

State of Florida  
Ninth Judicial Circuit of Florida

John Marshall Kest  
Circuit Judge

COUNTIES OF ORANGE AND OSCEOLA  
Orange County Courthouse, Suite 1740  
425 North Orange Avenue  
ORLANDO, FLORIDA 32801  
[www.ninthcircuit.org](http://www.ninthcircuit.org).

Diane Iacone  
Judicial Assistant  
(407) 836-0443  
Fax (407) 835-5127  
[Ctjadi1@ocnjcc.org](mailto:Ctjadi1@ocnjcc.org)

**DIV. 20 PROCEDURES  
JUDGE JOHN MARSHALL KEST**

**CONTACT INFORMATION**

You may contact the JA by telephone (407-836-0443) or e-mail ([ctjadi@ocnjcc.org](mailto:ctjadi@ocnjcc.org)) to request hearing times, plea dates, cancel hearings or obtain general information.

**DIVISION 20 STARTS PROMPTLY AT 8:30 AM.** If your name is called and you or your client are not present, your case will be passed and only recalled at the completion of the docket. If you are running late, e-mail the JA and advise the JA that you will be late and your expected time of arrival.

**UNLESS OTHERWISE STATED, ALL POLICIES AND PROCEDURES  
APPLY TO ALL VOP/VOCC CASES AS WELL AS NEW LAW VIOLATIONS**

**\*\*\*FOR ALL MOTIONS\*\*\***

The original motion must be e-filed with the Clerk of Court in accordance with Rule 2.520 *Fla. R. Jud. Admin.* A courtesy copy of the motion must be mailed or hand delivered to chambers. In addition to the courtesy copy of the motion, a proposed order, with copies and SASE envelopes for any parties not participating e-filing (defendant, bondsman, etc.) should be included. **No original motions will be accepted in Chambers. The body of the motion, or a cover letter must state the position of the opposing attorney.** If the opposing counsel did not respond to your inquiry timely, you may include that information in lieu of their position.

**MEET AND CONFER:**

**Counsel must meet and confer on all matters involved in the motion prior to setting the hearing on the motion.** However, a meet and confer is not required with regard to Motions to

Suppress. The phrase “meet and confer” means a substantive conversation in person or by telephone in a good faith effort to resolve the motion without the need to schedule a hearing. The “meet and confer” is not satisfied by exchange of e-mails, letters or fax. The notice of hearing must set forth that an attempt has been made to resolve this matter with opposing counsel prior to setting the hearing.

## **SCHEDULING HEARINGS**

All motions must be filed with the Clerk’s office and submitted to Chambers as outlined above prior to scheduling a hearing.

All hearings must be coordinated with the Judicial Assistant. An attempt must be made by the attorney to clear the time of hearing with opposing counsel. The JA will only schedule a hearing not cleared with opposing counsel if (1) an emergency exists – specific facts constituting the “emergency” must be set forth in the body of Motion, or, (2) if attempts have been made to clear with opposing counsel and opposing counsel will not cooperate or will not respond. It must be noted on the hearing Notice that attempts that have been made to clear times with opposing counsel.

When scheduling a hearing, please provide the Defendant’s name, all case numbers involving this Defendant, the title and date of the motion, the amount of time required for the hearing and attach a copy of the motion. Once a date is set, the moving party must notice all parties and file the original Notice of Hearing with the clerk’s office. Opposing counsel must be provided an e-mailed/faxed and/or written notice a reasonable time in advance of the hearing. **Please call or e-mail the Judicial Assistant immediately if a hearing is to be cancelled. Remember, only the party setting the hearing can cancel the hearing.**

Motions specifically enumerated in the *Rules of Criminal Procedure* should cite to the appropriate section and subsection of the rules and conform as required to the provisions of the Rules.

On **Discovery motions**, the motions must affirmatively confirm that attempts have been made to resolve issue with opposing counsel and either, the issue(s) cannot be resolved or opposing counsel will not respond. See “Meet and Confer” requirement above. Items requested must be specifically enumerated in the Motion. Any case law to be considered by the Court should be cited in the Motion, and, if possible, copies provided to the Court with the Courtesy copy of the Motion at least **three (3) days** before the hearing.

On **Suppression motions**, the motion must be filed and heard at least 7 business days prior to trial, see *Powell v. State*, 717 So. 2d 1050 (Fla. 5<sup>th</sup> DCA, 1998). Keep in mind that trial dockets may delay the setting of hearings and therefore request for hearing times should be made well in advance of trial. The Motion must comply with *Rule of Criminal Procedure* 3.190. The filing party must assure that the amount of time reserved for the hearing is sufficient for both parties. The defendant must be present at all suppression hearings, unless excused by the Court.

