



19th Judicial Circuit Court Judge Michael J. McNicholas

Guidelines and Procedures

Probate Division ("CP" cases)

Guardianship Division ("GA" and "MH" cases)

(Effective January 9, 2023)

PLEASE REVIEW ALL PROCEDURES PRIOR TO CONTACTING THE JUDGE'S OFFICE

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The email address for submitting probate checklists, petitions/motions, proposed orders, letters of administration and hearing packets is ProbateMC@circuit19.org.

The email address for submitting guardianship checklists, petitions/motions, orders and hearing packets is: GuardianshipMC@circuit19.org.

COMMUNICATIONS WITH JUDGE’S OFFICE: Please do not ask the Judicial Assistant or other Court personnel to communicate any message to the Judge. This is prohibited ex-parte communication. The Court’s staff is not permitted to relay ex-parte information to the Judge. This office can best respond to all communications via e-mail to: MortL@circuit19.org. E-mails must contain the case name, case number, subject matter and relevant date(s). Please ensure that all e-mails are also copied to all opposing counsel and/or *pro se parties* and indicate same in the body of your e-mail to prevent ex-parte communication to the Court.

PAPERLESS OFFICE: This office is paperless. Therefore, all correspondence, motions, hearing materials, etc. should be sent by EMAIL in PDF format to the Judicial Assistant at one of the email addresses listed above. Although discouraged, if you lack the ability to transmit documents by email, you may deliver or mail hard copy documents. Hearing materials should be provided to the Court at least five (5) business days before the hearing. Lengthy materials submitted in the form of tabbed PDF electronic binders are greatly appreciated. Highlighting pertinent sections and brevity is appreciated. Alternatively, lengthy submissions may be mailed or delivered to the Judicial Assistant on a flash drive. Please do not mail binders or hard copies of hearing materials. An electronic copy of the submission, including any flash drive, must be simultaneously provided to all other parties.

Case law and memorandum provided to the Court during the hearing may not be considered.

ORDER PREPARATION & SUBMISSION: Proposed orders must be submitted in Microsoft Word format with a transmittal letter confirmation to all counsel and *pro se parties* and copy of motion. Proposed order’s title must describe the subject and ruling of the Court, *i.e.* “Order Granting Plaintiff’s Motion for Partial Summary Judgment on Liability”, and shall contain the name and e-mail service address for all parties. See, Fla.R.Civ.P., Rule 1.100(c)(1). If any party does not have an e-mail service address, that party’s physical service address shall be contained in the

proposed order and it must be noted that the moving party shall serve each party who does not have an email address and file a certificate of such service.

If counsel is asked to prepare an order, the order shall be drafted and circulated within 2 business days of the hearing, and submitted to the Court via e-mail to the Judicial Assistant, with a transmittal letter confirmation to all counsel and *pro se* parties within 7 business days of the hearing, advising the Court in writing of any objection to the form of the proposed order. The Court will not execute proposed orders, agreed orders, or stipulations without transmittal confirmation to all counsel of record and *pro se parties*. The transmittal letter shall be authored by counsel of record versus an office paralegal or other staff. Please include the following language under the service list:

A COPY OF THIS ORDER IS BEING SERVED ON THE FOLLOWING PARTIES VIA THE E-FILING PORTAL: (Include parties with e-mail addresses)

(Insert the moving party, e.g. PLAINTIFF'S, DEFENDANT'S, etc.) COUNSEL SHALL SERVE A COPY OF THIS ORDER ON THE FOLLOWING PARTIES IMMEDIATELY AND FILE A CERTIFICATE OF SERVICE IN THIS COURT FILE: (Include parties with physical addresses)

COURT REPORTERS: Fla. R. Jud. Admin. 2.535(b) requires that the party requesting a court reporter must arrange for and pay the reporting fees for any hearing or trial. This requirement shall not preclude taxation of costs as authorized by law,

A. PROBATE DIVISION PROCEDURES:

Checklists are required for both Opening and Closing Estates. The checklists are posted on Judge McNicholas' web page under "forms" on www.circuit19.org:

1. Opening a Formal Estate;
2. Closing a Formal Estate (Discharge);
3. Summary Administration; and
4. Disposition of Personal Property with Administration

Attorneys must verify completion and correctness of the Checklists by personal signature. No signature stamps are allowed. Once the checklist is complete, the attorney's office shall submit via email only to ProbateMC@circuit19.org:

1. Completed checklist
2. Proposed Order(s) in word format; and
3. A description of the documents being provided, as well as the action you wish to be taken.

Original documents and monies are not to be sent to the Judge's office, and the Judge's office take no responsibility for such items.

B. GUARDIANSHIP DIVISION PROCEDURES

I. INCAPACITY PROCEEDINGS

Submit the following in WORD format via e-mail to GuardianshipMC@circuit19.org:

1. Notice of Petition to Determine Incapacity with the Hearing date filled in, if possible (refer to and schedule using the online scheduling system);
2. Order Appointing Attorney/Elisor; and
3. Order Appointing Examining Committee. If there is information on the proposed orders that can be filled in by your office, please do so before submitting to the Court, including case number and e-mail service addresses. Do not include Certificate of Service by the Clerk.

