

Division 57 Standard Operating Procedures

The following procedures are established for the orderly flow of cases within Division 57, St. Johns County Unified Family Court.

1. CALENDAR:

a. **Unified Family Court:** Family Judges in St Johns County publish a calendar every year showing all the court dates for our regular dockets which include, case management, injunctions, delinquency, and dependency. Judge McGillin also handles Veterans Treatment Court, which is noted as well on the Unified Family Court calendar.

b. **Motions to Continue Case Management Conference, Injunction, Dependency or Delinquency matters:** If you move to continue one of those hearings, please request a date certain for the continued hearing by reference to the published calendar. This lets us know your availability. If you don't let us know we will set you for the continued hearing on one of those published dates. Second continuances are not favored, particularly when you don't advise us of your availability.

2. **CONSENT FINAL JUDGMENTS:** See the Division Checklist for Consent Final Judgments. **File the checklist** and then send your proposed Consent Final Judgment to Division57@circuit7.org.

3. MOTIONS:

a. **Good Faith Certification Requirement:** It is in the best interest of your clients for the attorneys to attempt to discuss and resolve matters before seeking court involvement. As such, every motion for relief ***must*** include a statement by the attorney of record attesting to your attempt to resolve the matter by conferring with the opposing party. Include in the statement any partial agreement you may have reached during that discussion.

If you fail to include a certification of a good-faith conference the Court may dismiss your motion without prejudice to allow you to amend the Motion. Of course, genuine emergency motions and Petitions for Injunction are exceptions!

- b. **Motion to Compel:** Please consult Fla. Fam. L. R. P. 12.380(a)(2) and Seventh Circuit Administrative Order FM-2022-011-SC. You must serve a notice on the other party specifying the deficiency on the discovery at least 10 days before you file the Motion to Compel. You must also include the “10-day letter” and any response with your motion. If you don’t include this, you will be asked by the judge to clarify your omission.
- c. **Motion Title:** Keep it simple. “Motion For Temporary Parenting Plan, Temporary Spousal Support, Partial Equitable Distribution, Temporary Child Support and Temporary Attorneys Fees” can be simplified. Save the text and argument for the motion. Label the motion with a simple statement of its purpose like “Motion for Temporary Needs,” “Motion to Dismiss,” or “Motion for Contempt and Enforcement.”
- d. **General Magistrate:** You will almost always get a hearing sooner with the GM. If you want a quick hearing request, you should request, or accept referral to the GM. If you decline the GM, be prepared to wait for the next Case Management Conference to even schedule your motion. There are attorneys who routinely decline the GM solely for the purpose of delay. It is not professional.

4. **HEARING PROCEDURES:**

- a. **Copies:** The Clerk alerts the court’s Judicial Assistant (JA) of motions as they are filed. There is no need to send a courtesy email or paper copy of the motion to the court.
- b. **Emergency Motions:** The Court will make an initial determination on relief for emergency motions. Parties

should refrain from labelling a motion an emergency unless there is truly risk to life or limb or of a child being removed from the jurisdiction of the court. If the court grants relief *ex parte*, it will also set a hearing unilaterally. If a party is unavailable for that hearing date or time, the party so affected must file a motion to continue.

- c. **Case Management to Schedule Motions:** All other motions will ordinarily be addressed, for scheduling purposes only, at the next case management conference. If a Case Management Conference has not been set, a party may request one to be set. If the matter cannot wait for discussion at CMC, contact the JA at division57@circuit7.org and request hearing time. Make sure you specify how much time is needed. Remember that a 60-minute hearing means each side gets 30 minutes each.
- d. **Limits on Availability:** Cancellations of hearings are endemic. The Court will not set a hearing more than 60 days in advance of available hearing time. This Division uses the Case Management Conference to schedule hearings. Come to Case Management with your calendar and be prepared to schedule your hearing. It allows us to narrow the issues and focus the inquiry.
- e. **Time Limits:** If you need more than 2 hours for your Motion you really need a trial. Motions are short hearings to resolve matters not requiring a trial. The converse is true. Please don't try to try your entire case at a hearing. A temporary needs hearing can be held in 2 hours. The GM does it all the time. Please rest assured that the Court has read your pleadings and will read your exhibits.

