

CRIMINAL COURT PROCEDURES AND PREFERENCES

Division D—Judge Allman

SECTION 1- INTRODUCTION:

The Rules of Judicial Administration encourage the speedy, just, and inexpensive resolution of cases. These rules require the trial court to monitor and manage its docket to achieve this goal. This information on the Judge's procedures and preferences is provided for the benefit of attorneys and parties appearing before Judge Francis J. Allman.

SECTION 2 - MOTION PRACTICE:

2.1 Form and Content - In general, all motions and responses, unless made orally during a hearing or trial, should be in writing and should state with particularity the grounds and the relief sought. Motions and responses should include all authorities relied upon, either in the body of the motion or response, or in a separate memorandum of law. However, citation to legal authority is not required for routine motions that do not raise substantive legal issues, e.g., motions for continuance, motions to transport, etc.

2.2 Certificate of Good Faith Conference - Before filing any motion, the movant must confer with opposing counsel in an effort to resolve the issues raised by the motion. This does not envision an exchange of ultimatums but rather a substantive conversation geared toward resolution of the matter in good faith. Additionally, counsel are expected to respond promptly and professionally to inquiries and communication from opposing counsel in this and all matters concerning the litigation.

2.3 Specially Set Motion Hearings - Specially set hearings (bond, suppression, etc.) are scheduled by e-mailing Judicial Assistant Kelly Porritt (the JA) at porrittk@leoncountyfl.gov. Counsel will be given potential dates in order to coordinate with the other side. Once a date is agreed upon, the movant must e-mail the JA to set the date on the Judge's calendar **and must provide a Notice of Hearing to the JA.**

****PLEASE NOTE: Hearing time is not reserved until the JA has received the Notice of Hearing.****

Motions will NOT be scheduled for hearing unless:

- the motion has been filed with the Clerk;
- the movant has included a statement in either the motion or the notice of hearing that a “good faith effort” has been made to resolve and/or narrow the issues, but the effort was unsuccessful. See Section 2.2;
- the movant has consulted with opposing counsel regarding the total amount of time needed for the hearing prior to e-mailing the JA. In this regard, counsel should be realistic in assessing the amount of time needed for the entire hearing (not just one side). Hearings may be recessed and continued if the allotted time expires before the hearing is concluded;
- the movant has consulted with opposing counsel regarding convenient hearing dates after receiving available dates from the JA.

2.3.1 Timing of Hearings - Motions, particularly motions to suppress, child hearsay, Williams Rule, etc., must be filed and heard prior to trial. The Court considers jurors’ time to be extremely valuable and will make every effort to ensure their time is not wasted. The Court considers it a waste of jurors’ time to have them sitting in the jury room not hearing testimony because there is argument at trial on motions that could have been presented prior to trial. This is highly disfavored. Unless otherwise determined by the Court, motions will not be heard on the day of trial.

2.4 Materials to be Provided to the Court Before Hearings - Please be aware that the Court is not automatically copied with motions filed by the counsel. Because the Judge strongly prefers to read all submitted documents in advance of hearings, it is the responsibility of counsel to provide the Court with a courtesy copy of any and all documents (motions, memoranda, authority, etc.) See Section 2.5. Please do not send original motions to the Judge.

2.4.1 Time to Provide Materials - While no bright-line exists, the more voluminous the materials, the further in advance of the hearing they should be submitted. Submission of any materials within three (3) days of a hearing is discouraged as doing so will likely result in the Judge having insufficient time to read the material.

2.5 Submitting Documents - The Court accepts copies of e-filed motions and notices of hearings via e-mail to the JA in PDF format. However, materials exceeding 20 pages should be submitted in a three-ring binder with section dividers for ease of reference, if necessary. Longer submissions should also contain a table of contents. Please do not staple any pages in three-ring binders.

2.6 Motions Decided on Papers and Memoranda - Only rarely will the Court decide motions without a hearing. However, routine, unopposed motions may be decided without a hearing, provided the opposing party's position in agreement is noted.

2.7 Proposed Orders After Hearings - All proposed orders must be submitted in Word format to the JA via e-mail. Please do not e-file proposed orders. Normally the prevailing party will be asked to submit a proposed order after the Court rules at a hearing. In some instances the Court may request proposed orders from both sides, after review of which the Court will e-file the order of the prevailing party. See Section 7.

2.8 Cancellation of Hearings - If your hearing is cancelled or rescheduled, all attorneys are tasked with notifying the JA as soon as possible so that the Judge may turn his attention to other matters.

SECTION 3 - EMERGENCY MATTERS

3.1 Emergencies Defined - Emergencies are defined as “non-routine matters which, by their nature, require immediate action by the Court to prevent or stop physical harm to a person, irreparable property damage, or a hardship of such a critical nature that the immediate intervention of the Court is absolutely necessary.”

3.2 Discouraged Practice - The practice of labeling a routine matter as an “emergency” to gain priority on the Court's docket, calendar, or otherwise is prohibited. Please be aware that the designation of a matter as an “emergency” will normally cause the Court to abandon other pending matters in order to immediately address the emergency. Often the JA, clerk, bailiff's unit, court reporter, attorneys, as well other litigants, are also affected by alleged emergencies. In the case of a bona fide emergency this is necessary and proper.

