



Judge Robert J. Branning Court Procedures

Local rules and standards of professionalism regarding motions are strictly enforced. Only motions in full compliance with these may be heard. Any hearings not in compliance with these requirements may be canceled by the judicial assistant without notice.

Failure to comply with these procedures and the applicable administrative orders on which they are based may result in the cancellation of a hearing, termination of a privilege to appear remotely, or other sanctions as deemed appropriate.

SCHEDULING HEARINGS

- A. The Notice of Hearing must state whether the date and time were coordinated with opposing counsel. If the movant has been unable to do so, the Notice must provide the good faith efforts taken.
- B. The Notice of Hearing must contain the amount of time scheduled for the hearing. Counsel should recognize that multiple hearings are scheduled each day, and accordingly the Court makes every effort to keep to the docketed schedule. Consideration for the time needed by each attorney should be a factor when requesting the time for hearing. The Court will end the hearing at the allotted time, regardless of whether the parties have completed presentation of evidence or argument. This may result in the Court providing a ruling with insufficient information, so use the time wisely.
- C. No "piggybacking" additional motions onto previously allocated hearing time.
- D. No back to back scheduling. Attorneys will not schedule multiple hearings in a single block to acquire longer hearing time. Motions and adequate hearing time should be scheduled with the judicial assistant.

REMOTE OR 'ZOOM' HEARINGS

In Case SC2023-0803, newly amended Rule 3.116 preserves the general authorization to use communication technology for pretrial conferences while requiring a judge to grant a motion to use such technology for non-evidentiary pretrial matters scheduled for 30 minutes or less unless there is a determination of good cause to deny the request.

In keeping with the effort to efficiently use technology for efficiency and ensuring due process in criminal proceedings, the following procedure must be utilized for the scheduling of a remote pretrial hearing:

1. A motion requesting the use of remote technology must be filed, heard, and granted no less than five days before the court date.
2. An Order granting the use of remote technology must be submitted and executed by the judge no less than five days before the court date.

In accordance with Fla. R. Crim. P. 3.116 (effective July 1, 2024), use of communication technology for attendance or testimony at specified criminal proceedings is authorized, with reasonable advance notice and after judicial consideration of any objections and the defendant's waiver of rights.

Pretrial (including Case Management) Conferences. Parties who wish to use communication technology for a non-evidentiary pretrial or case management conference shall provide notice to all parties to determine whether each party consents, and shall inform the Court accordingly. Such notice must be provided sufficiently in advance of the scheduled proceeding to allow the Court to consider any objections. Even if all parties agree to the use of communication technology, absent exceptional circumstances, any party requesting to use communication technology shall provide notice to the Court at least 5 working days in advance of the proceeding to allow the necessary logistical arrangements to be made.

Proceedings where parties and counsel are appearing through the use of communication technology will generally be called at the end of the docket, after proceedings involving parties and counsel who are physically present in the courtroom. Counsel and parties appearing remotely should be prepared to wait in a Zoom waiting room before the scheduled Zoom meeting starts. The Zoom meeting is a court hearing and the rules of courtroom decorum (including attire) apply.

Presently, the Lee County Sheriff and the Court do not have the ability to accommodate an in-custody defendant's attendance at pretrial conferences or evidentiary hearings through the use of communication technology. Accordingly, in-custody defendants will be transported to the courtroom for all pretrial proceedings. The Court anticipates that defense counsel will be physically present with their client under these circumstances.

Testimony. The presentation of testimony through communication technology requires a motion, as specified in rule 3.116(d). The motion must be filed and heard prior to the hearing or trial at which the testimony is to be presented.

PREPARATION FOR REMOTE OR 'ZOOM' HEARINGS

- Each participant will need a device with a microphone and camera, with internet access on the same device.
- All participants must have a video and sound turned on in their Zoom settings.
- Participants should attempt to provide adequate lighting and sound for the judge to clearly see and hear them.
- Participants are encouraged to test Zoom before the hearing, including downloading the app at least one day before the hearing if using a tablet or phone.

