

Procedures and Rules
Criminal, Division 17
Jenifer M. Davis, Circuit Court Judge

1. General
 - a. Expected that all attorneys will follow the Ninth Judicial Circuit Courtroom Decorum Policy.
 - b. Many answers to frequently asked questions are contained in the Florida Rules of Criminal Procedure, the Florida Rules of Evidence, and Administrative Orders of the Ninth Judicial Circuit. All counsel are expected to know these rules and follow them.
 - c. No defense attorney should file **any motions** on a Defendant's case until a notice of appearance is first filed. No limited notice of appearance will be accepted.
2. Pretrial Procedures
 - a. Arraignment
 - i. Attorneys working for the Office of the Public Defender or Regional Criminal Conflict Counsel shall abide by Administrative order 2004-04-3 (as amended 2007) and check potential conflicts within 5 days.
 - ii. Cases wherein the Defendant pleads not guilty will be set for Pre-trial conference.
 - b. Discovery
 - i. Attorneys shall comply with Florida Rules of Criminal Procedure.
 - ii. Blanket discovery- Administrative Order No. 2003-06, 9th Judicial Circuit
 1. Agreement between the Office of the Public Defender and Office of the State attorney.
 2. Does not apply to Statewide Prosecutor's Office
 3. Does not apply to 1st Degree Murder Cases
 4. State must comply with the Florida Rule of Criminal Procedure 3.220 within 15 days after the later of either of the following:
 - a. The filing of the charging document- or
 - b. The appointment of the Office Public Defender
 - iii. Attorneys working for the Office of the Public Defender or Regional Criminal Conflict Counsel shall abide by Administrative order 2004-04-3 (as amended 2007) and check potential conflicts within 5 days from receipt of discovery.
 - c. Pleas
 - i. Scheduling- The Judicial Assistant will schedule pleas upon request no less than 48 hours prior to the date and time of the hearing. Pleas will primarily be scheduled on Friday mornings and Tuesday and Thursday of the first hearing week. However, limited number of pleas can be set each morning.

- ii. Defense shall provide immediate notice to the Assistant State Attorney by phone and/or email. Notice shall be no less than 48 hours prior to the plea.
- iii. Upon notice from the Defense, the Assistant State Attorney shall notice all persons subject to Fl. Stat. 921.143 of the date and time of the proceeding.
- iv. The Court, in its discretion, may refuse to accept a plea of guilty or no contest. Counsel shall be prepared to give a factual basis for the plea.
- v. Plea discussions. No later than 5 days before pretrial, the prosecutor and the defense attorney shall discuss the case, including any plea offer, and any outstanding or anticipated motions and discovery issues. Either party may initiate plea discussions but each party shall be prepared for the discussion by the stated deadline by completely reviewing and evaluating case information.
- vi. Defense attorney must convey any plea offer, or lack of plea offer, to the Defendant no later than 24 hours prior to the pretrial conference.
- vii. Any plea offer, if accepted, shall be reduced to writing.
- viii. Plea conferences with the Court may be set at the request of either party and will proceed in accordance with State v. Warner, 762 So 2d 507 (Fla 2000). Defense counsel should be prepared to state the sentence sought and the reasons that it would constitute a just and fair sentence. The prosecutor should be prepared with the alleged facts and victim statements and should be prepared to present Defendant's prior record.

d. Motions

- i. Filing Motions or Pleadings: File original pleadings directly with the Clerk of Court. All Motions filed should include an order with a proper certificate of service pursuant to the Rules of Criminal Procedure, and a pre addressed, stamped envelope. A courtesy copy of the motion with **proposed orders** and postage paid stamped envelopes may be hand delivered or sent via mail to the Judge's office. Faxed motions are not accepted unless requested by the JA.
- ii. Scheduling Hearings:
 - 1. Motions will not be automatically set for hearings. It is the attorney's responsibility to contact the Judicial Assistant for hearing time.
 - 2. The motion should be filed prior to requesting hearing time.
 - 3. It is necessary that when scheduling a hearing to know the case number, Defendant's name, and Defendant's next scheduled court date.

4. Hearings will be set **by telephone** rather than email. The Judicial Assistant will be checking her voice mail during the day and returning calls within a timely manner.
 5. Any motion which requires opposing party to subpoena witnesses will require at least ten business days for notice.
 6. Once a hearing is scheduled, the proponent must send a notice of hearing to opposing counsel.
- iii. Evidentiary Hearings: Evidentiary hearings will typically be set on Mondays of the hearing week or general hearing days. All evidentiary hearings, unless otherwise ordered by the Court, shall be set no later than Five days prior to the trial management conference. Unless showing of good cause, evidentiary hearings will not be held after the trial management conference.
 - iv. Cancellations: Contact the JA and opposing party immediately if a hearing is to be cancelled.
 - v. Bond motions:
 1. Contents: At minimum the motion should state the criminal charge, ties to community and prosecutor's position. The motion should state whether there is an objection from the State or Defense ruling without hearing. If there is no objection or the opposing party agreed position is stated in the motion (or in a separate writing), a ruling may occur without hearing.
 2. Contact with opposing party: Prior to scheduling a hearing, attorneys must contact the opposing attorney. If there is no objection to the motion the Assistant State Attorney may sign off on the motion or write an email to the JA. If there is an objection to the motion. The ASA should write the objection and have it contained in the motion or written by email. If attempts to contact the opposing party are unsuccessful, attempts should be specifically delineated within the motion.
 3. Hearings: Hearings will be set by the Judicial Assistant primarily on Wednesday afternoons and Friday mornings. Hearings will be allotted 10 minutes unless otherwise requested.
 - vi. Continuance:
 1. Contents:
 - a. Must comply with Administrative Order 2004-04-3 as amended (9th Circuit, Florida)
 - b. Age of the case
 - c. Any Codefendant's names and case numbers
 - d. Whether the Defendant is in custody
 - e. Opposing counsel's position
 - f. Grounds constituting good cause