5. COORDINATING HEARINGS:

- a. **Case Management Conference:** We used Case Management Conference to schedule hearings. This avoids having to follow the procedures in the next paragraph. Please don't continue the Case Management Conference and then call a week later to try and set hearings on the calendar. However, when a hearing cannot wait for Case Management Conference follow this procedure:
- b. **Once the judge approves setting a hearing:** The party filing the motion *has the lead* to coordinate time.
 - i. If set at CMC, the party filing the motion must file a Notice of Hearing. Simple – straightforward and everyone knows when the hearing is set.
 - ii. If set outside CMC, the party filing the motion must initiate a request for time with the Court's JA. Specify the motion to be heard, the DIN number for the motion and the time needed for BOTH sides.
 1. The Court's JA will provide you with 2-3 possible time slots.
 2. The party requesting the hearing must then coordinate with opposing counsel. DO NOT USE THE EMAIL FROM THE JA AS YOUR VEHICLE FOR COMMUNICATION. DO NOT INCLUDE THE JA IN YOUR "BACK AND FORTH" WITH OPPOSING COUNSEL OVER SCHEDULING.
 3. NOTE – MULTIPLE PARTIES MAY BE OFFERED THE SAME TIMES – FIRST RESPONSE = FIRST SET.
 4. Once you have agreed on a time, you must email the JA and let her know of the agreed date. If it is still available (SEE ABOVE) you will get a confirmation email.

5. The moving party must follow up with a Notice of Hearing within 24 hours of the confirmatory email from the JA. Check the docket and make sure the hearing is posted.

c. Cancelling Hearings: The only reason a party may cancel is if the matter settles in full, with a written agreement, filed with the court. Otherwise, you must move to cancel.

i. Reasons to Cancel

1. It settles,
2. A hurricane closes the Courthouse,
3. Illness of a party, with written documentation from a medical professional.
4. Other natural disasters preventing the hearing from proceeding.

ii. Bad reasons (also known as not good cause and otherwise valid reasons for a judge to deny a continuance):

1. The attorney is not prepared,
2. I didn't subpoena a witness and they just told me they aren't coming voluntarily,
3. My dog ate my casefile,
4. Other counsel and I agreed to cancel because we think we can work it out....
5. I forgot that I had a cruise/ timeshare/ vacation/ other hearing in Duval County in front of a mean judge who won't let me cancel, and;
6. I don't have discovery and I haven't filed a motion for relief and am not ready because I haven't filed that motion.

iii. Court cancellation:

1. On occasion the Court has to reset hearings. Reasons include emergency relief mandated in

other hearings, illness, natural disaster and priority cases. Occasionally crises in other Divisions force the Chief Judge or Admin Judge to assign a judge in family matters to a higher priority criminal matter.

2. When it occurs, the Court will expedite a reset of the matter.

6. CASE MANAGEMENT:

- a. The court uses case management in accordance with the Family Rules.
- b. Starting July 1, 2023, ALL Case Management Conferences will be live by default – that means you must file a motion for Zoom. Understand that the Court finds that in person appearance fosters professionalism, encourages settlement, leads to resolution of contested matters without hearing and is generally in the best interest of the children as it fosters parent communication and rapid resolution of parenting issues. The Court further finds that the geographic remoteness of an attorney's office is not a good cause for regular use of Zoom. When the case was initiated, it was well known that the courthouse was in St Johns County.
- c. Family court is personal. It is about people and their lives. It deserves time and attention. CMC gives the judge a chance to size up the parties and the litigation. That is hard to do on Zoom.
- d. Be prepared for CMC:
 - i. Discuss open issues with opposing counsel ahead of time.
 - ii. See what can be agreed upon!
 - iii. Review the docket for old motions that have not been addressed.
 - iv. Review your discovery posture.

