



**WAYNE M. DURDEN**  
JUDGE OF THE CIRCUIT COURT  
STATE OF FLORIDA, COUNTY OF POLK  
[WWW.JUD10.FLCOURTS.ORG](http://WWW.JUD10.FLCOURTS.ORG)

Polk County Courthouse  
255 North Broadway  
Bartow, FL 33830

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**CIRCUIT CIVIL DIVISION 11 PROCEDURES AND GENERAL INFORMATION**

- Term of Assignment:** Effective July 1, 2019 until further Order of the Chief Judge
- Mailing Address:** P.O. Box 9000, Drawer J-116  
Bartow, FL 33831-9000
- Hearing Room:** **9B-2 (ninth floor, west tower, red elevators)**  
**Motion Hearings and Non-Jury Trials for Civil Div.**
- Courtroom:** **8B (Eighth floor, west tower, Red elevators)**  
**Jury Trials (for Civil Division only)**
- Administrative Orders:** Copies of all Administrative Orders for the Circuit are available on our website at [WWW.JUD10.FLCOURTS.ORG](http://WWW.JUD10.FLCOURTS.ORG).
- Docket Schedule:** Three weeks of motions and two weeks of jury trials.  
Non-Jury Trials are scheduled during motion weeks.

**SCHEDULING HEARINGS ON REGULAR (MOTIONS) DOCKET:**

You may email our office ([chess@jud10.flcourts.org](mailto:chess@jud10.flcourts.org)) to obtain hearing times for a motion hearing once the motion has been filed with the Clerk's office and, if the case has been closed, once the case has been reopened. You will need to provide the following information:

1. Your attorney's estimate of time needed for the hearing. **It is very important that you schedule ample time for each party to have a fair opportunity to be heard regarding the issues. If ample time is not scheduled, the hearing may come to an end and require resetting to conclude. Please copy all parties to be coordinated with in your email request.**
2. The case number, style of the case, and the names of the attorneys involved and your motion.

3. You must send back an email to reserve a particular date/time slot. **Do not send out a notice of hearing until you have received confirmation from the judicial assistant.** This is on a first come, first serve basis.
4. All hearing date/time slots shall be cleared with opposing counsel prior to notices being filed. In the alternative, if counsel's good faith attempt to clear a hearing has been unsuccessful, the following language shall be used: **"The above hearing date has not been cleared with opposing counsel's calendar because (factual statement)."** Once a slot has been cleared (or a good faith attempt has been made) you must email back and copy all parties to reserve a particular date/time slot. If you don't, the hearing will not be reserved or added to the calendar. All available hearing date/time slots are given to anyone attempting to set a hearing. Slots are **not "held"** unless directed by the Judge.
5. You must **mail** a hard copy of the Motion that is being heard with the Notice of Hearing. As a majority of the motions are scheduled several weeks out, hard copies must be sent via **regular U.S. Mail**, or by another mail delivery service. **Do not fax or email** these documents to our office. They must be received in this office **no later than ten (10) business days prior to the hearing date.**
6. Be sure to include the location of the hearing on your Notice of Hearing. All **motion hearings** are held in **hearing room 9B-2, 9<sup>th</sup> Floor, West Tower, Red Elevators.**
7. **Uniform Motion Calendar:** Judge Durden **does not** have a UMC Calendar. If a matter is uncontested, you may submit the motion and proposed order to the Judge for review. The motion itself **should reflect that the matter is, in fact, uncontested.**
8. **Emergency or expedited hearings:** Emergency or expedited hearings **are only set by the Judge** once he has received an *Emergency Motion* for consideration and directs that an emergency hearing be set on the matter. If the *Emergency Motion* is denied as an emergency, the attorney/movant may set it during the regular course of business per the Civil Rules of Procedure. Requests for emergency relief must be brought to the judge's attention **via fax or hand delivery (e-filing alone will not bring this matter to the courts attention)**

**APPEARING BY TELEPHONE (for time certain hearings set on the Judge's regular/motions docket):**

Judge Durden permits telephonic appearances for both local and non-local attorneys for motions that are scheduled for **15 minutes or less. No telephonic appearances for pretrial conferences.** No motion/order is necessary for any counsel who wish to appear by telephone for a 15 minute hearing. If more than one attorney will be appearing by phone, it is the responsibility of the **attorneys to arrange a conference call. All counsel must be on the line before calling our conference line at (863) 534-4004.** All counsel need to **be on a land-line** and not a cellular phone.

