Policies and Practice Guidelines

1. ADMINISTRATIVE PASSES

Instead of calling a case during calendar, counsel can get an administrative pass under these conditions:

1. Counsel emails Judicial Assistant Kristy Bend at kbend@coj.net, with a copy to opposing counsel, stating what has been done on the case since the last pass date, what will be done on the case before the next pass date, and the requested pass date.
2. All counsel agree that it is not necessary to call the case during calendar.
3. **An email to request an administrative pass must be sent by 2:30 the day before the next scheduled appearance**.
4. All that is needed from the Court is an additional pre-trial date.
5. The requested pass date is no more than three weeks from the last pass date.
6. The case has not been administratively passed for more than two consecutive pass dates.
7. The requested pass date is more than two weeks before the final pretrial conference. Final pretrial conferences may not be administratively passed or cancelled.

2. MOTIONS FOR CONTINUANCE

Whenever possible, motions for continuance should be written and filed before the final pretrial conference. Oral motions for continuance made at final pretrial should be rare exceptions and backed by good grounds for making the motion late. By Rule, Motions for continuance must show good cause, FLA. R. CRIM. P. 3.190(f)(2), and they must "be accompanied by a certificate of the movant's counsel that the motion is made in good faith." FLA. R. CRIM P. 3.190(f)(4).

3. BAIL MOTION PRACTICE

Bail motions (or proposed orders submitted with them) should tie the facts of the case and the defendant's circumstances to Florida's statutory and rule-based factors, Fla. Stat. § 903.046(1); FLA. R. CRIM. P. 3.131(3), that govern setting bail.

Several of the statute and rule-based factors relate to the defendant's criminal record, such as prior convictions (particularly for violent crimes), prior failures to appear, and prior flight. Counsel for the defense and state should be able to address the defendant's record for the court's guidance. Preferably, this will be done before the hearing in the motion or a written response to it.

Bail motions (or a response to one) should be submitted with a proposed order in Microsoft Word form that ties the facts of the case and the defendant's circumstances to the statute and rule-based bail factors that justify the requested conditions of pre-trial release. For counsels' convenience, links to forms for bail orders in the general format the Court often uses are found at https://www.jud4.org/Ex-Parte-Procedures-and-Dates under this memo.

Counsel should be familiar with the following controlling precedent: *State v. Paul,* 783 So. 2d 1042 (Fla. 2001) (discussing circumstances in which defendants may be detained without bail); *Magbanua v. McNeil,* 310 So.3d 138 (Fla. 1st DCA 2021) (renewed or subsequent bail motions should state the changes in circumstances that justify the new request for modification of earlier-imposed conditions of pre-trial

release); *Mehaffie v. Rutherford*, 143 So. 3d 432 (Fla. 1st DCA 2014) (discussing affordability of bail or bond).

4. PRE-TRIAL MOTION PRACTICE

A. Hearings

No hearings will be scheduled on non-emergency motions until after the motion is filed with the court and opposing counsel has had a reasonable time to review it.

B. Unopposed Motions

Whenever possible, the lawyers should confer before filing to see if a contested motion can become an agreed motion. If nothing else, some issues can become agreed on, while others remain contested.

If a motion is unopposed or a proposed order is agreed to, the movant should state in the motion who agreed for the opposing party. If appropriate, include information about the victim's consent to the proposed relief. This information needs to be included in the motion or attached to it as an exhibit so it becomes a matter of record that all parties and the court can rely on. Keeping unopposed motions off the calendar saves everyone time.

C. Contested Motions

Florida Rule of Criminal Procedure 3.190 requires "Each motion or other pleading [to] state the ground or grounds on which it is based." Stating the "grounds" for a motion will usually entail at least the following:

1. What is the relief sought?
2. What are the undisputed facts, or facts that must be taken as true, that are pertinent to granting or denying the relief sought?
3. What are the disputed facts, if any, pertinent to granting or denying the relief sought?
4. What constitutional provisions, statutes, rules, or case law authorize the relief sought?

Beyond that, effective advocates will give due consideration to addressing the following in motions or written responses to them:

5. Who bears the burden of establishing entitlement to the relief sought?
6. What is that burden, i.e. probable cause, preponderance of the evidence, clear and convincing evidence, beyond a reasonable doubt, etc.?
7. Is granting or denying the relief sought discretionary or mandatory?
8. What laws, precedent, and rules militate against the relief sought or, perhaps, forbid it?
9. What, if any, findings are required by law to be made before granting or denying the relief sought?

Effective advocacy entails presenting answers for these questions to the court directly and concisely, whether in writing or orally. This does not mean that motions or responses to them have to be a list of these questions with answers or even anything close to that. However, an effective advocate seeks to make it as easy as possible for a judge to rule her way and do so with an oral ruling or written order that can withstand appeal. Particular thought should be given to no. 9. It is easy for the lawyers and the court

to overlook requirements for the court to make certain findings before granting or denying many kinds of relief.

E. Case Law

Courtesy copies of cases sent to the Court should be emailed in .pdf format. There is no need to send hardcopies. If case law will be relied upon, cite it in the motion or response, and use pinpoint citations. Try to avoid sending uncited cases to the court or just sending copies of cases instead of a written opposition to a motion. Once the research is done, it only takes a short while to prepare a court filing that briefly describes the legal propositions the cases are offered for, with pinpoint cites. In addition to being more effective advocacy than sending copies of uncited case law, filing a succinct statement of authorities provides a complete record for later use and appellate review.

5. Proposed Orders

Submitting well-prepared proposed orders that will withstand appeal is a hallmark of effective advocacy. Often, a proposed order largely mirrors a well-written motion. Answering the questions listed in the Contested Motions section will produce a solid proposed order. Much of the time, a good order begins with a brief statement of the facts pertinent to the motion being ruled on, followed by a statement of the legal standard or rule under which the court decides the motion, then an explanation of why the pertinent facts as applied to the controlling law requires or at least supports making the proposed ruling. Providing the court with proposed orders that make a record of why the ruling should be made and why it is legally correct is extraordinarily helpful.