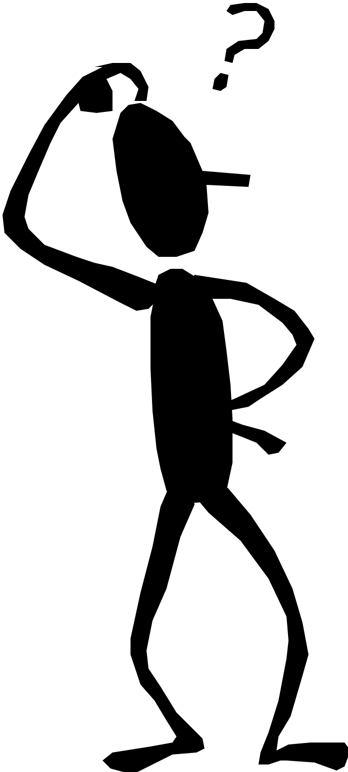
ADMINISTRATIVE POLICIES AND PROCEDURES

JUDGE CHARLES M. HOLCOMB



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The purpose of the following policies and procedures is to assist counsel and litigants in understanding and expediting obtaining, canceling and continuing hearings, as well as the processing of orders and judgments.

HEARINGS

1. SCHEDULING HEARINGS

Call the judicial assistant to schedule all hearings. Any hearing for more than 1 hour will require approval from the judge. A recurring problem with time scheduled for hearings is that the litigants misjudge the time requirements and schedule substantially less time than the hearing or non-jury trial requires. The result is that other litigants with scheduled time must wait to have their matter heard and if represented by an attorney, additional attorney fees.

The solution to the problem lies in making a good faith assessment of the time required and scheduling that amount of time. I will give you the time you estimate is needed. If other persons are waiting for their hearing or trial and your case goes over the time limit by more than fifteen (15) minutes, then I will have no reasonable alternative but to terminate your hearing or trial and schedule a subsequent continuation hearing.

2. DEFAULTS IN FAMILY LAW CASES

If a party has served the Petition and summons upon the adverse party according to law and a default has been entered against that party by the Clerk of the Circuit Court or a judge, the party may schedule a one-half hour hearing for entry of Final Judgment on the issue. A notice giving the time, date and place of the final hearing shall be provided the defaulting party at least 10 days prior to the hearing. The defaulting party has the right to appear and be heard if the issues are child support, custody, alimony, visitation, parental responsibility, equitable distribution etc... At the time of the hearing, the Court will take evidence and enter judgment. Should the defaulting party appear and the time scheduled is not sufficient for full hearing, the matter will be continued to the next available hearing date to conclude the hearing and enter an order or judgment. A default in a family law case when child custody, visitation, etc are issues, is much like a default in a civil suit for

unliquidated damages and may still require a full trial. If custody is an issue, a default may not have the affect of admission of liability in a civil unliquidated damages case because of the best interest of children issue.

3. A CHILD OR CHILDREN APPEARING AT A HEARING OR TRIAL

Pursuant to Rule 12.407, Florida Family Law Rules, do not bring a minor child to a hearing or trial or attempt to present testimony from the child or subpoena a child for a hearing or trial, without first obtaining the consent of the Court based on good cause shown unless in an emergency situation. This shall not apply to uncontested adoption proceedings.

4. ALL MOTION HEARINGS AND CERTAIN MOTIONS NOT ALWAYS ALLOWED A HEARING - PROCEDURE AND CERTIFICATION

The Court has noticed that Motions are filed and scheduled for hearing without any contact with opposing counsel. Very often, the attorneys discuss the motion for the first time when sitting in the waiting room in advance of the hearing and immediately resolve the subject matter of the motion by stipulation.

The Court could have much more productive time for motion calendars if those motions were resolved prior to scheduling a hearing. Before filing, discovery motions and enforcement motions counsel must confer to attempt to resolve the issue. To have a motion hearing set, counsel must include substantially the following certification on the Motion when filed:

"I hereby certify that prior to filing this motion, I have contacted opposing counsel and have in good faith attempted to resolve this matter without the necessity of a hearing and having been unable to do so I have coordinated the hearing date and time with opposing counsel and the date and time is (satisfactory) (unsatisfactory)." If unsatisfactory, the court will set up a telephone conference to resolve it.

If unable to consult with opposing counsel in an attempt to resolve the matter or to coordinate a hearing because opposing counsel fails to return phone calls or to otherwise communicate with you, please state that in your motion and the court will take action accordingly.

If a Motion to Compel Answers to Interrogatories or to

Compel Production is to be filed and states that time for response has past and that there was **NO** response and **No** objection filed, fax a copy of that Motion to the Judicial Assistant and a general order compelling compliance with the respective Rule will immediately be sent out. It will require compliance within 15 days. If complied with in the interim, it requires only that a Notice of Compliance be filed by the party ordered to comply. All other Motions to Compel will be processed in accord with the procedure set forth subsequently in this paragraph.