**Motions to Continue** must be addressed prior to Pre-trial Conferences absent unforeseen circumstances. Motions to Continue must be (1) in writing, (2) must specifically identify the

reason or reasons for which the continuance is sought, (3) if the continuance is because a witness is unavailable, the motion must identify the witness by name and indicate when the witness will be available, (4) must indicate when the case will be ready to try by both parties, and (5) must indicate any prior history of continuances previously granted in the case. Motions to Continue by Defense must be signed by the Defendant. Florida Rules of Judicial Administration 2.545(e) Motion must also address whether a speedy trial is being waived by the Defendant. The filing of a joint or agreed to motion to continue does not mean the matter is continued.

### **ARRAIGNMENTS:**

Arraignments are scheduled on the Court's calendar by the Clerk of Court on Wednesday and Thursday starting at 8:15 a.m. All Defendants noticed for arraignment are required to appear unless represented by an attorney and a Notice of Appearance (NOA), Waiver of Arraignment and Written Plea of Not Guilty has been filed with the Clerk of Court.

Please DO NOT send your original Notice of Appearance to the Judicial Assistant. You must send it directly to the Clerk's office. If, however, your NOA is filed the day before the arraignment, a copy should be sent to the JA to ensure the trial clerks have the information.

### **REQUESTS FOR BOND/BOND REDUCTION, ROR**

Defendants must be in custody. The attorney must have filed a Notice of Appearance or have an Order of Appointment. After filing the original Motion for Bond and copying the State, you must deliver a courtesy copy to Judge Kest's chambers, along with an original Order and with sufficient copies and envelopes for all parties not participating in e-filing (defendant, bondsman, etc.) When the Motion is filed, please call the JA to schedule a hearing. If the State subsequently responds and indicates "No Objection" or indicates that it will take "No Position," the Court may decide the motion without a hearing and, if so, the hearing will be cancelled, and the submitted order entered. However, if the State objects or does not respond, the hearing will proceed as set.

This procedure applies to all Bond Hearings - Initial Bond hearings, Motions to Reduce Bond, Motions to Modify Bond or Bond Conditions, etc. Limited Appearances for Bond Motions only are generally not permitted absent exceptional circumstances.

### **PRETRIAL/TRIALS – Courtroom 18A** – *Unless otherwise advised*

All Pre-Trials are scheduled at 8:30 a.m. on Tuesday two weeks before the start of the trial period; cases with private counsel are called first on a first come first serve basis. Private attorneys must "sign in" and will be called in the order of their appearance. Defendants MUST appear at pretrial unless they are in jail or an executed Waiver of Appearance, pursuant to the *Florida Rules of Criminal Procedure*, and signed by the Defendant, has been filed. Be prepared to announce whether your case is a Trial or Plea. If it is a trial, please advise the Court of (1) how long your trial will take, (2) whether an interpreter is needed, and if so, for what language, and (3) if a witness presents a timing issue,

### **PLEA DATES AND CUT OFF DATES FOR NEGOTIATED PLEAS:**

At or before Pre Trials, attorneys may schedule a plea with the JA and leave the courtroom.<sup>a</sup> The Court must be advised of any negotiated plea no later than 5:00PM on the Wednesday before the start of the trial docket on Monday. The JA will set a plea date. All pleas must be presented and accepted by the Court no later than the start of the trial docket the following Monday absent permission from the Court.

Pleas may also be scheduled in advance of Pre-Trials thereby eliminating the need for Counsel and the Defendant to appear. In many cases, pleas will be taken at 1:30 p.m. on the afternoon of Pre-Trials for out of jail Defendants ONLY. If the Defense attorney wishes to come at 1:30pm and enter a plea, the JA must be notified prior to, or during Pre Trials. *In Jail Defendants must be scheduled for another date with the JA.*

Division 20 has alternating three-week trial periods, followed by two hearing weeks. Specific trial dates will be announced at pre-trial by the Judge.

Motions to Continue made at pretrial: Motions to Continue are to be filed, and heard, prior to Pretrial. Counsel who substitute in during or after Pretrial must be prepared to go to trial as set on the docket. Motions to Continue may only be granted by the Court (“unopposed” does not mean “granted”). There is no automatic first time continuance. (See above)

### **TRIALS:**

Trials are called for 8:30 a.m. on each day of the trial week. Failure of the victim to appear when the case is called for Trial may well result in a dismissal. Capias will be issued for defendants who do not appear. Pleas can be taken at Pre-trials, time permitting (see below), or at any time as scheduled by the Judicial Assistant. The Court requires plea forms to have been discussed with and signed by the client, prior to the time set for the pleas. Inmates will not be brought to the courtroom for pleas unless the plea form has been executed prior to their arrival in the courtroom.

