IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT

HILLSBOROUGH COUNTY, FLORIDA

CIVIL DIVISION

,

Plaintiff(s),

Case No.:

vs. Division “C”

RMF CASE

,

Defendant(s).

/

**ORDER IDENTIFYING PROCEDURES APPLICABLE TO CONTESTED**

**RESIDENTIAL MORTGAGE FORECLOSURE NON-JURY TRIALS**

**(Revised 01/05/18)**

The following procedures are applicable to all contested residential mortgage foreclosure non-jury trials conducted before the Honorable Elizabeth G. Rice, Circuit Judge:

1. **Exhibits & Witness Lists**.
   1. **Trial Exhibit Lists**. **No later than three business days** **before** commencement of trial, each attorney shall file with the clerk of the court the original and **provide to the Court a** **courtesy copy** of a list of exhibits, numbered in the sequence in which the attorney will tender same. The exhibit list shall describe the exhibit sufficiently for the Court to identify it. **The parties shall use the form of the exhibit list available on the Court’s judicial directory forms page under the heading GENERAL/Trial/Pretrial.**
   2. **Trial Exhibits**. All exhibits shall be pre-marked with a permanent exhibit tag or stamp as prescribed by the clerk's office. In addition, counsel for the parties shall deliver to the Court no later than **three business days before** the commencement of trial the following:
      * + 1. a notebook binder containing **one** complete set of trial exhibits **for the clerk** **of the court**, together with the exhibit list referenced above; and
          2. a statement of stipulations and objections to the opposing party’s trial exhibits.

The Statement shall set forth as to **each** of the opposing party’s exhibits which exhibits the party stipulates as to its admissibility or objects as to its admissibility. Each objection asserted shall state the grounds for the objection in reasonable detail and cite to case law, if necessary. At the commencement of trial, all exhibits to which there are no objections and the Court approves shall be admitted into evidence. Any exhibit to which there is an objection may be offered into evidence by the party seeking its admission during the trial and at that time the Court will rule on the admissibility of the evidence. Failure to comply with the requirements set forth in this paragraph 4. may result in the exclusion of evidence at trial, removal of the case from the trial docket, or other appropriate sanction.

Further, impeachment materials such as trial transcripts, deposition testimony, and learned treatises must be shown to the Court prior to use in the examination of a trial witness.

* 1. **“Final” Witness List**. **No later than three business days** **before** commencement of trial, each attorney shall file with the clerk and provide to the Court a courtesy copy of a list of all witnesses **actually expected** to be called, listing the full names of the witness and any professional designation applicable to that witness (e.g., M.D.). The list also should include, if necessary, a phonetic spelling of the name.
  2. **Exhibit/Witness Exclusion**. Any witnesses or exhibits not listed in accordance with the pretrial order will not be allowed to testify or be admitted absent extraordinary or compelling reasons outside the control of the attorneys for noncompliance with the pretrial order. *See Binger v. King Pest Control*, 401 So. 2d 1310 (Fla. 1981); *Louisville Scrap Material Co., Inc., v. Petroleum Packers, Inc.*, 566 So. 2d 277 (Fla. 2d DCA 1990.
  3. **Exchange of Lists**. **No later than five business days** **before** commencement of trial, the attorneys shall:

(1) Exchange their respective trial exhibit lists referenced above in subparagraph a., listing with specificity each exhibit actually expected to be offered into evidence, denoting which exhibits are composite exhibits.

(2) Exchange their respective trial witness list, listing each witness the parties expect to **actually** call to testify at trial, including any witness testifying via deposition.

* 1. **Review of Exhibits**. **No later than five business days before** commencement of trial, the attorneys shall meet and review all proposed exhibits. Copies of any exhibits requested shall be furnished to opposing counsel at that time, if not previously furnished. During the presentation of evidence, it shall not be required, and counsel for the parties are directed not to, “tender,” any exhibit to opposing counsel for review. The exhibit shall be pre-marked for identification, tendered to the witness, and after sufficient evidentiary predicate has been established, tendered to the Court and offered into evidence.