The Court expends a substantial amount of hearing time on Motions regarding discovery and other matters which are not necessary, and which use time needed for other matters which need a hearing. Therefore, the following types of Motions will not be given a hearing unless the attorney certifies in the Motion that the grounds upon which the Motion is based requires oral argument for the Court to fully comprehend them or the Court feels that oral argument is necessary. Otherwise, Motions regarding the matters listed below will not be given a hearing but will be submitted to the Court along with a memorandum of argument or argument contained in the Motion, specifying the exact matters to be argued, the argument and any legal citations of authority with a copy of those citations included in the package sent to the Court. Opposing counsel shall have 7 business days [excluding Saturdays, Sundays and legal holidays] to file opposing argument and provide citations of legal authority for the arguments and copies of the authorities. The Motion shall contain a Notice substantially as follows: "You have seven (7) business days excluding Saturday, Sunday and legal holidays to file with the Court your arguments responsive to the motion and to furnish the Court with a copy of legal authorities cited." The original should be filed with the Clerk of the Court and a copy filed directly with the judge. Thereafter movant's attorney will have five (5) days [excluding Saturdays, Sundays and legal holidays] to rebutt. Each side shall provide a proposed order on the Motion along with their argument. The Motions included in this procedure are as follows:

1. Motions to dismiss based upon failure to state a cause of action only.

2. Motions for judgment on the pleadings.

3. Motions for a more definite statement.

4. Motions for leave to file a counterclaim or crossclaim.

5. Motions to amend pleadings.

6. Motions to compel answers to interrogatories or to compel response to request for production.

7. Objections to Production or Interrogatories.

8. Motions for protective order.

9. Motions to compel production from persons not a party under Rule 1.351, Fla. R. Civ. P. Note: When an opposing party objects, no hearing or motion is authorized because the Rule specifically states: "If any party serves an objection to production under this Rule within 10 days of service of the notice, the documents or things shall not be produced under this Rule and relief may be obtained pursuant to Rule 1.310," i.e. depositions upon oral examination duces tecum.

10. Motions for compulsory physical examinations pursuant to Rule 1.360, Fla. R. Civ. P.

11. Motions for a new trial, reconsideration or rehearing or amendments of judgments pursuant to Rule 1.530, Fla. R. Civ. P.

12. Motions for relief from judgment due to clerical mistakes pursuant to Rule 1.540(a), Fla. R. Civ. P.

13. Motions to require mediation or to dispense with mediation.

This procedure should have the effect of reducing unnecessary hearing time, resolution of issues and a faster ruling on the Motions.

5. TIME OF MOTION HEARINGS WHEN JURY TRIAL SCHEDULED, INCLUDING MOTIONS IN LIMINE.

Prospective jurors in all jury trials are private citizens of Brevard County who have jobs and other things to fill their day and live their life. Having to appear for jury service is to most an inconvenience and to many a sacrifice in both time and income. Many jurors are called from the far ends of the county causing them to drive for a long period of

time and incur gasoline and automobile expense. Jury service places anxiety and pressure on many jurors and prospective juries. Those who appear are fulfilling their civic duty and are entitled to be treated with courtesy, respect and efficiency so that they are not kept waiting unnecessarily. For that reason, the Court REQUIRES that all motion hearings, INCLUDING MOTIONS IN LIMINE, be scheduled and heard PRIOR to the day the trial period commences. Only in EXCEPTIONAL and EMERGENCY circumstances will a motion in liminie or otherwise be heard after the last working day prior to commencement of the jury trial docket for the trial period in which the case is scheduled to be tried.

6. CONTINUING HEARINGS

When it becomes necessary to request a continuation of a scheduled hearing, it is expected that counsel scheduling the hearing will contact my judicial assistant as far in advance of the scheduled hearing as possible, thereby freeing up hearing time for other cases. A continuation must be applied for at least 6 BUSINESS DAYS prior to the hearing so the time can be given to someone else. Otherwise, the continuance may not be granted unless a situation beyond the movant's control is established other than negligence in filing the motion.

If a continuation of a hearing is requested by counsel not setting the hearing, and a signed stipulation by both attorneys is not possible, then a motion for continuance may be presented at short hearing time and a decision will be made at that time with regard to continuing the scheduled hearing but no later than 6 BUSINESS DAYS prior to the hearing.

IF A HEARING IS CONTINUED, THEN IT IS THE RESPONSIBILITY OF THE ATTORNEY TO ADVISE THE JUDICIAL ASSISTANT THAT THE SCHEDULED HEARING IS CONTINUED SO THAT IT IS TAKEN OFF THE COURT'S CALENDAR.

7. CANCELING HEARINGS

The last minute cancellation of reserved hearing time wastes the courts time and there are multitudes of attorneys and pro se litigants requiring hearing time. If you need to cancel reserved time, you must notify my judicial assistant at least 6 BUSINESS DAYS prior to the date of the hearing so the time can be utilized by others. The Court will not allow any cancellations, other than in extraordinary circumstances and after a hearing on the issue, except for matters which are

resolved, which were the issues for which the time was reserved. Any hearing time cancelled will require the moving attorney or pro se to file a written Notice of Cancellation including resolution of the issue. Failure to cancel prior to 6 business days, except in circumstances approved by the Court or settlement of the issues addressed, will result in the hearing remaining on the docket and, if counsel does not appear, denial of the relief requested.

