

**POLICIES, PROCEDURES, AND PREFERENCES FOR ALL CASES ASSIGNED TO
JUDGE DAVID FRANK**

(Updated 7/18/2022 8:36:27 AM)

Current Assignment: Gadsden and Liberty Counties

13 N. Monroe St, Quincy, FL 32351

(850) 875-8041

DouglasT@leoncountyfl.gov

*The following matters will be heard using the Court's remote hearing protocol (Zoom):
dependency, foreclosure, replevin, pretrial conferences, case management conferences,
hearings on dismissal for lack of prosecution, and uncontested matters that require a hearing*

***** All other trials and hearings will be live, in-person attendance is required *****

NOTE: Judge offices do NOT receive any notice of documents filed by parties or others via the e-filing portal. IF YOU DO NOT SEND A COURTESY COPY TO THE JUDGE'S JUDICIAL ASSISTANT, THE JUDGE WILL NOT SEE IT AND THERE WILL BE NO ACTION TAKEN.

SETTING HEARINGS AND NON-JURY TRIALS

To set a hearing, persons representing themselves pro se (without an attorney) should call the Court's Judicial Assistant, Tracy Douglas, at 850-875-8041 for assistance. Attorneys requesting a hearing must send an email to Ms. Douglas at DouglasT@leoncountyfl.gov, with the following information:

- ✓ **The case style – names of the parties, case number, and especially the county.**
- ✓ **The name, email address, direct telephone number, and law firm of the attorney requesting the hearing.**
- ✓ **The title of the motion, petition, or matter that will be the subject of the hearing.**
- ✓ **The realistic estimate of how much time is needed for all participants. It has been our experience so far that remote hearings take longer than live hearings.**
- ✓ **The email address of every party. This includes pro se parties.**

Certain hearings will be set by the Court. For other hearings, the Judicial Assistant will provide available hearing times to the person requesting the hearing. The person requesting the hearing must then coordinate / clear one of the dates / times with all parties (persons entitled to notice) and check with the Judicial Assistant to ensure the date / time selected is still available. If the date / time is still available, the person requesting the hearing shall promptly file a notice of hearing and email a courtesy copy to the Judicial Assistant.

If a party refuses to coordinate or clear one of the three dates/times, the party seeking the hearing will notify the Court and the Court will select the date/time.

REMOTE HEARING PROTOCOL (ZOOM)

Attorneys setting remote video hearings are responsible for providing Zoom session information to all participants, especially to any pro se parties and to their witnesses.

Judge Frank's Zoom Session Information

Meeting URL: <https://zoom.us/j/6375135678>

Meeting ID: 637 513 5678

For joining with audio only by telephone: +1 786 635 1003

For assistance and instructions on how to join a Zoom session go to <https://support.zoom.us/hc/en-us/articles/201362193-Joining-a-Zoom-video-call>.

A Zoom hearing takes place in a virtual *courtroom* and all participants must conduct themselves accordingly. If there is someone in the room with you, you must disclose the identity of that person and the reason for his or her presence.

No later than 48 hours after the completion of the trial or hearing, parties must file a Notice of Filing Admitted Exhibits attaching copies of exhibits admitted into evidence on their behalf during the trial or hearing. The exhibits must be in unaltered form (i.e., the exact same document shown during the trial or hearing).

REQUESTING LEAVE FOR REMOTE APPEARANCE OR CASE MANAGEMENT CONFERENCE

Parties with ***good cause*** to request a lawyer, party, or witness' remote appearance during a live proceeding, or to request a case management conference, will send an email to the Judicial Assistant describing in detail the reasons for the request. The Judicial Assistant will have the request promptly reviewed by the Judge and will email the parties a reply of either granted or denied. If leave to appear remotely is granted, it is the responsibility of the party on whose behalf the remote appearance was requested to obtain and coordinate the proper use of the equipment, internet connection, and video conferencing application or program. If leave for a case management conference is granted, it is the responsibility of the requesting party to coordinate and notice the hearing.