- e. Bring your calendar. We will set hearings on all pending and set trial dates in Court. Once you agree to a date in court it will not be reset without good cause – see above.
- f. You can, of course, secure the services of a court reporter for any hearing but there really is no need for one at CMC. The Court will only take final testimony and enter agreed upon orders at CMC.
- g. DO NOT – NEVER EVER – NEVER EVER EVER – set a substantive motion on a CMC without consent of the opposing party AND the Court. It is rarely given. Final testimony in Dissolution, Paternity, Child Custody by extended family and name change are the notable exceptions.
- h. Talk to your client ahead of time about referrals to the GM. If a matter is referred, they will be asked to waive the 10-day period. If they don't want to, that's fine, but it takes time to do the full explanation of what the GM is, what she does, what the referral means, how to handle objections, how the GM rules etc.
- i. Here's how CMC should flow:
 - i. Day 1 case filed. Typically, the other side gets served quickly. An answer is typically filed around day 30.
 - ii. First CMC – between day 30 and 45. Mandatories should be almost finished. Tip – don't file your petition until your client turns in their mandatories to you.
 - iii. Between first and second CMC – all mandatories are done. RFI, RFA, RFP are all served and responded to in a timely manner.
 - iv. Second CMC – about day 90. If you have not settled, be ready to identify a mediator. You will be referred to mediation at the 2d CMC typically.

- v. Third CMC – about day 120-150. You should be finished with mediation. If the case settled, we can take final testimony at CMC and save your client some money for court reporter. If the case doesn't settle, we will set for trial.
- vi. Fourth or later CMC – in person – live – client and attorney – to discuss remaining issues that preclude the case going to trial,

7. CONDUCT OF HEARINGS AND TRIALS:

a. Scheduling:

- i. You must attend Pretrial (approx. 60 days before docket sounding) and Docket Sounding (Not less than 10 days before first available trial date).
- ii. You will not know the actual trial date until Docket Sounding.
- iii. Refer to the trial order for specifics.

b. Trying your case:

- i. Try your case as if it is sure to be appealed. Document everything. State everything. It is your job to protect your record. The judge will try to ensure that the record is complete as well, but it is primarily on the attorney.
- ii. Exhibits
 1. Pre-mark your exhibits with the clerk! Mark them with LETTERS only. Items marked for identification are labelled as “Petitioner’s Exhibit A for Identification” etc... When it is admitted, the clerk will give it a NUMBER. If you go past 26, then use AA, BB, CC etc. If you go past 52, then use AAA, BBB, CCC etc.
 2. Keep your exhibits to the minimum necessary to prove your case. Does the judge really need to see 15 years of credit card billing statements?

3. When you take an exhibit up to the clerk or to a witness, identify it by its current title. “Mr. Witness, I am now showing you what has been marked as Petitioner’s A for identification, the bank statement for January 2022.” It is very confusing when you say, “please look at this.” I don’t know what “this” is. Opposing counsel is unlikely to know. Your client may not know. The witness may not know. The appeals court for sure will not know. If I decline to enter an item into evidence and you want it preserved, ask that the “for identification” item be retained by the clerk for identification only as part of the record. The appeals court needs to be able to see what it was that you offered!
- iii. Equitable Distribution: If your case has more than 10 items to be distributed, I encourage use of the highly automated Equitable Distribution Spreadsheet on the Division 57 website. For smaller cases it is not necessary.
- iv. Objections:
 1. State the objection using a one- or two-word objection followed by the court soliciting a response and the issuing a ruling.
 - a. **Good Example:** Objection - hearsay.....wait.....wait.....the Court will then ask opposing counsel for a brief response such as “Excited Utterance”..... wait....wait.. the court will either rule or ask for more argument. If more explanation or argument is needed, the Court will ask for it.
 - b. **Bad Example:** “Objection, move to strike, hearsay, they didn’t say that at their

deposition, its wrong, illogical, unethical, immoral, immaterial and improper to ask that question!!” or words to that effect.
See above.

