

HONORABLE PATRICIA A. MUSCARELLA
315 COURT ST, ROOM 410
CLEARWATER, FL 33756
727.464.3263

Judicial Practice Preferences
Circuit Civil

Written suggestions or questions regarding these Practice Preferences are welcome. They were last updated in December, 2016. Counsel are encouraged to acquaint themselves also with the Standard of Professional Courtesy for the Sixth Judicial Circuit ADMINISTRATIVE ORDER 2015-052 and the Sixth Judicial Circuit Local Rules.

HELP FOR PARTIES WITHOUT ATTORNEYS

The Judicial Assistant CANNOT answer legal questions, or “explain” thing to the judge. Your opportunity to speak to the judge happens in court only. The Clerk of the Court has a Self Help Program for self-represented litigants in the St. Petersburg Judicial Building. Gulfcoast Legal Service can be reached in Clearwater 727.443.0657 or St. Petersburg 727.821.0726. Bay Area Legal Services is available at 800.625.2257. Lawyer referral services of the Clearwater and St. Petersburg Bar Associations are at 727.461.4880 and 727.821.5450 respectively.

TO SCHEDULE HEARINGS:

E-mail your requests to: Section7@jud6.org

Please put the case number and the style of the case in the Subject line.

In the body of the email:

- Motions requesting to be heard and date filed.
- Amount of time you are requesting.
- Names of the attorneys, which office you are with and the parties they represent and/or pro se parties.
- Whether or not this is a telephonic hearing.

SETTING HEARINGS. You must get available hearing times by email Section7@jud6.org. After you have coordinated and cleared hearing time with all parties, please email Section7@jud6.org to set on my calendar. **DO NOT** just send in a notice until your hearing has been confirmed.

FORECLOSURES. Please visit the Sixth Judicial Circuit website at www.jud6.org for the latest information regarding foreclosure cases. The procedures established in [Administrative Order 2017-007](#) should be followed in mortgage foreclosure cases files in Pinellas County.

[Administrative Order 2017-007](#) is the most recent Mortgage Foreclosure Procedures for the 6th Circuit. Please review it carefully. **This Court is implementing Section III (B): Motions decided on Written Submissions.** Pretrial non-evidentiary matters will be decided without a hearing, unless the Court desires a hearing, whereupon Counsel or any Pro-Se party will be notified. For all pre-trial non-evidentiary matters which have not yet been set for hearing, but have been filed, follow the procedures and time limits in Section III (B).

UNIFORM MOTION CALENDAR.

1. A Uniform Motion Calendar is established for Section 07 once a week from 2:00 PM until 3:00 PM on non-jury trial weeks, unless holidays, vacations, or other circumstances prevent such hearings. It shall be the responsibility of the attorney setting any UMC hearing to ascertain that the judge will be available **BEFORE** sending notice. This may be done by emailing Section7@jud6.org
2. Hearings are held in the Judge's Chambers in Room 410 and are limited to a total of five (5) minutes per case. **These hearings are heard by telephone conference only.**
3. Counsel setting the hearing shall notice opposing counsel in accordance with the applicable rules of procedure. A copy of the notice of hearing, with the appropriate pleadings and proposed order attached, shall be forwarded to the judge's judicial assistant via **regular mail**, marked "Uniform Motion Calendar", at least five (5) business days before the hearing. Cancellation of UMC hearings **REQUIRES** notification to the court and opposing party.
4. Hearings will be conducted on a "first come, first served basis". If you call and receive a busy signal it is your responsibility to call again until you reach the court.
5. If an order is not signed at the hearing, a proposed order shall be submitted to the judge with a cover letter stating that opposing counsel agrees that the proposed order accurately reflects the court's ruling, or that opposing counsel was given the opportunity to object to the proposed order, but did not.
6. Non-routine evidentiary matters shall **NOT** be heard on the Uniform Motion Calendar. Contempt matters also shall not be heard on these calendars.
7. Ensure in the appropriate motion that counsel for the moving party certifies in the motion that a good faith effort has been made to contact opposing counsel to resolve by agreement the issues raised.
8. The judge will require counsel to reschedule any matter that the judge considers too complex to handle on the Uniform Motion Calendar.

