

Rules of Procedure and Scheduling

Division 01 – Judge Michael S. Orfinger

(Effective October 7, 2024)

Attorneys and unrepresented parties are to adhere to the following rules of procedure and courtroom decorum in all court proceedings, without regard to whether the proceeding is conducted in person or with the use of communication technology:

Scheduling and Cancelling Hearings

1. Regular civil hearings are scheduled in 15-minute blocks up to one hour of time. A party seeking a hearing in excess of one hour must send a request by email to the Court's Judicial Assistant, Michelle MacDonald, nmacdonald@circuit7.org.
2. **To find available hearing times**, access the Division 01 Calendar and the Available Hearing Time Report on Benchmark. The Available Hearing Time Report is under the Reports tab on the Benchmark toolbar on the left side of your screen. To run this report, select "Orfinger, Michael S." in the dropdown menu for "Judge." Do not use the dropdown menu for "Event Type;" instead leave the default selection of ALL. Selecting an Event Type will result in a blank report.

Each Hearing Block in Benchmark is for 15 minutes of time. If more than 15 minutes is needed, select dates that have consecutive open blocks of hearing time.

After you have conferred and obtained agreement from all counsel and unrepresented parties as to a hearing date and time, email the judicial assistant with copies to all parties requesting the agreed hearing date and time. Your email, **which must be copied to all counsel and unrepresented parties**, must include 1) the case name, 2) the case number, 3) a list of motions to be heard with the filing date of each, and 4) a courtesy copy of the motion(s).

Only after you have sent this email to the Judicial Assistant and received confirmation of the hearing can you file a Notice of Hearing.

3. A motion may be cross-noticed for hearing only with the agreement of the attorney who initially set the hearing. In general, the motion originally noticed will be heard first. Notices and cross-notices of hearing should be emailed to the Judicial Assistant. No motion may be cross-noticed for hearing during expedited hearing times.

4. **Notices of Hearing:** In addition to the date, time, and location of the hearing, a notice of hearing must identify each motion to be heard, including the date on which the motion was filed and the docket entry number of the motion.
5. **Only the Judicial Assistant can cancel a hearing.** Filing a Notice of Cancellation is insufficient. Send all requests for cancellation to the Judicial Assistant, and upon receiving approval to cancel, file the Notice of Cancellation with the Clerk. **Cancellations must be requested no less than 48 hours prior to the hearing, absent exceptional circumstances. Counsel must appear at any hearing cancelled with fewer than 48 hours' notice, unless (a) counsel submits an agreed order resolving all matters that were to be heard; or (b) the moving party withdraws all motions that were to be heard.**
6. **Certificate of Good Faith:** Before any motion is filed, the moving party must contact the opposing party(ies) and attempt, in good faith, to amicably resolve the issues raised by the motion. Each motion must contain a certificate by the movant's attorney if represented (or the moving party if unrepresented) certifying his/her compliance with this requirement. This provision does not apply to motions for summary judgment or other case dispositive motions. If the certificate of compliance with this paragraph is not contained in the motion, then it must appear in the notice of hearing. As a general matter, the Court does not consider emails or phone calls between the attorneys' legal assistants or paralegals to constitute compliance with this paragraph. Failure to comply with this provision may result in the Court declining to hear the motion or denying the motion without prejudice.
7. A Notice of Evidentiary Hearing must be titled as such and must include the following language: ***All exhibits must be exchanged and provided to the clerk at least 48 hours prior to the hearing.*** (Please see procedure for exhibits below)
8. "Emergency" hearings are rarely granted. They must be requested in writing and the facts constituting the emergency must be clearly stated.
9. The **Expedited Docket** is for short matters only and provides a hearing time of 10 minutes or less.
10. The **F/C MFSJ Docket** is for uncontested summary judgment hearings in mortgage foreclosure cases. All other motions must be special set on a standard 'Hearing' block of time.

