

**IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR HARDEE, HIGHLANDS AND POLK COUNTIES, FLORIDA**

ADMINISTRATIVE ORDER 1-57.4

IN RE: PHASE 2 COVID-19 EMERGENCY COURT OPERATIONS PROCEDURES

WHEREAS, the World Health Organization (WHO) has declared COVID-19, a severe acute respiratory illness, to be a pandemic, and the Governor of the State of Florida and the State Surgeon General and State Health Officer have declared that a public health emergency exists in Florida; and

WHEREAS, the health, safety, and well-being of courthouse visitors, court employees, and judicial officers are a high priority and necessitates the Florida State Courts System's continued monitoring of the COVID-19 outbreak and its effects on court operations; and

WHEREAS, to protect health and safety, the Florida Supreme Court has issued numerous administrative orders to enable trial courts to continue to provide court operations and proceedings through the use of remote technology; and

WHEREAS, on May 6, 2021, the Florida Supreme Court issued Amendment 8 to AOSC20-32, *In Re: COVID-19 Public Health and Safety Precautions for Operational Phase Transitions* ("Eighth Amended AOSC20-32") which revised requirements for Phase 2 court operations through the adoption of the report titled *Requirements, Benchmarks, and Guidelines Governing Operational Phase Transitions*, May 6, 2021, (hereinafter "Report"); and

WHEREAS, on May 6, 2021, the Florida Supreme Court issued Amendment 13 to AOSC20-23, *In Re: Comprehensive COVID-19 Emergency Measures for the Florida State Courts* ("Thirteenth Amended AOSC20-23") which revised benchmarks and health and safety measures for Phase 2 court operations; and

WHEREAS, the Court has been operating in Phase 2 in Hardee, Highlands, and Polk counties since August 25, 2020, and has established and implemented protective measures for court operations as set forth herein and the Tenth Circuit's Phase 2 Operational Plan (COVID-19) (hereinafter "Operational Plan"), as amended; and

WHEREAS, it is necessary to update this Administrative Order to address revised requirements and measures provided for in the Thirteenth Amended AOSC20-23 and the Eighth Amended AOSC20-32; and

WHEREAS, in accordance with the authority vested in the chief judge under article V, section 2(d), Florida Constitution; section 43.26, Florida Statutes; and Florida Rule of Judicial Administration 2.215(b)(2); and

NOW THEREFORE, IT IS ORDERED that:

1. Transition to Phase 2 Court Operations: On August 25, 2020, by entry of Administrative Order 1-57.0, the undersigned determined that Hardee, Highlands, and Polk counties had met the benchmarks to move to Phase 2 court operations which authorizes limited in-person contact for certain purposes and/or requires use of protective measures. While the benchmarks were revised by Eighth Amended

AOSC20-32, each county within the Tenth Judicial Circuit continues to meet the revised benchmarks to move to and remain in Phase 2 court operations.

2. Definitions: Pursuant to Eighth Amended AOSC20-32, Report at 1:
 - a. “Courthouse” means any facility or building that houses jury assembly rooms, courtrooms, hearing rooms, judicial officers, or court staff or areas where court business is conducted, whether or not that building is formally called a courthouse.
 - b. “In-person court proceeding” means the assembly of prospective jurors, voir dire, juror deliberations, and any status conference, hearing, trial, or other proceeding conducted by a justice, judge, magistrate, or hearing officer if conducted in person and other court events conducted in person as may be determined by the Chief Justice or chief judge. Proceedings conducted in the remote video rooms at the Polk Virtual Court Complex or the Highlands County Plea Room are in-person court proceedings when a person is physically present.
3. Jury Proceedings and Jury Trials:
 - a. Non-statewide grand jury selection and proceedings, civil jury selection and trial proceedings, and criminal jury selection and trial proceedings are no longer suspended and must be conducted in a manner that is consistent with this Administrative Order and the *Tenth Circuit Phase 2 Operational Plan (COVID-19)*, as amended.
 - b. Remote civil and criminal jury trials may be conducted as provided for in the Thirteenth Amended AOSC20-23. “Within 30 days after the remote conduct of a jury trial for the first time in a judicial circuit, the circuit shall present the results of the trial and report its findings and recommendations to the Chief Justice through the state courts administrator.” Thirteenth Amended AOSC20-23 at 10.
4. Juror Excusals and Postponements: By entry of a separate administrative order, the Court has created a process for juror excusals and postponements in order “to mitigate the spread of COVID-19 and . . . address[] hardships related to the pandemic,” as directed in Section III.C. of Thirteenth Amended AOSC20-23 at 10..
5. Essential and Critical Proceedings: Essential and critical proceedings will continue to be conducted remotely unless the presiding judge deems it necessary to conduct the proceeding in-person.
 - a. Essential proceedings include, but are not limited to: “first appearance; criminal arraignments as necessary; hearings on motions to set or modify monetary bail for individuals who are in custody; juvenile dependency shelter hearings; juvenile delinquency detention hearings; hearings on petitions for temporary injunctions relating to safety of an individual; hearings on petitions for risk protection orders; hearings on petitions for the appointment of an emergency temporary guardian; hearings to determine whether an individual should be involuntarily committed under the Baker Act or the Marchman Act; and hearings on petitions for extraordinary writs as necessary to protect constitutional rights.” Thirteenth Amended AOSC20-23 at 12.

