Enforcing or Changing a Visitation and Shared Parenting Order

Enforcing an order for contact with your children and a shared parenting order: The judge can enforce an existing visitation and shared parenting order only if you file a motion and set it for hearing before the judge assigned to your case. So, if contact with your children is not happening and you want contact with your children, you must file the proper documents to have a hearing with the judge assigned to your case. Only the judge assigned to you case can enforce a visitation and shared parenting order. Enforcement of a visitation and shared parenting order cannot be made at the "Pay or Appear" hearing. If you cannot afford to hire a lawyer to help you with the enforcement of your contact with your children, you may go to Family Court Services, 335–2247, Lee County Justice Center, Room 1331 on the first floor, 1700 Monroe St., Fort Myers, Florida, and that office can help you file the proper documents.

If you want to <u>enforce</u> a visitation and shared parenting order you must file a motion to enforce the order and set it for hearing. The procedure for filing a motion and setting it for hearing is explained below.

Changing a visitation and shared parenting order: If you believe your visitation and shared parenting order needs to be changed you must file the proper documents to have a trial with the judge assigned to your case. Only the judge assigned to you case can decide if a change can be made. Changes to your visitation and shared parenting order cannot be made at the "Pay or Appear" hearing. If you cannot afford to hire a lawyer to help you with a change to your order, you may contact Family Court Services, 335–2247, Lee County Justice Center, Room 1331 on the first floor, 1700 Monroe St., Fort Myers, Florida, and that office can help you file the proper documents.

If you want to <u>change</u> an order for contact with your children and a shared parenting order, the proper document to file and serve on the other side is a "supplemental petition to modify" and the petition must state facts which demonstrate a change in circumstances since the prior order that justify a change in the prior shared parenting and contact order. The original supplemental petition must be filed in the court file and a copy "served" on the other side. A copy of it must be served on the other side with a summons that requires a response within 20 days. After a response is filed, or after a default is entered if no response is filed, the petitioner must file a Notice for Trial. The procedure for setting cases for trial is spelled out below.

The following paragraphs explain how to mediate a case, set a petition for trial, and how to set a motion for a hearing:

<u>Trials</u>

A. . <u>Notice for Trial</u> "Petitions" are heard at "trials." "Motions" are heard at "hearings." The procedure for setting a hearing is explained below. If a party wants a trial date on a petition, the party must file a Notice for Trial, as required by Rule 12.440. Upon the filing with the clerk of a Notice for Trial under Rule 12.440, the clerk sends a copy to the court mediation department and the mediation department prepares an order for mediation for the judge to sign. The parties must attend at least one mediation conference before the judge will set a trial date. If the mediation is unsuccessful and the parties do not settle the case, the mediation department will notify the judge's office that mediation was unsuccessful. The judge will then sign a trial order that sets the case for trial and send a copy to the parties.

B. . <u>Trials limited to the time estimated in the Notice for Trial</u> As with hearings, a recurring problem is that a party noticing a case for trial does not ask for enough time. Rule 1.440(b) and Rule 12.440 require the party filing a Notice for Trial to include an estimate of the time required for the trial.

As with hearings, in general, the parties are entitled to equal time to present their cases and a party filing a Notice for Trial should estimate the time he or she needs and then double it. The judges rely upon a party's estimate of the time required to try a case when setting the trial docket. If the case cannot be concluded within the time requested, the court may have to continue the case to the next available time, which is usually months away.

C. . No pretrial conferences or pretrial statements unless requested by a party In general, pretrial conferences are not scheduled by the judge when a trial order is signed. Any party may set a pretrial conference or case management conference on the court's hearing docket at any time. Further, no pretrial statement is required. Any party may make a motion for pretrial statements and set the matter for a hearing.

D. . Courtroom decorum Parties and lawyers should review a copy of Administrative Order 2.18 of this circuit concerning "Standards of Courtroom Decorum." The judges expect parties and lawyers to adhere to this rule in all hearings and trials.

E. . Continuance of trial - written stipulation required For continuances of trials, if the parties agree to a continuance, a written stipulation signed by the parties themselves, as well as their attorneys, if any, must be filed before the court can grant a continuance. Rule 2.085; Rule 12.460.

F. . Cancelling trials that are settled If a trial is cancelled because the parties have settled the case, one of the parties must call the court's judicial assistant and notify the judge the case has settled.

G. . Mediation required before trial and may be continued if not mediated Mediation is required in all cases before trial. If the parties do not mediate before trial, and no order dispensing with mediation has been entered, the case will be continued and must be renoticed for trial on the next available trial docket.

Hearings

A. . General policy "Motions" are heard by the judge at a "hearing." "Petitions" are heard at "trials." The procedure for setting a petition for trial is explained above. Motions are set for hearings by the judicial assistants on a "first come, first serve," "if time is available," and "as soon as possible," except for "emergency" motions. No preferences are given. Parties are expected to be cooperative and flexible with each other in scheduling and rescheduling hearings.

B. . How to get hearing time with the judge Hearings are scheduled by calling the judicial assistant ("JA") for the judge to whom the case is assigned. Parties must contact the clerk of court to find out the judge assigned to any case. The JA's keep the calendars of the judges and schedule the hearings. Every Thursday, the JA's prepare a list of the dates and times of the cases to be heard the next week, called the "docket," and deliver that list to the clerk. The clerk delivers the files for the next day's hearings to the judge's office the day before the hearing is scheduled.