II. EXAMINING COMMITTEE FEES:

Pursuant to Administrative Order 2017-06 in RE: Order for Compensation of Examining Committee, this office will only accept the Order for Compensation of Examining Committee posted under "Forms" on Judge McNicholas' webpage on www.circuit19.org. This order must be sent within five (5) days after the hearing for incapacity is held. Concerning payment of Examining Committee Fees where the Ward has been found indigent, these fees are preset and must be as follows:

Physicians: \$325.00

Psychologists: \$225

Lay People: \$125

Submit checklists, petitions/motions, proposed order (in word format) and hearing packets to the following via e-mail: GuardianshipMC@circuit19.org.

C. CONTESTED PROBATE/GUARDIANSHIP

I. REQUIREMENTS FOR COURT REPORTERS:

All evidentiary matters (both trials and hearings) must be recorded by a court reporter. It is the moving party's responsibility to arrange to have a court reporter present.

II. SETTLEMENT OF CASES:

If your case settles immediately notify the Court's Judicial Assistant via e-mail at MortL@circuit19.org, with a transmittal confirmation to all parties, ATTACHING AN ALREADY E-FILED NOTICE OF SETTLEMENT, DISMISSAL DOCUMENTS AND FINAL DISPOSITION FORM.

III. HEARING SCHEDULING/HEARING CANCELLATION/APPEARANCE BY TELEPHONE:

*All motions must be e-filed PRIOR to setting a hearing, however, the mere filing of a motion is insufficient to set a motion for hearing. The motion must be set for hearing to bring the matter to the Court's attention. You are required to provide the Judge's office with the Notice of Hearing and hearing packet via email.

All hearings for 1 hour or less, including Uniform Motion Calendar and Special Set Hearings must be scheduled online by counsel. Please refer to Judge McNicholas' online scheduling calendar posted at https://slccjis.stlucieco.gov/attorney_calendar/default.aspx to confirm and schedule available dates. You must register to obtain your User ID and password on the site. When registering on the site, please include your e-mail address. Parties will be restricted to the time allotted for the hearing. The Court reserves the discretion to reject any scheduling. Attorneys who repeatedly abuse the online scheduling maybe denied further privileges of self-scheduling. Any hearings requiring more than 1 hour must be scheduled by contacting Judge McNicholas' Judicial Assistant via e-mail. The email shall include a copy of the motion already e-filed with the clerk and a cover letter from counsel with a statement explaining exactly why more than 1 hour is needed.

Cancellation of any hearing must be done: 1) through the online court scheduling calendar; 2) by e-filing a Notice of Cancellation of Hearing in advance of the hearing date; and 3) by sending a courtesy copy of your Notice of Cancellation of Hearing to the Judicial Assistant e-mail, once you have e-filed same.

Appearance via Zoom is by court approval only. Please submit a motion and a proposed order in Word format to MortL@circuit19.org. Parties must appear in person unless they are specifically authorized to appear via Zoom.

IV. UNIFORM MOTION CALENDAR:

Uniform Motion Calendar hearings are for 5 to 10 minutes, non-evidentiary motions only. Uniform Motion Calendar hearings must be scheduled online. Please refer to Judge McNicholas' calendar posted at https://slccjis.stlucieco.gov/attorney_calendar/default.aspx to confirm and schedule available dates. Uniform Motion Calendar hearings will normally be held on designated days from 9:00 a.m.-9:30 a.m. All Uniform Motion Calendar hearings must be noticed for 9:00 a.m.

Hearings on UMC are limited to ten (10) minutes per case (not per motion). Additional motions may not be "piggy-backed" by cross-notice unless counsel first confirms with opposing parties and the online calendar, that sufficient additional time is available and can be reserved for same. UMC is heard on a "first come, first serve" 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 UMC time expires, any remaining hearings will need to be rescheduled.

Contested motions for summary judgment, evidentiary motions and complex, highly contested motions will not be heard at UMC. The types of motions suitable for hearing on the Uniform Motion Calendar include simple motions, such as motions to strike affirmative defenses, amend pleadings, short discovery motions, etc. UMC is available to pursue a summary final judgment for liquidated damages, after a default based upon a proper motion with supporting documentation, unless a party appears to contest it. In that instance, the parties must reset on the on-line "special set" calendar. Please do not set a non-qualifying motion on UMC simply because special set hearing time is not available immediately.

V. SPECIAL SET HEARINGS

For motion(s) which are not appropriate for UMC because the motion(s) require more than the allotted ten (10) minutes for UMC but less than one hour, please refer to the calendar posted at https://slccjis.stlucieco.gov/attorney_calendar/default.aspx to confirm and schedule available dates. You must register to obtain your User ID and password on the site. When registering on the site, please include your e-mail address.

VI. COOPERATION OF COUNSEL AND NOTICES OF HEARING

Hearings must be cleared with opposing counsel and/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 set forth either in the motion or in the notice of hearing. After 3 days, the requesting party may unilaterally set a hearing. Notice of the hearing must be provided at least five (5) business days prior to the hearing. All 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., Rule 1.380(a)(2). All notices of hearing shall contain a certification signed by the scheduling attorney 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. 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 or local professionalism panel.

VII. **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 e-mailed to the Court at MortL@circuit19.org, along with a transmittal confirmation from counsel, 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 Courtcall telephonic appearance if their schedule will not allow them to appear in person.