TELEPHONIC HEARINGS. Telephonic hearings are permitted. Evidentiary matters will generally **NOT** be considered. Hearings by telephone **MUST** be set forth in the notice of hearing. The party filing the notice shall be responsible for getting each

participant on the line **BEFORE** calling the Judge. Attorneys may attend in person.

FAX / E-MAIL POLICY. The judge **does not** accept any correspondences, motions or orders via email and/or fax.

MOTIONS. Motions must be filed **before** requesting hearing times.

NON-EVIDENTIARY MOTIONS AND MOTIONS WITHOUT HEARING.

In addition to motions that have been customarily considered ex parte, certain other motions may be decided based solely on written submissions pursuant to Administrative Order 2015-056 and Administrative Order 2013-05. As provided by the AOs, after being served with such motions, the nonmoving opposing party shall have 10 days to file any written response, after which the court may rule without further notice or hearing.

The following motions shall generally be considered on written submissions: Motion to Dismiss, to Strike, for Leave to Add Parties, to File Amended Complaint, to File Supplemental Complaint.

MOTIONS TO COMPEL.

1. *Without Hearing:* [ADMINISTRATIVE ORDER 2013-005](#) - An ex parte order may be entered requiring compliance with the original discovery demand within ten days when a motion alleges a complete failure to respond or object, and no request for extension. No sanctions will be awarded ex parte. (Use form of order provided by the above AO).
2. *With Hearing:* per Local Rule 5 [Sixth Judicial Circuit Local Rules](#). Motions shall quote in full each interrogatory, question on deposition, request for admission or request for production to which the motion is addressed, and the objection and grounds therefor as stated by the opposing party.
3. *With or Without Hearing:* All motions must comply with Local Rule 5(C). A copy of the Local Rules are attached as Exhibit A. Any motion not conforming to this rule will be returned to the moving party.

Parties may, by stipulation only, waive hearing on other non-evidentiary motions and request the court to rule on written submissions alone. Conversely, parties may by stipulation, or motion, request oral argument on any motion otherwise subject to this procedure. The court will consider such request without hearing and advise the parties if a hearing should be scheduled.

PROCEDURE.

File and serve motions without contacting the court initially. When ten days have passed after service on opposing parties, then send the court:

1. **A courtesy copy of the motion**

2. Any supporting material of record
3. Copies of any material served in response by another party
4. A simple form of proposed order with stamped envelopes for distribution of conformed copies
5. An appropriate cover letter (with cc to other parties)

- Remember the court needs a hard copy. Electronic filings do not come to the judges attention.
- Nothing herein shall be deemed to limit the court's ability to require a hearing on any matter.

EMERGENCY MOTIONS. When attorneys e-file an emergency motion, the documents will be processed by the Clerk and will appear on the case docket in Odyssey faster. However, the Clerk does not forward it to the Judge's office and accordingly, the Judge and JA are not aware of the filing. It is the attorney's responsibility to contact the Judge's office and provide the Judge with a copy of the motion. Emergency motions will not be set for hearing on an emergency basis unless the court deems it to be an emergency.

Pro se emergency motions **only** are forwarded to the Judge's office by the Clerk.

COURTESY COPIES OF MOTIONS. Our system is not paperless! E-filing with the clerk does not put anything into the judge's hands. Courtesy copies of the Motion, Notice of Hearing, and all supporting documentation (including any prior pleading to which a motion is directed) must be provided directly to Judge Muscarella, 315 Court Street, Room 410, Clearwater, FL 33756 via Hand/U.S. Mail/Fed Ex/UPS (**not email or fax**) to be received at least five (5) business days prior to the hearing. **FAILURE TO COMPLY WITH THIS PROCEDURE MAY RESULT IN CANCELLATION OF YOUR HEARING.** Originals should be filed with the Clerk. Copies provided to the court will be presumed to be courtesy copies. Please break up lengthy submissions into subparts (cases, exhibits, etc.) that are stapled or otherwise divided separately.

