

Legal Secretary's Handbook

2002

Introduction

This handbook was developed to assist legal secretaries and other members of law office staffs in dealing with the Judge's Office. It will be updated from time to time and will be posted on the Internet at the Eighteenth Circuit's Web Site. It will also be furnished to the various county bar associations in the Central Florida area for distribution. Suggestions to improve this handbook are welcome. All suggestions should be sent to the Court Administrator's Office at the Seminole County Courthouse, 301 N. Park Avenue, Sanford, Florida 32771. The Web Site is located at <http://www.18thcircuit.state.fl.us/> or <http://www.jud18.flcourts.org/>.

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I

DEALING WITH THE COURTS

The Courts are composed of several components, each having its own assigned duties and responsibilities. You must know how each of them function in order to understand the system. The following is a brief description of the major components.

II

The Court Staff

The Judge

Circuit Judges and County Court Judges are judicial officers who preside over their respective trial courts, make rulings and enter judgments determining the controversies brought before them. They hold public office and periodically run for election or reelection on a nonpartisan basis. Both Circuit & County Judges serve six year terms. All Judges are members of The Florida Bar and must have been members for at least five years before becoming a judge. Most judges have been members for considerably longer than five years.

Judges are bound by a strict code of ethics that limits their access to the public and litigants who appear before them. They are not allowed to speak to the litigants or their attorneys about a case unless the conversation takes place at a duly noticed hearing when all concerned have an opportunity to be present. **Members of law office staffs should not attempt to contact a judge directly for any reason and should never suggest that a client or witness do so.**

There are exceptions to the no contact rule. Attorneys or pro se litigants are authorized to contact the judge on matters that can be heard "ex parte" or without the other side being present. These hearings are on routine matters such as entry of a default or obtaining a commission for an out of state court reporter to take depositions. Often times the parties or their lawyers agree or stipulate to the entry of an order and, since there is no objection and appearance at a hearing is waived by the agreement, the matter can be heard "ex parte." Examples of authorized ex parte matters include:

- Entry of a default when no defensive pleading has been filed.
- Obtaining a Commission for an out of state deposition
- Entry of a stipulated order
- Uncontested dissolution (divorce)
- Uncontested adoption
- Name change
- Writ of Execution or Possession
- Writ of Replevin
- Order to Show Cause

Judicial Assistants

Each Judge has a Judicial Assistant. The Judicial Assistant is the closest staff member to the Judge.

Judicial Assistants have a variety of responsibilities including scheduling hearings, preparing orders and correspondence, communicating with other judge's offices and dealing with the public. The typical Judicial Assistant answers between fifty and one hundred telephone calls per day. Some Judicial Assistants are assisted by receptionists who screen calls, take messages and handle routine inquiries.

There are times when a Judicial Assistant is not available to take calls from anyone. Judges spend a lot of time in court and they often need the Judicial Assistant's undivided attention between scheduled hearings for short periods of time each day. If a Judicial Assistant is not available, your call will be returned as soon as possible or you might want to call back after thirty minutes or so.

Staff Attorneys

Staff Attorneys are law school graduates who are members of The Florida Bar or who are waiting to take The Florida Bar Examination. They are employed by the court to assist in research and the legal business of the court. They have a variety of duties, mostly behind the scenes. A staff attorney is bound by the same ethical limitations as a judge when discussing pending cases. Normally, a Staff Attorney is assigned to assist the same judge or judges for a year or more at a time.

Some judges have their staff attorney review motions prior to hearings for possible ruling. This routinely occurs on Rule 1.140 motions in civil cases (Motions to dismiss, for more definite statement, for change of venue or to strike improper matters) and may occur on others. See Sec. IV.

Coordinators

In Seminole County, each division of the court has a trial coordinator. These include the civil, criminal and family

divisions. The trial coordinators manage the trial dockets of the judges assigned in their divisions and perform a variety of other duties. Questions relating to the trial docket should be addressed to the coordinators and not the Judicial Assistants.

