

Courtroom Guidelines, Procedures and Expectations for Civil Cases
Assigned to Judge Paul B. Kanarek
(Amended September 14, 2010)

HEARINGS

Hearing time may be obtained by contacting the court's Judicial Assistant at (772-770-5052) or by e-mail to ShepkeG@circuit19.org.

1. **Setting of hearings:** Hearings must be cleared with opposing counsel or *pro se* parties. Good faith cooperation is expected 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. 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 by U.S. Mail.

Additional motions should 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 be reserved to hear them.

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.
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 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. **Appearance by telephone:** Telephone hearings are permitted as long as there is not testimony or evidence. No motion or order is necessary. All telephone appearances must be made through CourtCall, a company which provides connection between the parties and the courtroom for a flat fee. When you know the date and time of your hearing you must call CourtCall directly at **1-888-882-6878** to arrange for your appearance by phone. **You must schedule your CourtCall appearance at least five (5) working days prior to the hearing.**
5. **Uniform Motion Calendar** – A Uniform Motion Calendar will normally be held Tuesday through Thursday from 8:30 a.m. to 9:00 a.m. All hearings must be scheduled for 8:30 a.m. Please refer to the Judge Kanarek’s calendar posted on our web site (www.circuit19.org) to confirm available dates. **You must give the opposing party**

notice of the hearing at least five (5) working days prior to the hearing unless otherwise agreed by the parties.

Hearings at UMC are limited to 10 minutes per case (**not per motion**). When you attend UMC you must sign up on the sign-in sheet inside the courtroom. Normally UMC will be heard on a “first come, first served” basis. After proper notice, failure of any party to appear at the hearing shall not prevent a party from proceeding with the matter when the case is called. If the party noticing the matter for hearing chooses to wait for the absent party, the matter may be passed over until the end of the calendar. If the judge runs out of time on UMC, any remaining hearings will need to be rescheduled.

Counsel who filed the motion must bring a proposed order to the hearing (generic orders granting/denying with at least five lines for additional provisions may be used) along with sufficient copies and self addressed, stamped envelopes for all parties. Failure to bring same will result in using a Court provided order which will be executed by the Judge and filed with the Clerk. Counsel who filed the motion will be required to obtain copies for all parties from the Clerk (at a fee determined by the Clerk) and mail them to the parties. If you want the court file at the hearing you must call the Clerk at least five business days prior to the hearing and request that the file be brought to the hearing.

Copies of all hearing notices and relevant motions must be sent to the court’s Judicial Assistant five (5) working days prior to the hearing. Any case law or statutes to be relied upon shall be submitted to the Court with the motion with relevant portions highlighted.

The court will not hear motions for summary judgment in mortgage foreclosure cases and will not hear evidentiary motions at UMC. The types of motions suitable for hearing on the Uniform Motion Calendar include simple motions to strike affirmative defenses, to amend pleadings, discovery motions, protective orders, objections to CME, etc.

UMC is available to pursue a summary final judgment for liquidated damages, including attorney’s fees and costs after a default based upon a proper motion with supporting documentation unless a party appears to contest it. If that occurs the Court will set an evidentiary hearing/trial on such matters as may be necessary. You must request the file be brought to Court for the scheduled hearing by contacting the Clerk’s office.

All Notices of Hearing for UMC shall contain a certification signed by the lawyer who set the hearing in substantially the following form:

I HEREBY CERTIFY that I have personally contacted opposing counsel in an effort to resolve the issue(s), however, the matter cannot be resolved and a hearing is necessary.

Please note that certifications containing language to the effect that an effort will be made to resolve the issue in the future is NOT sufficient. If personal communication is

attempted but unsuccessful, written communication to opposing counsel will suffice. Failure to comply with this requirement may result in cancellation of the hearing by the Court. If it is determined that the certification is not true, other sanctions may be imposed, including a referral to the Florida Bar.