MATTERS FOR WHICH THE COURT WILL RULE UPON THE PAPERS (NO HEARING)

Parties are strongly urged to confer and agree on as many matters as possible. If all parties agree, the title of the motion must include the word "Agreed" or "Unopposed" and a proposed order may be submitted to the Court without a hearing. Agreement of the parties does not mean the motion will automatically be granted. There may be reasons to deny the motion even if agreed.

In addition to agreed matters, the following will be ruled upon the papers without a hearing:

1. Motions for Protective Order
2. Motions to Compel
3. Motions for Continuance of a Trial

For these matters, **the movant will email a proposed order to the Judicial Assistant after the time for a response has run.** Issues regarding privilege that are not clear on the face of the papers filed will be set for in camera hearing.

PROPOSED ORDERS

Proposed orders should not be submitted until after the hearing on the matter.

Proposed orders must be sent as an attachment to an email to the Judicial Assistant at DouglasT@leoncountyfl.gov with copies to all parties. The e-mail accompanying the proposed order must include the case name, the case number, the date of the hearing if applicable, and whether the proposed order is agreed or unopposed.

Proposed orders must be in Microsoft Word plain text format. There should be no internal formatting such as tables or hyperlinks or colors other than black.

Each proposed order must be one document. All exhibits or attachments must be included in or merged into the document in Microsoft Word format and not submitted as separate documents.

The party who requested the order is responsible for serving a copy of the issued order on all parties and interested persons who are not registered to receive a copy via the Florida Courts E-Filing Portal, such as pro se litigants, or others entitled to notice under the applicable law.

SETTING A CASE FOR TRIAL

Cases will be set for trial pursuant to the Florida Supreme Court directives on active differentiated case management and the corresponding Second Circuit Administrative Order. Parties **must** notify the Court as soon as their case is at issue.

DUTY TO IMMEDIATELY NOTIFY THE COURT OF SETTLEMENTS

Parties **must** notify the Court of any settlement, **immediately upon settlement**, by sending an email to the Judicial Assistant, with copies to all parties, stating that the case has been settled and requesting the Court to remove any remaining activities from the Court's calendar. The email must include the date and time of all pending / currently set activities (trial, the pretrial conference, hearings) to be canceled.

TRIAL AND HEARING EXHIBITS

All exhibits must be clearly labeled at the bottom of the first page. The labels will include: party designation (plaintiff, etc.), last name if there are more than two parties, exhibit number in sequence (numbers not letters). Items that are logically related to each other such that they

constitute a “set” of the same, such as “twenty photographs of plaintiff’s damaged vehicle,” can be submitted as a composite exhibit. However, items that are not a set of the same, must not be lumped together and called “composite” exhibits.

Parties will ensure that all paper exhibits to be admitted are prepared for trial as follows:

- A) One-sided (front only);
- B) The most legible copy / clearest image;
- C) No staples;
- D) No post-its or other extraneous stickers;
- E) Letter size (8 ½ by 11); and
- F) No unnecessary binders, tabs, or folders.

Parties may, however, place exhibits in binders or folders with tabs and tables of contents as an additional courtesy copy to be used by the Court during the hearing or trial.

MOTION PRACTICE

Motions filed after the deadlines set forth in the Court’s scheduling order will not be heard unless there is time on the Court’s calendar and extraordinary good cause is shown for the delay or there is an agreement of the parties. The fact that a motion is entirely unopposed or fully agreed must be stated in the title of the motion.

To avoid delay for any pending motion, parties may by agreement request a ruling on the papers submitted without a hearing. The request should be made via email to the Judicial Assistant.

Unless otherwise directed by the Court, responses in opposition to a motion shall be filed within ten (10) days after service of motions to compel discovery, motions for protective orders, and motions for continuance, and twenty (20) days for all other motions. **Responses filed after this time may not be considered and, if applicable, a ruling on the papers may be issued without argument from the non-moving party.** In addition, responses may not be considered if filed any later than 48 hours prior to the hearing.