PLEASE DO NOT EMAIL DOCUMENTS TO THE JA UNLESS THEY ARE SPECIFICALLY REQUESTED.

EX PARTE MOTIONS. Counsel seeking consideration of a matter ex parte should always include courtesy copies of the motion and any supporting materials such as affidavits, including their proposed orders, service copies, postage-paid envelopes, and an appropriate cover letter signed by a member of the Florida Bar, not a staff member.

CASE LAW. Paper copies of case law and other legal authority are welcomed by the court. Pertinent portions may be highlighted. Copies provided to the court (including any highlighting) shall be provided to opposing counsel before the start of the hearing.

CANCELLATION OF HEARINGS. UNDERSTAND THAT FILING A "NOTICE OF CANCELLATION" IS NOT A REQUIREMENT OF LAW AND DOES NOT CANCEL THE HEARING WITH THE JUDGE'S OFFICE. If your case settles, call the office immediately to cancel any hearings that may be scheduled. The mere filing of a

Stipulation of Dismissal is not adequate notice to the court that a case set for trial has been resolved.

WITHDRAWAL OR SUBSTITUTION OF COUNSEL. Rule of Judicial

Administration 2.505 requires a “motion and hearing” for withdrawal of counsel. Judge Muscarella will forego a live hearing and deem this requirement adequately complied with if, and only if, there is filed a Stipulation for Withdrawal **signed by both the client and all counsel**. The same rule requires that all substitutions of counsel be “signed off” by the client. Orders granting withdrawal must include the complete address and telephone number where future correspondence and pleadings may be sent to the client.

MOTIONS TO CONTINUE TRIAL. Absent very good cause, such motions must be signed by the client, as provided by Rule 1.460, and will require a hearing even if stipulated to by opposing counsel.

PROPOSED ORDERS AFTER HEARING. As provided by the Standards of Professional Courtesy for the Sixth Judicial Circuit [ADMINISTRATIVE ORDER 2015-052](#) proposed orders shall be submitted to the judge with a cover letter stating whether opposing counsel agrees, or objects, to the proposed Order – or, that opposing counsel was given the opportunity to object to the proposed Order, but did not. Transmittals of proposed orders should always reference the date of hearing. Draft orders should have page breaks such that part of the body of the order is included on the signature page. The Court *will not hold* orders pending objections. *Sufficient copies and stamped, addressed envelopes must be provided.* If only the original is submitted, copies will not be provided. **If the parties cannot agree on a proposed order, they should submit all the proposed orders simultaneously in one combined mailing.**

DEPOSITION DISPUTES. If extremely critical, attempt an immediate telephone hearing. Otherwise, certify question and set hearing.

PRE-TRIAL STATEMENTS. Utilize uniform pretrial statement form. Attorney attending pretrial will be the attorney who will attend the trial. No motions will be heard at pretrial conference without leave of Court.

MOTIONS IN LIMINE. All Motions in Limine shall be filed no later than 30 days after discovery closes and set for hearing on or before 15 days prior to the pretrial. Counsel, not support nor paralegal personnel, are required to meet and confer no later than 5 days prior to hearing date, either in person or by telephone, on each and every set Motion in Limine. Thereafter, counsel filing the motion must prepare and file a stipulation, on or before the hearing date, confirming in writing which Motions in Limine are agreed upon

DISPOSITIVE MOTIONS. Shall be filed and set for hearing 30 days after discovery deadline.

