

GENERAL SCHEDULING AND PROCEDURES VOLUSIA COUNTY DIVISION 10 - PROBATE/GUARDIANSHIP

Judge James R. Clayton
Circuit Judge

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As of October 15, 2021, the following guidelines and procedures are in effect for Division 10 - Probate and Guardianship in Volusia County, Florida.

HEARINGS

1. Pursuant to Supreme Court of Florida AOSC21-17 and Circuit 7 Administrative Orders Z-2021-029 and C-2021-042, the following proceedings will be conducted in-person:
 - a.) Adult Protective Services
 - b.) All evidentiary hearings
 - c.) Trials
 - d.) Injunctions for protection against a Vulnerable Adult.
 - e.) Order to Show Cause hearings.
 - f.) Witnesses may not testify via Zoom unless a motion for relief from appearing in person with a proposed order is submitted at least 1 week prior to the hearing in which they are to testify.

2. All other matters will be conducted by Zoom. Only in the instance of a party or witness not having access to an electronic device to appear remotely will the court consider a motion for relief from appearing remotely with a proposed order submitted at least 1 week prior to the hearing.
 - a.) Attorneys appearing by electronic means shall conduct themselves as if present in the actual courtroom/hearing room and in a professional manner.
 - b.) All attorneys, parties, participants and interested persons shall appear by Zoom from settings that are free from extraneous noise or interruptions and to utilize the mute function if such noise or interruption occurs, so as to reduce interference with the court proceedings.
 - c.) All attorneys, parties and participants appearing by Zoom are to refrain from engaging in activities that may otherwise detract from the focus of the hearing.
 - d.) The court shall have the right to terminate a hearing if a) – c) above are violated.

3. **Setting of Hearings:**

a) Motions must be E-filed with the Clerk before a hearing will be scheduled.

b) **Benchmark Calendar and Scheduling**

Judge Clayton's calendar and available hearing times are posted on Benchmark. Hearing options are best viewed by running the Available Hearing Time Report. The Available Hearing Time Report is found under the Reports tab on toolbar located on the left. When running this report do not use the drop-down menu for Event Type. Leave this field defaulted to ALL. Selecting an Event Type will result in a blank report. Each Hearing Block in Benchmark is for 15 minutes of time. If more than 15 minutes are needed, select dates with sufficient consecutive open blocks. Judge Clayton's Benchmark is not open to direct scheduling at this time. Once a hearing date and time has been coordinated with all parties, send an email to the judicial assistant to request scheduling. Along with the date and time requested, this email should provide the case number and matter to be heard or include courtesy copies. A Notice of Hearing should not be filed prior to the judicial assistant's confirmation email and should include the Zoom meeting information when appropriate.

- c.) Should opposing counsel, their staff, or pro se litigants fail to respond within 3 business days or refuse to cooperate in setting the hearing, the Notice of Hearing can be E-filed ***with the difficulty or refusal specifically stated in the Notice of Hearing.***
- d.) In addition to filing the Notice of Hearing with the Clerk of Court, a copy of the Notice of Hearing must be furnished to the Judicial Assistant no later than 7 calendar days prior to the hearing.
- e.) Additional motions may not be "piggy-backed" by cross-notice unless: 1) counsel confirms with opposing counsel that there is no objection to the cross-notice and 2) counsel or their office confirms with the Judicial Assistant that sufficient time is available for all matters to be heard.
- f.) Should you intend to use any legal memoranda / case law / evidence at a hearing, please deliver to chambers and opposing counsel courtesy copies at least three business days prior to the hearing. Hard copies will be required unless 20 pages or less, in which case they may be e-mailed to the Judicial Assistant.
- g.) Only the party setting the hearing may cancel the hearing. If a case is settled or dismissed, file a copy with the Clerk of Court and e-mail a copy to the Judicial Assistant as soon as possible. Advise the Judicial Assistant, if applicable, to take the case off the hearing / trial docket.

4. **Emergency Hearings:**

If any emergency situation arises, counsel may request that a hearing be set on short

notice. The motion must be designated as “EMERGENCY” in the heading and the body of the motion must include a detailed explanation of the circumstances constituting the emergency. The motion must be received by the court before a hearing will be set. The court will review the motion and, if it is determined that an emergency does exist, the Judicial Assistant will contact counsel to set the hearing.

5. Orders:

- a.) Proposed orders must be submitted in Word format.
- b.) Proposed orders must be sent to the court electronically by email at division10@circuit7.org. The subject line of the email must state “Proposed Order” and, if appropriate, “from hearing on (date) .” c.) Unopposed or matters consented to must contain language in the motion and order stating that opposing counsel has agreed to the relief sought. If the order is objected to by opposing counsel, the counsel submitting the order must advise the court of that fact.

6. Changing Caption: Unless a specific court order is entered authorizing a change, do not change the caption (“style”) of the case. Even if a party is dropped or added, the caption cannot be changed by counsel or parties, absent a court order.

7. Withdrawal/Substitution of Counsel: Withdrawal can only be accomplished by order, which will be entered only upon stipulation signed by client(s) or after a hearing. If a hearing is necessary, a notice of hearing must be sent to the client(s) as well as all other parties and such service shall be reflected on the certificate of service of the motion. Fla. R. Jud. Admin. 2.505(f)(1). Similarly, a substitution of counsel requires an order of court, either upon a written consent of the client(s), which shall be filed with the court, or after notice and a hearing. Fla. R. Jud. Admin. 2.505(e)(2). The address where the client can be served in the future should be in the motion and included in the proposed order.