6. Motion to Dismiss and/or Motion for More Definite Statement: The court will initially consider all Motions to Dismiss filed pursuant to Rule 1.140(b) and Motions for More Definite Statement filed pursuant to Rule 1.140(e), **without** a hearing. Motions to Dismiss must strictly comply with the requirements of the Rule in that the grounds on which they are based and the substantial matters of law intended to be argued shall be stated specifically and with particularity. Motions for More Definite Statement must strictly comply with the requirements of the Rule in that the motion must point out the defects complained of and the details desired.

The moving party shall furnish a copy of the Motion to the Court's Judicial Assistant by U.S. mail. The copy shall be accompanied by a generic order granting/denying the motion with at least five lines for additional provision to be added by the Court; stamped, self addressed envelopes for all counsel of record and *pro se* parties; and a cover letter showing copies to all counsel of record and *pro se* parties. If the moving party fails to comply, any party may furnish a copy of the motion along with the required documents to the Court. The Court will hold the motion for ten (10) days to give the opposing side the opportunity to reply. If the Court determines that a hearing is necessary, the movant will be advised to schedule a hearing and file the appropriate notice. If a hearing is not required an appropriate order will be entered. No case dispositive ruling will be made without a hearing.

6. Discovery Motions and Motions to Compel: The mere filing of a Motion is insufficient. 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 that the movant, in good faith, has conferred or attempted to confer with the person or party failing to make discovery in an effort to secure the information without court action.** *See* Fla.R.Civ.P. 1.380(a)(2).

When a motion to compel discovery alleges a complete failure to respond or object to discovery, and the time for complying with the discovery request has lapsed and there has been no request for an extension of time, an Ex Parte order may be entered requiring compliance with the original discovery demand within ten (10) days of the signing of the order. The movant shall submit the proposed order to the Court with sufficient copies and self addressed stamped envelopes for all parties and shall also certify that notice of the requested relief was provided to all parties.

7. Motions for Protective Orders: The filing of a Motion for Protective Order, without presenting it before the Court, is insufficient. 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 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. Legal Memorandum and Citations: Any legal memorandums or briefs, along with hard copies of significant cited authorities (highlighting the pertinent sections is appreciated by the Court), should be provided to the Court at least three (3) business days before the hearing. The Court will attempt to review the motion and memorandum, and read the cases cited therein, prior to the hearing so that an immediate ruling may be rendered. Highlighting pertinent sections is appreciated. Brevity is appreciated and memorandums should be kept to no more than five (5) pages in length. Case law and Memorandums provided to the Court during the hearing may not be considered. **The Court, on occasion, may rule on motions without a hearing. Therefore, both counsel filing the motion and opposing parties are encouraged to timely file written argument with the Court.**
9. 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 is asked to prepare an order, the order shall be drafted and circulated to counsel within 2 working days of the hearing and must be submitted to the Court with a cover letter to all counsel and *Pro Se* parties within 7 days of the hearing. Opposing counsel must advise the Court of any objection to the form of the proposed order within 3 days thereafter. The Court would appreciate a copy of any proposed order on either a removable storage device or via e-mail, in addition to the hard copy. 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)

Please submit proposed orders, agreed orders, or stipulations with sufficient copies for all parties and a stamped, self-addressed envelope for each. Do not put "cc: all counsel of record" at the bottom of the order. Each party shall be individually named.

The court will not execute proposed orders, agreed orders, or stipulations without a cover letter stating the action requested, that a copy was provided to all counsel of record and *Pro Se* parties; and if there is a stipulation or an agreed order that there are no objections to the entry of the order.

10. Motions for Rehearing, Reconsideration, or New Trial: Upon filing said motion the moving party shall send a copy to the Judge for review. The copy of the motion sent to the Judge shall be accompanied by generic order granting/denying the motion, with at least five lines for additional provisions, a transmittal letter showing copies to all counsel and *Pro Se* parties, and stamped, self addressed envelopes for all counsel and *Pro Se* parties. If the moving party fails to comply, any party may furnish a copy of the motion and the required documents to the Court. If the Court determines that a hearing is

necessary, the movant will be advised to schedule and hearing and file appropriate notices.

