

Guidelines for Practice in Division 83

Regarding the Setting of Hearings:

As an Officer of the Court, a Lawyer is Responsible for Respecting the Time of Others and helping to Manage the Efficient Use of Court Resources.

1. Discuss resolution of issues with opposing counsel prior to requesting court time. Litigate only those issues which cannot in good faith be resolved without the help of the judge.
2. Accurately Estimate the amount of hearing time needed for hearings in relation to the number of witnesses to be called by proponent of motion and opposing counsel. Discuss amount of time needed with opposing counsel prior to requesting time from Judicial Assistant.
3. Upon receiving an inquiry concerning a proposed time for a hearing or other proceeding, a lawyer should promptly agree to the proposal or offer a counter suggestion.
4. Make sure your office staff does not double-book counsel for trials or motion hearings. If this happens due to cases being set by the court after a hearing has been scheduled, then advise the Judicial Assistant *and opposing counsel* immediately so that witnesses can be taken off standby. Do *not* wait until the day of court to file a Notice of Conflict.
5. Give adequate notices of hearings to opposing counsel and send copies of motions to opposing counsel immediately upon filing.
6. Notify Judicial Assistants *as soon as possible* when hearing or trial times will no longer be needed, so that the court time can be used by other litigants.
7. File motions tailored to the specific case and facts, not form motions with superfluous issues.
8. Read all pertinent case law prior to filing pleadings in order to realistically evaluate which issues need to be litigated.
9. Set motion hearings by filing the motion and then calling the Judicial Assistant prior to PreTrial to get a hearing time. This will avoid a PreTrial appearance by counsel and client. The case will be pretried at the hearing.

Regarding PreTrial Preparation:

“Except where there are strong and overriding issues of principle, an attorney should raise and explore the issue of settlement in every case as soon as enough is known about the case to make settlement discussions meaningful.” Florida Bar, Trial Lawyers Section Guidelines For Professional Conduct.”

1. Send out reciprocal discovery as soon as the information becomes available. If it is sent out the day the information is received, then the paperwork will not build up. Opposing counsel will be able to discuss the evidence with their client/ witness(es) in advance of PreTrial.
2. Complete plea negotiations sufficiently in advance of PreTrial that opposing counsel may discuss resolution with their client before PreTrial. Initiate (and return) contact with opposing counsel to resolve as many cases as possible and avoid congestion of the trial docket.
3. If resolution of a case is agreed upon prior to PreTrial, then Defense Counsel may call the Judicial Assistant to schedule a plea hearing at a time which is less crowded than PreTrials. The PreTrial appearance can then be avoided by counsel and client.
4. File all motions prior to PreTrial, assuming that discovery has been received in a timely manner. Counsel may avoid a Pretrial appearance if a motion has been filed and hearing time has been set for that motion prior to PreTrial. If counsel has not filed motions prior to PreTrial and is requesting hearing time, the Court may require a continuance in order to allow time for the motion to be filed prior to hearing time being granted.
5. The Court will move the PreTrial proceedings as quickly as possible. Attorneys must keep their discussions quiet enough to allow for a dignified and audible discussion between the Court and the attorneys whose case is being heard on the Record.
6. First time continuances are generally granted at pretrial with agreement of opposing counsel, by motion and without an appearance at PreTrial. Written waiver of Speedy Trial executed by the defendant should be filed with defense continuance motions, along with an order and copies for distribution. Second continuances are not granted without an appearance and only for Good Cause.
7. In order to obtain a Trial Date, counsel should bring their calendar (or a copy) and know the dates within the trial period when they and their witnesses will be available. Do not send an associate to set it on the trial docket if there are conflicts on counsel's schedule which should be avoided.
8. Pleas will be taken at PreTrials whenever counsel's line recedes to the point where other counsel are not kept waiting, however counsel are encouraged to set plea hearings at less crowded times, which will allow counsel to avoid the Pretrial altogether.

Regarding Preparation for Hearing or Trial:

Everyone in the courthouse knows who the real stars are. They are the ones who are prepared, who know which cases are worthy of trial, and who win.

