

## **CRIMINAL COURT PROCEDURES AND PREFERENCES**

**Division A— Judge Kevin J. Carroll**

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### **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. In furtherance of this goal, information on the Judge's procedures and preferences is provided for the benefit of attorneys and parties appearing before Judge Kevin J. Carroll.

### **SECTION 1 - COMMUNICATION WITH THE JUDGE'S OFFICE:**

#### **1.1 Communication with Judge Carroll**

Impartiality is the most basic principle of judicial ethics. This means that all parties to a pending case must be included in all communications with the Court regarding the matter. The Judge is restricted by principles of judicial ethics from communicating about pending cases outside of hearings or documents filed in the court file and served on all parties. These restrictions apply equally to the Judge's Judicial Assistant (the JA). The JA cannot deliver messages about substantive matters from a litigant or any other person to the Judge. However, communication with the JA for scheduling purposes is permitted. See Section 2.3.

#### **1.2 Communication with Judge Carroll's Judicial Assistant (JA)**

At the risk of stating the obvious, the JA does not consider arguments or decide legal matters; such is the exclusive province of the Judge. Consequently, the practice of arguing the merits of a case to the JA, or including the JA on e-mail exchanges in which disagreements between the parties are aired, serves no purpose and is prohibited. Furthermore, the JA is an extension of the Judge. As such, intemperate communication should be avoided.

### **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 issue(s) 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, motions in limine, Williams Rule, etc.) are scheduled by e-mailing the JA at GastonL@leoncountyfl.gov. Counsel will be given potential hearing dates in order to coordinate the hearing with the other side. After potential hearing dates are provided, please **do not** include the JA on e-mail exchanges between the parties involving discussions or coordination of the hearing date. The only e-mail the JA should receive is the agreed-upon hearing date **or** notification that the parties cannot agree on a hearing date, in which case the procedures in Sections 2.3.1 or 2.3.2 shall be followed.

**\*\*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 Agreed-Upon Hearing Dates** - Once a date is agreed-upon, the movant must e-mail the JA to set the hearing on the Judge’s calendar.

**2.3.2 No Agreement on Hearing Dates** - If the parties cannot agree on a hearing date, the movant shall notify the JA, who will bring the matter to the Judge’s attention. The Judge will then schedule the hearing at the convenience of the Court. **In every instance the movant must provide a Notice of Hearing to the JA.**

**2.3.3 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 the motions and supporting documents 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 Sections 2.4.1 and 2.4.2. Please do not send original motions to the Judge.

**2.4.1 Submitting Materials** - The Court accepts copies of e-filed motions and notices of hearings via e-mail to the JA in PDF format. However, supporting materials should be submitted directly to the Judge's office. Materials exceeding 20 pages must be submitted in a three-ring binder. Longer submissions should also contain a table of contents and section dividers for ease of reference. **Please do not staple any pages in three-ring binders.**

**2.4.2 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. Likewise, as the Judge prefers to read all legal authority in advance of hearings, handing the Judge case law during a motion hearing is highly disfavored.

**2.5 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.

**2.6 Proposed Orders After Hearings** - The clerk will not accept or forward e-filed orders from attorneys which are attached to motions. All proposed orders must be submitted to the Judicial Assistant in Word format. 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 signed order of the prevailing party. **Please see Section 7.1 for more details on e-filing proposed orders**

**2.7 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. A notice of cancellation efiled by the attorney cancelling a scheduled hearing will alert the clerk to remove it from the docket.

## **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 Prohibited 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 Judge 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 to 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. Page **5 of 8 (edited 03/03/20)**

## **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 (in Leon County Jail)** - 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 4:30 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. See Section 4.4 for important information.

**4.2.1 Defendants in Custody (in other than Leon County Jail)** - 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 make every 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.