11. Attorneys must comply with the Standards of Professional Courtesy adopted by the Judges of the Seventh Judicial Circuit on June 4, 2004 (available at [Professionalism - Seventh Judicial Circuit Court of Florida \(circuit7.org\)](http://Professionalism - Seventh Judicial Circuit Court of Florida (circuit7.org))). Attorneys must also comply with the Standards of Professionalism found in the Oath of Admission to The Florida Bar, The Florida Bar Creed of Professionalism, the Professionalism Expectations, and the Rules Regulating the Florida Bar.
12. Attorneys must address objections and any remarks to the Court, rather than to opposing counsel. Avoid all disparaging personal remarks or acrimony toward opposing counsel. Refer to all persons (including witnesses and other counsel) by their surnames and not by their given or “first” names. Exceptions may be made in the case of children.
13. Objections to legal argument during non-evidentiary hearings should be kept to an absolute minimum.
14. During evidentiary hearings or trials, if an attorney makes an objection, the objecting attorney should state simply that he or she objects, followed by the legal basis for the objection. “Speaking objections” are not necessary, particularly in the presence of a jury, so the objecting attorney should withhold further comment or argument unless requested by the Court. The proponent of the question should not make any argument as to the objection unless the court requests a response, and any such response should be equally brief.
15. If any attorney invokes the rule of sequestration, the attorneys are responsible for informing their clients and witnesses of the meaning of the rule and the consequences of violating it.
16. Any paper or other tangible object not yet received into evidence should be marked for identification by the Clerk and shown to opposing counsel before it is tendered to the witness.
17. Normally, one attorney for each party should examine or cross-examine any one witness. The attorney who examines or cross-examines must make any objections to questioning by the other attorneys.
18. Do not ask the Court to declare a witness to be an expert.
19. The Court will gladly read case law or legal memoranda furnished by counsel or an unrepresented party, provided it is furnished to the Court at least five (5) business days prior to the proceeding to which it applies. Materials in excess of ten (10)

pages must be submitted in hard copy, appropriately tabbed and indexed, with identical copies furnished to opposing counsel.

20. Submit all proposed orders (**EXCEPT** Final Judgments of Foreclosure) via email to Division01@circuit7.org in Microsoft WORD format. **DO NOT MAIL OR FILE PROPOSED ORDERS.** A proposed order must be circulated among the parties prior to submitting it to the Court. If another party objects to a proposed order, the fact and basis of the objection must be noted in the email to the Court. If you are requesting the Court to enter an order granting or denying a motion, please observe the following requirements:
 - a. The 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” or “Order.”
 - b. If the order is one that will be entered without a hearing, do not begin the body of the order with, “THIS CAUSE came on for hearing by the Court...” or words to that effect. Instead, begin with, “THIS CAUSE came before the Court...”
 - c. If the motion for which a proposed order is submitted is unopposed, the body of the motion should recite that the moving attorney has consulted with counsel for the other parties, and that the other attorneys have either affirmatively voiced their lack of opposition, or that no response was received.
 - d. Proposed orders should not contain such things as a law firm’s internal file number, a bar code or other computer generated code, or a law firm’s letterhead in the header or footer of the order.
 - e. 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 pro se 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.
21. **Foreclosure proceedings:** Original documents such as notes, mortgages, allonges, assignments, affidavits, and default letters) must be **SENT DIRECTLY TO THE CLERK’S OFFICE.** The Court will not conduct a final hearing in a foreclosure

action if the original documents are not filed with the Clerk by the date of the hearing.

Deliver all proposed Final Judgment of Foreclosure to chambers along with sufficient copies for conforming and pre-addressed, stamped envelopes, at least five (5) business days prior to a foreclosure summary judgment hearing or trial.