In Brevard County, trial coordinators perform similar functions as the coordinators in Seminole County but questions relating to the trial docket should be directed to the Judicial Assistant.

The Clerk of the Court

The Clerk of the Court is a Constitutional Officer who is elected every four years in a partisan election. The clerk has been referred to as "an arm of the court" but actually operates independently of the court except in the discharge of statutory duties and according to administrative orders. The clerk is responsible to keep the records of the court and maintains all of the court files.

Court files are located in the law department (civil files), the criminal division (criminal files), the probate division (probate, guardianship and mental health files) and the juvenile division (juvenile delinquency and dependency files). Any questions relating to court files should be directed to the appropriate section of the Clerk's office and not to the JA.

Trial Clerks

Trial Clerks are employed by the Clerk of the Court and are assigned to trial judges by the Clerk. Trial clerks keep minutes of court proceedings, act as evidence custodians, administer oaths to witnesses and jurors and perform other duties as directed by the judge. Law office staff should direct questions relating to minutes of court proceedings to the trial clerk.

The Sheriff

The Sheriff is an elected official who serves a four year term and is elected in a partisan election.

The Sheriff is responsible for courthouse security, transport of prisoners and administration of the county jail. The Sheriff is also the chief law enforcement officer of the county and is responsible to execute the judgments of the courts.

Each judge has a bailiff assigned who is a member of the sheriff's staff. The bailiff is responsible for the personal security of the assigned judge, opens and closes court and assists in witness management in the courthouse.

III

The Courts - Jurisdiction

The Circuit Court is the state's trial court of general jurisdiction. It considers civil cases where the amount in controversy is \$15,000 or greater, probate of estates, injunctions, mortgage and lien foreclosures, dissolution of marriage, adoptions, name changes and a wide variety of other actions. The criminal jurisdiction is limited to felony cases, including death penalty cases, unless a misdemeanor crime is charged along with a felony charge. Juvenile cases, delinquency or dependency are also assigned to the circuit court. Circuit judges may issue writs of habeas corpus, certiorari, quo warranto and all writs necessary to complete the jurisdiction of the court.

The County Court is a court of special jurisdiction. It considers civil cases where the amount in controversy is less than \$15,000, criminal cases which are classified as misdemeanors, violations of municipal and county ordinances, traffic infractions, and landlord and tenant disputes. The County Court also considers actions assigned by special administrative order. In Seminole County, these cases include simplified dissolution of marriage actions and injunctions for protection against domestic violence.

All judges are magistrates empowered to issue arrest and search warrants.

IV

SCHEDULING, RESCHEDULING AND CANCELING HEARINGS, SUBMITTING ORDERS AND OTHER HELPFUL HINTS

(Suggestions from JA's within the Eighteenth Circuit)

The Judicial Assistant is there to schedule hearings and manage the Judge's calendar and not to provide legal advice or tell you how to do your job. Please do not try to make your problem the

problem of the Judicial Assistant. However, the Judicial Assistant can help you with questions about how the Judge calendars different matters and will assist you with questions about scheduling. Please respect the fact that the Judicial Assistant is very busy and keep the following in mind:

Relationship with the JA

Be polite! Believe it or not, JA's are often under more stress than you are. It is important to cultivate a friendly and professional relationship with the JA.

