

GUIDELINES & PROCEDURES Re: Setting Trials, Pre-Trial Conference, and Trials

**Judge Denise Kim Beamer
Ninth Judicial Circuit – Orange County
Circuit Civil Division 33**

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HOW TO SET A CASE FOR TRIAL

The Judicial Assistant can advise counsel, upon inquiry, as to future trial dockets but there is no guarantee whether your case will be able to be set on the docket requested. If requesting a specific trial docket, 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 motion practice.

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 as long as the case is at issue. See, *Rolle v. Gary A. Birken, M.D.*, 994 So. 2d 1129 (Fla. 3rd DCA 2008)

In the event the Court issues an Order Setting Case for Trial pursuant to a Notice for Trial without agreement of the parties, and either 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 and should schedule said motion for hearing during short matters. 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) 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. Business Court procedures may be utilized by the parties or required by the Judge.

Any complex case that does not qualify for Business Court 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).

PRIOR TO PRE-TRIAL

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 READ THE UNIFORM ORDER SETTING CASE FOR TRIAL TO BE SURE YOU ARE IN COMPLIANCE WITH ALL PROVISIONS.

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:

- (1) be in writing;
- (2) be signed by the attorney and the parties requesting same;
- (3) identify the position of opposing counsel on the motion;
- (4) indicate any other continuances that have been sought and or granted or denied;
- (5) set forth when the parties will be ready for trial, if granted; and,
- (6) 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. The attorneys must comply with the requirements in the trial order until the Court grants a continuance of trial.

PRE-TRIALS

Pre-trials will be utilized to set the order of the trial docket, 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 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.

Important Issues Related to the Pre-Trial Conference

- PARTIES SHOULD ESSENTIALLY BE READY TO TRY THEIR CASES AS OF THE PRETRIAL CONFERENCE.
- **Parties shall bring to the Pre-Trial Conference a completed copy of the Pre-Trial Check List and Order Controlling Trial**
- **AN “IN PERSON” ATTENDANCE (via ZOOM while in-person requirements are suspended) AT THE PRETRIAL CONFERENCE BY THE ATTORNEYS WHO WILL TRY THE CASE IS MANDATORY.** Substituted appearance by counsel other than trial counsel at the pre-trial conference is not permitted. The pretrial will usually last 20 to 30 minutes.
- 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 at ctjasb2@ocnjcc.org 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 and all documents necessary to close the case have been filed with the Clerk. A Notice of Settlement is not sufficient to close the case. A dismissal or judgment as to all defendants/claims is required.

TRIALS

Trials will take place in Courtroom 19-B 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 9:30 a.m. unless otherwise notified. Depending on other emergency matters, the Court will start at 9:30 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 *Amended Ninth Judicial Circuit Courtroom Decorum Policy* available at <http://www.ninthcircuit.org>. Professionalism will be expected of each attorney and representative of their offices and any retained witnesses.¹ 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 it is 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. Please submit hard copies of case law cited in the trial brief with appropriate highlighting of the pertinent sections.
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 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.

¹ 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).

6. **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.
7. **Exhibits:** All exhibits are to be **pre-marked** for identification by the attorneys 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 to the Ninth Circuit's Technology Support department at <http://ninthcircuit.org/services/technology-support>.
8. **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.
9. **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.²

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,

²In Orange County some documents electronically filed with the Court are imaged and may not be readily available to the Court.

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.**

10. **Objections:** The Court will not allow speaking objections in front of the jury. When counsel rises to object, only the legal basis for the objection 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.
11. **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.
12. **Jury Instructions and Verdict Forms:** Joint jury instructions and verdict forms are to be prepared and submitted to the Court at least 5 business days prior to the beginning of the trial period. The agreed set of jury instructions must be provided to the Court by hard copy as well as via e-mail no less than 5 business days prior to the beginning of the trial. Disputed instructions should be noted within the joint jury instructions. The Court will provide each juror with a written copy of all jury instructions when the jury retires to deliberate. In addition, the final instructions should not contain any citations or information as to who requested the instruction. The Court typically will read some substantive law instructions to the jury during preliminary instructions; however, the Court may omit this reading if counsel have not timely provided an agreed set of instructions to the Court