

**Courtroom Guidelines, Procedures  
and  
Expectations  
for Orange County Circuit Civil Division 35  
Judge Donald A. Myers, Jr.**

\*\*NOTE: REVISED AND EFFECTIVE 7/15/13\*\*

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 35 IN ORANGE COUNTY, FLORIDA WHEN PRACTICING BEFORE JUDGE DONALD A. MYERS, JR..<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 35. Next, please contact the Judicial Assistant by e-mail at [ctjamgl@ocnjcc.org](mailto:ctjamgl@ocnjcc.org) after coordinating hearing time(s) with opposing counsel. It is also imperative that counsel comply with the various requirements of Administrative Order 2012-03, <http://ninja9.org/adminorders/orders/2012-03> known colloquially as the “Meet and Confer” requirement. In addition to filing the Notice of Hearing with the Clerk of Court, a copy of the Notice of Hearing and Motion(s) to be heard must be furnished to the Judicial Assistant via U. S. Mail or hand delivery no later than two weeks prior to the hearing.

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. See, Admin. 2012-03 ¶6. 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 hand delivery.

Additional motions must 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

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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.](#)) as well as the [local administrative rules](#).

<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*.

be reserved in which to hear them. Please note that only the party setting the hearing may cancel the hearing.

Telephone hearings are permitted as long as there is no testimony to be offered or evidence submitted, or unless otherwise prohibited herein. Counsel must file a motion and present a proposed order to the court in advance of the scheduled hearing. 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.

- 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 or respond.
- 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 or e-mailed 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/Short Matters - *Ex Parte* and Short Matters are held Monday through Thursday at 8:30 a.m. Matters will be handled in the order in which the attorneys appear. Therefore, *ex parte* matters should arrive early. If no matters remain pending at 9:00 a.m. short matters will close. 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.
- 5- Uniform Motion Calendar - Uniform Motion Calendar are scheduled hearings that are held during hearing weeks on Monday - Thursday from 9:00 – 9:30 a.m. You will find the available time slots on JACS. 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, to strike affirmative defenses, for more definite statement, to amend pleadings, short discovery motions, protective orders, objections to CMEs, Motions for Summary Judgment after default (not foreclosures), etc. Hearings must be cancelled no later than 48 hours prior to the day the hearing is scheduled.
- 6- Discovery Motions and Motions to Compel: The mere filing of a Motion is insufficient. Any motions filed but not set for hearing will be considered abandoned. 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) and Admin. Order 2012-03. If no response or objection has been filed to initial Supreme Court approved discovery requests, the moving party may submit a proposed order with the Motion. No hearing will be necessary. Please refer to the 2013 Handbook on Civil Discovery Practice. [www.flatls.org](http://www.flatls.org) [2013-discovery-handbook[1].pdf]
- 7- Motions for Protective Orders: The filing of a Motion for Protective Order, without attempting to set it for immediate hearing, is insufficient to protect from any discovery requested. 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.

- 8- Motions in Limine (MIL) - MIL may not be scheduled for a hearing unless they contain a certification of a good faith attempt as to each item to resolve the matter without court action. Notices of hearing on MIL must identify the specific issues which remain in controversy after counsel has conferred. MIL will not be heard during the week of trial or at trial. MILs must be filed prior to the pre-trial, but may be heard between the pretrial and trial, time permitting unless another order directs otherwise.
- 9- 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. **The Court, on occasion, may rule on motions without a hearing. Therefore, counsel are encouraged to timely file written argument supporting and opposing their positions with the Court.**
- 10- 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 heard after the pre-trial conference if hearing time has been obtained from the JA prior to the actual pretrial and notices of hearing have been sent out. **NO HEARINGS DIRECTED TOWARDS MATTERS INVOLVING THE TRIAL WILL BE HEARD DURING THE ACTUAL TRIAL PERIOD** absent unanticipated events occurring.
- 11- 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 two (2) working days and must be submitted to the Court within seven (7) days of the hearing, with a copy to opposing counsel. Counsel must advise the Court of any objection to, or agreement on, the form of the proposed order when the order is submitted. The Court would appreciate a copy of any proposed order via e-mail in addition to a 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 via e-mail in Word ; 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 sides shall present their proposed Order to the Court for consideration within the seven (7) days.