When setting hearings:

a. First, make sure you are calling the JA whose judge is assigned to the case. Do not expect the JA to look up the judicial assignment for you. If you do not know which judge is assigned, call the clerk for that information.

b. Determine the courthouse in which the hearing or trial will be held. The addresses are located in The Florida Bar Journal. Do not ask the JA for the address. It wastes time.

c. Have the file in front of you.

d. Know the case number.

e. Know the caption (style) of the case (plaintiff and defendant).

f. Before you call the JA know the name of your motion or why you need a hearing. Ask your attorney if the motion is brought under Rule 1.140. Most motions to dismiss, for more definite statement, to strike portions of a pleading and for change of venue are brought under that rule. These motions may be scheduled on a special calendar.

g. Know how much time is needed for the hearing. Ask your attorney before you call the Judge's office.

h. Know the names of the attorneys for all parties involved.

i. It is unnecessary to ask for hearings "as soon as possible" or to ask, "Is this the soonest you have?" The JA is going to give you the next available time on the Judge's calendar for your particular type of hearing. If your attorney is not

available on the hearing date suggested by the JA, ask for another date. It is not necessary to tell the Judicial Assistant why a particular date or time is inconvenient. This will save you and the Judicial Assistant valuable time. However, if there is a reason why you need a hearing before or after a particular date, please say so. The JA may have to obtain special permission from the judge to schedule a hearing on an early or late date.

j. If your telephone system has the capability, arrange conference calls with opposing counsel's office to coordinate time for hearing. This will eliminate calling the JA's office several times.

When canceling hearings, know the date and time for which the hearing was scheduled. **Only the attorney or party not represented by and attorney who set the hearing can cancel it.** When setting hearings, Judicial Assistants note on the calendar which attorney is the scheduling party. If a case settles, please call the Judicial Assistant and cancel all scheduled hearings.

Hearings are scheduled, changed and canceled all during the day. You may call in the morning and find there is no time available on the calendar for four weeks. That afternoon a whole day may become available. JA's do not give out special time to just certain people. Hearings are scheduled on a first come, first served basis. Also, if you ask for 45 minutes and then cut it to 30 minutes trying to get on the calendar earlier, do not expect the Judicial Assistant to set the hearing for 30 minutes. Don't underestimate the amount of time you need trying to get an earlier date. This will only result in wasting time on the judge's calendar that other attorneys could use.

Some Judges require copies of motions for new trial or motions for rehearing to be sent to them before requesting a hearing time. The JA will tell you if your motion needs to be reviewed before a hearing can be scheduled. Do not send copies of motions or notices of hearing to the judge unless the JA requests it.

Some hearings will require the attendance of a large number of people or may require special court facilities or equipment. Be sure to let the JA know if your hearing will require any of these things.

General Information

1. UNLESS YOU HAVE AN EXTREME EMERGENCY, please do not ask a JA to locate your attorney or give him/her a message. Sometimes Judicial Assistants can't leave their office for hours at a time, much less try to find your attorney.

2. If a JA has to hang up on you abruptly, please don't think she is being rude. She may be having some sort of crisis in her office. Many times we have angry, emotional people come into our office, and they can make quite a scene which sometimes requires a bailiff to remove them from the courthouse. In civil divisions, Marchman and Baker Act hearings dealing with chemically impaired and mentally ill people can become explosive in just a matter of a few seconds. There are also times when the judge demands the JA's undivided attention, and she certainly is not going to tell the judge to wait until she finishes her conversation with you (that is unless she doesn't really care to continue her job).

3. Please do not give the judge's telephone number to your clients. Never tell your client to call the judge's office for any reason. You would be surprised at the number of calls we receive from persons who are being represented. We are legally and ethically prohibited from talking to them and when we have to go through "our routine" of telling them why, it just takes up time that we could use talking to you.

4. Every July the judges rotate division assignments. You should check with the court administrator's office to get a new list of assignments, room numbers and judicial assistant's names. Also, some divisions publish manuals which contain current information about a variety of matters and you should obtain a copy of the manual for your convenience. Some of the manuals are published on the Eighteenth Circuit Web Site.

Proposed Orders

1. Titles on orders should state their content, i.e., "Order Compelling Discovery". Please do not send proposed orders with only the word "Order" typed on it. Orders should be on a separate page, with their own caption and case number, not on the same page as the motion.

