

PRACTICES AND PROCEDURES FOR CIVIL CASES IN DIVISION 49

(revised November 4, 2025)

Sandra C. Upchurch, Circuit Judge

Katie Smith, Judicial Assistant

Contact Information:

Mailing Address: Kim C. Hammond Justice Center
1769 E. Moody Blvd, Bldg 1
Bunnell, FL 32110

Telephone: (386) 313-4530

Email Address: kasmith@circuit7.org

I. Communication with the Judicial Office:

- A. **Method of Communications:** All communications with the judicial chambers must be submitted by email to kasmith@circuit7.org. Unless otherwise directed. **The subject line of any email to the judicial assistant must contain the county, case number, case name, and relevant matter.**
- B. **Ex Parte Communications:** All communications must comply with Canon 3 of the Code of Judicial Conduct, which prohibits a judge from initiating, permitting, or considering *ex parte* communications and from considering other communications outside the presence of the parties concerning a pending or impending proceeding, unless authorized by law. All parties must be copied on any email directed to the judicial office, unless an *ex parte* communication is authorized by law.
- C. **Unsolicited Communications:** The Court will not consider unsolicited communications from non-parties to a case. Parties may only contact the judicial office in accordance with these practices and procedures.
- D. **E-Filing Portal Contact Information:** All attorneys and self-represented litigants **must** make and receive service by email through the Florida Courts E-Filing Portal, **unless excused**. Communication with the judicial chambers shall be by telephone to (386) 313-4530 **only if excused from email service**. The phone number to judicial chambers does not accept text messages.
- E. **Response to Inquiries:** The judicial assistant receives voluminous emails and phone calls daily and strives to substantively respond to all inquiries within one (1) business day. If the judicial assistant is unable to substantively respond within one business day, your message will be acknowledged as received with an indication of when to expect a substantive response and alternate contact for immediate assistance. When the judicial assistant is out of the office, your message will be acknowledged as received with an indication of when to expect a substantive response and an alternate contact for immediate assistance.

- F. **Communications with Judicial Assistant:** The judicial assistant is not permitted to provide legal advice. Any email sent to or from the judicial office may be a public record subject to disclosure. **Do not include the judicial assistant in emails between parties that do not request action from the judicial chambers.**

II. **Scheduling Procedures:**

- A. **Court Schedule:** Trials are scheduled for Division 49 beginning the third week of the month for a two-week trial period, except for November and December which have a one-week trial period.

Hearings are scheduled Monday, Wednesday, and Friday during non-trial weeks.

Scheduling Hearings:

All Hearings must be requested for scheduling through the judicial assistant by an email copying opposing counsel and any self-represented litigant to kasmith@circuit7.org.

The subject line of any email to the judicial assistant must contain the county, case number, case name, and relevant matter. (Ex.: Flagler County - 2024 CA 000123– John Smith v. Jane Smith – 1 Hour Hearing Time Requested).

Once hearing dates are provided by the judicial assistant, the parties shall coordinate the hearing time and advise the judicial assistant by email of the hearing time selected. Once the hearing time is confirmed by the judicial assistant the party setting the motion for hearing must prepare and file a notice of hearing. If the hearing notice is not filed within 3 days of confirmation by the judicial assistant, the hearing time will be offered to other parties for other cases.

- B. **Notice of Hearing:** **The Notice of Hearing must include:** (a) remote or an in-person (in person only if specifically requested or necessary due to complexity) (b) the docket number (Dkt) and the filing date of the motion to be heard; (c) the amount of time reserved; and (d) the Zoom Meeting ID number. A courtesy Notice of Hearing must be provided to the judicial assistant by email to Division49@circuit7.org. **An evidentiary hearing** shall be identified as such in the Notice of Hearing. A hearing may be cross noticed only with permission from the court and by agreement of all parties. The Cross Notice of Hearing must also be provided to the judicial assistant.

All motions SHALL conform to the conferral requirements of Fla. R. Civ. P. 1.202. Motions scheduled for hearings that fail to comply with Rule 1.202 may be summarily denied and the hearing cancelled. A non-movant's purposeful failure to respond to conferral attempts may be considered consent to the relief sought. **Three attempts** at conferral (which includes

telephone communication) are required. Above attempts shall be documented in the motion if the conferral attempts proved unsuccessful.

