

JUVENILE COURT PROCEDURES AND PREFERENCES

Circuit Judge Joshua Hawkes

Judicial Assistant: Robyn Fricchione FricchioneR@leoncountyfl.gov

INTRODUCTION

The Rules of General Practice & Judicial Administration encourage the speedy 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 Joshua Hawkes.

SECTION 1 - COMMUNICATION WITH THE JUDGE'S OFFICE

- 1.1 Communication with Judge Hawkes** - 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 Hawkes' Judicial Assistant (JA)** - At the risk of stating the obvious, the JA does not consider arguments or decide legal matters. 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.

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 is 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 motion hearings are normally scheduled by e-mailing the JA at FricchioneR@leoncountyfl.gov. They may also be set at the discretion of the Court. To set with the JA, counsel will be given potential hearing dates. After hearing dates are provided, please **do not** include the JA in the email exchanges between parties for date coordination. **Once a date has been agreed upon or parties cannot agree** on a hearing date, **notify the JA**. If the parties cannot agree on a hearing date, the procedures in Section 2.3.2 will govern.

****PLEASE NOTE: Hearing time is not reserved until the JA has received the E-filed Version of 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 email the JA for confirmation of hearing date and to have the hearing set on

the Judge's calendar. At that time, the hearing date is reserved. **Movant must then provide an E-filed version of the Notice of Hearing to the JA.**

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. **Movant must then provide an E-filed version of the Notice of Hearing to the JA.**

2.3.3 Timing of Hearings/Witnesses – Pretrial motions, motion *in limine*, *Daubert* motion, etc., must be filed *and* heard prior to trial. Unless otherwise determined by the Court, motions will not be heard on the day of trial.

The Court also prioritizes paid witness and third-party witnesses time over party's time. Thus, those type of witnesses should normally be called first, with the quickest on top of that list so they can move on with their day.

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 via the Portal. 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 regular PDF format. No file sharing formats (*e.g.*, Dropbox). 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 days of a hearing is disfavored as doing so will likely result in the Judge having insufficient time to

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

2.5 Proposed Orders After Hearings - The clerk will not accept or forward e-filed orders which are attached to motions to the Court. All **proposed orders must be submitted** to the JA via email **in Word format and accompanied by the e-filed motion.**

The prevailing party may 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, with appropriate changes, if any. **See Section 7.1 for more details on e-filing proposed orders.**

2.6 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. **The Judge has final say on whether a hearing is cancelled and, unless the parties hear otherwise, they should appear at the hearing.**

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. **Note: Lack of due diligence by a party or counsel does not constitute as 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.

SECTION 4 PRESENCE OF JUVENILES

4.1 In General - A Juvenile'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 Juveniles in Custody (in Leon County Judicial Assistant) - Juveniles are not automatically transported for routine matters. If counsel wants a defendant transported, a request must be made to the Juvenile Clerk not later than 3:00 pm the day before the proceeding. Juveniles 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 Juveniles in Custody (in other than Leon County Judicial Assistant) - Juveniles who are not being held in the Leon County Judicial Assistant will require a transport order to secure their appearance in court. The bailiff's unit requires a minimum of fourteen (14) business days' notice in order to ensure the transport of out-of-county Juveniles.

It is the responsibility of counsel to make certain the bailiff's unit receives two certified copies of transport orders no fewer than fourteen (14) 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 Juveniles as this is not an efficient use of county resources.

4.3 Juveniles 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 Judicial Assistant 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.

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 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 – Juvenile trials start at 9:00 am every Thursday, unless directed by the Court. All counsel and their clients are expected to be present in the courtroom at this time. 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 9:00 am. 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 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 must be typed, and the witnesses need to be listed in the intended order they will be called to testify, unless directed differently by the Court.

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 Plea Acceptance: 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: This office e-files most orders (one notable exception is warrants). The clerk will not accept, or forward e-filed orders attached to motions from

attorneys. Please send proposed orders in word format through the JA. The order must be in Word format and accompanied by the e-filed motion (in lieu of the Portal's cover "letter") which indicates opposing counsel's position.

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.