

HONORABLE PHILIPPE MATTHEY

Judicial Practice Preferences
Circuit Criminal
Section A
Courtroom 5

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Communication with Chambers

- The Judicial Assistant is not permitted to answer legal questions, give advice, or explain your situation to the Judge. Your opportunity to speak to the Judge happens in Court only.
- The Judicial Assistant is typically available from 8:30 AM – 12:00 PM and from 1:00 PM – 4:30 PM Monday through Friday, excluding court holidays. Although the Judicial Assistant may send communications outside of these hours, the Judicial Assistant may not respond to incoming communications.
- Communications and submissions of documents via e-mail are acceptable and preferred. However, all motions and pleadings must be filed with the Clerk of Court.
- Substantive *ex parte* communications sent to the Court, regardless of how they are sent, will be filed in the court file. Communications solely related to the scheduling of hearings are not substantive.
- Please be advised that all e-mail communications sent to the Court are subject to public records requests.

- In an effort to facilitate the efficient and prompt processing of cases, as well as to maintain an accurate record of conversations with chambers, Judge Matthey *prefers, but does not require*, that parties utilize electronic communication (e-mail) when contacting chambers. Telephone calls may be followed-up with an e-mail confirmation by Judge Matthey's Judicial Assistant.

Pretrial Conferences

Defendant's Presence

- Unless properly waived pursuant to Rule 3.180, defendants shall be present at all pretrial conferences.
- A defendant must be present if required by Court, regardless of any previous waiver.
- A defendant's presence *should not* be waived if counsel has not had an opportunity to discuss the case with them.
- A defendant's presence *may not* be waived if speedy trial has not or will not be waived and the case will be set for a trial.
- Unless previously approved by the Court, defendants must be present at the first and final pretrial conference prior to their trial.

Pretrial Motions

Filing of Motions/Orders

- As it may take several days for motions to appear on the docket, attorneys should provide the Court with a courtesy copy of any motion filed via email or in open court.
- Any proposed orders shall be submitted to the Court via email to the Court's Judicial Assistant.

Scheduling of Hearings

- A motion must be filed *prior* to requesting a hearing.
- Generally, non-substantive motions (most bond motions, motions filed pursuant to Rule 3.134, motions to compel, motions with brief legal argument only, etc.) may be scheduled for a hearing with the Court's Judicial Assistant.
- Generally, Judge Matthey will schedule all substantive/evidentiary motions in open court. Hearings will not be scheduled without a written motion being filed and copies provided to the Court and the State.
- When appropriate, and with consent of opposing counsel, some *ore tenus* motions will be considered in open court.
- If a motion has not been heard prior to the trial, attorneys will be prepared to litigate any remaining issues on the day of trial, unless good cause shown.

Defendant's Presence

- Cases will be set for a pretrial conference at the same time as substantive motion hearings.

- Absent prior Court approval and good cause, the defendant *must* be present for all pretrial motion hearings.
- If a ruling is made at the time of the motion hearing, attorneys should be prepared to discuss the case and the defendant should be prepared to resolve the case or set it for trial.

Discovery Issues

- Opposing counsel must confer and make a good faith attempt to resolve discovery matters without a hearing.
- If a hearing is necessary, it should be scheduled either in open court with opposing counsel present or with the Court's Judicial Assistant *and* prior agreement of opposing counsel.

Appearance/Conduct at Hearings

- All persons appearing before the Court shall be in appropriate attire.
- *Shorts and/or sleeveless shirts are not permitted.* Absent prior authorization from the Court, hats must be removed in the courtroom.
- Do not chew gum in the courtroom.
- Do not sleep in the courtroom.
- Do not bring children in the courtroom without Court approval.
- Electronic devices may not be used in the gallery.
- Persons appearing remotely should be cognizant of their appearance and surroundings. Persons appearing via Zoom shall be dressed in appropriate attire for the manner of their appearance.
- To maintain proper decorum, and to avoid distractions, the Court reserves the right to remove those who fail to comply with these instructions.

Proceedings/Remote Appearances

Arraignments

- If a written plea of not guilty is filed, the appearance of defense counsel and the defendant is waived.
- In custody defendants who are represented by an attorney are not brought to court for Arraignments.