- b. Critical proceedings related to the state of emergency or the public health emergency, include, but are not limited to proceedings related to: “violation of quarantine or isolation; violation of orders to limit travel; violation of orders to close public or private buildings; and enforcement of curfew orders.” Id. at 13.
6. Other Trial Court Proceedings: The guiding principle shall be that judges shall facilitate the use of technology in conducting proceedings remotely, in whole or in part. “Participants who have the capability of participating by electronic means in remote court proceedings shall do so.” Thirteenth Amended AOSC20-23 at 3-4.
- a. Instructions for Accessing Remote Proceedings: The Office of the Court Administrator for the Tenth Judicial Circuit Court is tasked with providing the parties and/or their attorneys, and any other necessary court participant with instructions regarding how to attend remotely. These instructions will continue to be made available on the Tenth Circuit Court’s website (www.jud10.flcourts.org).
 - b. Non-jury criminal trials may be conducted remotely if the parties agree to conduct the trials remotely and the requirements in Section III.B.(1)b.i.,ii., and iii. of Thirteenth Amended AOSC20-23 are met. Otherwise, the trials shall be conducted in person.
 - c. Non-jury termination of parental rights and juvenile delinquency trials shall be conducted remotely if authorized by the presiding judge. Otherwise, those trials shall be conducted in person.
 - d. All other non-essential and non-critical court proceedings shall be conducted remotely unless the presiding judge determines that one of the following exceptions applies:

Remote conduct of the proceeding is inconsistent with the United States or Federal Constitution, a statute, or a rule of court that has not been suspended by administrative order; or

Remote conduct of the proceeding would be infeasible because the court, the clerk, or other participant in the proceeding lacks the technological resources necessary to conduct the proceeding or, for reasons directly related to the state of emergency or public health emergency, lacks the staff resources necessary to conduct the proceeding.

Thirteenth Amended AOSC20-23 at 15. If one of the exceptions is determined to apply, the proceeding shall be conducted in person.

7. Inmate Competency Evaluations: Inmate competency evaluations by Expert Witnesses shall occur pursuant to existing AO 1-50.2 (or as subsequently amended), except that Expert Witnesses may conduct evaluations remotely in the event that the Expert Witness has arranged for the remote video connection between the Expert Witness’s office and the Hardee, Highlands, or Polk County jail. Expert witnesses who wish to conduct their inmate evaluation by remote means should contact the Office of the Court Administrator for the Tenth Judicial Circuit Court at (863) 534-4686 so a video link and instructions can be provided. The Expert Witness shall schedule the evaluation

based on the jail's availability and shall then notice the State Attorney's Office and defense counsel of the date and time of the remote evaluation. Either party or the Expert Witness may submit a request to the presiding judge to allow an evaluation to be conducted in-person.