22. Motions to withdraw as counsel must comply with Fla. R. Gen. Prac. & Jud. Admin. 2.505(f). The motion and notice of hearing **must** affirmatively reflect service on the client. The Court will not require a hearing if the motion includes a consent signed by the client, or if a separate consent signed by the client is filed. 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.
23. **Continuances:** The procedures of Fla. R. Civ. P. 1.460 and the policies underlying Fla. R. Gen. Prac. & Jud. Admin. 2.545(e) apply to all motions for continuance filed in this Division. This is true notwithstanding that a motion for continuance may be designated as "stipulated," "joint," "unopposed," or the like. **Motions for continuance must be signed by the party seeking the continuance except for good cause shown, and the absence of a party's signature may lead to the motion being denied as facially insufficient.** A party requesting a continuance must be cognizant of the time standards imposed by Fla. R. Gen. Prac. & Jud. Admin. 2.250(a)(1) and this Court's Case Management Order.

Procedures for Appearance via Communications Technology

24. Non-evidentiary hearings scheduled for 30 minutes or less may be conducted in person, through communication technology, or a combination of the two. The Court typically uses Zoom for virtual appearances. **The Court's permanent Zoom Meeting Identification Number is 386 822 5073.** Participants who do not have access to the Internet, or to a sufficiently stable Internet connection to use Zoom, may appear by CourtCall at their expense. CourtCall must be reserved at least two business days prior to the hearing.
25. As a general matter, hearings scheduled for more than 30 minutes, as well as any evidentiary hearings, are to be conducted in person. Any party who wishes to appear via communication technology must follow the procedure set forth in Fla. R. Gen. Prac. & Jud. Admin. 2.530(b)(2).

26. **Attorneys appearing by Zoom shall have their cameras on at all times during the proceeding and shall be dressed in courtroom attire.** They are to appear from settings that are free from extraneous noise or interruptions.
27. Attorneys shall instruct their clients and witnesses to familiarize themselves with Zoom in advance of the proceeding, to check their cameras, speakers, and microphones prior to the hearing, and to enter their first and last names where indicated so they are readily identifiable on camera. Attorneys should instruct the parties and witnesses that they will also be required to be on camera during the entire proceeding, and their microphones should be muted except when being sworn in or testifying. If any party invokes the rule of sequestration, non-party witnesses will be placed in the virtual waiting room until they testify.
28. During the examination or cross-examination of a party or other witness, no attorney shall “assist” the witness by providing documents or other materials to the witness without first obtaining leave of Court. The content of any such documents or materials must be in the plain view of the Court and the other attorneys, utilizing screen sharing if necessary.
29. Witnesses shall be instructed not to look at any other documents or devices during their testimony without leave of Court. Any such documents or devices must be readily visible to the Court and all other participants in the Zoom hearing.
30. **Motions to Cancel Foreclosure Sales:** Any such motion must substantially comply with Fla. R. Civ. P. Form 1.996(c). A party seeking to cancel a foreclosure sale should indicate in the motion whether the sale has been cancelled before and, if so, the number of occasions and the reasons for the prior cancellation(s). If the basis for seeking cancellation is that the parties “are continuing to be involved in loss mitigation” or the like, the motion should explain the status of those efforts. In the event a condominium association, homeowners association, or other entity subject to “safe harbor” statutes such as section 718.116 or section 720.3085, Florida Statutes are defendants, a motion to cancel foreclosure sale must state whether that party consents to the cancellation. **All proposed orders should give the Court the option of denying the motion and provide blank space in which the Court can reschedule the foreclosure sale in the event the motion is granted.**

Exhibits for Evidentiary Hearings

31. **Mail or hand-deliver** hard copies of all non-demonstrative exhibits, along with an index, identifying each exhibit and assigning it a letter (*i.e.*, Exhibit A, etc.) **to the Clerk of Court** at the Volusia County Courthouse, 101 N. Alabama Avenue, DeLand, Florida. The Clerk must receive the exhibits at least two (2) business days in advance of any hearing or trial.

Requesting a Trial

32. Send a copy of a file-stamped Notice at Issue to division01@circuit7.org. The Court will enter a trial order within two (2) weeks.

Settlement

33. When a case is settled, promptly notify the Judicial Assistant and file a Notice of Settlement. The Court will enter an Order on Notice of Settlement to remove the case from the trial docket and cancel any future hearings.