

JUDGE NICHOLS' PROCEDURES

DIVISION 50 – CIVIL

Kim C. Hammond Justice Center, 1769 E. Moody Blvd., Bldg. 1, Courtroom 401, Bunnell, FL
32110

The following practices and procedures apply to all civil cases pending in Division 50. These procedures are designed to assist the parties in having their cases handled as efficiently as possible. If you have questions regarding the requirements set forth herein, please contact the judicial assistant (JA) for the division at mwestfall@circuit7.org or (386) 313-4510.

1. Orders on Unopposed Matters: Orders on consented matters which do not need a hearing may be forwarded to the Judge. The motion and proposed order must specify that the relief sought has been agreed to by all parties. The order must be submitted electronically utilizing the procedures set forth below in paragraph 5.

2. Orders on Ex Parte Motions: The Court will consider the following *ex parte* motions:

A. *Motions to Cancel Foreclosure Sales:* The Court will consider motions to cancel or reschedule foreclosure sales on an *ex parte* basis, only if the following requirements are met: (a) the written motion is received by the Court no less than five (5) business days before the scheduled sale date and served on all parties; (b) the motion must contain specific facts setting forth the reasons for the postponement; and (c) the motion must have supporting documentation attached (e.g. sale contract, loan modification information, etc.). Motions will not be granted as a matter of right and will only be granted on a limited basis upon a determination of good cause.

B. *Motions to Withdraw by Counsel:* Counsel may seek withdrawal from representation upon filing of an appropriate motion. Notice must be provided to all parties and their client. The motion must set forth the reasons for withdrawal and the client's last known address. If the client does not consent to the withdrawal in writing, a hearing will need to be scheduled.

C. *Motions to Substitute Counsel:* Motions to substitute counsel must comply with Fla. R. Gen. Prac. & Jud. Adm. 2.505 and contain the client's written consent.

3. Motions to Compel Discovery:

A. Unless there has been a complete failure to respond or object to written discovery requests, motions 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. If there has been a complete failure to respond to discovery requirements, a party may utilize the procedures in Seventh Judicial Circuit Administrative Order CV-22-004-SC to obtain an order compelling discovery.

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, in accordance with Fla. R. Civ. P. 1.380.

4. **Hearings:**

A. *Scheduling Hearings*

i. All hearings need to be coordinated among all counsel and scheduled through the JA via e-mail. **Hearings may not be scheduled on the Court's calendar less than 10 days before the scheduled hearing date without the Court's consent.**

ii. No hearing shall be scheduled on motions that have not yet been filed. Hearings scheduled on unfiled motions will be stricken. A Notice of Hearing must be filed *immediately* upon securing hearing time.

iii. Multiple motions in the same case may not be scheduled at non-sequential times throughout the same day.

iv. Counsel must ensure that enough time is reserved to allow for arguments by all parties. All parties will receive equal time during hearings. Hearings scheduled with insufficient time to hear all parties' arguments will be cancelled and continued until sufficient time is available.

v. Other parties in a case are not permitted to notice a hearing on a different motion at the same time as the scheduled hearing without the consent of the party that reserved the time. Hearings set in such a manner will be stricken.

B. *Chambers Copies of Motions:* If the motion(s) scheduled for hearing exceed(s) 15 pages, including attachments, the movant shall submit a chambers copy, in hard copy, of the motion(s) and attachments to the Court, which must be received by the Court ***no later than five (5) business days prior to the hearing.*** Failure to timely submit a chambers copy of the motion as directed herein may result in canceling of the hearing, or the Court's inability to review the motion prior to the hearing due to the Court's busy hearing schedule.

C. *Legal Memoranda:* If parties desire to submit legal memoranda, or responses in oppositions to motions upcoming for hearing, in addition to filing the memoranda or response, ***regardless of length a chambers copy must be delivered to the judge no later than five (5) business days prior to the hearing.*** Responses or memoranda in opposition to motions are not required unless mandated by the Florida Rules of Civil Procedure. Responses or memoranda in opposition to motions shall not exceed twenty (20) typewritten pages without leave of Court. Replies to responses in opposition to motions are not permitted absent leave of Court. Untimely submissions or submissions not delivered to the Court may not be considered.

D. Conferral Certification: All motions shall conform to the conferral requirements of Fla. R. Civ. P. 1.202. Motions that fail to comply with Rule 1.202 may be summarily denied. A non-movant's purposeful failure to respond to conferral attempts may be considered consent to the relief sought.

E. Hearing Cancellations: **If** a hearing is cancelled, a Notice of Cancellation must be filed **and** the JA must be **immediately** notified of the cancellation so the time may be made available for litigants in other cases. Only the party that scheduled a hearing may cancel that hearing.

F. Court Reporters: Parties arranging a court reporter for attendance at a hearing must assure the court reporter meets the requirements set forth in Seventh Judicial Circuit Administrative Order G-23-041-SC.

G. Emergency Motions: Emergency hearings must be requested in writing, setting forth in the introductory or first paragraph the reasons why the matter is considered an "emergency." The request must be delivered to the Judge's chambers. Generally, emergencies exist where persons or property face the threat of imminent harm without court intervention. The unwarranted designation of a motion as an emergency will result in summary denial of the motion and may result in additional sanctions.