8. CROSS NOTICING OF HEARINGS

There will be no cross noticing or "piggybacking" of motions unless counsel first contacts the judge's judicial assistant to confirm that the calendar will accommodate the hearing of additional matters at the scheduled time.

9. NOTICE OF HEARING

A notice of hearing must state that which is to be heard. A notice of hearing that states "All Pending Motions" is a nullity. Notice must be given to the Attorney Ad Litem or Guardian Ad Litem appointed in the case, if any. Otherwise, the hearing may be subject to cancellation by the Court pending proper notice to the Attorney Ad Litem or Guardian Ad Litem.

10. MATTERS NOT REQUIRING A HEARING

a) Appointment of Special Process Server
b) Stipulated Modifications
c) Stipulated Temporary Orders
d) Motions to Substitute Party
e) Cancellation and rescheduling a foreclosure sale
f) Motion to Vacate Foreclosure Judgment because of reinstatement, payment of judgment or novation.
g) Default judgments of liquidated amounts.
h) Motions to appoint counsel pro hac vice. However, the Court requires a verified motion stating that the attorney is an active member in good standing in the bar of another state, all jurisdictions in which the attorney is in good standing in the bar and the number of cases in which the attorney has filed a motion for permission to appear in Florida in the preceeding 3 years. See Rule 2.061, Fla. R Jud. Admin. In addition, the Court requires a statement that the attorney has read and comprehends the Fla. R. Civ. P. or Fla.R. Crim. P. as applicable to the case, and the Florida Rules of Evidence.

Additionally, a certified statement from the bar of that state that the attorney is admitted to that bar and is in good standing.

i) Motions as identified on Section 4 of this document.

j) Motions to disqualify trial judge. See Section 27 of this document.

k) Exparte motions authorized by Florida Statute or Rule of Civil Procedure.

11. EMERGENCY HEARINGS

The Court has reserved certain Mondays from 9:00 o'clock a.m. to 12:00 o'clock noon for emergency hearings. This time is reserved for real, presently existing matters in which serious wrong or injury may occur if not addressed immediately. Sanctions may be imposed for those abusing the emergency time scheduling. To request an emergency hearing please send the Motion to the Judicial Assistant. After the judge has reviewed the Motion to determine if it is an emergency the Judicial Assistant will call you to schedule the hearing.

12. SHORT HEARINGS (TEN MINUTES OR LESS) (SHORT HEARING DOCKET)

Matters requiring ten minutes or less will be heard Friday from 9:00 a.m. to 10:00 a.m. Hearings are limited to a strict ten minutes or less. They are heard on a first come first serve basis. Attorneys are to sign in with the court deputy. Four (4) working days notice should be given to opposing counsel. Orders or Judgments are to be presented at the time of the hearing. Short hearing matters are to be scheduled with the Judicial Assistant in sufficient time to order the file.

13. TELEPHONE CONFERENCE HEARINGS

Some motion hearings, motions for summary judgment, etc. may be handled by telephone conference. However, the notice of hearing must set the hearing up as a telephone conference and contain the correct information. Otherwise, the privilege of appearing by telephone will not be granted. Opposing

counsel must be apprised of your intent to appear by telephone to decide whether or not they will appear by telephone also. The moving attorney has the obligation to place the telephone conference call. The Judicial Assistant does not have the time to place those calls. Testimony will not be allowed to be taken by telephone unless all affected parties stipulate and agree to such testimony or the Court finds it is reasonable and necessary to take the testimony by telephone. Telephone conferences are allowed as they tend to decrease the expense and needless expenditure of time in litigation.

It is the responsibility of each attorney involved to notify the moving attorney and any other attorney involved of the intent to appear by telephone. It is the sole responsibility of the moving attorney to place a conference call including all other attorneys who will appear by telephone and get them on the conference line prior to the time set for the hearing. Abuse of this procedure may result in revocation of the privilege to attend hearings by telephone.

14. TEMPORARY RELIEF

Motions for Temporary Relief should be sent to the Court for review prior to a hearing being scheduled. Some temporary relief motions will be ordered to mediation. If an emergency exists emergency time on Monday or other available time will be scheduled for the hearing, but only after the Court has determined that an emergency actually exists.

15. RULE TO SHOW CAUSE

A verified Petition for Rule to Show Cause or a Petition for Rule to Show Cause with accompanying Affidavit must include factual allegations of alleged violations. e.g. non payment of support, coming upon the property, violence, etc., and is to refer to the specific order, date and paragraph which is alleged to have been violated.

Petitions for Rule to Show Cause may be presented during short hearing time. If the Petition is granted, the attorney may obtain a hearing date for the Rule to Show Cause from the Judicial Assistant. Note that violations of domestic violence injunctions may be handled pursuant to Rule 3.840, Florida Rules of Criminal Procedure, for indirect criminal contempt.

