

CRIMINAL COURT PROCEDURES AND PREFERENCES

Division B - Judge Joshua Hawkes

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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 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; 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 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 hearings (bond, suppression, motions in limine, *Williams*' Rule, "straight up" or "open" pleas, etc.) are scheduled by e-mailing the JA at FricchioneR@leoncountyfl.gov. Counsel will be given potential hearing dates. The JA will provide parties with hearing dates. After hearing dates are provided, please **do not** include the JA in the date coordination amongst counsel. **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, or the Court deems another date more appropriate, the procedures in Section 2.3.1 will govern.

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 a 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 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 regular PDF format. No “shared” formats. 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 disfavored 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 forward e-filed orders which are attached to motions to Judge. All **proposed orders must be submitted** to the JA via email **in Word format and accompanied by the e-filed motion.**

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. **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. **An e-filed Notice of Cancellation 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. **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 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 is authorized to waive the appearance of their clients for routine case management conferences, provided the requirements of Section 4.3 are satisfied. No Court order or approval is required.

4.2 Defendants in Custody (in Leon County Jail)

Defendants are not automatically transported for every hearing. **If counsel wants a defendant transported, an emailed request must be made to the Division B felony clerk and JA no later than 2:00 p.m. the day before the proceeding.**

Defendants are automatically transported to the courthouse for pretrial case management conferences, docket soundings, and trials; no request of the clerk is required for these proceedings.

4.2.1 Defendants in Custody (other than Leon County Jail) *Counsel responsible for transport order.

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 provide JA e-filed version of Motion to Transport and proposed order in Word format 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 is authorized to excuse clients from appearance at routine case management conferences. However, counsel is 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 and "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 is required to cancel the transport and notify the JA 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.

4.5 Plea Hearings (Out-of-Custody, Disputed, Open or Straight Up Pleas)

If a defendant who is not in custody wishes to enter a plea where some aspects are disputed, or to enter an “open” or “straight up” plea with sentencing occurring at the time of plea, the plea must be specially set with Judge Hawkes’ JA. All counsel must confer and reserve enough time on the Court’s calendar to hear the entire matter (not just one side). If the parties cannot agree on a date, the plea hearing will be set according to Section 2.3.1.

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 must be in writing. If hearing is necessary and if possible, it should be scheduled before the date of the matter sought to be continued. The Court may rule on the motion without a hearing if the position of opposing counsel is noted in the motion. Motions to continue a trial after the Pre-Trial 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 and the position of opposing counsel, 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 (in Word) along with the motion is preferred, 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 2.3.2. 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 is 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 is 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.” **In Person presence is required of all counsel and defendants for this docket.**

“Pre-Trial Case Management” refers to the last hearing before docket sounding where discovery, plea, and trial planning should take place. If a case is likely to resolve by negotiated plea, it should be done at pretrial case management. “Pre-Trial Case Management” will normally occur two weeks prior to the “Docket Sounding” date.

“Docket Sounding” refers to the proceeding at which the trial calendar is set. It is the last proceeding at which the Court will normally accept a *negotiated* plea. However, counsel should be prepared for changes to the trial calendar, and parties set as backup should be ready to proceed. 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 after Pre-Trial Case Management. The Court, in its discretion, may accept a negotiated plea after the Docket Sounding. 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 is 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 is not normally considered to not be grounds for a continuance.

SECTION 7 – ELECTRONIC FILING AND SCHEDULING

7.1 E-Service

Judge Hawkes’ office e-files all 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 e-filed 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 e-filed it. See Section 2.6.

7.2 Online Scheduling

Currently, this division does not support online scheduling, but the Court’s calendar is available online.

SECTION 8 - PETITIONS TO SEAL/EXPUNGE

8.1 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.

SECTION 9 – REMOTE APPEARANCES

9.1 Remote Appearance by Counsel

Counsel may request to appear by remote means (e.g., telephonically, Zoom, etc.) by filing a motion and proposed order no fewer than 48 hours prior to the proceeding. The motion shall set forth the reasons remote appearance is necessary and shall include the most recent date Counsel has had *personal contact* with opposing counsel (not email or legal staff contact, etc.). **Remote appearances for Pre-Trial Case Management or Docket Sounding is discouraged.**

SECTION 10 – MOTIONS TO CONVERT COURT COSTS/FINES INTO COMMUNITY SERVICE HOURS

10.1 Form Motion

A form motion to convert court costs/fines into community service is provided on the division instruction website. This form must be used and must be accompanied by an affidavit setting forth the movant’s financial position. The Court will rule on the paper if possible and supported by evidence. Unsupported motions and those not in proper form, will be denied without prejudice.