Any party (**non-attorney**) attempting to appear telephonically for a hearing would need to submit the appropriate motion for the Judge's consideration and may only do so if the Judge grants the motion. Any parties appearing telephonically must appear pursuant to the Florida Rules of Judicial Administration, Rule 2.530.

**CROSS NOTICES:** No cross-notices to add other motions will be permitted **unless the judge's office has cleared the hearing time and the motions**, and provided that the hearing time and other motions were cleared with opposing counsel as provided in paragraph 3 above.

**SCHEDULING MOTIONS FOR SUMMARY JUDGMENT HEARING FOR RESIDENTIAL/ COMMERCIAL FORECLOSURES WITH PRO SE DEFENDANTS (ONLY) INSTRUCTIONS:**

1. If there is no opposing counsel, a residential or commercial foreclosure *Motion for Summary Judgment* hearing may be scheduled during motion weeks.

2. There will be **no telephonic hearings for Motions for Summary Judgements of Foreclosures.** **All parties must appear in person** for Motions for Summary Judgements for foreclosures.
3. If no one appears to contest the Motion, Judge Durden may enter the submitted Judgment. The Clerk of Courts is responsible for scheduling and implementing the sale date upon receipt of the executed Judgment.
4. **Judgment packets for this docket shall be forwarded to our office a minimum of 10 days prior to the hearing date.** All information readily available (i.e. attorney's fees and costs) should be completed. Our circuit requires the filing of a **notarized Affidavit of Compliance** in accordance with Administrative Order No. 3-29.2. A copy of the notarized *Affidavit of Compliance* **must** be included in the packet. **Failure to include this document will prevent the Final Judgment from being signed and processed.** All original documents must be filed with the Clerk of Courts. Do **not** send original documents with the packet.

**The Judge WILL NOT grant any Motions for Default Final Judgment on residential or commercial foreclosure cases without a properly noticed hearing.** The only exception to this would be if the Default Final Judgment was stipulated to by counsel/parties. A copy of the signed stipulation would need to be submitted along with the packet and filings would still need to be in compliance with local **Administrative Order 3-29.2**(which includes filing and providing a hard copy of a **notarized Affidavit of Compliance**).

### **CANCELLATION OF HEARINGS:**

1. Please call as soon as you learn that the hearing is to be canceled. If your case settles, you **must** still cancel any hearings that you have set on the Judge's calendar.
2. Only the party who set the hearing may cancel it, and **it is that party's responsibility to notify everyone of the cancellation.**
3. If the length of a hearing changes in any way (for example, a case settles and you know that a long hearing will only take a few minutes rather than an hour) please let the Judge's office know as soon as possible. The remainder of that time may be needed for other hearings.

### **SUBMITTING PROPOSED ORDERS FOR CONSIDERATION:**

#### **ORDERS SUBMITTED WITHOUT A HEARING:**

1. All proposed Orders must include a copy of the motion in the packet submitted by mail to the assigned Judge's office. Please verify the correct Judge with the Clerk's Office prior to submitting the motion/proposed Order packet for consideration. If the Judge feels that a hearing is needed, the submission will be returned to the sending attorney with a memo stating that the Judge requires a hearing, and will include the email address for scheduling. Orders to Show Cause regarding entry of Summary Judgments entry **MUST** include a final hearing date that is obtained by email **before** submitting the packet for the Judge's consideration. If this is sent in with a blank for the final hearing date, **it will be returned with a memo directing the attorney to email for available dates and resubmit with the date filled in.**
2. When sending in proposed orders, please be sure to send a transmittal letter showing that a copy of the letter and proposed order has been sent to opposing party. Orders will generally be held for a minimum of five (5) working days in order to give opposing party/counsel time to object. If the cover letter indicates that there are no objections to the proposed order, the Judge may waive the hold process and sign the order upon submission to the Court. Counsel must include sufficient copies and stamped envelopes to be conformed and mailed out to all parties/counsel. Otherwise, it will be up to the parties/counsel to get copies from the Clerk's Office, subject to any applicable fees.