Please note that "e-portal" does not provide for the uploading of proposed orders to the Court or for filing. 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." All proposed orders of any type should be accompanied with a cover letter indicating (1) whether or not the form of the submitted order is agreed to by all opposing counsel and (2) with sufficient paper copies and addressed, stamped envelopes to serve all parties and counsel.

- 12- 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 will be cancelled. If no agreement can be reached amongst the attorneys, attendance at the hearing by the lawyers trying the case is mandatory.

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. See, Rolle v. Gary A. Birken, M.D., 994 So.2d 1129 (Fla. 3<sup>rd</sup> DCA 2008)

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, or that a conflict exists, 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) or an Abbreviated Case Management Conference (ACMC) and issue an order setting forth the matters to be covered at the conference. Cases such as medical malpractice cases, complex commercial litigation cases, multiple party litigation cases, cases with voluminous records or exhibits, as well as other types of cases will be set by the Court, without request, for certain types of 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 considered for a Case Management Conference by the filing of a written request with the Judicial Assistant. Once "case managed," the action will be controlled, not only by the Pre-Trial Order, but also by any resulting Case Management Order(s). Generally, cases that are subject to case management will require periodic status conferences.

### **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 (Uniform Order)* 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(s). **THE COURT EXPECTS STRICT COMPLIANCE WITH THE ORDER ABSENT A TIMELY MOTION AND ORDER OF COURT MODIFYING THE CONDITIONS THEREIN.** Joint stipulations to extend times set forth therein are not permitted.

*Please review the Pre-trial Order.*

1- Mediation: Mediation **MUST BE COMPLETED** prior to pre-trial. The Plaintiff is charged with timely submitting the mediation order. *Please review the Pre-trial Order.* The parties must make certain that the mediator files a final report with the Court.

2- 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 noted lest said objections be deemed waived. Retained 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. Opinions rendered at trial will be limited to those disclosed to opposing counsel in either a written report prior to the depositions or in response to deposition or written discovery questions prior to the close of discovery. *Please review the Pre-trial Order*

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

4- 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 all versions. *Please review the Pre-trial Order.*

5- 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:

- (A) in writing;
- (B) be signed by the attorney and the parties requesting same;
- (C) identify the position of opposing counsel on the motion;
- (D) indicate any other continuances that have been sought and or granted or denied
- (E) set forth when the parties will be ready for trial, if granted; and,
- (F) comply with *Fla.R.Civ.P.* 1.460 and *Fla. R. Jud. Admin*2.545(e).

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. Pursuant to both the Uniform Order and most case management orders, discovery closes the day prior to the pretrial conference. **PARTIES SHOULD ESSENTIALLY BE READY TO TRY THEIR CASES AS OF THE PRETRIAL CONFERENCE.** An Order on Pretrial Conference will be issued at or after the pretrial.

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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.

## SETTLEMENT OR RESOLUTION

The Court must be notified immediately of any settlement or resolution of any matter or of any parties to 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 19B unless otherwise indicated. Attorneys should check with the Judicial Assistant the day before the trial to confirm the actual courtroom that will be used. Counsel and their clients are to be in the courtroom and ready for trial no later than 8:15 a.m. Depending on other emergency matters, the Court will start at 8:30 a.m. or as soon thereafter as possible.

1- 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* <http://www.ninthcircuit.org/programs-services/court-resource-center/decorum-policy.shtml> Professionalism will be expected of each attorney and representative of their offices and any retained witnesses.<sup>4</sup> The Court is under a professional obligation to make referrals of unprofessional conduct to the local Bar or The Florida Bar. See, *In Re: Code For Resolving Professionalism Complaints* No. SC13-688 (June 6, 2013).

2- Cell Phones, PDA, Communication Devices, Cameras or other photographic equipment: 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. No photographs or recording, video or otherwise is permitted within the courtroom unless specifically permitted by the Court after formal request is made.

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

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

5- Voir Dire: The Court will conduct a preliminary voir dire of the jury. 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. Counsel are reminded to be considerate of the jurors' personal lives

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<sup>4</sup> Counsel are referred to and must be familiar with the (1) Oath of Admission to the Florida Bar, (2) The Florida Bar Creed of Professionalism, (3) The Florida Bar Ideals and Goals of Professionalism, (4) the Rules Regulating The Florida Bar, and (5) the decisions of the Florida Supreme Court. See for reference *In Re: Code For Resolving Professionalism Complaints*, SC13-688 (June 6, 2013).