8. Mandatory Procedures: To provide for the safety of those persons accessing the courthouses and court facilities, the following protective measures (outlined in Eighth Amended AOSC20-32 and the Tenth Circuit Phase II Operational Plan, as amended) are hereby adopted for the Court's continued response to the pandemic:
 - a. Social Distancing: In the event of an in-person hearing, the judge or the judicial officer shall take necessary steps to practice social distancing in order to minimize potential exposure to COVID-19. The presiding judge or judicial officer must ensure that all participants in the proceeding maintain a "social distance" as recommended by the Centers for Disease Control and Prevention ("CDC").
 - b. "Face masks covering the nose and mouth are required for everyone during an in-person court proceeding, with no exceptions." Eighth Amended AOSC20-32, Report at 7. Face masks have been and will continue to be provided at no cost to visitors who do not have one. Id. Face masks must completely cover the nose and mouth and fit snugly around the nose, chin, and sides of the face during in-person court proceedings. Id. In the event that a witness testifying in a court proceeding is not wearing a clear face mask or a cloth face mask that has a clear plastic panel (hereinafter "clear face mask"), and a clear face mask has been deemed necessary to afford due process, the witness may be permitted by the presiding judge to replace the opaque face mask with a clear face mask when in the witness chair for use during their testimony.
 - c. "Any person may voluntarily choose to wear a face mask in a courthouse when not attending an in-person court proceeding." Id.
 - d. Court Bailiffs and local Sheriff Deputies are hereby granted the authority to eject a person from an in-person court proceeding and refuse a person access to an in-person proceeding if the person refuses to wear a face mask and/or socially distance during an in-person court proceeding in accordance with this Administrative Order.
9. Presence of Children at Shelter Hearings: Unless directed otherwise by the assigned judge, the presence of children at shelter hearings is waived during the Court's response to the pandemic or until further order.
10. Rescheduling canceled proceedings. For matters that are not rescheduled by the Clerk of Court, it is up to the parties to reschedule any proceedings that have been stayed, cancelled, or postponed. The Clerk of Court and the Judicial Assistant of the assigned judge is tasked with informing a party who inquires as to whether a matter is to be rescheduled by the Clerk or the parties with the assistance of the Judicial Assistant.
11. Direction to Maximize the Resolution of Cases: Section III.G. of the Thirteenth Amended AOSC20-23 directs the chief judge of each circuit to maximize the resolution of cases by requiring active case management of certain civil cases and by directing all judges within their circuits and the local Bar to strictly comply with Florida Rule of

General Practice and Judicial Administration 2.545. Accordingly, all judges of the Tenth Judicial Circuit are hereby directed to strictly comply with Florida Rule of General Practice and Judicial Administration 2.545(a), (b), and (e), which respectively require judges to conclude litigation as soon as it is reasonably and justly possible to do so, to take charge of all cases at an early stage and to control the progress of the case thereafter until it is determined, and to apply a firm continuance policy allowing continuances only for good cause shown.

Also as directed by Section III.G. of the Thirteenth Amended AOSC20-23, all attorneys practicing within the Tenth Judicial Circuit are directed to strictly comply with Florida Rule of General Practice and Judicial Administration 2.545(a), which requires lawyers to conclude litigation as soon as it is reasonably and justly possible to do so, and that the pandemic alone is not a basis for a lawyer's failure to prepare a case for trial or otherwise actively manage a case.

12. Case Management for Civil Cases: This section is effective April 30, 2021.

- a. **Applicability**: The case management procedures below apply to all cases in which the Florida Rules of Civil Procedure apply, including cases proceeding “under one or more of the Florida Rules of Civil Procedure pursuant to Florida Small Claims Rule 7.020(c) if the deadline for the trial date specified in Florida Small Claims Rule 7.090(d) no longer applies in the” case. Thirteenth Amended AOSC20-23 fn.13 at 16-17. The case management procedures below do not apply to cases subject to section 51.011, Florida Statutes, post-judgment proceedings, and writs to which Florida Rule of Civil Procedure 1.630 applies.” Id.
- b. **Determine Track**: Each judge assigned to an applicable civil division shall cause the civil cases in their division to be reviewed to determine whether it is complex, streamlined, or general. Complex, streamlined, and general are defined as:
 - i. **Complex Civil Cases** - actions that have been or may be designated by court order as complex under Florida Rule of Civil Procedure 1.201. Upon such designation, the action shall proceed as provided in the rule.
 - ii. **Streamlined Civil Cases** – unless otherwise determined by the presiding judge, streamlined civil cases are uncontested cases, cases not entitled to jury trial, or cases where a jury trial is not demanded.
 - iii. **General Civil Cases** - all other civil cases.
- c. **Case Management Orders for Streamlined and General Cases**:
 - i. Case management orders must include the following at a minimum:
 1. Deadlines for service of complaints, service under extensions, and adding new parties;
 2. Deadlines to complete fact and expert discovery;
 3. Deadlines for all objections to pleadings and pretrial motions to be resolved;
 4. Deadline for mediation to have occurred;