H. In-Person and Remote Appearances: All hearings regardless of the number of matters to be heard, scheduled for one hour or longer or that are evidentiary must be attended in-person. Non-evidentiary hearings scheduled for less than one hour may be attended in person or through audio-video communication technology, as defined in Rule 2.530(a)(2), Fla. R. Gen. Prac. & Jud. Admin. Parties and/or counsel planning to attend a hearing via audio-video communication technology must notify the Court prior to the hearing of their intention to do so.

I. Remote Appearance Zoom Procedures: Audio-video communication technology is conducted using the Zoom platform. Zoom is accessible via the Court's Zoom meeting number 386 313 4510; no password is required. The following shall be strictly adhered to during authorized appearances made over Zoom:

- i. Hearings conducted on Zoom are official court proceedings, and proper courtroom decorum must be followed, **including appropriate courtroom attire.**
- ii. Unauthorized recording of Zoom proceedings is not permitted.
- iii. If a court reporter is present, they must meet the requirements in Seventh Judicial Circuit Administrative Order G-23-041-SC.
- iv. Participants shall limit distractions during the hearing. Find a quiet place to participate in the hearing.
- v. All participants shall assure they are properly identified by name. Zoom identifiers such as "iPhone" are insufficient.
- vi. Participants who interrupt the proceedings, or create a distraction, will be muted or disconnected.

J. Hearing Notices: All notices of hearing must identify the specific hearing room or courtroom where the hearing will take place and shall not indicate the hearing is a remote hearing. For non-

evidentiary hearings scheduled for less than one hour, the notice shall additionally specify “parties and/or counsel may appear by Zoom in lieu of in-person appearance and must strictly adhere to the Zoom attendance guidelines.” An example of a proper notice of hearing can be found on the Court’s website.

5. Submission of Proposed Orders:

A. All proposed orders must be sent to the Court electronically by email at mwestfall@circuit7.org. The subject line of the email must state “Proposed Order,” and include the case style and case number. The proposed order must be an attachment to the email in MS Word format. Proposed orders shall not be filed through the e-filing portal. Do not send proposed orders in pdf format.

B. Executed orders will be served upon counsel of record in the case at their designated email addresses; thus, it is imperative that all counsel keep their email addresses up to date. Unrepresented parties who have designated an email address will receive the executed orders at their email address. Unrepresented parties who have been excused from designating an email address will receive orders through the mail.

C. Proposed orders following a hearing at which the judge announced a ruling and directed a party to submit a proposed order reflecting that ruling must be presented to opposing counsel prior to submission to the Court. The email to the Court with the attached proposed order must indicate whether the proposed order has been shown to opposing counsel for review and whether opposing counsel agrees to its content.

D. Proposed orders following a hearing at which the judge did not announce a ruling shall only be submitted if the Court requested the parties to do so.

6. Setting Cases for Trial: Parties seeking to set a case for trial do not need to schedule a hearing with the Court but should file a Notice of Trial that complies with Fla. R. Civ. P. 1.440. A copy of the Notice must be sent to the Judge’s chambers. If a specific trial term is agreed to by the parties, the Notice should so specify. 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.

7. Motions for Summary Judgment: Motions for summary judgment, and responses thereto, shall strictly adhere to the time requirements in Fla. R. Civ. P. 1.510 and the Uniform Case Management Order. Motions and/or responses that do not adhere to the time specifications will not be considered. Replies by movants to a non-movant’s response in opposition to a motion for summary judgment are not permitted absent an order from the Court. Replies filed without Court authorization will not be considered.

8. Motions to Continue Trials: A motion to continue must comply with the requirements in Rule 1.460, Fla. R. Civ. P. and Rule 2.545(e), Fla. R. Gen. Prac. & Jud. Adm. No continuance is granted as a matter of right and the parties should not assume that a continuance will be granted, even if all parties consent. Motions to continue trials are disfavored and rarely granted. Lack of due diligence in preparing for trial is not good cause to continue a trial.

9. **Settlements:** If a case set for trial settles, counsel must notify the JA.

10. **Witness Testimony by Audio-Video Communication Technology:** All witness testimony at hearings or trial shall be in-person unless otherwise authorized by Court order. If a party seeks to have a witness testify via audio-video communication technology, a motion must be filed that complies 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 a copy of the Court's procedures governing Zoom appearances.

11. **Trials:** 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. All exhibits must be pre-marked for identification by the clerk ***before trial***. Exhibits marked for identification shall be identified by letter. Exhibits will be assigned a number upon admission into evidence.

B. One attorney for each party shall examine or cross-examine any one witness. The attorney who examines or cross-examines shall make any objections.

C. Offers or requests for stipulations must be made outside the presence of the jury. Suggestions of counsel relating to the comfort or convenience of jurors must be made outside the presence of the jury.

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

E. Motions in limine 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). Motions in limine shall be filed and heard at least one week before the scheduled trial begins.

F. Prior to jury selection, counsel for all parties shall confer and generate **one joint set** of jury instructions for use at the charge conference. Instructions that are agreed upon shall be so designated; instructions not agreed upon should be labeled as the Plaintiff's or Defendant's requested instructions within the **joint** set. Citations to the source of the instructions should be noted therein. Plaintiff's counsel (unless Plaintiff is unrepresented, in which case defense counsel) is responsible for creating the **joint** set of proposed instructions. The **joint** set of instructions should be given to the Court on paper and electronically (e.g. flash drive, email, etc.) in MS Word format. Proposed verdict forms should be submitted the same way.

G. Counsel and parties shall be prepared to try their cases anytime during the scheduled trial term.

H. Please refer to the trial order and Uniform Case Management Order for additional requirements and deadlines.