16. CONTEMPTS

Motions for Contempt are heard at specific times and scheduled with the judge's Judicial Assistant. If the contempt relates to a money arrearage, then an Arrearage Worksheet **must** be prepared and **must** accompany the motion. It is suggested that the client keep a log of all payments and dates. A current print out of the clerk's record must be brought to the hearing if the Order required payment through the clerk's office.

17. UNCONTESTED DISSOLUTIONS OF MARRIAGE

Uncontested dissolution of marriage are scheduled by the Judicial Assistant.

Counsel and all litigants shall have a proposed Final Judgment prepared, as well as submitting to the Court any agreements entered into between the parties, the final disposition sheet, and the vital statistics form. An Affidavit of Corroborating Witness, a valid Florida drivers license, a voters registration card are acceptable to prove residency, or testimony of a corroborating witness. Certified copies are obtained from the Clerk's office. Certified copies are pre-paid in Simplified Dissolution of Marriage cases only. Therefore, in all other cases you can obtain a certified copy from the clerk by paying the certification fee.

18. ADOPTIONS

Adoptions are scheduled by the judicial assistant AFTER the Court file has been reviewed by the Judge. After the Judge determines the case is complete, the Judicial Assistant will call to schedule a hearing time. Adoptions require approximately 5 minutes and the children are requested to be present at the hearing, except that children age 12 and over are required to attend and give written consent.

Section 63.062, Florida Statutes, identifies persons whose consent is required. Section 63.072, Florida Statutes, identifies persons whose consent can be waived and sets forth legal grounds for waiver of consent. Persons seeking to adopt sometimes have the belief that because consent may be waived that no service of process need be obtained. Although the adoption statute does not speak to this issue, it is the opinion of the court that since the petition for adoption is an original pleading, it must be served in accordance with the Florida Statutes and the Florida Rules of Civil Procedure. Chapter 48, F.S., provides for personal service on

individuals. Chapter 49, F.S., provides for constructive service. Service of process and notice of the hearing satisfies the due process of law. When setting a final hearing on the petition, the attorney must advise if service of process was obtained or a written consent was obtained from the person whose consent is required.

19. MOTION TO COMPEL DISCOVERY

Motions to Compel Discovery **will not be heard unless** the motion or the notice of hearing bears a certificate of the moving counsel stating that he or she has contacted opposing counsel and attempted to resolve the matter without a hearing but that the matter could not be resolved.

When preparing a motion to compel answers to interrogatories or production requests, please list in the motion the interrogatory propounded and if no answer, then so state. If you believe it is an evasive or incomplete answer, then so state, and restate the incomplete answer.

In the event production was requested, state what was produced and also what should have been produced. If no production, then state none.

Discovery should be open and cooperative, with the party in possession of the documentation or who has the documentation easily available supplying the discovery. Lack of cooperation increases costs and fees. Since case law permits an assessment of costs and fees against the party who insists on creating litigation, the court may consider the potential assessment of costs and attorney's fees if difficulties are created in discovery and attorney fees are otherwise allowable.

20. MOTION TO WITHDRAW AS COUNSEL

A written consent of the client or a hearing, with notice to the client, are the only way to withdraw.

If the Court grants a motion to withdraw, the order allowing withdrawal of counsel must reflect the following:

a) The client's name, address and telephone must be stated;

b) That all pleadings and notices are to be furnished to the client at that address;

c) That the client is responsible for notifying the Clerk of any changes of address.

21. SUBSTITUTION OF COUNSEL

Rule 2.060(i) Florida Rules of Judicial Administration, governs substitution of counsel. The Rule requires the WRITTEN CONSENT OF THE CLIENT to be filed in the court file. Stipulations signed only by the attorneys are not sufficient. A client may file a separate written consent or consent on the face of the stipulation. Motions without a written consent of the client will be returned.

22. PROPOSED ORDERS

Proposed orders should be presented at all hearings; otherwise, the hearing may be subject to cancellation by the Court.

In the event the proposed order submitted at hearing is unacceptable to the Court and must be redrafted or, if one has not been submitted, the attorney preparing the order is to submit the order to opposing counsel or party for approval as to form prior to submission to the Court. Proposed orders shall be accompanied by a cover letter stating that opposing counsel has or has not approved the form of the order. If a response can not be obtained from the opposing party please state that in your cover letter. The letter shall reference the title of the proposed order and the date of the hearing. This applies whether the proposed order is hand delivered to the judge's office or mailed. Any order submitted to the Court without a cover letter will be returned to the sender.

PROCEEDURE FOR REQUIREMENT FOR SUBMISSION OF PROPOSED ORDERS OR JUDGMENTS TO THE COURT FOR SIGNATURE

Those Orders which require resubmission to the Court or reflect rulings of the Court should be submitted to the Court within ten (10) calendar days of the Court's ruling.

The common practice of submitting an order or judgment to the court is to state in the cover letter that a copy has been furnished to opposing counsel and asks opposing counsel to contact the court directly if there is an objection. Some letters specify a number of days in which to contact the court with objections. Invariably, many orders and judgments are entered because of no contact with opposing counsel and an objection is filed or made subsequent to entry of the order or

judgment by the court. This necessitates expenditure of more time on the part of the court in hearings and entry of new orders or judgments. Therefore, the court does not sanction this procedure. The court will require the following procedure:

(1) Transmit copy of proposed order or judgment to opposing counsel by fax, delivery, mail, email etc with a request to notify you that the order or judgment accurately contains the rulings of the court.