However, non-emergencies which are improperly labeled as emergencies create hardships and unfairly prejudice court personnel and other litigants. Therefore such a motion must state with particularity the reason the matter meets the definition of an emergency as set forth above. **Please Note:** Lack of due diligence by a party or counsel does not create an emergency.

3.3 Emergency Hearings - Requests or motions for an emergency hearing are decided by the Judge.

If the matter is a bona fide emergency, the movant shall file the motion for an emergency hearing with the Clerk of Court. The Clerk will e-mail the motion to the JA and the Judge will then review the motion and determine if it is an actual emergency and if a hearing is warranted. Opposing counsel must be given a copy of the motion with all attachments.

SECTION 4 PRESENCE OF DEFENDANTS

4.1 In General - A defendant's presence is required at **ALL HEARINGS** unless previously waived by the Court or by Court order. However, counsel are authorized to waive the appearance of their clients for routine case management conferences. No court order or approval is required. See Section 4.3.

4.2 Defendants in Custody (Leon County) - Defendants are not automatically transported for routine matters. If counsel wants a defendant transported, a request must be made to the Division D felony clerk not later than 5:00 p.m. the day before the proceeding. Defendants are automatically transported for pretrial conferences, plea hearings, and trials; no request of the clerk is required for these proceedings.

4.2.1 Defendants in Custody (Other than Leon County) - Defendants who are not being held in the Leon County Jail will require a transport order to secure their appearance in court. The bailiff's unit requires a minimum of ten (10) business days notice in order to ensure the transport of out-of-county defendants.

It is the responsibility of counsel to make certain the bailiff's unit receives two certified copies of transport orders no fewer than ten (10) business days prior to the defendant's scheduled court appearance. Counsel should endeavor not to cause the unnecessary transport of out-of-county defendants as this is not an efficient use of county resources.

4.3 Defendants Not in Custody - As noted in Section 4.1, counsel are authorized to excuse clients from appearance at routine case management conferences. However, counsel are expected and required to alert the Court if any client is not keeping appropriate contact with counsel.

SECTION 5 TRIALS

5.1 In General - Trials start at 8:30 a.m. All counsel and their clients are expected to be present in the courtroom at this time. Jurors are sacrificing their time to perform an important civic duty. Again, the Court intends to make every effort to ensure that jurors' time is not wasted. See Section 2.3.1. Counsel should be personally aware of, and impress upon their clients, witnesses, etc., the importance of timeliness. This goes for breaks and recesses also.

5.2 Witnesses - All witnesses that are present should be in the courtroom at 8:30 a.m. to receive any instructions from the Court. Counsel has the discretion to have reliable witnesses arrive at a later time. While the Court recognizes that the pace of trial is impossible to predict with surgical precision, counsel are cautioned to be judicious in the exercise of this discretion. Furthermore, during the trial, it is counsel's obligation to have the next witness in the courtroom when court resumes from a break or recess. The Court considers it a waste of jurors' time to be waiting on witnesses to appear and/or for counsel to be searching for witnesses throughout the courthouse when court reconvenes.

5.2.1 Witness List - Counsel shall provide the Court with a list of probable witnesses prior to the beginning of the trial. The list may be legibly handwritten.

5.3 Evidence – Counsel must provide the Court and opposing counsel with a list of probable evidence prior to the start of the trial. All exhibits should be marked and numbered as listed. All evidence will be shown to opposing counsel after it is marked. It is opposing counsel's obligation to carefully examine the evidence before the trial begins.

During trial, the party offering the evidence is obligated to make opposing counsel aware of any changes in the numbering of the exhibits or the intent to offer of any evidence not previously numbered or displayed. Opposing counsel may rely on this numbering; therefore, it is unnecessary to further present exhibits to opposing counsel before offering the item in evidence.

Counsel are responsible for making arrangements to have evidence in the courtroom in time for inspection and marking.

5.4 Pleas - Normally the last opportunity to enter a negotiated plea is at the pretrial conference. After the pretrial conference the Court will still accept "open" or "straight up" pleas. The Court, in its discretion, may accept a negotiated plea after the pretrial conference. However, this is highly disfavored, and counsel should be prepared to justify to the Court why there should be a deviation from normal practice

Please note, despite counsel's expectation that a case may be resolved with a plea, counsel are strongly cautioned not to cancel witnesses or cease trial preparation in expectation that a defendant will enter a plea.

SECTION 6 - CONTINUANCES

Motions to Continue: Motions to continue a trial, final violation of probation hearing, sentencing, and specially set hearings must be in writing and must be scheduled before the date of the matter that is sought to be continued. Motions to continue other hearings and court dates must be in writing identifying the reasons for continuance and the status of speedy trial. An agreed order along with the motion may be presented in lieu of a hearing. Motions to continue a trial after the pretrial conference are strongly discouraged and will be carefully reviewed.

SECTION 7 - ELECTRONIC FILING AND SCHEDULING

E-Service: Judge Allman's office e-files orders. The clerk will not accept e-filed orders from attorneys. Proposed orders must be submitted to the JA in Word format. See Section 2.7.

Online Scheduling: We do not participate in online scheduling at this time.

SECTION 8 - PETITIONS TO SEAL/EXPUNGE

A courtesy copy of the Petition, Affidavit, FDLE Certification, along with a blank order, **MUST** be provided to the JA/Judge upon filing a Petition to Expunge/Seal.