2. An order may "deny" a motion but should never "grant" it. Do not submit an order which "grants" a motion. These orders are generally not appealable and require the judge to search through the files to determine the ruling. This is frustrating and time consuming. For instance, an order should not read "The motion to

dismiss is granted." Instead, it should set forth the relief ordered such as "The complaint is dismissed. Plaintiff shall have twenty days in which to serve an amended complaint."

3. Please send required number of copies with the order along with stamped, self-addressed business size envelopes for each party. Do not staple envelopes to orders. Orders with insufficient copies or stamped, self-addressed envelopes may be filed without copies being distributed.

4. Make sure the order is titled in the proper court and that the judge's signature line is correct. If there are blanks for the month and date, make sure they are long enough for them to be handwritten. A circuit judge's title is Circuit Judge. A county court judge's title is County Court Judge. Please do not use different titles such as "Judge of the Circuit Court."

5. You should send a transmittal letter to the judge with an order with the caption or style of the case and the case number referenced. **The transmittal letter should be signed by the attorney sending it so the judge will know the attorney has reviewed the order for form and content. Secretaries and paralegals should never sign correspondence to the judge.** If the order is the result of a particular hearing, reference the hearing date. Transmittal letters should state that opposing counsel has no objection to the order if that is the case. If there is an objection, schedule a hearing for the entry of the order. If opposing counsel will not respond to requests for approval of the order, state what attempts have been made to obtain approval. The Judges' offices get hundreds of orders each week that have to be matched up with the court files. By sending a transmittal letter, your order will get to the Judge much faster for signing.

6. Do not put "Ordered at Titusville" or "Done and Ordered" on one page and the Judge's signature line on another. Also, avoid putting the "Done and Ordered" paragraph on a page separate from the text of the order. This could result in someone inserting unauthorized wording on the order.

7. All orders must have a "Done and Ordered" or "Ordered at Sanford" paragraph, a signature line for the judge and a list of persons for whom copies have been furnished.

8. Examples of typical orders in proper format are included at the end of this handbook.

Some Helpful Procedures for the Secretary

_ Do submit an original of motion to the clerk and not to the judge.

_ Do submit original orders to judge and not to the clerk.

_ Do list those who should get copies (including yourself) on the certificate of service of each order.

_ Do include enough copies of the order for distribution (including yourself).

_ Do include stamped, addressed envelopes unless there is pick up in the courthouse for your office - State Attorney, Public Defender, etc.

_ Do provide a transmittal letter signed by your attorney.

_ An order must be on a separate page with its own caption.

_ Don't submit orders with blanks unless the transmittal letter gives options for the judge to chose from. Call the JA or clerk for dates, etc.

_ Don't title an order simply "Order". It must include the style and subject.

_ Do not put "Done and Ordered" on one page and the judge's signature line on another. Also, try to avoid putting "Done and Ordered" paragraph on a page separate from the text of the order.

_ Circuit judge's title is Circuit Judge.

_ County court judge's title is County Court Judge.

_ Do not present an order to the judge until opposing counsel has approved it.

_ Do not submit an order which requires the judge to date it twice or which "grants" a motion.

_ The words "The Honorable..." should not appear under the judge's signature line.

_ Do not tell your client or witnesses to call the judge's office.

_ Use the form of the orders below for a guide.

V

FORM ORDERS

Forms and Language to Avoid

EXAMPLE I

ORDER

THIS CAUSE came on to be heard before me, the undersigned circuit Judge, this _____ day of __, A.D. 2002, and after hearing the testimony of the parties, the argument of counsel and being otherwise fully advised in the premises,

IT IS ORDERED, ADJUDGED AND DECREED that the Motion to Dismiss the Complaint is granted; and it is

FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff may amend the complaint within twenty days.

Done and Ordered this _____ day of __, A.D. 2002, at Sanford, Seminole County, Florida.