(2) Opposing counsel shall within 2 business days in which to contact submitting counsel to indicate acceptance or to note objections.

(3) If objected to, counsel shall try to agree upon an order or judgment to be submitted to the court.

(4) The cover letter submitting the proposed order or judgment shall contain a statement basically as follows:

(a) I have submitted the proposed (order) (judgment) to opposing counsel and there is no objection to it being entered.

(b) I have submitted a copy of the proposed (order) (judgment) to opposing counsel and counsel objects to the entry of the (order) (judgment) and counsel for the parties have been unable to reach an agreement after discussing the issue.

Cover letters submitting rulings of the court without one of the above representations will be returned to the submitting attorneys for compliance with this procedure.

23. OBJECTION TO PROPOSED ORDERS OR JUDGMENTS

If opposing counsel objects to the entry of the proposed order prepared by the designated attorney, then it will be necessary to schedule a telephone hearing before the Court. Counsel and/or parties are urged to attempt to work out forms of orders without the assistance of the Court.

24. ORDERS AND AFFIDAVITS RELATING TO ATTORNEY'S FEES

All Orders requiring the opposing side to pay attorney fees must comply with **Florida Patients Compensation Fund v. Rowe, 472 So. 2d 1145 (Fla. 1985)** and **Standard Guaranty Insurance Company v. Quanstrom, 555 So. 2d 828 (Fla. 1990) and subsequent caselaw.** That is, the Order must state the number of hours the Court finds reasonable, the hourly rate the Court finds reasonable, the total amount the client has paid or is liable for, any enhancement formula and amount and the total

fees awarded.

For Affidavits to be sufficient to support an award of attorney fees, they must comply with the criteria of Florida Patient's Compensation Fund v. Rowe, 472 So 2d 1145 (Fla. 1985). Therefore, this Court will require the following:

a. Affidavit of Attorney Seeking Fees: This Affidavit must state the number of hours actually expended and the hours reasonably to be expended in concluding the case; (2) the hourly rate or other basis of the fee arrangement with the client; (3) the amount of the fee actually paid by the client or for which the client will be liable.

b. Affidavit of Witness Attorney: These Affidavits must state: (1) that the attorney has examined the file; (2) must specify the actual number of hours the attorney(s) seeking fees have spent or will spend in the case and that the specified number of hours are reasonable; (3) must state the hourly or other rate charged by the attorney seeking fees charged to the client and that such rate or basis is reasonable.

Affidavits which do not contain the foregoing information will not be considered as they are not legally sufficient.

25. COPIES AND ENVELOPES

The attorney preparing the proposed order or judgment shall furnish the court with a sufficient number of copies and stamped, addressed envelopes for mailing conformed copies. It is the responsibility of the attorney to forward copies of orders to his client.

If any order is submitted without copies or stamped envelopes, the order will be entered and filed in the Court file. It will be the responsibility of the attorney preparing the order to obtain copies from the Clerk's office.

26. FORM OF PROPOSED ORDER

The title of every order submitted shall contain the subject matter ruled upon and not merely "Order". If it is a final order, there is to be a designation in the title that it is final. The commencement paragraph shall contain the date(s) the hearing took place.

All orders submitted shall be on plain white 8 1/2 x 11 paper and shall not contain the attorney's letterhead nor paper with the attorney's name, etc. printed on the paper.

The submission of an agreed upon proposed order or judgment shall be considered a representation that the attorneys have read it and that it is submitted in good faith in accordance with the findings and rulings of the Court.

All orders must contain a certificate of service consisting of names and addresses.

27. DISQUALIFICATION OF JUDGE

Any Motion to Disqualify the trial judge must be brought pursuant to Section 2.160, Florida Rules of Judicial Administration. It must be filed within 10 days after discovery of the facts constituting the grounds for disqualification and must be promptly submitted to the Court for an immediate ruling. The Motion MUST COMPLY with the requirements of the rule. NO HEARING SHALL BE SCHEDULED ON THE MOTION AS THE JUDGE MUST RULE BASED ONLY UPON THE CONTENTS OF THE MOTION. The Motion must be presented to the trial judge (not the Clerk's office) and must be ruled upon immediately by examination of the contents and form of the Motion. The judge cannot take any further action in the case until the Motion is ruled upon. If the grounds are legally sufficient, the judge will enter an Order of Recusal. If not legally sufficient, the Motion will be denied. Unless it is a second or successive Motion for Disqualification, the judge shall not respond to or comment upon the Motion. If denied, a Motion for Rehearing will not be entertained. The remedy is a Petition for Writ of Prohibition to the Appellate Court.

28. VERIFIED PLEADINGS

There appears to be a misconception as to the meaning of a verified pleading when allowed by a statute or rule of procedure. There also appears to be a misconception of the meaning of language necessary for an oath or affirmation versus an acknowledgement. The question arises frequently in certain actions under the prejudgment writ of replevin statute and prejudgment writ of garnishment statutes.