III. In Person and Remote Appearance:

- A. **Remote Proceedings:** All non-evidentiary matters or hearing scheduled for less than sixty (60) minutes are conducted remotely, which allows attorneys and parties to appear remotely, as provided by Florida Rule of General Practice and Judicial Administration 2.530. Under special circumstances **AND ONLY** upon approval by the court, some attorneys or self-represented litigants may appear at a hearing remotely, while others may appear at the hearing in person. Any request to appear in person for a hearing designed as remote in the Notice of Hearing requires **five (5) days advance notice to judicial chambers.**
- B. **In-Person Proceedings:** All non-jury trials, evidentiary hearings, and hearings scheduled for sixty (60) minutes or longer **shall be IN PERSON** unless agreed upon by the parties **AND** approved via the judicial assistant.
- C. **Platform Used:** The Court uses Zoom for remote appearances. All Zoom hearings are assigned the following permanent Zoom ID number: **386 313 4530**. All Zoom notices must have the zoom link below.

Sandra Upchurch's Personal Meeting Room

Join Zoom Meeting

<https://zoom.us/j/3863134530>

Meeting ID: 386 313 4530

One tap mobile

+17866351003,,3863134530# US (Miami)

+16513728299,,3863134530# US (Minnesota)

Join instructions

<https://zoom.us/join/3863134530/invitations?signature=Cd95RKlHi4IHm7m8ZhLzWl0l1jK1lin1KhQZs6WyTwU>

- D. **Requirements:** Witnesses testifying by Zoom must adhere to the rule of sequestration of witnesses, if invoked. No one may be in the room with the witness when the witness is testifying absent Court approval. Except for expert witnesses and treating physicians, witnesses may not have any documents, notes, or other materials for use in giving testimony.

- E. **Technology Needs:** Attorneys, parties, or witnesses who appear remotely should log on to Zoom at least ten minutes prior to the hearing time. Any person appearing remotely must be in a private location that is quiet and free from distractions. Absent extenuating or unforeseen technological circumstances, all attorneys shall appear with video, not by audio only and **MUST BE** dressed in courtroom attire.

Any person appearing remotely **MUST** enable the person's camera when joining the proceeding and keep the camera turned on unless instructed otherwise by the court. Any person appearing remotely must mute the person's microphone when joining the proceeding and keep the microphone turned off until instructed otherwise by the court. All participants appearing remotely must be sure their **first and last** names are entered correctly. Under no circumstances will a participant be permitted to appear remotely from a moving vehicle.

- F. **COURT REPORTERS:** Court reporters may appear in person or remotely in accordance with the designation in the Notice of Hearing. Attorneys shall refer to the following link for court reporter qualifications: <https://circuit7.org/orders/g-2023-041-sc/>

IV. **Submission of Orders and Judgments:**

- A. **Format and Submission Method:** All proposed orders following a hearing shall be **E-FILED** through **E-Portal** under filing into an existing case.

Proposed orders must be circulated among the parties **BEFORE** submission. If a party objects to a proposed order, this objection **must** be noted in the email to the Court. The moving party must mail or otherwise deliver copies of the signed order to any *pro se* litigant or other litigant who has been excused from eService. A Notice of Service must then be filed in the court file to reflect delivery of the order.

A proposed order should be titled "Order [Granting/Denying] [Plaintiff's/Defendant's] Motion to _____". When viewing the docket, an entry like "Order Granting Defendant's Motion to Continue Trial" is more informative than "Order on Motion to Continue." Do not under any circumstances submit a proposed order simply entitled "Order." If the order is agreed too or has no objections, agreed/No Objection **MUST** be notated in the order.

Proposed orders should not contain law firm information, including internal file numbers, a bar code or other computer-generated code. Proposed orders should be sequentially numbered on the bottom center of each page with page numbering suppressed on the first page.

Proposed orders must state that copies have been furnished by *eService* to each named attorney. **Counsel for the moving party must mail or otherwise deliver a copy of the signed order to any self-represented litigant or other litigant who cannot be served automatically by eService.** A Notice of Service must then be filed in the court file to reflect delivery of the order.

- B. **Deadline for Submissions:** Proposed orders must be submitted **no later than seven (7) days after any hearing** unless otherwise directed by the court during the hearing. **NO** proposed order will be accepted prior to any Hearing/Trial scheduled.

- C. **Foreclosure Proceedings/Original Documents:** (including affidavits, notes and mortgages, default letters, allonges, and assignments) must be **SENT DIRECTLY TO THE CLERKS OFFICE.** No hearing shall go forward if the original documents are not filed with the clerk by the date of the hearing. All proposed Foreclosure Final Judgments must be submitted through E-Portal. They **must** be Submitted **NO** more than 3 days **AFTER** hearing or by Courts direction.

