the requesting party may unilaterally set a hearing giving at least 14 days written notice (plus 5 days if mailed) to the opposing counsel/litigant who failed to cooperate. The Notice of Hearing must state that opposing counsel/litigant refused to coordinate a hearing time and include Certificate of Compliance, second option (see attached "Exhibit A").

After filing any motions or notices with the Clerk, a courtesy copy of any and all motions and notices of hearing may be forwarded to the Judicial Assistant via mail or hand delivery.

5. Mandatory Meet and Confer Process

Pursuant to Administrative Order 2012-03, effective April 12, 2012, a mandatory meet and confer process is established **for all motions** to be *set for hearing* in the circuit civil division and to occur *before* scheduling the hearing **except** for the following motions: injunctive relief without notice; judgment on the pleadings; summary judgment; or to permit maintenance of a class action.

Counsel with full authority to resolve the matter shall confer *before* scheduling the hearing on the motion to attempt to resolve or otherwise narrow the issues raised in the motion, and **include a Certificate of Compliance** (attached hereto as "Exhibit A") that the conference has occurred **in the Notice of Hearing** filed with the court. It shall

be the responsibility of counsel who schedules the hearing to arrange the conference.

The term "**confer**" requires a substantive conversation in person or by telephone in a good faith effort to resolve the motion without the need to schedule a hearing, and does not envision an exchange of ultimatums by fax, e-mail or letter. Counsel who merely attempt to confer have not conferred for purposes of this Order.

Counsel must respond promptly to inquiries and communications from opposing counsel who notices the hearing and is attempting to schedule the conference. If counsel who notices the hearing is unable to reach opposing counsel to conduct the conference after three (3) good faith attempts, counsel who notices the hearing must identify in the Certificate of Compliance the dates and times of the efforts made to contact opposing counsel.

Counsel shall include in the Notice of Hearing the Certificate of Compliance certifying that the meet and confer occurred (or did not occur and setting out the good faith attempts to schedule the conference) and identifying the date of the conference, the names of the participating attorneys, and the specific results obtained.

Counsel who notices the hearing shall ensure that the court and the court's judicial assistant are aware of any narrowing of the issues or other resolution as a result of the conference.

6. Attorney Telephonic Appearances

Attorneys may appear by phone (on non-foreclosure cases) if there is no testimony or evidence and the hearing is less than thirty (30) minutes. **A motion and order for telephonic appearance is necessary.** Once the Judge signs the order approving the telephonic hearing, it will be noted on the docket and the courtroom telephone number provided to counsel. It is the responsibility of the attorney appearing by telephone to initiate the call.

If multiple parties are appearing by telephone, it is the scheduling attorney's responsibility to arrange and place the conference call. **No cell phones** (the connection is often poor and causes problems for the parties, counsel and court reporters).

Please note that the Court has complete discretion when it comes to telephonic appearances of attorneys, parties, and witnesses. There is no right to appear by use of the Court's phone system. Likewise the Court may require personal attendance of attorneys, parties and witnesses at all hearings/trials. Unless a party obtains prior, written permission from the Court, **there are no telephonic appearances for Ex Parte, Foreclosures or Pre-Trial Conferences.**

7. Witnesses Appearing by Audio/Video Communication Equipment

Parties seeking to have a witness appear by audio/video equipment must review Rule 1.451 of the Florida Rules of Civil Procedure. Witnesses appearing by audio/video communication equipment must be sworn in at their location by a notary or other person authorized to administer oaths in the witness's jurisdiction. **There are no audio/video appearances on foreclosure cases. Parties must contact Orange County Court IT Department (407-836-0522) in advance of hearing/trial to coordinate equipment requirements.**

8. Cross Noticing

Additional motions should not be "piggy-backed" by cross notice unless counsel first confirms with opposing counsel that there is no objection to the cross-notice. Then

counsel must email the JA to confirm that it can be heard in the same time frame or that sufficient additional time is available for all matters to be heard. **It is cross noticing counsel's responsibility to make sure the matter is placed on the Judge's court calendar or same may not be heard even if cross-notice has been filed.**

9. Hearings/Trials cannot be cancelled unilaterally

You must email or speak directly with the Judicial Assistant, provide the reason for the cancellation and the Judicial Assistant will advise if the matter can be cancelled. Timely file with the Clerk's Office and fax/email to the Judicial Assistant a Notice of Cancellation. If you settle a case, file a dismissal with the Clerk's Office, fax/email copy to the Judicial Assistant and advise Judicial Assistant to take case off hearing/trial docket. Please also call the JA as soon as possible to advise of the cancellation. Failure to appear at a properly noticed hearing or trial may result in a show cause order.

10. Court Reporter

If you want a record of hearing/trial you must make arrangements for a Court Reporter. Parties, Witnesses and/or Attorneys shall not record the proceedings except through a court reporting service present in the hearing room/courtroom.