Before filing any motion, the moving party shall confer with counsel for the opposing party or pro se parties in a good faith effort to resolve the issues raised by the motion. “Confer” means a substantive, professional conversation by telephone, videoconference, or in person. It does not mean simply sending an ultimatum by email or letter with no follow up. **Failure to properly confer can result in the motion being denied on that basis alone.** Counsel and pro se parties are expected to respond promptly to inquiries and communication from opposing counsel. Any party refusing to timely and properly confer may be sanctioned. The confer requirement does not apply to motions authorized to be filed ex-parte, uncontested motions, and dispositive motions such as motions for summary judgment.

A party alleging that a pleading fails to state a cause of action will confer with the opposing party before moving to dismiss, and, upon request of the other party, will stipulate to an order permitting the filing of a curative amended pleading in lieu of filing a motion to dismiss.

Motions in limine are for validly disputed matters of evidence. They are not a vehicle for obtaining an advisory opinion from the Court regarding any possible boiler plate misbehavior on the part of opposing parties. Requests that nobody could reasonably oppose -- such as requests to exclude exhibits that are clearly hearsay without exception, requests to prohibit the eliciting of settlement information, requests to prohibit disparaging comments, etc. – must be handled by a proposed, agreed order. Such matters will not be allocated scarce hearing time.

DEFAULTS

Unless otherwise ordered by the Court, final judgments that may include unliquidated damages will not be entered against defaulted parties via summary judgment.

A party seeking final judgment against a defaulted party (whether clerk defaulted or judicially defaulted) must request a final evidentiary hearing on damages. Typically, thirty minutes will be reserved.

The party setting the final hearing will be prepared to prove proper service of initial process, proper entry of the default, reasonable notice of the hearing, and proper service of the notice on the defaulted party.

In foreclosure cases, the plaintiff also will be prepared to discuss compliance with state and federal loan relief and modification regulations, and the status of any discussions between the defaulted parties and the plaintiff or plaintiff's servicer/agent. In addition to damages, Plaintiffs must prove standing. All ambiguous defendants, such as unknown tenants and unknown spouses, must have been dropped. Only the properly defaulted and specifically identified parties against whom plaintiff seeks entry of final judgment should remain. Final judgments sought against non-borrowers, or that otherwise will not include subsequent deficiency judgments, must be identified as "In Rem."

FORECLOSURES

See above section on procedures where a defendant is in default.

Paper copies of proposed orders and other documents should not be sent to the judge's chambers. Documents that must be processed by the clerk should be delivered directly to the clerk.

Proposed final judgments must not contain language expressly or impliedly providing that a subsequent writ of possession will be issued without further order of the court. To obtain a writ of possession, a party must file a proper motion for an order directing the clerk to issue the writ.

Parties seeking a writ of possession pursuant to a foreclosure on a federally-related mortgage loan or on any dwelling or residential real property must attach the following affidavit to their motion:

AFFIDAVIT IN SUPPORT OF MOTION FOR WRIT OF POSSESSION (FORECLOSURE)

I swear or affirm that

1. I am entitled to possession of the subject property, described in the motion, because I am the successful bidder at the foreclosure sale and the certificate of title has been issued to me, and there are person(s) occupying the premises without my consent.

2. I am entitled to a writ of possession because (check all that apply):

_____ The persons occupying the premises are the mortgagor or the child, spouse, or parent of the mortgagor.

_____ The lease or tenancy of the occupants was not the result of an arms-length transaction.

_____ The lease or tenancy of the occupants requires the receipt of rent that is substantially less than fair market rent for the property and is not rent that has been reduced or subsidized due to a federal, state, or local subsidy.

_____ I have provided a notice to vacate to the bona fide tenant occupants at least 90 days before the effective date of the notice and there is no lease, or the lease is terminable at will.

_____ The remaining term of the occupant's bona fide lease entered prior to the notice of foreclosure has expired.

_____ The remaining term of the occupant's bona fide lease entered into prior to the notice of foreclosure has not expired, however, the purchaser will occupy the unit as a primary residence and the occupants have received the 90-day notice to vacate.

3. The present motion complies with all applicable requirements for the termination of any Federal- or State-subsidized tenancy, or any other applicable federal, state or local laws or regulations, that provide longer time periods for notice or additional protections for tenants, than those set forth in this affidavit.