- D. **EX PARTE Orders:**

Motions for Withdrawal of Counsel: Upon written motion stating the reasons for withdrawal, the client's last known address, telephone number with area code, and email address; and notice to all parties and their client. The motion **must** attach written consent from the client. The proposed order must direct that all future pleadings, orders, and other papers be served on the client at his or her last known address, which will be set forth in the order together with the client's last known telephone number, and email address. It must also require the client to register for eService at www.myflcourtagency.com. The Court will not automatically stay an action simply because a party's counsel has withdrawn. Absent written consent, the motion **MUST** be set for a hearing.

Motions for Substitution of Counsel: Upon written motion, which includes the client's written consent, the court may grant proposed order. Proposed orders need to be submitted through E-Portal. If client consent is not attached, the motion **MUST** be set for hearing.

Motions to Cancel Foreclosure Sales: Upon (a) a written motion received by the Court no less than five (5) business days before the scheduled sale date; (b) the motion must contain specific facts setting forth the reasons for the postponement; (c) the motion must have supporting documentation attached (e.g. short sale contract, loan modification information, etc.) and (d) the motion must be served on all parties, specifying all efforts made to contact all parties, and any agreement or objection to the relief sought.

- E. **EMERGENCY HEARINGS:** **Must be requested with an appropriate motion and emailed to the Judicial Assistant** at kasmith@circuit7.org. **ONLY** under circumstances where persons or property face the threat of imminent harm without court intervention. **"Emergency" hearings are rarely granted.** If the Court determines an emergency exists, the Court will

unilaterally schedule a hearing. All parties shall make themselves available for the emergency hearing, barring exigent circumstances.

IV. DISCOVERY DISPUTES:

- A. Unless there has been a complete failure to respond or object to written discovery requests, a Motion to Compel discovery must include in the body of the motion in quotation, each interrogatory, deposition question, request for admission, or request for production to which the motion is addressed, followed by quotation, in full, of the answer or response which is asserted to be insufficient, or the objection and grounds stated by the opposing party. Merely attaching the request and alleged deficient response to the motion will not suffice.
- B. **All discovery disputes are governed by Florida Rule of Civil Procedure 1.202 and *In Re: Motions to Compel Discovery in Civil Actions CV-2022-004-SC*. See <https://circuit7.org/orders/cv-2022-004-sc/>.** A Motion to Compel set for a hearing must detail compliance with this procedure or it will be stricken.

A party may seek a ruling without a hearing by filing a Notice of Request for Court to Consider Motion to Compel Discovery without Hearing contemporaneously with the Motion to Compel.

The opposing party shall have fifteen (15) days from service of the Motion to Compel and Notice of Request to file a written response to the motion and notice.

Following the expiration of the period allowed for the response, the movant shall advise the court that the motion is ripe for a decision and submit a proposed order through E-Portal.

- C. Discovery disputes called up for a hearing and determined to not be meritorious, failure to respond to discovery, or objections to discovery that have no legitimate basis may result in sanctions pursuant to Florida Rule of Civil Procedure 1.380.

V. Pretrial Procedures and Conferences:

Case Management Conference/Status Conferences: Any party may request a case management conference (CMC) or a status conference when a case requires. The Court strongly encourages the early use of pretrial conferences in more complex cases, multiple-party litigation, or any case that might benefit from court intervention. Any request for a CMC or status conference must articulate the reasons for the necessity of the conference, and the amount of time needed for the conference.

Attendance: All CMC's/Status Conferences are to be attended via Zoom. Unless excused by the Court in advance, attendance at all pretrial conferences is mandatory for attorneys and self-represented litigants. Parties represented by counsel are not required to appear.

Scheduling: If the Court agrees that a CMC or status conference is required, the moving party may schedule the CMC or status conference through the judicial assistant by email. **ALL** CMC or status conference will be by **ZOOM** only.

VI. Setting Case for Trial:

Requesting a Trial: A Notice for Trial must be filed and a copy of a file-stamped Notice for Trial to Division49@circuit7.org. The Court will enter a trial order within approximately two (2) weeks. The Court always reserves the right to schedule a case for trial without waiting for the parties to file a Notice for Trial. The Notice of Trial must specify whether the trial is by jury or non-jury, and the expected length of the trial.

Parties shall carefully read the Court's Order Setting Case for Trial and the Uniform Case Management Order to comply with the requirements and deadlines therein. A party seeking affirmative relief shall be mindful of the notice requirements detailed in the Uniform Case Management Order.

Absent extraordinary circumstances, the trial period shall be scheduled in accordance with the time standards set forth in the Seventh Judicial Circuit Administrative Order CV-2024-023-SC, In re: Case Management Order in Civil Cases, effective January 1, 2025. In the absence of exceptional circumstances, the Court will not consider an agreed-upon specific trial period requested by the parties that fail to comply with the deadlines in the Uniform Case Management Order.