1. Continuances *on the day of the hearing or trial* due to unavailability of witnesses are granted only if the unavailability was unforeseeable and unavoidable. If a client fails to disclose the existence of witnesses prior to the day of court, counsel will be called upon to demonstrate that such witnesses could not have been discovered by due diligence of counsel and/ or client.
2. Call the witnesses prior to the day of court in order to determine availability. If counsel know their cases well and have negotiated all the resolvable cases prior to trial day, then the number of possible trials will be limited to a manageable number. Witness availability can then be determined prior to the day of court, and without asking the 5-6 court staff and 14 venire members to wait during what otherwise would be productive court time for confirmation of witness availability.
3. Exercise good client control. A defendant or victim/litigant is entitled to straightforward advice expressing the lawyer's honest assessment of the prospects at trial, *Fla. Bar Rule 4-2.1, Comment*. Only with clear information can the client/ victim make an informed decision regarding whether it is truly in his/her best interests to proceed to trial or to accept a compromise settlement.
4. Counsel need to conclude negotiations as quickly as possible on the Day of Trial. Optimally these discussions have been finished prior to PreTrial or a trial date would not have been necessary. However, if settlement discussions are still going on during court time, they should be focused and quick. Settlement discussions among counsel in the courtroom should also be quiet enough to avoid affecting the dignity and audibility of business being conducted on the Record.
5. Defense counsel need to conclude settlement explanations with their clients prior to the opening of court. If the final plea offer is in hand prior to trial or hearing time, then counsel should discuss all options *and the plea form and Notice of Fines* prior to the time of the hearing or trial.
6. Counsel should be ready with all settlements by 10:00 am on trial days. Pleas on the morning of trial will be taken until 10:15. At that time the jury will be called and any cases not resolved will be rolled to another day within the trial period.
7. When preparing for a motion hearing, counsel should complete case law research prior to coming to court, and photocopy appropriate cases for opposing counsel as well as the court.
8. The better command an attorney has regarding the witness testimony and case facts, the better prepared the attorney will be to evaluate and win the case.

Regarding In Jail Clients:

The measure of our true humanity and character is proportionate to the amount of concern we show to those who are most vulnerable.

1. Communicate with In Jail defendants. If an attorney has not seen an incarcerated defendant prior to PreTrial the attorney will not be prepared to advise the court regarding how the case should be set. Some defendants spend far in excess of the offered sentence in jail because their counsel have not seen them.
2. If a plea offer is not timely forwarded by the State, then call the Judicial Assistant for an early **plea conference** with the Court. Tell the JA it is an **in-jail** plea conference, and that you need a date as soon as possible. **Zealous representation includes getting hearing dates** within a time earlier than the Pretrial date when appropriate.
3. If a defendant in custody wants to enter an early plea, counsel may call the Judicial Assistant and have the In Jail defendant brought to court within 48 hours during most weeks, except arraignment, video and rotation weeks. This is especially advantageous for defendants who will serve in excess of the State's plea offer if they wait until Pretrials to resolve their case. The Judicial Assistant will ask counsel if they are certain that the defendant is willing to complete the court business requested, because it wastes the time of corrections, transportation and court deputies to bring over an inmate who does not complete the scheduled court business. Defendants must be ordered via the JA by 12:00 noon of the day prior to the court hearing date requested so that transportation can be arranged.
4. Make sure the defendant is willing to complete the court business requested prior to setting a plea. If the defendant has not had contact with counsel, there is a low level of trust and a plea in his/her best interest may fall through. Come early and conduct final discussions from the holding facilities. Explain the plea form and Notice of Fines prior to the client coming to the courtroom so that this process will not hold up other court proceedings.
5. In Jail defendants are not brought over for PreTrials unless counsel schedules them for Plea or other specific hearing with the Judicial Assistant by 12:00 noon the day prior. If trial is needed, the Court is willing to set the In Jail trials within the first week of the trial period. If a defendant who is held as max security due to serious pending felony charges needs to clear up a misdemeanor case by plea, the Court would encourage and allow a written plea in absentia.
6. A defendant needs to have appropriate clothing for a trial. Appropriate clothes should be brought by the Defendant's family to the jail prior to the court date, and the Defendant should be advised by counsel to bathe and clothe appropriately for trial.
7. If a defendant appears to be incompetent to proceed, then file the motion and order for psychiatric examinations *as soon as possible* and ask the Judicial Assistant to set the case on a Mental Health Docket instead of the PreTrial Docket. Ask the Corrections Staff if the jail or the Mental Health Pre-Trial Release program can offer treatment for that defendant.