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 explore the facts of their case nor explain the law that may apply in the case, nor attempt to curry favor with the venire. Time limits provided during pretrial will be enforced.

6- Jury Selection Process: After voir dire, the Court will first ask each side for any cause strikes, first on behalf of the Plaintiff and then on behalf of the Defendant(s). Upon completion of challenges for cause, the Court will move to pre-emptory challenges. The Court will start with the first remaining juror and move sequentially as they are seated in the venire, alternating between (among) counsel until a panel is chosen. Back striking during jury selection is always permitted. The number of alternates will be determined by the Court by the type and length of the trial. Each party will have one additional strike as to each alternate. If a "backstrike" of an underlying juror is offered after the alternate(s) are selected, the replacement juror will not be the alternate but will be the next juror available after the alternates that have already been chosen.

7- Opening and Closings: 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. If Power Point presentations are to be used, a hard copy must be filed with the Court to create an appellate record. Further, unless the Power Point content is simply verbiage that could otherwise have been written on a large pad, the content must have been exhibited to opposing counsel prior to its presentation to the jury so any objections may be dealt with in advance of its use..

8- Exhibits: All exhibits are to be marked for identification by the clerk with tags provided by the clerk of court prior to the day of trial. Arrangements must be made directly with the trial clerk. Exhibits which will be stipulated into evidence, or which are not objected to, may be marked into evidence as exhibits. Once exhibits are marked in evidence or are offered but not admitted, they become the property of the Clerk of Court and may not be altered or removed from the courtroom without order of the Court. No exhibits are to be published or exhibited to the jury until admitted into evidence and/or authorized by the Court. Audiovisual and/or equipment questions should be addressed with <http://www.ninthcircuit.org/programs-services/audio-visual>.

9- Demonstrative Aids: Any demonstrative aid that is to be used at trial must be marked by the clerk and exhibited to opposing counsel and the Court prior to the week of trial. The Court will hear argument of any counsel opposing the use of the demonstrative aids prior to the trial week.. No aids are to be shown to the jury without prior approval of the Court. All demonstrative aids should be initialed on the back to verify that they have been presented to opposing counsel prior to the trial. If an issue arises, the Court will look to see if the demonstrative aid in question has been initialed.

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

If any issues or motions arise as to the expert's ability (qualifications, opinions or ability) to testify arise, those matters must be addressed well in advance of the pretrial conference. Daubert challenges must be filed, scheduled and heard well in advance of trial. Hearing time is limited; failure to have filed and have heard challenges as to experts and their opinions in a timely manner may result

in the challenge not being addressed, the trial continued, sanctions being imposed or other actions by the Court.

11- 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>5</sup>

If depositions or portions thereof, are to be published during trial either as substantive testimony or for impeachment, any objections must be addressed to the Court in advance of pretrial. Designations of the offering party must be filed, and responsive cross-designations filed within five (5) business days thereafter, and then any objections contained within those designations, which need to be addressed by the Court, must be noticed and heard before pretrial. It is the responsibility of the party attempting to utilize the deposition to timely commence the process. The Court may, at its discretion, rule on the objections without a hearing. Therefore, counsel must provide a hard copy of the deposition to the Court and may wish to provide written argument on the designations and cross-designations in a timely manner.

12- 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. Matters addressed at sidebar are not to be repeated in front of the jury and are considered confidential unless advised otherwise by the Court.

13- 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 the pretrial.

14- Jury Instructions: Jury instructions are to be prepared by both sides and exchanged at least one week prior to beginning of the trial period. A hard copy must be provided to the Court as well as a copy via e-mail no less than seven (7) days prior to the beginning of the trial. The Court intends to provide the jury with a written copy of all jury instructions when the jury retires to deliberate. In addition, the final instructions should not contain any citations, jury instruction titles or information as to who requested the instruction. In certain cases, the Court may provide some substantive law instructions orally 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 at the pretrial conference.

### **INFORMATION NOT COVERED**

If any matters concerning the conduct of the pre-trial or trial procedures of Orange Civil Division 35 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.

*Effective July 15, 2013*

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<sup>5</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.

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