REMOTE HEARING PARTICIPATION

- The Court will not provide technical support for Zoom participants or attendees.
- Appropriate attire is mandatory for any appearance in Court. Dress for your Zoom proceeding as if you were attending your court proceeding in the courtroom.
- Use a background that is not distracting.
- The Zoom format does not provide means for case participants or attendees to talk among themselves.
- Please adjust the Zoom profile settings to reflect the participant's legal name. Often, attendees will log into Zoom meetings with a device name, or name other than their own. Failure to log in under the proper name may prevent the Court from recognizing the correct participant is attending and acknowledging their presence for the court record. It is not the Court's responsibility to discern who is a litigant and who is not.
- When you are admitted from the Waiting Room, you should mute yourself by clicking on the microphone icon. If there is a red line through the microphone you are muted and cannot be heard by the people in the meeting. When it is your turn to speak, you will need to unmute yourself by clicking the microphone.

SUBMITTING DOCUMENTS TO THE COURT

- A. Do not submit proposed orders by email or facsimile without court permission.
- B. The Court does not accept service by email or facsimile.
- C. Parties must provide copies of all documents submitted to the Court to opposing counsel. The Court will not read or consider documents submitted to the Court that have not been served on the other party.

CANCELLATIONS

- A. File a notice of cancellation with notice to opposing counsel and the Judicial Assistant.
- B. Contact the Judicial Assistant to cancel a hearing within seven days of the hearing date.

CONTINUANCES

- A. Continuances will be rarely granted, and then only upon a showing of an unanticipated event and good cause.
- B. A motion to continue must be in writing unless there is an exceptional reason why it must be made *ore tenus*.
- C. Trials are not automatically continued by the submission of a stipulation. A stipulation must be signed by all counsel and Defendant, and shall be submitted to the Court detailing the reasons a continuance is necessary. The Judge will determine if a hearing is required.
- D. All parties shall proceed to prepare for trial as scheduled until an Order is entered granting the continuance.

INDIGENCE

Defendants with retained counsel wishing to be found indigent for costs must abide by the following procedures, or their motions will be denied.

1. Motions to be found indigent for costs must not be combined with motions for transcripts or appointment of experts. Such motions must be filed separately, and after an order has been entered finding Defendant indigent for costs.

2. A motion to be found indigent for costs must attach an affidavit of attorney's fees indicating the amount of attorney's fees and the source of payment for those fees, an application for criminal indigent status with clerk's determination, and a response by JAC.

3. The motion shall indicate: the provider of any income claimed by Defendant; a list of specific debts and liabilities claimed by Defendant; and a certification by the attorney (or *pro se* Defendant) that the Defendant does not own or have an interest in any property or vehicles, and does not own or have an interest in any bank account, trust, or other source of funds over \$2,500. Counsel (or *pro se* Defendant) will be subject to contempt or other sanctions if this certification is subsequently determined to be fraudulent.

4. A motion for transcripts (and any proposed order) must list the dates of the hearing or deposition, the name of the person deposed, and must attach JAC's response. A proposed order must state that the transcript is to be produced at regular rates. A proposed order for a hearing transcript must not specify a court reporter or specific rates.

5. A motion for appointment of an expert must specify the name of the expert to be appointed, who is currently under JAC contract. The motion must attach JAC's response. The Court will not appoint an expert who is out of state when there is an expert available in Florida. The motion must state GENERALLY, without citing work product or trial strategy, why the expert is reasonable and necessary to the defense of the case.

6. A motion for additional funding for an expert must indicate how the expert spent the initial funding, and what work remains to be performed by the expert that only the expert can perform. Funding will not be allowed for an expert to perform work that the attorney or a paralegal could perform as part of normal representation.

7. Motions for access of expert to jail: An expert is permitted to visit a Defendant in jail when counsel has contacted the jail to make an appointment for the expert. The Court will not, and has no authority to, order the jail to allow unscheduled visits by an expert which would violate jail security rules and procedures.

8. Motions for testing of evidence: The Court will not permit a defense expert to remove evidence from FDLE custody. Generally, FDLE is amenable to allow a defense expert to observe testing in the FDLE facility. In exceptional circumstances, FDLE may allow a defense expert to conduct testing at the FDLE facility. Upon a showing of necessity for testing not conducted by FDLE, the Court will consider a motion for evidence to be shipped to a separate defense chosen laboratory for testing, and returned to FDLE custody, when given assurances that the laboratory is a nationally recognized, accredited, and professional facility.