Judge of the Circuit Court

EXAMPLE II

ORDER

THIS CAUSE CAME ON TO BE HEARD before me, this ___ day of ___, A.D. 2002, upon the Defendant's Motion for Summary Judgment, and the court having considered the motion, the affidavits and the other matters of record, and being otherwise fully advised in the premises,

IT IS ORDERED AND ADJUDGED:

The Motion for Summary Judgment is granted.

CONSIDERED, ORDERED, ADJUDGED AND DECREED, in Melbourne, Brevard County, Florida this _____ day of ___, A.D. 2002.

Circuit Court Judge

Both of these forms are more suited to practice in the first half of the twentieth century before modern rules and forms were developed. The language is archaic and "unnecessarily redundant." The judge is required to date the orders twice and there is insufficient space to write in the month.

The titles of the orders do not disclose their content. Additionally, the second order "grants" a summary judgment but does not contain a judgment. This order is not appealable and accomplishes nothing.

The signature lines for the judge are incorrect and should simply read "Circuit Judge" or "County Court Judge". It is acceptable to put the judge's name under the signature line with the title on the next line but please spell the judge's name correctly.

The rules of civil and criminal procedure contain forms which are modern and which are sufficient in many cases.

Form Orders that are Correct

1. Titles:

Order Dismissing Second Amended Complaint
With Leave To Amend

Order Compelling Discovery

Order Imposing Sanctions Against Defendant Smith

Final Summary Judgment

Final Judgment for Defendant Smith

Order Dismissing Complaint Against Defendant Smith
With Prejudice

Order Denying Defendant's Motion to Dismiss
Third Amended Complaint

Order Striking Portion of Plaintiff's Fourth Amended Complaint,
Imposing Sanctions Against Defendant Smith, and Directing
Response to Interrogatories

2. Introductory portions of orders:

Example I.

This action is taken by the Court upon the Motion for Summary Judgment filed by the plaintiff. Upon Consideration of the Motion,

IT IS ADJUDGED:

Example II.

This action is taken by the court upon the Motion for Sanctions filed by the defendant. The evidence presented established that the interrogatories in question were served on January 1, 1998, and that no answers or objections were served within the time allotted by the Rules of Civil Procedure. The court ordered the plaintiff to answer the interrogatories by March 15, 1998, and the plaintiff has willfully failed to comply with the order. Accordingly,

IT IS ADJUDGED:

3. Adjudicatory portions of orders:

The Second Amended Complaint is dismissed.

This action is transferred to Orange County, Florida, for improper venue. The clerk shall transfer the file upon receipt of the filing fee.

This action is abated until arbitration is completed.

The words "and abusive language" are stricken from paragraph 2 of Defendant Smith's Amended Answer.

The affirmative defense of Accord and Satisfaction is stricken from the answer because it is not a defense in this action.

Defendant shall have twenty days in which to serve an amended counterclaim.

Plaintiff, John Doe, have and recover from defendant, Richard Roe, the sum of \$15,000 and costs in the sum of \$376.00 for a total of \$15,376.00, for which let execution issue.

Plaintiff, John Doe, shall take nothing by this action and defendant, Richard Roe, shall go hence without day and recover the costs.

Plaintiff shall serve a more definite statement within 10 days.

Defendant's objections to interrogatories numbered 1 - 7 are sustained. Defendant shall serve answers interrogatories numbered 8 - 20 within 10 days.

Plaintiff shall have an additional 20 days in which to serve an Amended Complaint.

The Motion to Dismiss is denied. Defendant shall serve an answer within 20 days.

4. Conclusion of Orders¹

¹It is acceptable to use either of these forms. Some firms prefer the order to read "Ordered at" and others prefer "Done and

Ordered at Titusville, Florida, this ____ day of
_____, 2002.

County Court Judge

Done and Ordered at Sanford, Florida, this _____ day of
_____, 2002.

John Doe²
Circuit Judge

Ordered." The former is the more modern form.

²It is optional to include the judge's name.