11. Interpreters

Unlike criminal cases, Circuit Civil Court does not provide language interpreters for litigants. You must make your own arrangements. Caveat - Under the ADA, Court Administration will provide sign language interpreter in civil matters. Contact Court Administration no later than two working days in advance to arrange accommodation for hearing or voice impairment. See Administrative Order 07-97-32-04.

12. Discovery Disputes

Please attempt to resolve discovery disputes in good faith prior to scheduling a hearing. In addition to the Florida Rules of Civil Procedure, the Court will attempt to follow the guidelines set out in the 2016 Florida Handbook on Civil Discovery Practice provided by the trial lawyers section of the Florida Bar.

13. Discovery Motions and Motions to Compel

The mere filing of a Discovery Motion, Motion to Compel or Motion for Protective Order is insufficient. A Motion must be filed and 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 timely response or objection has been filed to initial Supreme Court approved discovery requests (e.g. Fact Information Sheet, Interrogatories, etc.), the moving party may submit a proposed order (including stamped addressed envelopes) with the Motion. Unless there is a written objection by the opposing party, no hearing will be necessary and the Court will rule in chambers.

14. Motions for Protective Orders

The filing of a Motion for Protective Order, without presenting it to the Court, is insufficient. The Court will make itself available for 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 that occur during depositions where a failure to do so would require the conclusion of a deposition and the resetting of same depending on the Court's ruling.

15. Motions in Limine

Motions in Limine may not be scheduled for a hearing unless they contain a certification of 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. Please do not use the Court's hearing time for a review of existing Florida case law; rather, the time should be used to discuss specific issues and concerns applicable to your case.

16. Hearing Notebooks. Legal Memorandum and Citations

Bring proposed Order with copies/stamped addressed envelopes; copies of case law/Statutes for Judge and opposing counsel; and copies of Motion, in case the Motion is missing from the docket. If you highlight case law/exhibits, all copies must be highlighted. Bench notebooks with copies of pertinent pleadings, case law and Proposed Order, are welcome. Make sure opposing counsel receives the same notebook. If you want the Court to review the notebook before the hearing, make sure to deliver at least three (3) business days before the Hearing (hard copy or removable storage device using Word or PDF). Pursuant to Florida law, all Motions/Orders must be in English. For lengthy notebooks/briefs, please consider using an electronic storage device such as a flash drive instead of paper/notebooks.

The Court will attempt to review the motion/memorandum, and review the cases cited therein, prior to the hearing, so that an immediate ruling may be rendered. Brevity is appreciated and Memorandums should be kept to no more than five pages in length. 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.**

17. 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 heard no later than one (1) week prior to the first day of the trial docket. **ABSENT EXTRAORDINARY CIRCUMSTANCES, NO HEARINGS DIRECTED TOWARDS MATTERS INVOLVING THE TRIAL WILL BE HEARD DURING THE ACTUAL TRIAL PERIOD.**

18. 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 is asked to prepare an Order, the Order must be submitted within 7 days of

the hearing, after first submitting 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. Additionally, after hearing, the Court would appreciate a copy of any proposed Order, in word format, on either a removable storage device or via e-mail in addition to hard copy.

When 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, *e.g.* "Order Granting Plaintiff Motion for Partial Summary Judgment on Liability." *See* Fla.R.Civ.P. 1.100(c)(1). For agreed upon Orders without hearing, the Court requires confirmation from opposing counsel in writing. This confirmation may be a faxed note to Plaintiff that is included when submitting the Order or an email to the JA from opposing counsel. Please ensure that sufficient copies for all parties as well as self-addressed stamped envelopes for all parties are included.

19. Hearings on Motions for Re-hearing, Reconsideration or New Trial

Upon filing said motion, please send a copy to the Court for review. The Court will either rule without a hearing or the JA will contact the moving attorney to schedule a hearing.

20. Attorney's Fees - Discovery Disputes

If you are seeking attorney's fees you must, before filing a Motion to Compel pursuant to Fla.R.Civ.P 1.380, **confer with counsel** for the opposing party in a **good-faith effort** to resolve by agreement the issues raised, and **shall file** with the court at the time of filing of the motion, a statement certifying that he/she has conferred or attempted to confer with opposing counsel and that counsel have been unable to resolve the dispute.

As provided in Section (a)(4) of Rule 1.380, if the motion is granted, the court shall award expenses which may include attorney's fees. Review the 2016 Florida Handbook on Civil Discovery Practice, which is available on the Ninth Judicial Circuit website, www.ninthcircuit.org.

21. Compulsory Medical Examinations

See Guidelines for Counsel Regarding Compulsory Medical Examinations at Court's web page or email the Judicial Assistant ctjajg1@ocnjcc.org for a copy.