2. Instruct your client on what to do when they hear the word OBJECTION. Tell them please be quiet and wait for a ruling. It is **improper** to try to slide an answer in. Such an answer is likely not even be heard and cannot, and will not, be considered. If they keep doing it, the judge will have to correct them, they will get upset and it often goes downhill from there.

v. Argument

1. Focus on the elements the judge must decide. Assume that the court was paying attention to the facts and highlight the testimony you feel is best for your side. Don't just rehash everything the witnesses said. Find a theme to your case and argue on that theme.
2. Statutes: if one applies, be prepared to argue its applicability to the facts of your case. We are all textualists now (quoting Justice Kagan).
3. Caselaw – caselaw is helpful but not mandatory. Understand that Judge McGillin uses an electronic note taking device for case notes. If you have caselaw for a hearing, send it to Division 57 (with a copy, of course, to your opposing counsel) a day or two before the hearing. If you must bring paper copies, bring one for opposing. If you highlight anything it must be identical on all copies.
4. Keep it civil. Remember you are an advocate not a surrogate. The parties in family law

litigation are in pain. Don't take it on yourself and don't infuse your argument with that pain.

vi. Where to stand:

1. Direct and Cross – stand at the podium.
2. Objections – from your seat at counsel's table – please stand (it truly does get my attention) and speak loudly. Make sure the microphone on your table is near you.
3. Approaching the bench: I am not a stickler on this. It is best to ask – it keeps my bailiff from wondering why you are coming up.
4. Approach the witness: Ask before you approach a witness.

vii. Attitude. Outside my chambers there are three wall hangings:

1. The Constitution. The most important legal document in US or arguably world history. We swear to uphold it and defend it.
2. The USS Arizona Memorial – at Pearl Harbor. This print shows the price of not being prepared. Be prepared always. Nothing substituted for preparation. Also – it's an honest memorial. As a country we were hurt badly that day. We lost people. But we came back. The ends of the memorial sweep up reflecting ultimate victory in that war. If you lose, analyze the loss, learn from it, and move on to victory.
3. A picture of an Army-Navy football game. Many of you know I went to West Point. I was infused with the "Beat Navy" spirit. We wanted to Beat Navy. We lived and breathed "Beat Navy." We even ate (no kidding) "Beat Navy" Cake. We Beat Navy (sometimes). But here's

the point – at the end of the day, we (Army folks) knew we were on the same team as the Navy types. We worked with them, and we respected them. Opposing counsel should behave the same way with the same attitude. Advocate intensely for your client; seek to win. But at the end of the trial make sure you can still have the opposing counsel over for a barbecue. Don't say something about them in the middle of the trial you will regret for the rest of your professional life.

viii. Proposed Orders:

1. Trials – the court will likely ask both sides to prepare a proposed judgment. Please submit it no later than the deadline set in court. Please send it to division57@circuit7.org in MS Word or RTF format.
2. Hearings:
 - a. If the Court rules from the bench, the prevailing party will often be asked to prepare an order. This is NOT a chance to make your case. You already won. State the facts the Court recited, if any, and submit to opposing counsel.
 - b. Opposing counsel review. If you disagree, then note the disagreement and submit it to the court. Again, this is not a rehearing. Submit in Word or RTF to the division mailbox. Save advocacy for the courtroom. Remember the JA is not your audience!
 - c. If the Court does not rule it may ask for proposals from both sides. Use trial procedures above.

d. Under advisement with no ruling: the Court will prepare the Order. After a period of analysis, the Court may still ask for proposals.

3. Wait: If it has been more than 45 days since your proposed order was submitted, or since the Court took it under advisement, please shoot a quick email to the JA. She will make sure the order is in the works and may give you feedback on whether additional items are needed. The Court may set a brief (early – like as in 8:15 am) Zoom status hearing if some point of confusion has come up, or if the court needs additional assistance.