**4.4 Plea Hearings** – The practice of having inmates transported from the jail for a plea hearing when there is not an agreed-upon disposition (unless the inmate will be entering an “open” or “straight up” plea) is **prohibited**. Often plea hearings are set while plea negotiations are still ongoing. This is expected and proper. However, counsel are required to cancel the transport of inmates if a plea agreement has not been reached (unless the inmate will be entering an “open” or “straight up” plea). Inmates are **not** to be transported so counsel can “talk to them” about a plea. While the Court understands that plea agreements can disintegrate unexpectedly, this

should be a rare occurrence. The unnecessary transport of inmates will be very closely monitored. Page 6 of 8 (edited 03/03/20)

## **SECTION 5 – CONTINUANCES**

**5.1 Motions to Continue Trials, VOP Hearings, Sentencing, Etc.** - Motions to continue a trial, violation of probation (VOP) hearing, sentencing, and specially set hearings should be in writing and scheduled for hearing before the date of the matter sought to be continued, if at all possible. Motions to continue a trial after the Pretrial-Case Management conference or Docket Sounding (*see* Section 6.4), or to continue a VOP hearing on the date of the hearing, are **strongly discouraged** and will be carefully reviewed.

**5.2 Motions to Continue Other Hearings** - Motions to continue other hearings must be in writing, must identify the reason(s) for continuance, must state the status of speedy trial, and must be scheduled for hearing before the date of the matter sought to be continued. An agreed-upon order along with the motion may be presented, which the Court may enter without a hearing. Additionally, the Court, in its discretion, may rule on opposed motions to continue without a hearing.

## **SECTION 6 TRIALS**

**6.1 In General** – Jury selection and 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 2.3.3. Counsel should be personally aware of, and impress upon their clients, witnesses, etc., the importance of timeliness. This applies equally to breaks and recesses.

**6.2 Witnesses** - All witnesses that are present should be in the courtroom at 8:30 a.m. to receive any instructions from the Court. Counsel are permitted, in their 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 immediately available 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.

**6.2.1 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, and the witnesses need not be listed in the order they will be called to testify.

**6.3 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 arranging to have evidence in the courtroom in time for inspection and marking prior to the start of the trial.

**6.4 Pre-Trial Case Management and Docket Sounding:** Beginning May 1, 2020 the terms “Pre-Trial Case Management” and “Docket Sounding” are added to the Court’s standard lexicon. Cases set for trial will be set for both a “Pre-Trial Case Management” and a “Docket Sounding.” “Pre-Trial Case Management” refers to the last proceeding at which the Court will accept a *negotiated* plea. A tentative trial calendar is set at this proceeding. “Pre-Trial Case Management” will normally occur two weeks prior to the “Docket Sounding” date. “Docket Sounding” refers to the proceeding at which the final trial calendar is set. Docket Sounding will normally occur during the week immediately preceding Monday jury selection (most often on Thursday).

**6.5 Plea Acceptance:** “Straight up” or “open” pleas (no agreement) will be accepted at Docket Sounding. The Court, in its discretion, may accept a negotiated plea after the Pre-Trial Case Management conference. However, this is highly disfavored, and counsel should be prepared to justify why there should be a deviation from normal practice.

**Please note:** Despite all expectations 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, as the failure of an expected plea to occur will not be grounds for a continuance.

## **SECTION 7 - ELECTRONIC FILING AND SCHEDULING**

**7.1 E-Service:** Judge Carroll’s office e-files orders with the exception of warrants. The clerk will not accept, or forward e-filed orders attached to motions from attorneys. Please note that effective October 14, 2019 counsel must use the Portal to file proposed orders. The order must be in Word format and accompanied by the efiled motion (in lieu of the Portal’s cover “letter”) which indicates opposing counsel’s agreement or objection. The proposed order submitted via the Portal will not reach the clerk’s office until the Judge has considered and signed the order and his JA has efiled it. See Section 2.6.

**7.2 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, Position of the State Attorney, and a blank order MUST be provided to the JA upon filing a Petition to Expunge/Seal.