- viii. The court may advise the Defendant the allegation's substance and, if no objection, confirm that the Defendant has reviewed with counsel the charging document and discovery.
 - ix. The Court may inquire on the status of the case including the status of discovery, evidentiary motions, and plea discussions.
 - x. Counsel shall be prepared to announce if ready for trial or if it is anticipated the Defendant will by changing the plea.
 - xi. The dates for evidentiary hearings, motion deadlines, discovery deadlines, or other dates may be set according to the differential needs of each case.
 - xii. A Pretrial conference order may be completed.
- f. Trial Management conference (TMC)
- i. The trial management conference shall be conducted in open court with the trial prosecutor, the trial defense attorney and defendant present.
 - ii. The TMC will Thursday or Friday morning preceding the trial week.
 - iii. Unless objected to by a party, the Court may:
 - 1. Ask the prosecutor to describe salient facts and anticipated proofs and any final plea offer.
 - 2. Address the Defendant and ensure the Defendant understands:
 - a. The state's final plea offer, if one exists.
 - b. The sentencing exposure for the offenses charged, if convicted.
 - c. That ordinarily a plea offer will not be accepted after the trial management conference has been conducted and trial date has been set.
 - d. The nature, meaning and consequences that a negotiated plea will not be accepted after the trial date set.
 - e. Defendant has the right to reject the plea offer and go to trial and the State must prove the case beyond a reasonable doubt.
 - 3. The attorneys should be prepared to:
 - a. Discuss the agreed statement of facts to be read to the jury during impanelment.
 - b. Discuss any proposed stipulations.
 - c. Provide list of attorneys arguing the case.
 - d. Provide list of names and occupation of prospective witnesses.
 - e. Provide list of proposed exhibits.
 - f. Discuss anticipated pretrial or motions in limine.
 - g. Provide Defendant's location, if in custody.
 - h. Inform the court if there are interpreter needs or other special needs.

- i. Discuss length of trial.
 4. If the case is not otherwise disposed a “Trial Management Order” shall be prepared by the parties and entered by the Court. The Court will inform the Defendant of the right to be present at trial, the trial date set, and the consequences for failing to appear.
3. Trials
 - a. Schedule
 - i. Counsel shall be present by 8:30 for trial call.
 - ii. Counsel shall be prepared to proceed to jury selection at 9 am.
 - iii. Counsel should be prepared to present testimony beginning at 10 am.
 - iv. Usually there will be 1 ½ hour mid day break.
 - b. Rule of Sequestration: Either party may request exclusion of witnesses pursuant to the Florida Rules of Evidence. If such a request is made, the attorneys are responsible for ensuring that witnesses are not present in the courtroom before they testify and understand that they may not discuss the facts of the case or any witness’s testimony with anyone.
 - c. Voir Dire: The Court will first question the panel as a whole as to general topic such as knowledge of the case, the parties, or the attorneys: experience with the judicial system as witnesses, parties, or jurors; serious schedule conflicts; and relevant legal principles. Counsel will then be permitted to inquire. If jury selection topics cover sensitive and private areas, counsel should consider asking for individual voir dire on select topic areas. When questioning is complete, the jury will be allowed to break. The Court will first handle any cause challenges. Preemptory challenges will follow on a rotation beginning with the State.
 - d. Presentation of Case: The court permits four rounds of questioning with each witness (direct, cross, re-direct, and re-cross). Additional rounds must have specific permission from the Court.
 - e. Witness release: Once a witness has been lawfully subpoenaed, the witness may not be released except by stipulation of the opposing party or ruling of the Court.
 - f. Juror note-taking: Note taking is permitted in accordance with the Florida Rules of Criminal Procedure.
 - g. Juror questions: Are not normally permitted of witnesses.
 - h. Jury instructions:
 - i. The State should prepare proposed jury instructions and a verdict form and show the defense attorney at the earliest opportunity.
 - ii. Counsel shall prepare special instructions in accordance with the Florida Rules of Criminal Procedure and email or have it available on a PC compatible device no later than the conclusion of the Defendant’s case.

Please Note: These procedures only govern Criminal Division 17 with the Honorable Jenifer M. Davis, presiding as Circuit Court Judge.