3. If you object to an order, please call and inform the Judge's office immediately. If you only mail in correspondence of objection and rely that getting to this office within five (5) working days you may be too late with the objection. Note that objections made by phone must be followed up by a written explanation within five (5) working days, with copy to opposing counsel.
4. All proposed orders should be bound together by either a paperclip or binder clip. **PLEASE DO NOT STAPLE the cover letter, original proposed order, and copies to be conformed together as one large packet.** Also, do not staple the envelopes to the copies to be conformed. Stamped, addressed envelopes: Send stamped addressed envelopes for all parties to whom a copy of the order should be sent. The return address on the envelope should be that of the Judge:

Circuit Judge Wayne M. Durden  
P.O. Box 9000, Drawer J-116  
Bartow, FL 33831-9000

5. All original motions must be filed with the Clerk of Courts. If you are filing a motion that requires a reopen fee, make sure that you submit the information directly to the clerk for initial processing.

#### **ORDERS GENERATED FROM A HEARING OR TRIAL**

1. The order should have a full title containing the subject matter of the motion or pleading ruled upon (e.g., Order Granting Plaintiff's Motion to Compel, **not just "Order"**).
2. The opening paragraph of the Order should include the hearing or trial date and the names of counsel and parties who were present at the hearing. If a party did not appear after having received proper notice of the hearing, the Order should so indicate.
3. All orders submitted for the Judge's signature should be on plain white paper (i.e., not on the firm's printed paper).
4. Envelopes should contain the name and address of the Judge as the return address.
5. **Do not** put "Honorable" or "The Honorable" under the signature line. The correct form is simply to type the Judge's name in capitals, followed by a comma, and then his title.

#### **Correct form:**

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**WAYNE M. DURDEN, Circuit Judge**

6. **Do not** type only the "**DONE AND ORDERED**" part or only the signature line on a page by itself. In other words, you should include some text from the order before you start with the **DONE AND ORDERED**, etc.
7. Do not leave any more "fill in" blanks in an order than you absolutely have to. If you can find out the information by placing a telephone call, you should do so, and then type it in the order before submitting it to the judge's office. That gives opposing counsel an opportunity to react to the figures or dates, and saves problems arising after entry of the order. It also prevents incorrect information being filled in, and then the order having to be redone.
8. Always show at the bottom of the order (and the transmittal letter) the people to whom copies are being mailed. If someone is being ordered to do something (submit a report to the court, etc.) they will need a copy, even if they do not normally get copies of all pleadings. Please **submit a stamped, addressed envelope for everybody who needs a copy of the order**, except those who are covered by internal mail.
9. Do not include a Certificate of Service to be completed by the judicial assistant.

## **FAXES:**

The only documents that should be faxed to this office should be titled as **Emergency Motions**. **Always call first to make sure it was received and that there is someone available in the office to process it.** Failure to do this will delay in the processing of your *Emergency Motion*. Also, be sure you indicate the name of the person to whom the fax is being sent, as we share a fax machine with other offices.

## **SUBMITTING EMERGENCY MOTIONS FOR CONSIDERATION:**

You must first **call** this office to apprise the judicial assistant that your office will be submitting an *Emergency Motion* for Judge Durden's consideration and then fax a copy of the *Emergency Motion* to the office. Any emergency motion submitted for *ex parte* consideration, should clearly so state. Unless the *Emergency Motion* is being submitted *ex parte*, the fax shall include a cover letter that indicates that this submission has been copied to the opposing party/ counsel, who may send in a timely response per the procedure of this Judge's office. After reviewing the *Emergency Motion* and any response received from the other side, Judge Durden will decide if the matter raised is a true emergency and whether the hearing should be advanced on the docket. **Failure to call the office before faxing the *Emergency Motion* will delay the processing of the *Emergency Motion*.**