An oath or verification requires a swearing or affirmation which would subject the person signing the pleading to a prosecution for perjury if the facts sworn to be true are false and the person knew they were false when sworn

to or affirmed. An acknowledgement is a statement by a person qualified to take oaths and acknowledgements that the person purporting to sign the document (such as a deed) produced identification or was known personally and stated that he or she was the person who signed the document, not that the content of the document is true.

An oath or verification which is qualified by "to the best of my knowledge and belief" does not fulfill the requirements of verification or oath or affirmation unless specifically permitted by the applicable rule or statute such as a personal representative of an estate who cannot have personal knowledge of all the facts but must rely on others. See Rule 5.020(e), Fla. Prob.R. and Section 731.104, Florida Statutes 1999 as examples.

The standard form for an oath or affirmation is substantially as follows:

Long form (preferred)

> "Before me, an officer duly qualified to take oaths, personally appeared ___________________________, (known by me personally) (who produced identification), and after being placed under oath, swears or affirms that the facts stated above are true and correct."

Short form

> "sworn to and subscribed before me"

An acknowledgement is totally different. A representative form as follows:

> "Before me, an officer duly qualified to take oaths and acknowledgements, personally appeared _________________________, (known by me personally) (who produced identification) and acknowledged before me that he/she was the person who signed the foregoing instrument."

Section 92.525, Florida Statutes 1999, defines verified pleadings or documents as the word is used in statutes, rules, etc. It includes an oath or affirmation before an officer qualified pursuant to Section 92.50, Florida Statutes, OR a written declaration stating "under penalties of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true," followed by the signature of the

person making the declaration. The operative language is "under penalties of perjury" because this takes the place of an oath or affirmation before an official and allows a verification which is untrue to be prosecuted as perjury. See Section 92.525(3), Florida Statutes, 1999. To only state that the facts are true and correct is insufficient and does not constitute a verified pleading. The statement must be under oath or affirmation before an authorized officer OR be verified by the words, "UNDER PENALTIES OF PERJURY."

Various hybrid forms of purported jurats are in use and do not meet the requirements. One seen often is as follows:

> "Before me appeared ____________________ who acknowledged before me that he/she signed the above [document][pleading] and did take an oath."

What is missing is no statement that the person stated the facts alleged were true or what oath the person took. Could it be an oath that the person is who he/she said he/she is?

The practice of bringing a pleading to the judge at an unscheduled time and waiting in the lobby for the order to be signed for pre-judgment writs of replevin or pre-judgment writs of garnishment is discouraged. In a rush because of pending SCHEDULED matters, mistakes are sometimes made in that the verification may not be adequately checked and a writ issued wrongfully which could subject the party requesting it to liability on the bond or otherwise.

29. TARGET OBJECTIVE ORDERS AND DEPOSITIONS

In civil cases, a target objective order is sent out to all parties establishing cut off dates for accomplishing various steps in preparation for trial. These are sent after the case has been noticed for trial and is placed on a trial docket. Experience indicates that cases are not actually ready for trial when noticed for trial and organized efforts are needed to get the case ready to be tried. Trial judges are bombarded just before a trial docket with numerous motions regarding discovery problems and late disclosures of witnesses and lack of discovery of expert opinions. The target objective order requires disclosure of expert witnesses by a cut off date. Frequently, the expert when disclosed, has not done the work necessary to render his or her opinion when disclosed, This then creates delays and last minute attempts to coordinate depositions. When a discovery deposition is

noticed, the party hiring the expert will often cross notice the deposition for a video deposition to be used at trial in lieu of the appearance of that witness. Sometimes a written opinion of the expert is furnished the other party well in advance of the deposition and at other times, no written opinion is furnished. At times, the expert discloses that he or she has not examined the party or done the work necessary to render an opinion and does not do so until just prior to the deposition. This places the deposing party at a great disadvantage because the opposing party has not had the opportunity to consult that party's expert to prepare a meaningful examination or cross examination.

Rule 1.390 and Rule 1.310, Fla. R. Civ. P. do not distinguish between a deposition for discovery purposes only and a deposition to be used at trial in lieu of the appearance of the witness. Problems develop when no written opinion of the expert is furnished to the other side and the party hiring the expert cross notices a video deposition for trial at the time the discovery deposition is noticed.

Because of the waste of judicial time and need for continuances when this situation develops, this court has determined that guidance for the attorneys trying cases in this division is necessary. Therefore, the following interpretations of the rules and this Court's procedure will be as follows:

A. Prior to the cut off date for disclosure of expert witnesses, all experts disclosed by either side must have done their examinations and work up to be able to render their opinion which may not be changed without good cause and notice to the other party in sufficient time to address the change prior to a jury being selected. A written opinion should be provided the other party prior to or at time of disclosure of the expert witness if possible.

B. The Court distinguishes between a discovery deposition ad a trial deposition. A video deposition for trial may not be cross-noticed at a discovery deposition set by the other party to learn the expert's opinion and basis for it. A deposition for trial to be used in lieu of the appearance of the expert in person shall be noticed as such and conducted after any initial discovery depositions have been concluded. Cut off dates may be enlarged by agreement of the parties or by court order.