The only notice of the Trial date will be verbally provided to Counsel at the Pretrial. A written notice will not be sent out if the case is set within the Trial period. It is the responsibility of the attorney to know the Trial date and to provide that information to the Defendant.

If there is a co-defendant in your case and/or if your defendant has other active criminal cases pending in Division 20 or other divisions, please advise the Court.

### **CASE MANAGEMENT CONFERENCE:**

Case Management Conferences are scheduled on qualifying cases for 8:30 a.m. on the Monday of our second hearing week. **All attorneys and Defendants must be present.** The Defendant’s presence may not be waived.

### **TRIAL MANAGEMENT CONFERENCES**

Trial Management Conferences (TMC) will be held on the Wednesday prior to the beginning of the trial period on selected cases that are to be tried (some F2's and F1's and above). The cases that are to be set for TMC will be announced at Pre-Trial. Defendants must attend the TMC and their presence cannot be waived.

### **SCORE SHEETS, PLEA OFFERS, DEMANDS AND JURY INSTRUCTIONS**

Score sheets will be required on every case at the Case Management Conference, Trial Management Conference, Trials and VOP/VOCC Plea / Status date/Hearings. The Court will take pleas on VOP's, VOCC's, new law violation F3's and some F2's at Arraignment.

Offers or Notice of No Offer must be sent out by the State on all cases at least seven (7) days prior to the Case Management, Pre Trial, or VOP/VOCC Plea/Status date. Defense Counsel must speak to their client prior to the Case Management, Pre Trial, or VOP/VOCC Plea/Status date regarding submitted offers. *The Court expects that if the State has failed to comply with the requirements of offers being made timely, that the Defense Attorney will contact the State seeking an offer.*

**When a Demand for Speedy trial is made it will be expeditiously set for trial. The filing of the demand suggests to the Court that there will be no negotiated plea in the case.** The case will either go to trial, plea straight up to the bench, be NP'd by the State, or disposed of by motion.

### **JURY INSTRUCTIONS:**

The State will be required to prepare the Jury Instructions for every Jury Trial and will forward a Word version copy to Defense Counsel, the Court, and the Court's Judicial Assistant via email prior to the start of the trial. The instructions should be **one document** that *includes* the cover page with the case style, the instructions, and the verdict forms. The State should **NOT** send multiple documents. If Defense Counsel has special instructions that they would like given during the final charge to the Jury, they should send them in one document to the State, the Court, and the Court's Judicial Assistant via email.

### **EARLY TERMINATION OR MODIFICATION OF PROBATION MOTIONS:**

The original motion must be filed with the Clerk's office in accordance as outlined above under **MOTIONS**. Defense counsel should contact the probation officer (PO) and ask them to provide a letter or email as to the status of the costs and conditions that were ordered, and the PO's position on early termination if they are willing to provide it. The motion must contain the Assistant State Attorney's name and position and attach the letter/email from the Probation Officer. For motions for early termination counsel must provide an affidavit from the Defendant stating that he/she has not been arrested in the last 180 days and is not the subject of a criminal investigation. Please send a copy of the motion, affidavit, proposed order, copies of the order for all parties and stamped addressed envelopes to chambers for the Judge's review. If a hearing is required, the Judicial Assistant will contact you to schedule the hearing.

**Generally, the Court will not grant early termination if there are outstanding monetary obligations, programs that were to be completed, which have not been, or community service to be performed which has not been finished.**

### **SENTENCINGS:**

Sentencings are, held on Friday of hearing weeks at 10:00 a.m. Generally 15 minutes will be allotted. If additional time will be needed (e.g. witness testimony, victim input, etc.) please advise the judicial assistant at the time the sentencing is being scheduled. If the defendant is entitled to a PSI and requests same, the sentencing will normally have to be set out at least six weeks from the date of rendition of the verdict to have the PSI prepared and presented to the Court and counsel.

### **REQUESTS FOR INTERPRETER:**

If the Defendant requires an interpreter, please email the Judicial Assistant at least two (2) business days prior to the scheduled time for Spanish interpreters and at least ten (14) business days for any language other than Spanish. Also advise the Judicial assistant as to the name of the witnesses who will need the interpreters and when, specifically, they will be testifying.

Effective 6/1/18

*Please note: These procedures apply to **Judge John Marshall Kest** only. These procedures are in conjunction with and in addition to the Uniform Pre-Trial Order. It is recommended that you refer to the procedure of each Judge or contact the Judicial Assistant in the Division for instructions. Further, procedures do change, make certain that you refer to the most recent revision.*

---

<sup>a</sup> If scheduling a case for a plea, attorneys may leave the courtroom once they have scheduled their plea(s) with the JA and notified the Clerk that the plea is set.