22. Setting of Trials

The Judicial Assistant can advise counsel, upon inquiry, as to future trial dockets. Counsel may 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. When filing the Notice for Trial, include the length of time anticipated to try the case as well as sufficient self-addressed, stamped envelopes for all parties. If a trial period is not requested in the Notice, the Court will issue an Order setting a Status

Hearing to Determine Date of Trial, the order will provide upcoming available trial dockets. The parties may agree to a trial docket and notify the JA by email and the hearing will 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 Pre-Trial 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.

23. Case Management Conference

The Court may 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 involving medical malpractice, complex commercial litigation, multiple party litigation, voluminous records or exhibits, as well as other types of cases may be set by the Court, without request, for a Case Management Conference.

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

24. 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 pretrial 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. Parties and counsel must comply with time limits unless the Court approves a stipulation. **THE COURT EXPECTS STRICT COMPLIANCE WITH THE ORDER ABSENT A TIMELY MOTION AND ORDER OF COURT MODIFYING THE CONDITIONS THEREIN.**

Mediation: Mediation **MUST BE COMPLETED** prior to pre-trial. The Plaintiff is charged with timely submitting the mediation 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 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.

Joint Meeting of Counsel: Plaintiff is charged with arranging a meeting of all counsel at least 10 days prior to the pre-trial, in person. Attendance is mandatory by the attorneys who will actually be trying the case.

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.

Motions to Continue: 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) 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.

25. Pre-Trials

Pre-trials will be utilized to set the order of the trial docket, discuss witness problems, jury instructions issues, audio/visual equipment needs, need for interpreters, 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 prior to the pre-trial conference. **PARTIES SHOULD ESSENTIALLY BE READY TO TRY THEIR CASES AS OF THE PRE-TRIAL CONFERENCE.**

26. 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 of dismissal or has signed an Order that the matter has been resolved.

27. Trials

Trials will take place in Courtroom 19B unless otherwise indicated. Counsel and their clients are to be in the courtroom and ready for trial no later than 9:00 a.m.

28. 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 www.ninthcircuit.org.

29. Trial Briefs

If a trial brief is to be filed with the Court it should be submitted to the Judge's Chambers no later than three (3) business 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. A computer flash drive containing the briefs and cases may be submitted instead of a hard copy.

30. Court Reporter:

The same Court Reporter must report the entire trial to enable jury read backs. It is helpful for the court reporter to report in “real time” so that the Court can follow along with the testimony and have access to the transcript.

31. **Voir Dire**

The Court will conduct a preliminary voir dire of the jury. Counsel may request the Court to 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 or explain the law that may apply in the case.

32. **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 peremptory 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.

33. **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. Do not block the Judge's view of jurors. The Court will discuss with counsel the time requirements for both opening and closing 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, or appear as if she/he is reading from, reports, depositions or transcripts.

34. **Exhibits:**

All exhibits are to be marked for identification by the clerk prior to the start 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 authorized by the Court.

35. **Demonstrative Aids:**

Any demonstrative aid that is to be used at trial must be marked by the clerk and shown 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.

36. 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. The party calling the expert is responsible for informing the expert of "in limine" rulings, and the effect of the invocation of the Rule of Sequestration.

37. 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.

38. 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.

39. Jurors

The Court generally will allow jurors to take notes and to ask questions where necessary. Section 40.50, Florida Statutes. If any attorney or party objects to these procedures such objection should be addressed to the Court at the pretrial conference, prior to trial.

40. Jury Instructions

Jury instructions and verdict forms are to be prepared by both sides and **exchanged no later than three (3) working days before the Pre-Trial Conference**. A hard copy should be provided to the Court at least three (3) business days prior to the trial along with a copy on a removable storage device. The Court intends to provide the jury with a written copy of all jury instructions when the jury retires to deliberate. Therefore, there should be enough copies of the final instructions for each juror, the clerk, Court, counsel and the court reporter. In addition, the final instructions should not contain any citations, jury instruction titles or information as to who requested the instruction.

41. Information not covered

If any matters concerning the conduct of the pre-trial or trial procedures of Orange Civil Division 33 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 the Court's procedures.

"Exhibit A" First Option

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that a lawyer in my firm with full authority to resolve this matter had a substantive conversation in person or by telephone with opposing counsel in a good faith effort to resolve this motion before the motion was noticed for hearing but the parties were unable to reach an agreement.

/S/ _____

Counsel for the party who noticed the matter for hearing.

Second Option

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that a lawyer in my firm with full authority to resolve this matter attempted in good faith to contact opposing counsel in person or by telephone on:

- 1. _____ (Date) _____ at _____ (Time) _____ ;**
- 2. _____ (Date) _____ at _____ (Time) _____ : and**
- 3. _____ (Date) _____ at _____ (Time) _____ ;**

to discuss resolution of this motion without a hearing and the lawyer in my firm was unable to speak with opposing counsel.

/S/ _____

Counsel for the party who noticed the matter for hearing.