5. Projected date of trial;
6. Indicate that deadlines will be strictly enforced by the court; and
7. Indicate that a firm trial date will be ordered by the presiding judge when the case is at issue pursuant to Florida Rule of Civil Procedure 1.440.

For cases filed before April 30, 2021, the case management order must include the projected trial date and the deadlines listed above if the event has not already occurred or has not already been specified by a separate court order.

ii. Case management orders must be issued as follows:

1. If the case is subject to dismissal for lack of prosecution pursuant to Florida Rule of Civil Procedure 1.420(e), then a case management order must be issued within 30 days after the Court determining that the case should remain pending.
2. If the case is subject to a statutory stay or a moratorium that prevents prosecution of the case, then a case management order shall be issued:
 - a. Cases filed on or after April 30, 2021: Within 45 days after the stay or the moratorium ends or within 30 days after service of the complaint on the last of all named defendants (whichever date is later); or
 - b. Cases filed before April 30, 2021: By December 3, 2021, within 45 days after the stay or the moratorium ends or within 30 days after service of the complaint on the last of all named defendants (whichever date is later).
3. If the case is not subject to a statutory stay or a moratorium, then a case management order shall be issued:
 - a. Cases filed on or after April 30, 2021: Within 30 days after service of complaint on the last of all named defendants; or
 - b. Cases filed before April 30, 2021: By December 3, 2021.
4. The parties may stipulate and agree to a case management order, which must be submitted for final approval by the deadline stated by the presiding judge. The required form to be used for the parties' agreement is attached as Attachment A, entitled "Civil Case Management Plan." A sample case management order is provided in Attachment B.

iii. Maximum Deadline Periods for Streamlined Cases (unless otherwise ordered based upon good cause):

1. Deadlines for service of complaints, service under extensions, and adding new parties (**service within 120 days of filing of the complaint unless the Court grants an extension which shall not exceed 240 days from the date of filing of the complaint**);

2. Deadlines to complete fact and expert discovery (**within 270 days after the complaint is filed**);
 3. Deadlines for all objections to pleadings and pretrial motions to be resolved (**within 45 days after filing and prior to the pretrial conference**);
 4. Deadline for mediation to have occurred (**within 270 days after the complaint is filed**); and
 5. Projected date of trial - **within 12 months of filing**.
- iv. Maximum Deadline Periods for General Cases (unless otherwise ordered based upon good cause):
1. Deadlines for service of complaints, service under extensions, and adding new parties (**service within 120 days of filing of the complaint unless the Court grants an extension which shall not exceed 240 days from the date of filing of the complaint**);
 2. Deadlines to complete fact and expert discovery (**within 450 days after the complaint is filed**);
 3. Deadlines for all objections to pleadings and pretrial motions to be resolved (**within 45 days after filing and prior to the pretrial conference**);
 4. Deadline for mediation to have occurred (**within 450 days after the complaint is filed**); and
 5. Projected date of trial – **within 18 months of filing**.

13. Effective Date: Unless otherwise stated herein, this Administrative Order is effective immediately, and shall remain in effect until further order of this Court or the Florida Supreme Court. This Administrative Order VACATES and SUPERCEDES Administrative Order No. 1-57.3 entered on April 16, 2021.