## **AVAILABILITY OF BACK-UP OR DAILY "DUTY" JUDGE FOR EMERGENCY OR PRIORITY NEED:**

If you have an *Emergency Motion* or priority need and Judge Durden is unavailable, the following is an outline of the correct procedure to follow:

1. **You must first call Judge Durden's office.** If directed to do so by Judge Durden, the judicial assistant will then refer you to another Judge's office.
2. Each Judge has designated "back-up" Judges. Generally Judges in each division will substitute for each other when necessary, subject to their availability. If another Civil Division Judge is unavailable, there is also a designated daily Duty Judge. But, **referring a case to another Judge is completely at the discretion of Judge Durden**, which is why it is necessary to call his office first.

## **MOTION(S) FOR APPOINTMENT OF ATTORNEY AD LITEM:**

If a case calls for the appointment of an Attorney Ad Litem, you may choose an attorney that accepts regular appointments in civil matters. At such time as you are ready to submit the motion and proposed order to our office, please be sure to include the attorney ad litem's information (i.e. name, address, phone number) in the order. There should be no blanks in the Order for the Judge to fill in.

## **TRIALS:**

To have your case set for trial, you will need to file a Notice for Trial with the Clerk of Court and **mail** in a hard copy to this office. Do not rely on the clerk to provide our office with the information. If you do not receive a trial order within a reasonable time, you should inquire with the judicial assistant. Jury trials are scheduled during a two-week trial period. Non-Jury trials are scheduled during the three week motion block. **Appearance at the pre-trial conference by telephone is not permitted.**

**MARKING TRIAL EXHIBITS:**

Prior to any hearing all documents intended for admission into evidence shall have exhibit identification information pre-marked in a form suitable for receipt into evidence. The exhibit labels shall be in substantially the following format:

**Case No.** \_\_\_\_\_

**Party** \_\_\_\_\_ **Exhibit No.** \_\_\_\_\_

**Admitted** \_\_\_\_\_ **Excluded** \_\_\_\_\_

**Date:** \_\_\_\_\_

The party submitting the exhibit shall fill in all blanks on the label except “admitted” and “excluded.”

**JURY INSTRUCTIONS:**

In accordance with the uniform Order Setting Pretrial Conference and Jury Trial and Directing Mediation, Plaintiff shall provide a complete set of proposed jury instructions. Defendant shall provide only special instructions not included in Plaintiff’s submission. The proposed instructions should be submitted via email to the judicial assistant no later than the Friday before the trial. Said instructions should be in Word format.

**JOINT MOTION(S) TO CONTINUE TRIAL:**

Judge Durden *normally* does not require hearings on Joint Motion(s) to Continue Trial, provided that all parties have signed the joint motion, along with their respective attorneys, if applicable. Counsel for the moving party should contact the judicial assistant to advise that a joint motion is forthcoming, so the pretrial and/or trial date can be flagged for removal from the docket upon execution of the Order of Continuance/ new Pre-Trial Conference/ Trial Order. In order to avoid a delay in prosecution of the case, Judge Durden prefers that that a new pretrial and trial date be chosen at the time the joint motion is filed, with the new agreed to date/ time/ location for both the Pre-Trial Conference and Trial Block being included in the Order of Continuance/ new Pre-Trial Conference/ Trial Order submitted by counsel. You will also need to include any other information that counsel/ parties wish to change, i.e. cutoff dates, mediation, etc., as the proposed Order submitted for entry will serve as the new Pre-Conference/ Trial Order. Any information not updated in this new Order will remain as announced in the previously entered Pre-Trial Conference/ Trial Order.

**MOTION(S) FOR REHEARING:**

Florida Rule of Civil Procedure 1.530(b) provides that a Motion for New Trial or Motion for Rehearing should be served within 10 days of the jury verdict or 10 days from the filing of a judgment in a non-jury action. You must file the original with the Clerk and mail in a courtesy copy to the Judge. If a rehearing is to be held, the judicial assistant will email you available dates and times for you to clear and notice the hearing.