The foregoing is necessary to provide each party a fair trial

and to save judicial time in hearing motions addressing these issues.

FINAL JUDGMENTS

30. FORM OF FINAL JUDGMENTS OF DISSOLUTION OF MARRIAGE

The final judgment must contain the following:

(a) Appropriate paragraphs relating to support, custody, abatement of support, etc., and not merely ratify and confirm the agreement, if any.

(b) Signature page must contain text. If the signature page contains only the "Done and Ordered" clause or a line for the judge's signature, then it will be returned.

(c) Show that conformed copies are being forwarded to all counsel and pro se parties, giving names and addresses.

(d) Identification information of the parties - name, address, age and social security number, as well as name and date of birth and social security number, if any, of children.

(e) If there are matters that cannot be completed by the final judgment or are ongoing such as alimony, child support, security, etc., the final judgment shall contain a statement that each party shall keep the other party advised of their current address and telephone number.

(f) Prior to reducing any support payments, the payer is to file a Supplemental Petition for Modification and current financial affidavits. If no affidavit was filed at the time the previous order was entered, one must be filed to state the financial position of each party at the time of entry of the previous order.

(g) All Final Judgments of Dissolution of Marriage shall be accompanied by a final disposition form, vital statistics form and a check in the correct amount made payable to the Clerk of the Court, Brevard County, Florida.

The attorney preparing the final judgment is to submit the proposed final judgment to opposing counsel for approval as to form prior to submission to the Court. All final

judgments are to be accompanied by a cover letter stating opposing counsel has approved the form of the order or objected to it. This applies whether the proposed order is hand delivered to the judge's office or mailed. If the attorneys cannot agree on the order, then a telephone hearing is to be scheduled by the court to resolve the issue.

TRIALS

31. SETTING FOR TRIAL

A notice of trial stating that the cause is at issue must be filed with the Clerk's office, accompanied by stamped, self addressed envelopes to all counsel of record and pro se litigants.

After receipt of the notice of trial, an order setting the case for scheduling conference or pretrial conference and trial will be entered and served upon all counsel and parties of record.

Unless set prior to the scheduling conference or pretrial conference, the Court may at that time set a date and time certain. Counsel and pro se parties should bring their calendars with them so that trials can be set to avoid conflicts.

When a trial date is given, no further notice of trial will be given by the Court except that the Court may designate counsel to send written notice to opposing counsel or pro se party who did not appear at the pretrial conference.

32. PRETRIAL CONFERENCE

The Court will expect that both counsel who will be trying the case and pro se litigants will be present at pretrial conferences.

Unless specifically excused by the judge, all attorneys are required to attend pretrial conferences, even if a time certain for trial has been set.

33. MOTION FOR CONTINUATION OF TRIAL

Any motion for continuance of a trial shall be in writing, signed by counsel for the moving party, and shall state when the cause will be ready for trial. In ruling upon

such motions, the Court will weigh the following factors:

(1) the legal grounds;
(2) when the case was filed;
(3) when the case was noticed for trial;
(4) when the motion was filed;
(5) if either party will be prejudiced;
(6) if the case has been previously continued;
(7) if a temporary support order is being complied with;
(8) the condition of the Court's calendar;
(9) whether the opposing party consents or objects.

Motions which have the effect of postponing the trial such as motions to amend pleadings or adding parties will likewise be considered in light of these factors. Late disclosure (after pre-trial conference) of expert witnesses may not be allowed if such late disclosure will necessitate a continuance.

Rule 2.085, Florida Rules of Judicial Administrative, places several duties upon trial judges and counsel should be aware of them. Subsection (b) requires that a trial judge take charge of cases at an early stage in the litigation and control the case by taking certain steps to a efficient resolution.

Subsection (c) requires that a trial judge SHALL APPLY A FIRM CONTINUANCE POLICY and that continuances should be few and good cause required for any continuance.

Subsection (d) contains time standards deemed reasonable to complete various types of cases. Cases exceeding the time standards are reported to the Florida Supreme Court and trial judges may be required to explain to the Chief Justice why cases are seriously beyond the time standards. Counsel should review the time standards in the rule, found in Florida Rules of Court, West Group Publication.

34. MODIFICATIONS

All modifications of a Final Judgment must be either served on or mailed to opposing party as a "Supplemental Petition for Modification" with the appropriate filing fees, if any. Supplemental Petitions for Modification must contain a paragraph advising that Respondent has 20 days from date of

service to file a response with the Clerk's office and copy to Petitioner. (If mailing count 20 days plus 5 mailing days). Modifications will be set for trial upon notice to the Court that the matter is ready to proceed to trial. A notice for trial must be accompanied by self addressed, stamped envelopes. Upon receipt of the notice of trial, the trial coordinator will set the matter for trial period and an order setting trial will be furnished to counsel for the parties or parties.

A trial is not necessary if the modification is stipulated to and signed by both parties and their counsel, if any. In this event, the stipulation may be forwarded to the Court along with a proposed order and required copies and envelopes.

