

**Courtroom Guidelines, Procedures
and Expectations for Civil Cases
Assigned to Judge William L. Roby
Martin County Courthouse**

HEARINGS

1. **Special set hearing time:** Special set hearing time in excess of one (1) hour may be requested by emailing a letter explaining the circumstances that necessitate a lengthy hearing to the Court's Judicial Assistant.

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 scheduled, such hearing time is subject to forfeiture.

A. Do not set hearings and then not show up for them.

Too often, the Court will set aside valuable court time for a special set evidentiary hearing, only to have no one show up for the hearing. No one even has the courtesy to call or file a notice of cancellation. This hearing time is then unavailable to other litigants.

Hearings in excess of 20 minutes will *not* be canceled unless: (1) a hearing is held to continue the hearing for extraordinary and unforeseen grounds; (2) the movant waives the relief requested in writing; (3) a stipulation and order is submitted to the Court for signature in advance of the hearing that fully resolves the issue(s); or (4) the case is fully resolved by settlement or otherwise, prior to the hearing date. Failure to follow this procedure may result in sanctions, including loss of the privilege to appear by telephone; restrictions on the ability to set and notice hearings without specific Court approval; the entry of an order deeming the matter raised in the motion as waived; and for repeat offenders, referral to the Florida Bar. Setting hearings and not showing up for them might implicate Rules Regulating the Florida Bar, Rule 4-1.1, or Rule 4-1.3.

B. Pick and choose your fights wisely. Not every issue requires judicial intervention.

This is especially applicable to *discovery disputes*.¹ Litigants have an obligation to cooperate with respect to planning and executing discovery or resolving discovery disputes. A party cannot file a motion to compel with the Court without first working cooperatively with the other party to resolve the dispute.

A motion to compel discovery or for sanctions for failing to answer or respond *must* include a certification that the movant has in good faith conferred or attempted to confer with the party failing to act in an effort to obtain the answer or response without court action. In person or telephonic communications are preferred over written communications. See, Becker, *Civility: A Rational Approach to Combat Discovery Abuse*, Law Trends & News, Vol. 6, No. 1 (Fall 2009). https://www.americanbar.org/content/newsletter/publications/law_trends_news_practice_area_e_newsletter_home/09_fall_lit_feat1.html

The certification *must* include a description of the communications held or attempted in attempting to resolve the matter, including the date, time, and participants in each communication.

No motion to compel discovery will be heard where the parties did not comply with the foregoing procedures.

¹ Judges and litigants now routinely describe modern discovery as a "*morass*," "*nightmare*," "*quagmire*," "*monstrosity*," and "*fiasco*." In 2008, the American College of Trial Lawyers ("ACTL") Task Force on Discovery joined with the Institute for the Advancement of the American Legal System ("IAALS") to survey members of the ACTL on the role of discovery and any perceived problems in the United States civil justice system. Nearly 1,500 ACTL members responded, speaking with an average thirty-eight years of experience in civil litigation and with nearly equal representation of plaintiffs and defendants. An overwhelming majority of the survey participants reported that discovery has become an end in itself---a costly weapon used to "*bludgeon*" parties into settlements. The participants commented that attorneys, rather than clients, "drive excessive discovery." Forty-five percent of them believed that discovery is abused in "*almost every case*," Participants complained that "we have sacrificed the prospect of attainable justice for the many in the interest of finding that one needle in the . . . haystacks," and that "*the total lack of control of discovery . . . is killing civil litigation*."

Netzorg & Kern, *Proportional Discovery: Making it the Norm, Rather Than the Exception*, 87 Denv. U.L. Rev. 513, 515; see also, Nicholls, *A Proportional Response: Amending the Oregon Rules of Civil Procedure to Minimize Abusive Discovery Practices*, 89 Or. L. Rev. 1445 (2011); Therrien, *Talkin' 'Bout a Revolution?: Utah Overhauls Its Rules of Civil Discovery*, 2011 Utah L. Rev. 669 (2011).

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.
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 emailed 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 (through CourtCall), if their schedule will not allow them to appear in person.
5. **Appearance by telephone:** Telephone hearings are permitted as long as no testimony or evidence is to be presented. 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.**
6. **Uniform Motion Calendar:** A Uniform Motion Calendar (UMC) will normally be held Tuesday, Wednesday, and Thursday from 9:00 a.m. to 9:30 a.m. All hearings must be scheduled for 9:00 a.m. Please refer to Judge Roby’s calendar posted on our website (www.circuit19.org) to confirm available dates. **Counsel shall not schedule motions on the UMC Calendar with the Judge’s Judicial Assistant.**

Hearings at UMC are limited to ten (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.

If you want the court file at the hearing you must call the Clerk at least five (5) 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 email or 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 (5) 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.

For motions to **compel discovery**, the Notice of Hearing must contain the above certification, and **additionally**, the certification **must** include a description of the communications held or attempted in attempting to resolve the matter, including the date, time, and participants in each communication .

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. **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.

9. **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.
10. **Legal Memorandum and Citations:** Thumb/flash drives, rather than notebooks, are greatly appreciated. Any legal memorandums or briefs for special set hearings, along with copies of significant cited authorities (highlighting the pertinent sections is appreciated by the Court), should be provided to the Court **at least ten (10) 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. Again, highlighting pertinent sections is appreciated. **Brevity is also 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.**

11. **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 two (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 seven (7) days of the hearing. Opposing counsel must advise the Court of any objection to the form of the proposed order within three (3) days thereafter. The Court would appreciate a copy of any proposed order on either a flash drive or in a Word document in an attachment to an e-mail, in lieu of a 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 ten (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 ten (10) days after receipt of the initial proposed order, the initial proposed order may be signed by the Court.

12. **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 a 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 via a court order.**

13. **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.
14. **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.
15. **Notice for Trial, Orders Setting Trial and Dockets:** When filing a notice for trial, you must send a copy of the notice and submit return envelopes with postage for each counsel/*pro se* party to the Judge's office. Due to the length of the trial order, please be sure that each envelope has enough postage for two (2) ounces. If you do not provide the required envelopes with sufficient postage, your case will not be placed on the trial docket. Your case will **not** be set for docket call unless you follow the above requirements.

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.

16. **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.
17. **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.
18. **Docket Call and Trial Calendars:** Please see Judge Roby's web page on www.circuit19.org for dates of docket call and trial settings. The foregoing will be updated as time permits. A copy 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 Roby'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. Motions will not be heard by the Court at docket call. **PLEASE NOTE**, if a joint pre-trial statement is not filed prior to docket call, the case will not be set for trial at docket call.
19. **Trial Preparation:** Judge Roby 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.

20. **Commercial Mortgage Foreclosures/Summary Judgment:** 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.**
21. **Residential Mortgage Foreclosures:** **Martin County Residential Mortgage Foreclosure matters are heard at the Martin County Courthouse at 100 East Ocean Boulevard in Stuart. Judge Roby has a separate online scheduling calendar for Martin County Residential Mortgage Foreclosure.**

A link to the Residential Mortgage Foreclosure Procedures can be found at www.circuit19.org on the left-hand side of the screen.

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 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, and mortgage foreclosure cases, 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

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 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: Jury instructions are to be prepared by both sides and exchanged at least fourteen (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 seven (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.

Rev. March 20, 2019