DONE AND ORDERED in Bartow, Polk County, Florida this 10th day of May, 2021.

s/ELLEN S. MASTERS, CHIEF JUDGE

Original: Polk County Clerk of Court

Copies: All Judges
 Hardee County Clerk of Court
 Highlands County Clerk of Court
 Polk County Clerk of Court
 Nick Sudzina, Trial Court Administrator
 Office of the State Attorney
 Office of the Public Defender
 Office of Criminal Conflict and Civil Regional Counsel, Second District
 Department of Juvenile Justice
 Hardee, Highlands, and Polk Law Enforcement Agencies
 Electronic Bar Mailing

ATTACHMENT A

IN THE COUNTY COURT IN AND FOR Choose an item. COUNTY, FLORIDA

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR Choose an item. COUNTY, FLORIDA

Case Number: Click or tap here to enter text.

Section: Click or tap here to enter text.

Click or tap here to enter text.

Plaintiff,

v.

Click or tap here to enter text.

Defendant.

_____ /

CIVIL CASE MANAGEMENT PLAN

I. Case Track Assignment (check one): Case disposition times for all case tracks have been established in accordance with the Florida Rules of General Practice and Judicial Administration 2.250(a)(1)(B).

- Streamlined Track (Case resolved within 12 months without a jury trial).
- General Track (Case resolved within 18 months with or without a jury trial).
- Complex Track (Case resolved pursuant to Florida Rule of Civil Procedure 1.201, with or without a jury trial).

II. Case Deadlines and Events:

Deadline or Event	Party (if applicable)	Date
Deadlines for service of complaints, service under extensions, and adding new parties		Click or tap to enter a date.
Deadlines to complete fact and expert discovery	Plaintiff(s):	Click or tap to enter a date.
	Defendant(s):	Click or tap to enter a date.
Deadlines for all objections to pleadings and pretrial motions to be resolved		Click or tap to enter a date.
Deadline for mediation to have occurred		Click or tap to enter a date.
Projected date of trial (a firm trial date will be ordered by the presiding judge when the case is at issue pursuant to Florida Rule of Civil Procedure 1.440).		Click or tap to enter a date.

III. Trial Information

Estimated Length of Trial (specify the number of trial days):	Click or tap here to enter text.
Identification of Jury or Non-Jury Trial:	<input type="checkbox"/> Jury Trial <input type="checkbox"/> Non-Jury Trial

The schedule of deadlines herein will be strictly adhered to by the parties unless change is otherwise agreed to by the parties and approved by the Court. The Court will consider a request to approve changes to these deadlines upon a showing of good cause by either party based on matters arising from an emergency nature or unavailability. However, once the *Civil Case Management Plan* has been approved by the Court, procrastination in completing discovery or the unavailability of counsel will not constitute good cause for a change to these deadlines. The failure to abide by these deadlines may result in sanctions by the Court, including the award of attorney’s fees, the striking of pleadings and/or a dismissal of the action.

IV. SIGNATURE OF COUNSEL/UNREPRESENTED PARTIES IF SUBMITTED AS AGREED UPON PLAN

_____ Plaintiff’s Counsel Address: Click or tap here to enter text. Phone: Click or tap here to enter text. Fax: Click or tap here to enter text. E-mail: Click or tap here to enter text. Fla Bar #: Click or tap here to enter text.	_____ Defendant’s Counsel Address: Click or tap here to enter text. Phone: Click or tap here to enter text. Fax: Click or tap here to enter text. E-mail: Click or tap here to enter text. Fla Bar #: Click or tap here to enter text.
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_____ Plaintiff (if unrepresented) Address: Click or tap here to enter text. Phone: Click or tap here to enter text.	_____ Defendant (if unrepresented) Address: Click or tap here to enter text. Phone: Click or tap here to enter text.
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ATTACHMENT B

IN THE COUNTY COURT IN AND FOR Choose an item. COUNTY, FLORIDA

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR Choose an item. COUNTY, FLORIDA

Case Number: Click or tap here to enter text.

Section: Click or tap here to enter text.

Click or tap here to enter text.

Plaintiff,

v.

Click or tap here to enter text.

Defendant.

_____ /

CIVIL CASE MANAGEMENT ORDER

THE COURT having reviewed the attached *Civil Case Management Plan*, incorporated herein, and finding it to be satisfactory, it is now

ORDERED that all parties shall abide by the terms of the attached *Civil Case Management Plan*.

DONE and **ORDERED** in Choose an item., Choose an item. County, Florida on Click or tap to enter a date..

County Judge/Circuit Judge

Copies:
Attorneys of Record
Unrepresented Parties