1. **Witness Examination**. The examination of witnesses shall be limited to direct examination, cross-examination, and re-direct examination. *See* *Fla. Stat*. § 90.612.
2. **Evidentiary Objections**. In making objections, the attorney making the objection shall announce the legal basis for the objection without further argument (i.e., “Objection, hearsay.”). The responding attorney shall respond accordingly, giving only the legal basis for opposing the objection. Neither attorney shall make any other argument or comment except upon the Court's own directive.
3. **Waiver of Records Custodians**. If the parties have stipulated to waive records custodians, business records admissible under the business records exception to the hearsay rule (*Fla. Stat*. § 90.803(6)) will be admissible without the necessity of calling a qualified witness, absent a showing that the records are otherwise untrustworthy. *See Heckford v. F.D.O.C*., 699 So. 2d 247 (Fla. 1st DCA 1997). *See also, Love v. Garcia*, 634 So. 2d 158 (Fla. 1994).
4. **Deposition Transcript Review**. If any party intends to publish to the Court all or any portion of a deposition transcript, the party shall deliver to opposing counsel **no later than ten days before** the commencement of trial a page and line reference of all testimony intended to be published. Any and all objections to any portions of deposition transcripts to be offered into evidence shall be made known to the Court and shall be considered by the Court **no later than five days before** the commencement of trial.
5. **No Improper Impeachment**. When impeaching a witness with a prior recorded statement, regardless of form, counsel must first show the statement to opposing counsel, lay a proper foundation for the prior recorded statement and provide the Court and the witness with a copy of the prior recorded statement prior to proceeding with impeachment. *Cf.* C. Ehhardt, *Florida Evidence* § 614.1 (2013 Edition).
6. **Summaries**. If a party intends to use a summary at trial, the party shall file and serve written notice on the opposing party **no later than** **ten days** **before** the commencement of trial of such intent and otherwise comply with section 90.956, *Florida Statutes*. Otherwise, the summary will be excluded at trial.
7. **Judicial Notice**. The Court will take judicial notice of all pleadings and orders filed in **this case**, including financial affidavits. *See* § 90.204, *Florida Statutes*. Other requests for judicial notice must be filed **no later than ten days before** the commencement of trial.
8. **Cumulative Evidence/Mode and Order of Interrogation and Presentation**. Cumulative evidence is not permitted. In addition, any issues or problems with the scheduling of witnesses must be raised and addressed at the pretrial conference. The Court will make every effort to adhere to counsel’s preferred order of presentation of witnesses and other evidence. However, once the trial commences, the Court expects the presentation of evidence to proceed smoothly and efficiently. Lastly, the Court shall enforce section 90.612, *Florida Statutes*, strictly, and reserves the right to require counsel to call witnesses out of order if necessary to avoid late starts, long mid-day recesses, and early afternoon recesses.
9. **Professionalism & Courtroom Decorum**. The conduct of this trial shall be pursuant to and consistent with the Florida Bar, Trial Lawyers Section, Guidelines for Professional Conduct. Each attorney shall admonish their client(s) and office staff not to exhibit inappropriate behavior in the presence of the Court. Inappropriate conduct shall include but not be limited to facial gestures and audible comments.
10. **Use of Surnames Only**. All counsel are directed to refer to their clients, each other, and all witnesses only by surnames and not be their first or given names.
11. **Electronic Devices**. Counsel shall advise clients, witnesses, and staff that all electronic devices shall be turned off prior to entering courtroom and shall remain off in the courtroom during the trial. During trial, electronic devices which are audible in the courtroom shall be confiscated and retained by the bailiff until the conclusion of the trial.
12. **Failure to Comply**. Failure to comply with the requirements of this order will subject the party and/or counsel to appropriate sanctions. Sanctions include the striking of pleadings; exclusion of evidence; refusal of the Court to award attorney’s fees and costs; and any other sanctions deemed appropriate by the Court. All parties must comply as ordered in the preceding paragraphs.
13. **Other**. None. OR [ ]

DONE AND ORDERED: .

ELIZABETH G. RICE

Circuit Court Judge

*Conformed copies furnished to:*

(insert names of counsel/parties)