11. Requirements for court reporters: All evidentiary matters (both trials and hearings) must be reported by a court reporter. It is the moving party's responsibility to arrange to have a court reporter present.
12. Withdrawal or Substitution of Counsel: You must follow the provision of Fla.R.Jud.Ad.2.505. You must obtain the client's consent in writing which shall be filed with the Court, or a hearing must be held after proper notice to the client.
13. Notice for Trial, Orders Setting Trial and Dockets: When you send a Notice for Trial please submit two complete sets of return envelopes. Due to the length of the trial order, please be sure that each envelope has enough postage for two (2) ounces or the Order Scheduling Trial will be returned.

The court will schedule the order of trials at the docket call. It will be the responsibility of the lawyers and *pro se* litigants to keep track of their position on the trial docket following docket call. Please note that cases set for trial will remain on the trial docket until the case is concluded. Cases will retain their priority.

14. Facsimile Transmissions: **DO NOT** send materials by facsimile if they can be sent by U.S. Mail, courier, overnight express, etc. The only things to be sent by facsimile are emergency matters and materials requested by the Court.
15. Settlement of Cases: If your case settles after you have received an order setting a case for trial please first immediately notify the Court's Judicial Assistant by telephone and follow up with a letter advising of settlement. This also applies to cases that are subsequently placed on the trial docket.
16. Mortgage Foreclosures/Summary Judgment:
 - a. **If you wish schedule your Motion for Summary Judgment for hearing and to attend by telephone please call CourtCall directly at 1-888-882-6878 to schedule the hearing and to arrange for your appearance by phone.** Do not schedule a hearing for Summary Judgment until you have filed your motion. Hearing time is at a premium. **IF IT IS DETERMINED THAT YOU HAVE SCHEDULED YOUR MOTION FOR SUMMARY JUDGMENT AND HAVE NOT FILED YOUR MOTION YOUR HEARING WILL BE CANCELLED BY THE COURT AND YOU WILL NEED TO RESCHEDULE ONCE YOU HAVE FILED YOUR MOTION.**
 - b. If you wish to schedule your Motion for Summary Judgment and to appear in person please call my Judicial Assistant.

c. At the time you file your Motion for Summary Judgment please file the ORIGINAL PROMISSORY NOTE AND MORTGAGE with the Clerk. **DO NOT** send the originals to the Judge's office.

d. Pursuant to Administrative order 2007-06, **YOU MUST** use the Nineteenth Circuit's approved form for Final Judgment of Mortgage Foreclosure. You may find a copy of this form on Judge Kanarek's web site located at www.circuit19.org.

e. If you are representing the plaintiff and are APPEARING BY TELEPHONE (Courtcall) at a Summary Judgment hearing on a residential mortgage foreclosure you must send your summary judgment packet to:

Senior Judge
250 NW Country Club Dr., Ste 217
Port St. Lucie, FL 34986

Your summary judgment packet must be received at that address no later than 10 calendar days prior to the scheduled hearing. **IF THE COMPLETE PACKET IS NOT RECEIVED AT LEAST 10 CALENDAR DAYS BEFORE THE HEARING THE MOTION FOR SUMMARY JUDGMENT WILL NOT BE HEARD AND MUST BE RESET.**

f. If you are representing the plaintiff and are APPEARING IN PERSON at the Summary Judgment hearing on a residential mortgage foreclosure your final judgment packet including your proposed final judgment, notice of sale, etc., must be sent to:

Honorable Paul B. Kanarek
2000 16th Avenue, Suite 375
Vero Beach, FL 32960

Your summary judgment packet must be received at that address at least 10 calendar days prior to the scheduled hearing. Send four (4) sets of addressed, stamped envelopes with your package so that the Court can send out the final judgment, notice of sale, certificate of sale, and certificate of title and disbursements. **DO NOT** send the original note and mortgage with the package. The proposed final judgment shall contain the location and address where the sale is to take place. When sending out this package you must include a cover memo stating the date of the hearing. **IF THE COMPLETE PACKET IS NOT RECEIVED AT LEAST 10 CALENDAR DAYS BEFORE THE HEARING THE MOTION FOR SUMMARY JUDGMENT WILL NOT BE HEARD AND MUST BE RESET.**

SETTING OF TRIALS

The court will issue an Order Directing Pre-Trial Procedure and Setting Trial in every case upon receipt of a Notice for Trial 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 case for trial. If a Notice for Trial is filed, or if the Court issues an order setting a matter for trial pursuant to a Notice for Trial, and the 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 a case management conference. Delays in advising the Court that there is not sufficient time to complete discovery may be considered a waiver of any objection to the setting of a trial date.

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.

CASE MANAGEMENT CONFERENCE

The Court will schedule certain cases for a formal Case Management Conference (CMC) and issue and order setting forth the matters to be covered at the conference. Cases such as some medical malpractice cases, complex commercial litigation, multiple party litigation, cases with voluminous records or exhibits, as well as other types of cases will be set by the Court, without request, for a CMC.

However any case can be submitted for a CMC by simply filing a written motion. Once submitted, the action will be controlled, not only by the Order Setting Trial, but also by the CMC order.

TRIALS

Trials will take place in Courtroom 5, unless otherwise indicated. Counsel and their clients are to be in the courtroom and ready for trial no later than 9:00 A.M. on the date of trial. Depending on other emergency matters the Court will start as soon after 9:00 A.M. as possible.

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.

Trial Briefs: If a trial brief is to be filed with the Court it should be submitted to the Judge's Chambers no later than three (3) working days before the trial is to commence. The Court appreciates hard copies of cases cited in the trial brief with appropriate highlighting of the pertinent sections.

Voir Dire: The Court will conduct a preliminary voir dire of the jury. Counsel are welcome to request that the Court 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 either explore the facts of their case or explain the law that may apply in the case.

Jury Selection Process: After voir dire, the Court will first ask each side for any cause challenges. Upon completion of challenges for cause, the Court will move to pre-emptory challenges. The Court will start with the first juror and move sequentially as they are seated in the venire, alternating between counsel until a panel is chosen. Back striking during jury selection is always permitted. The number of alternates will be determined by the type and length of the trial. Each party will have one additional strike as to each alternate.

Opening and Closing: 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. The Court will discuss with counsel the time requirement of both opening and closing and will expect that a reasonable estimate be provided by counsel.

Exhibits: All exhibits are to be marked for identification by the clerk prior to the start of trial. Exhibits which will be stipulated into evidence may be marked in evidence. Once exhibits are marked, either for identification or in evidence, 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 authorized by the Court.

Demonstrative Aids: Any demonstrative aide that is to be used at trial must be marked by the clerk and exhibited to opposing counsel and the Court prior to the start of trial. The Court will hear argument of any counsel opposing the use of the demonstrative aids prior to the start of trial. No aids are to be shown to the jury without prior approval of the Court.

Experts: The Court will not accept or qualify a witness as an expert in front of the jury. Challenges to an expert's qualifications will be handled 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.

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 for both the Court and for the witness being questioned.

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.

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 trial.

Jury Instructions: A complete set of proposed jury instructions are to be prepared by both sides and exchanged prior to the beginning of jury selection. A hard copy should be provided to the Court prior to the beginning of jury selection as well as a copy on a removable storage device or by e-mail in Word 2007 format or lower. The proposed jury instructions should contain a jury instruction title for each proposed instruction, any citations, and information as to who requested the instruction. The Court intends to instruct the jury immediately prior to opening statements. The Court will instruct the jury immediately prior to closing arguments and will provide the jury with a written copy of all final jury instructions at that time.

INFORMATION NOT COVERED

If any matters concerning the conduct of the pre-trial or trial procedures 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.