Notice Period: At docket sounding, the Court will assign cases to specific days during the trial period and may assign back-up cases. Attorneys, self-represented litigants, parties, and witnesses are expected to be available during the entire trial period.

VIII. TRIAL PROCEDURES: The following procedures are for jury trials before the Court. These procedures supplement the requirements set forth in the order setting the case for trial.

A. **JOINT PRETRIAL STATEMENT, JOINT PROPOSED JUROR QUESTIONNAIRE AND JOINT JURY INSTRUCTIONS:** The parties shall submit joint juror questionnaire, proposed jury instructions, pretrial statement and verdict form(s) no later than docket sounding. Should parties disagree on certain juror questions, proposed instructions or the verdict form, the parties shall denote the competing question, instruction(s) or verdict form for which there is a disagreement within the joint filing. **These items shall be provided in Microsoft Word format by email to Division49@circuit7.org.**

B. **MOTIONS IN LIMINE** shall be heard prior to docket sounding and shall be limited to case specific anticipated evidentiary issues. **Boilerplate motions in limine** not addressing case

specific anticipated evidentiary issues will not be considered. *See State Farm Mut. Auto. Ins. Co. v. Davis*, 336 So. 3d 392, 397 n.5 (Fla. 5th DCA 2022).

C. **Remote Witness Testimony:** All witness testimony at hearings or trial shall be in-person **unless agreed upon by the parties AND approved by the Court**. If a party seeks to have a witness testify via audio-video communication technology, a motion must be filed in accordance with Rule 2.530, Fla. R. Gen. Prac. & Jud. Admin. Parties calling a witness to testify via audio-video communications technology shall ensure the witness is provided with a copy of the Court's procedures governing Zoom appearances.

D. **Counsel for the Plaintiff shall bring one ream of letter size (8x11) paper on the first day of trial and hand it to the clerk.** This paper will be used to prepare the juror questionnaires, jury instructions, and verdict forms.

E. **Counsel for Defendant shall bring (i) standard letter size (8x11) lined pads; and (ii) pens** for each of the jurors, including alternate juror(s) to be used for juror note taking.

F. All exhibits must be pre-marked for identification by letter from A-Z, AA-ZZ, A3-Z3, etc. Exhibits will be assigned a number upon admission into evidence.

G. Any exhibit to be used as a demonstrative aid or during witness testimony shall be shown to opposing counsel before being tendered.

H. Do not ask the Court to declare a witness to be an expert, or "tender" a witness as an expert.

IX: Other Division Procedures:

Non-Jury Trials/Evidentiary Hearings: The parties shall exchange copies of all exhibits and index at least three (3) business days in advance of the hearing/trial. Failure to copy a party with a proposed exhibit may be grounds to deny the exhibit as evidence. The parties are not required to exchange exhibits if the exhibits are documents previously filed into the court file and in compliance with the Florida Rules of Civil Procedure.

Settlement: When a case is settled, promptly notify the Judicial Assistant and file a Notice of Settlement. If there are any Hearings/Trials set a notice of cancellation of Hearing/Trial **MUST** be filed with the Notice of Settlement. The parties have thirty (30) days to execute settlement documents and dismiss the case, although the Court may extend that time upon good cause shown. If no good cause is shown for failing to dismiss the case before expiration of the 30-day period, the Court will issue an Order to Show Cause for failure to file Dismissal.

Notice of Voluntary Dismissal: Upon filing the Notice of Voluntary Dismissal, a courtesy copy must be emailed to the judicial assistant. The email must state if there are currently hearings set that should be cancelled. The judicial assistant will take the hearings off the docket upon receiving the email.

Hearing Materials: ALL hearing materials **MUST** be emailed to Division49@circuit7.org. **NO** earlier/later than 48 Hours prior to the Hearing. The court will **not** accept paper copies. The email must be titled as follows... (Hearing Materials – 30-minute hearing November 4, 2025, 11:30am – 2025 CA 000123 – John Smith v. Jane Smith)

ADA Accommodations: If you need an ADA accommodation, please contact Anne Pierce, the ADA coordinator for the Seventh Judicial Circuit at (386) 257 6096 or e-mail SignLanguageRequests@circuit7.org at least seven (7) days before your scheduled court appearance, or immediately upon receiving the notification if the time before the appearance is less than seven (7) days.

Interpreter Requests: Any requests for an interpreter should be sent to Interpreter@circuit7.org.