

**Procedures, Courtroom Guidelines and
Expectations for Civil Cases
Assigned to Judge James W. McCann
Courtroom A3-1**

Revised: February 21, 2012

HEARINGS

1. Special set hearing time: Special set hearing time may be obtained by using our online scheduling program. The website is: https://slccjis.stlucieco.gov/attorney_calendar and you must register to obtain your user ID and password on the site. **Please note any hearings that require more than one hour must be requested in writing with an explanation as to why more than one hour is needed.** Please indicate whether opposing counsel agrees with the estimated time requested for hearing.
2. 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 three (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. Should a notice of hearing not immediately be forwarded to the Judicial Assistant after special set hearing time is obtained, such hearing time is subject to forfeiture.*

Hearings may not be specially set until the motion is actually filed with the Clerk.

Additional motions may 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.

3. Cooperation of counsel: If counsel does not cooperate, the requesting party may unilaterally set a hearing giving at least two (2) weeks’ notice to the opposing counsel who failed to cooperate; unless there is a compelling need to have the matter heard within two (2) weeks.
4. 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, (court call) if their schedule will not allow them to appear in person.

5. 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.**

Appearance via CourtCall is allowed for Special Set hearings only if the hearing is 15 minutes or less.

6. Uniform Motion Calendar – A Uniform Motion Calendar will normally be held Monday through Friday from 8:30 a.m. to 9:15 a.m.

MONDAY AND FRIDAY – UMC FORECLOSURE SJ/FJ ONLY
TUESDAY, WEDNESDAY & THURSDAY–ALL OTHER UMC MOTIONS

All hearings must be scheduled for 8:30 a.m. (**NOTE:** Mondays and Fridays are for Foreclosure Summary Judgments only.) All UMC hearing time may be obtained by using our online scheduling program. The website is: https://slccjis.stlucieco.gov/attorney_calendar and you must register to obtain your user ID and password on the site.

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. Appearance via CourtCall is allowed for UMC hearings. 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. If you are appearing via CourtCall, please provide a proposed order with your copy of the NOH and Motion sent to the J.A. (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. 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 by mail, not fax, 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. You must give the opposing party notice of the hearing at least five working days prior to the hearing unless otherwise agreed to by the parties.

The Court 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.

The Judicial Assistant does not track UMC hearings. As a result, we ask that you please not call the Judge's office to check if your case has been set on a UMC docket.

7. 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. **Please do not call the Judge's assistant for a hearing on these motions.**

8. Judicial Defaults: No judicial defaults will be entered ex parte in Chambers. If you are entitled to a Clerk's default, you should have the Clerk enter a default. If you seek a judicial default order, you must set the matter for hearing. If you set the matter on UMC, you must request the file from the Clerk or bring copies of returns of service and any papers filed by the Defendant(s) against whom you are seeking a judicial default. See UMC procedures.
9. 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.

10. 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.
11. Legal Memorandum and Citations: Any legal memorandums or briefs for special set hearings, 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 **fourteen 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. 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.**

12. Orders and Rulings of the Court: The Court will strive to issue orders and rulings in a timely manner. 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. Do not state in a cover letter words to the effect: "By copy of this cover letter to opposing counsel, opposing counsel is requested to advise the court if there is an objection to the proposed order." Instead, advise the court if there is an objection to the proposed order. If opposing counsel objects to the proposed order, such counsel will have 10 days from the date the proposed order is submitted to the Court, to deliver (not send) to the court an alternate proposed order. If the alternate proposed order is not received by the judge's office within 10 days after receipt of the initial proposed order, the initial proposed order may be signed by the Court.

13. 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. **Please do not set a Motion for Rehearing or Motion for Reconsideration for hearing without first receiving permission from the Court.**

14. 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.
15. Withdrawal or Substitution of Counsel: You must follow the provisions 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.
16. Notice for Trial, Orders Setting Trial and Dockets: When filing a notice for trial, you must send a copy of the notice and please submit return envelopes for each counsel/pro se party.

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.

17. 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.
18. 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.
19. Docket Call and Trial Calendars: Please see Judge McCann's web page on www.circuit19.org for dates of docket call and trial settings. The foregoing will be updated as time permits. Copies of the cases to be set on the Court's docket will be available in the courtroom on the day of docket call. Telephonic appearance is **NOT** permitted at docket call. The lawyers must appear in person at docket call. The trial dockets will be posted on Judge McCann's webpage at www.circuit19.org as quickly as possible after docket call. It will be the attorney's and/or pro se party's responsibility to track the case progression on the trial docket.
20. Trial Preparation: Judge McCann requires compliance with the Pre-Trial Order setting your case for trial, which includes, without limitation, timely submission of Joint Pre-Trial Statements. Your case will be subject to removal from the trial docket if a pre-trial statement is not filed prior to docket call. **Motions in limine and other motions concerning how the trial is to be conducted will not be entertained during trial or**

on the day of jury selection, unless the Court is satisfied that with due diligence, the matter could not have been heard pretrial.

21. Mortgage Foreclosures/Summary Judgment:

- a. UMC FC SJ hearing time may be obtained by using our online scheduling program. **If you wish to attend by telephone, please call CourtCall directly at 1-888-882-6878 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. Mortgage Foreclosure Summary Judgments are handled by Judge McCann only on Mondays and Fridays, 8:30 am until 9:15 a.m.**
- b. 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.
- c. 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 McCann's web site located at www.circuit19.org.
- d. EFFECTIVE MARCH 12, 2012: All residential mortgage foreclosure summary judgment packets for Martin County cases must be sent to the address below no later than ten (10) calendar days prior to the scheduled hearing. These hearings are scheduled online (please see above). If complete packets are not received at least ten (10) calendar days in advance of the hearing, the summary judgment hearing may be reset. **PLEASE SUBMIT THE PACKETS TO: FORECLOSURE JUDGE, 250 NW COUNTRY CLUB DR., STE. 217, PORT ST. LUCIE, FL 34986.**
- e. The final judgment package, including your proposed final judgment, notice of sale, etc., must include 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.

22. Judge McCann has specifically adopted the Guidelines for Professional Conduct. Such Guidelines are posted on Judge McCann's web site located at www.circuit19.org. Failure to abide by the Guidelines may result in sanctions.

SETTING OF TRIALS

The Court will issue an Order Directing Pre-Trial Procedure and Setting Trial in every case upon receipt of a copy of Notice for Trial pursuant to Fla.R.Civ.P. 1.440 and requisite envelopes. 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 an 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 A3-1, unless otherwise indicated. Counsel and their clients are to be in the courtroom and ready for trial no later than 9:30 A.M. on the date of trial. Depending on other emergency matters the Court will start as soon after 9:30 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.

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 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 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 question or answer 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: Jury instructions are to be prepared by both sides and exchanged at least **14 days prior to trial. A hard copy shall be provided to the Court as well as a copy on a removable storage device or by e-mail at least 7 days prior to trial.** The Court intends to provide the jury with a written copy of all jury instructions when the jury retires to deliberate. Therefore, there should be enough copies of the final instructions for each juror and the Court, counsel and the court reporter. In addition, the final instructions should not contain any citations, jury instruction titles, or information as to who requested the instruction. In certain cases, and with the agreement of all counsel, the Court may provide some substantive law instructions to the jury during preliminary instructions and/or before closing arguments.

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.

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