

Policies and Practice Guidelines

1. ADMINISTRATIVE PASSES

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

- A. 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.
- B. All counsel agree that it is not necessary to call the case during calendar.
- C. **An email to request an administrative pass or add a case to the calendar must be sent by 2:00 the day before the next scheduled appearance.**
- D. All that is needed from the Court is an additional pre-trial date.
- E. The requested pass date is no more than three weeks from the last pass date.
- F. The case has not been administratively passed for more than two consecutive pass dates.
- G. 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. CALENDAR

The number of cases on Mondays' calendars is minimized to allow for starting jury selection promptly. Counsel must prepare for calendar ending early on Monday, i.e. show up at 9:00 a.m. Avoid putting cases on for ordinary pretrial hearings on Tuesday and Wednesday. When the division is in trial, those days will be filled addressing competency reviews, specially setting hearings, arraignments (usually Tuesdays), plea bargains, and final pretrial conferences (usually Wednesdays). Expect long calendars on Thursdays.

3. BAIL MOTION AND PRETRIAL DETENTION AND RELEASE

Bail motions 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); *Mehaffie v. Rutherford*, 143 So. 3d 432 (Fla. 1st DCA 2014) (discussing affordability of bail or bond), 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 ready to address the defendant's record for the court's guidance.

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. *Magbanua v. McNeil*, 310 So.3d 138 (Fla. 1st DCA 2021).

Pretrial detention is an evidentiary matter. *Perry v. State*, 842 So. 2d 301, 303 (Fla. 5th DCA 2003). Unsworn statements of counsel, whether made in writing in court filings or orally in court are not evidence. *Moeller v. S.E. Fla. Behav. Health Network, Inc.*, 392 So. 3d 579, 587 (Fla. 4th DCA 2024). Motions to impose pretrial detention by revoking bail must have some evidentiary support, such as attaching a sworn arrest and booking report or filing a timely request for judicial notice.

4. PRE-TRIAL MOTIONS

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. Facial sufficiency for motions to suppress will be determined before setting a hearing. FLA. R. CRIM. P. 3.190(g)(3) & (h)(2) (2025).

B. Unopposed Motions

Whenever possible, the lawyers should confer before filing to see if a contested motion can become an agreed motion. Alternatively, some issues can become agreed on, while others remain contested. Keeping unopposed motions off the calendar saves everyone time.

If a motion is unopposed or a proposed order is agreed to, the movant should state in the motion who agreed on behalf of 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.

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 that must be resolved before the court rules?
4. What constitutional provisions, statutes, rules, or case law authorize or prohibit 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, if any, findings are required by law to be made before granting or denying the relief sought?

Particular thought should be given to no. 8. 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 to kbend@coj.net 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. Avoid sending uncited cases to the court or just sending copies of cases instead of a written opposition to a motion.

5. PLEA BARGAINS AND PLEA FORMS

Plea bargains over the victim's objection or where the victim wants to address the Court should be specially set. They should not be addressed during calendar unless the parties have received advance permission from the Court.

Use the current versions of the plea forms found here: <https://www.jud4.org/court-administration/felony-plea-forms>. The count, charge, etc. box should contain only the crimes that the defendant is pleading guilty to. The fine box should only contain fines that are being assessed. Special conditions of probation should be listed in the Probation Conditions section, not the Negotiated Sentence section. That section should just list the length of the probationary term. For sentences involving a withhold of adjudication of guilt, jail time is a special condition of probation. Fill out the parts pertaining to costs, restitution, and Marsy's Law compliance.

6. TRIALS

A. Trial Order

Read it for every case you have that gets set for trial. It changes over time and can be different from case to case.

B. Motions for Continuance

Motions for continuance must show good cause, and they must be made in good faith. FLA. R. CRIM. P. 3.190(f) (2025).

B. Trial Schedule

The Court conducts calendar prior to trial. When trials are ongoing, calendar often starts at 8:30 a.m. instead of 9:00 a.m. Expect jury selection to start between 9:30 and 11:00 a.m. on Monday. Expect trial proceedings to start at 10:00 a.m. on Tuesdays and thereafter. Expect trial proceedings to end between 5:00 p.m. and 6:00 p.m., other than deliberations.

7. SENTENCING HEARINGS

The State should provide defendant a scoresheet prior to a sentencing hearing, including one conducted as part of a plea bargain. The Court must be provided with a scoresheet prior to imposition of sentence, *Navarro v. State*, 416 So. 3d, 1217, 1222-23 (Fla. 5th DCA 2025), ideally at the beginning of the sentencing hearing. Counsel should be prepared for the Court to judicially notice the court files for any actions that appear on the scoresheet.

8. ZOOM APPEARANCES

Know the laws and rules that apply to Zoom appearances. The first and last name of anyone who wants to participate in a hearing by Zoom must be displayed to be admitted. Video should be off and microphones muted while waiting for a case to be called. Zoom participants should treat a Zoom appearance like any other court appearance. Distracting backgrounds should be replaced with software-generated backgrounds or blurred out. Participants should not be walking around, driving, etc.