TRIALS:

NON-JURY TRIALS. Non-Jury Trials to be scheduled for one hour or more should be set for a case management conference to discuss scheduling. Counsel may appear by phone.

JURY TRIALS. Approximately 15 jury trials are set each trial week. The court generally tries the oldest cases first. When filing your motion for jury trial, please submit a courtesy copy of your motion to the judge's office. A Case Management Conference is required to obtain a trial date. All juries are selected on the first day of the trial week. The court may try 2 or 3 trials in one week.

VOIR DIRE. Attorneys will inquire of the entire jury panel seated in the gallery. A seating chart with jurors names will be provided. The court will initiate voir dire questions and then counsel will follow with their inquiry. The time limit for voir dire will be discussed at the pre-trial conference.

PEREMPTORY CHALLENGES. Generally 3 per party with total of plaintiff to match total of defense.

RESPONSE FROM COUNSEL WHEN BAILIFF BRINGS JURY IN. No preference. Counsel may stand if they wish. All counsel should be consistent, either all standing or all sitting.

COURTROOM TRIALS – REQUEST PERMISSION FOR THE FOLLOWING. To approach the bench. No permission is necessary to approach the clerk or a witness with or for a document.

ATTORNEYS FEES. The issue of entitlement may be tried in the main action or at a subsequent hearing. Issues regarding the amount of attorney fees shall be left for a subsequent hearing. Fee affidavits are sufficient in lieu of expert testimony if all parties agree to their use.

MARKING EVIDENCE TO BE USED AT TRIAL. Exchange evidence and exhibits consistent with the Order Setting Pretrial and Trial prior to trial. All evidence is to be pre-marked in advance of its intended use by counsel. The clerk will mark exhibits as they are received into evidence. Don't waste trial time looking at evidence for first time.

SHOWING TANGIBLE EVIDENCE TO THE COURT. After showing the exhibit to opposing counsel it may be shown to a witness without first showing it to the judge, unless the judge specifically requests to see the exhibit.

EXPERT WITNESS. Except in ruling on an objection, the court should not, in the presence of the jury, declare that a witness is qualified as an expert or qualified to render an expert opinion, and counsel should not ask the court to do so. A judicial ruling that a proffered expert is "qualified" prior to the time that counsel has posed a precise question eliciting expert testimony is premature and, unless an objection is interposed, unnecessary. Experts should be prepared at trial to answer questions regarding number of

hours they have spent working on the case and hourly rate charged as of date of trial. Attorney calling expert is responsible to relay this requirement to expert.

MEDIATION. Mediation is required unless unique case (ex-constitutional issue). Trials (jury or non-jury) will normally NOT be held unless mediation is completed. A case management conference may be set to discuss trial and mediation dates. The case must mediate within **one year** of the trial.

COURTROOM DEMEANOR COMMENTS. ADMINISTRATIVE ORDER NO. PA/PI-CIR-2015-052: This A.O. contains the STANDARDS OF PROFESSIONAL COURTESY FOR THE SIXTH JUDICIAL CIRCUIT which will be strictly enforced. No speaking objections. All argument to be directed to Court. Examine witnesses from the podium. Do not argue after Court rules.

OTHER PRACTICE AND PROCEDURE POINTERS:

MOTIONS FOR REHEARING AND RECONSIDERATION, ETC. Will not be set for hearing. Please submit a copy of the motion to the judge's office for entry of an order. If the Judge determines a hearing is required, your office will be contacted.

IF CASE SETTLES. **Immediately** call the office to cancel any hearings or trials that may have been scheduled.

ORDERS. Orders should NOT have the "DONE AND ORDERED" and Judge's signature standing alone on a separate page. Some part of the body of the Order should be included on signature page.

ENSURING PROPER NOTICE. Ensure proper notice sent to all. Even with defaults, ensure all parties copied all the time with everything. NOTICE, NOTICE, NOTICE **and** opportunity to be heard are KEY concerns for every Judge.