

DIVISION CV-E PROCEDURES FOR SCHEDULING AND HEARING MOTIONS REQUIRING EVIDENTIARY HEARING

Since January 1, 2020, Division CV-E Policies and Procedures¹ published on the Fourth Judicial Circuit's website² established a mandatory meet and confer process to occur *before* scheduling the hearing on all motions except for the following motions: injunctive relief without notice; judgment on the pleadings; or to permit class action. Effective January 1, 2025, Florida Rule of Civil Procedure 1.202 titled "Conferral Prior to Filing Motions" requires parties to meet and confer before filing a motion in a civil case. The rule is intended to help with case management.

The Court has heard numerous motions and matters, some supported with affidavits and opposed with conflicting affidavits, requiring the Court to make findings of fact, but not noticed as an evidentiary hearing. In many such cases, counsel for the parties failed to meet and confer before filing the motion or scheduling the hearing. It has been the Court's experience during such hearings that counsel for one or all parties did not realize an evidentiary hearing was required to resolve factual issues within the motion or matter, or reconcile conflicting affidavits, until the Court asked preliminary procedural questions during the hearing. When counsel for the parties agree or the Court finds from a review of the motion or matter and the relevant Court record that the motion or matter requires an evidentiary hearing, the hearing on the motion or matter must be continued and rescheduled – delaying resolution of the motion or matter for weeks or months, depending on the amount of hearing time needed to present all relevant witness testimony and proffered evidence for the Court to consider in its ruling and whether limited pre-hearing discovery relevant to the motion or matter to be heard at the evidentiary hearing is necessary. In sum, the failure of counsel to recognize or consider whether an evidentiary hearing is necessary to rule on the motion or matter and confer with each other regarding the same prior to filing the motion and/or scheduling the hearing can unnecessarily delay the litigation and prevent the timely completion of the case pursuant to Fla. R. Gen. Prac. & Jud. Admin. 2.250.

The Court recognizes its duty to actively case manage each case assigned to it and comply with Rules 2.250 and 2.545, Fla. R. Gen. Prac. & Jud. Admin. and Rules 1.200, 1.201, 1.280, 1.440, and 1.460, Fla. R. Civ. P. As such, the Court requires that counsel for the parties, during the Rule 1.202 meet and confer prior to filing motion(s), to discuss whether there are factual issues within such motion(s) the Court will be required to resolve with an evidentiary hearing. To promote judicial efficiency in scheduling a hearing on the motion(s), counsel for the parties shall attempt to reach an agreement on whether an evidentiary hearing is needed for the Court to rule on the motion(s).

If counsel for the parties are in complete agreement that an evidentiary hearing is not required, then counsel for the parties shall schedule a non-evidentiary hearing pursuant to Sections III. C., D. and E. of Division CV-E's Policies and Procedures published on the Fourth Judicial Circuit's website. However, if there is a complete agreement, or disagreement, over whether an evidentiary hearing is required, then counsel for the parties during this Rule 1.202

¹ See Sections III. L and M.

² See website: <https://www.jud4.org/ex-parte-dates-judge-s-procedures/duval-judges>

meet and confer shall prepare the following: a Division CV-E Trial Set Memorandum estimating the time for any motion hearing estimated to require more than 1 hour to be emailed to the Court's Judicial Assistant; and an appropriate proposed Case Management order ("CMO" scheduling the evidentiary hearing on the motion or matter.

To facilitate this meet and confer process the parties should utilize the Court's template for *Case Management Order Scheduling Motion for Evidentiary Hearing and Pre-Evidentiary Hearing Case Management Conference and Requiring Matters to be Completed Prior to Pre-Evidentiary Hearing Case Management Conference* published in Word format on the Court's website³ to draft either an "Agreed Order" to be submitted to the Court or a single red-lined version of the CMO in draft form for the Court to consider competing provisions during a subsequent Case Management Conference. If the parties do not agree on whether the motion(s) require an evidentiary hearing or the provisions of the CMO scheduling the evidentiary hearing, the parties must schedule a 5-minute CMC on one of the Court's published ex parte hearing dates no later than 30 days after the meet and confer.

³ See website: <https://www.jud4.org/ex-parte-dates-judge-s-procedures/duval-judges>