DISSOLUTION OF MARRIAGE SUPPORTING DOCUMENTS

35. FINANCIAL AFFIDAVITS

Financial Affidavits must be filed timely by both parties. If a party fails or refuses to file a financial affidavit when required, opposing counsel should move for an order requiring the party to do so. Financial Affidavits shall be filed in uncontested dissolution cases even though child support or alimony has been agreed upon in a Marital Settlement Agreement. If the parties financial circumstances change during the pendency of the proceedings, amended updated Financial Affidavits must be filed as soon as such change is known. The Financial Affidavit should be in the appropriate forms required by the Florida Family Law Rules of Procedure.

36. CHILD SUPPORT GUIDELINE WORKSHEET

A child support guideline worksheet must be prepared and presented to the Court by counsel for the party requesting an award of child support, whether at a temporary hearing, contested trial or uncontested final hearing where a Marital Settlement Agreement has been reached. If opposing counsel does not stipulate to the correctness of the worksheet submitted, he or she must present a separate worksheet on behalf of his or her client.

37. EQUITABLE DISTRIBUTION WORKSHEET

An equitable distribution worksheet must be prepared and presented to the Court by both parties.

(a) As to real property: List all property and identify each by address and legal description. If the legal description is more than one paragraph, please attach a separate exhibit with the legal description and identify the property by reference name used by the parties. Please include the date of purchase, the cost of the property, current market value and any indebtedness related on the property. If there is a disagreement as to the value of the property, please identify the value placed upon the property by each party and the basis for the valuation. Copies of deeds may be used for the legal description.

If either party is requesting a special equity, please calculate it in accordance with **Landay v. Landay, 429 so. 2d 1200 (Fla. 1983**), **Griffiths v. Griffiths, 563 So.2d 773 (Fla. 3rd DCA 1990), and Donaldson v. Donaldson, 481 So.2d 101 (Fla. 2nd DCA 1986).**

(b) As to personal property: List all personal property by separate exhibit. Each item of personal property is to be listed with appropriate identification name as used by the parties. Please include the date of acquisition, the cost of the property, current value and any indebtedness related to the property. If there is a disagreement as to the value of the property, please identify the value placed upon said property by each party and the basis for the valuation. Also, state whether the property is claimed to be marital or non-marital property. A worksheet/exhibit is provided by the court to list the property, valuate it and provide the other information. This exhibit will be introduced into evidence and represent the parties testimony on those issues so that it will not be necessary to address each item unless the value or other matter is an issue.

38. AFFIDAVIT OF DUE DILIGENCE

Affidavits of Due Diligence in support of service by publication shall state, with particularity, the efforts made to locate the party. General, conclusory statements are insufficient to support service by publication and the affidavit must be based upon personal knowledge.

39. RESIDENCY WITNESS

A residency witness affidavit, valid Florida drivers license, voters registration, may be used in lieu of live testimony of a residence witness at all contested and uncontested dissolution trials or final hearings. Live testimony is also permitted.

40. UCCJA STATEMENTS AND ALLEGATIONS

Florida Statute 61.132 and 63.135 requires that the provisions of the Uniform Child Custody Jurisdiction Act be complied with by the filing of a verified affidavit simultaneously with any pleading requesting child custody or visitation or adoption or making the necessary allegations in the verified pleading. This applies to all dissolution of marriage cases whether contested or uncontested and any other custody proceedings required by the Act as well as adoptions.

41. ARREARAGE WORKSHEET RELATING TO CONTEMPT

Whenever enforcement of delinquent child support, alimony or other money payment arrearage is sought, moving counsel must present to the Court, with copy to opposing counsel or party, a written calculation sheet showing how the arrearage was calculated. Additionally, if payments were required to be made through the clerk of the court, a clerk's certificate current as of the date of the last payment due prior to the hearing shall be obtained and presented to the Court with copy to opposing counsel or party. If interest on the arrearage is requested, its amount and method of computation must likewise be shown on the written calculation sheet.

42. NOTICE OF CONFLICT - TRIAL SCHEDULES

Attorneys frequently file Notices of Conflict with the court when they have another case or cases scheduled during the same trial period before another judge. These are normally filed with the Clerk of Court and the judge never receives the notice. A copy of the notice should be sent directly to the judge. It is the responsibility of the attorney having the conflict to resolve it by arranging a continuance of the other trial(s) or a motion to continue this trial. The ATTORNEY must take action immediately when the conflict becomes known. A last minute claim of conflict will not be entertained by the court. Trial priorities are listed in Rule 2.052, Florida Rules of Judicial Administration:

(1) Criminal cases should prevail over civil cases.

(2) Jury trials should prevail over non-jury trials.
(3) Appellate arguments, hearings and conferences should prevail over trial court proceedings.
(4) The case in which the trial date has been first set should take precedence.

Other factors are cost, number of witnesses and attorneys involved, travel time, length of trial, and age of case, the lowest number taking precedence. If the attorney is unable to resolve it, the judge must be informed so that the judge can contact the other judge and attempt to resolve the conflict.

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CHARLES M. HOLCOMB
Circuit Judge

Revised June, 2001