Pretrial Conferences

- In accordance with Rules 2.530 and 3.116, the use of communication technology is permissible for remote appearances at pretrial and status conferences.
- As the Court's dockets are large, and court sessions busy, and in an effort to minimize unnecessary distractions of the Court's Judicial Assistant, absent an *unanticipated exigency*, any request to appear remotely at a pretrial conference must be made *at least one week prior* to the scheduled pretrial conference. A written Motion and proposed Order shall be filed with the Judicial Assistant. If the request is granted, the Court will call the attorney via telephone from court, so a phone number should be included in the Motion and Order.

- Untimely or repeated requests to appear remotely, absent good cause shown, will not be permitted.
- As most pretrial conferences are conducted during mass-motion calendars, sometimes with a large number of cases to be called, remote appearances may be taken at the end of the docket.
- All participants appearing remotely should be ready and available when the Court is ready to call the case. *Do not contact chambers to advise the Court's Judicial Assistant that a participant is "waiting," or "ready" for the case to be called.*
- The Court reserves the right to require a defendant to appear in person.
- Remote appearances are not permissible for appearances where the Court has directed a "mandatory" appearance.
- Absent prior court approval, telephonic appearances or waivers of appearance are not permissible for the first and final scheduled pretrial prior to a trial.

***Most of the non-trial court hearings are set as Pretrial Conferences under Fla. R. Crim. P. 3.220(o). While Pretrial Conferences are typically brief, they are a critical event in fulfilling the obligation of both judges and lawyers to "conclude litigation as soon as it is reasonably and justly possible to do so." Fla. R. Gen. Prac. & Jud. Admin. 2.545. The Pretrial Conference serves as a regular opportunity for the prosecuting attorney and defense attorney to engage in discussions related to plea negotiations, discovery matters, scheduling of depositions, and trial preparation. The Pretrial Conference also provides an opportunity for an in-custody defendant to consult with his or her attorney. It has been the Court's experience that counsel's and/or defendant's appearance at Pretrial Conferences by audio-video communication technology interferes with rather than advances these objectives. While the Rules of Criminal Procedure permit waivers of appearance and appearance through audio-video communication technology, in person appearance is highly preferred and strongly encouraged.

Evidentiary Matters

- In accordance with Rule 2.530, the use of communication technology is permissible for appearance at a motion hearing.

- A party seeking to utilize such technology must file a motion *in advance* of the hearing, the opposing party must consent, and there must be an express waiver of any applicable right of confrontation.

In All Matters

- Remote appearances (evidentiary hearings) will be by way of the audio-video platform Zoom. Remote Pretrials (non-evidentiary hearings) will be by way of the telephone.
- Matters requiring the taking of testimony *must* be conducted via Zoom, with the participant's camera activated.
- Zoom meeting and login information will only be sent to attorneys or self-represented parties. It is the attorney's/self-represented party's responsibility to share the login information with clients, court reporters, witnesses, or anyone else who is to attend the hearing.
- It is also the attorney's/self-represented party's responsibility to share these guidelines with invitees and ensure their compliance.
- No unauthorized recording of remote hearings is permitted. This includes, but is not limited to, audio recording, video recording, or screen captures.
- All participants shall dress appropriately and govern themselves accordingly as if appearing in-person.
- Upon joining the meeting, *all participants shall rename themselves*, if necessary, so their identity is easily identifiable to the other participants. Participants should be cognizant of how they are identified, as inappropriate names will be admonished and may be excluded to the virtual court hearing.
- Participants should be cognizant of their surroundings and background. Virtual backgrounds are acceptable, but should not be a distraction. Similarly, virtual backgrounds should not contain offensive images or messages.
- Participants should make their best efforts to limit background noise. Participants should keep themselves muted when not talking to avoid disruptions.

Considerations Regarding Remote Appearances

- Due to nature of a criminal division, including large dockets and a frequent inability to speak with either their client or the assigned prosecutor, the Court strongly suggests that attorneys request remote appearances sparingly.
- Remote appearances should not be utilized for older cases or cases where a defendant is in custody.
- The manner of remote appearance is within the discretion of the Court.
- Should the Court believe that an attorney is misusing the ability to appear remotely, or by doing so causing unnecessary delay, or otherwise frustrating the efficient handling of a case, the Court may find good cause to decline such future requests from that attorney.
- When setting future hearings, the Court may require the in-person attendance of either the Defendant or their counsel. Absent good cause, such a requirement will prevent the ability for a remote appearance.

- A failure to appear during a remote proceeding may nonetheless result in the Court issuing a *capias*.
- Generally, remote appearances are taken at end of the calendar. However, participants appearing remotely should be ready for the case to be called at any time after the start of the calendar, as Court cannot predict when cases will be ready to be called or how long a calendar it will take.