C. . Coordinating hearing time with opponent Parties are expected to be flexible in scheduling hearings. A party asking for hearing time may send out a Notice of Hearing without notifying the opponent of the hearing time or otherwise clearing that time with the opponent's calendar. However, if the opponent has a reasonable basis for claiming a conflict in the scheduled time, the parties should agree to reschedule the hearing to a mutually agreeable time. The circumstances creating the need for the hearing and the schedules of the parties must be balanced by the parties. Again, cooperation is expected. If the parties cannot agree to reschedule a hearing, the continuing of the hearing will have to be decided by the judge at a hearing.

D. . Notice of Hearing is prepared by counsel or party Parties prepare, file and serve all Notices of Hearing for any hearing time scheduled with the judicial assistant. When a party calls the judge's judicial assistant, the judicial assistant schedules the hearing time on the judge's calendar. It is the responsibility of counsel or the party requesting the hearing to prepare, serve and file a Notice of Hearing. If a Notice of Hearing is not served on the opponent and filed with the clerk within a reasonable amount of time before the hearing, the court cannot hold the hearing and the matter will be continued.

E. . Hearings are limited to the time requested A recurring problem is that litigants do not ask for enough time when scheduling a hearing or a trial. When a party calls to schedule hearing time, the judicial assistant will ask the party how much time will be required for the hearing. **The party opposing the motion is entitled to equal time; therefore, a party requesting a hearing should determine how much time he or she needs and then double the estimate when calling for a hearing time. The party requesting hearing time will be held to the time requested.** The court schedules hearings based upon the accuracy of the estimate. If the next hearing is not canceled and the next case is ready to proceed, the matter may be continued to the next available hearing time. Further, if the opponent has not had adequate time to respond at the hearing, because the time has run out, the court may continue the hearing to allow the opponent sufficient time to respond.

F. . No "piggybacking" or cross-noticing of motions Once a motion is scheduled on the court's docket, subsequent motions may not be "piggybacked" onto the time reserved for the first motion because the time reserved was only adequate for the first motion. If later motions are scheduled in the same case, the court's assistant may reschedule all pending motions to an earlier or later time so that all motions in a particular case are heard at the same time.

G. . Structure of hearings The court expects every hearing to proceed: (1) Movant argument, (2) Opponent response, (3), Movant rebuttal if the movant has reserved some of its time for rebuttal and if not, no rebuttal and the hearing is over. If the motion requires evidence, witnesses may be called and the same structure should be observed.

H. . Courtroom decorum Parties and lawyers should review a copy of Administrative Order 2.18 of this circuit concerning "Standards of Courtroom Decorum." The judges expect parties and lawyers to adhere to this rule in all hearings and trials.

I. . Motions, etc., filed within 10 days of a hearing In general, a document delivered to the clerk for filing in the court file **will not** make it to the court file until ten (10) days after it is filed. All documents are microfilmed before filing. A document waiting to be microfilmed is not in the court file and the judge cannot read it before the hearing, although a copy may be in the clerk’s computer. Documents are scanned into the computer the same day they are delivered to the clerk for filing. Nevertheless, if a party has filed a motion, notice or other document within 10 days of the hearing time, it is a good idea to bring to the hearing a copy of the document which the party wants the court to consider.

J. . Bring copies of exhibits and law for the opponent Parties should bring three copies of any exhibits offered at any hearing or trial for the opponent, whether these documents have been produced or discovered during the course of the litigation or not. Likewise, three copies of any statutes, case law, or other legal authority that will be submitted to the court should be brought to court, one for each party and one for the judge.

K. . Only the movant may cancel Only the movant setting a hearing can cancel the hearing. An opposing party or lawyer cannot cancel a hearing time. The judicial assistant may move a hearing to adjust the court's calendar or to get pending motions in the same case heard at the same time. The party

requesting the hearing time in the first place may cancel the hearing time at any time and for any reason. The party opposing the motion and hearing time cannot cancel without the agreement of the party who set the hearing in the first place, or, if there is no agreement, without filing a motion to continue and setting it for a hearing.

L. . A hearing time canceled is lost to the movant A time scheduled on the court's docket for a particular motion cannot be "used" by the lawyer or party scheduling the motion for another motion if the first motion is canceled. All requests for hearings are treated equally, that is, "first come, first served." Time cannot be "reserved" on the court's docket. Motions should be filed and served as allowed by the Family Law Rules of Procedure.

M. . Canceling hearings If the need for the hearing time no longer exists, the party or lawyer setting the hearing is expected to call the court's judicial assistant and cancel the hearing time on the judge's calendar. This is common courtesy to the court and other litigants needing hearing time. The judges read the files before the hearings but this is not necessary if the hearing is canceled.

N. . Telephone hearings Each family division judge handles telephone appearances differently, depending upon what is appropriate in each case. Parties must contact the judicial assistant for each family division judge in advance of the hearing to determine how that judge will handle an appearance over the telephone. In general, *argument* by a party or an attorney may be heard over the telephone. Rule 2.071. The party requesting a telephone appearance must notify the opposing party in writing and the court's judicial assistant of the intention to appear by telephone. Rule 2.071(b). How the party gets before the court on the telephone - whether called collect by the judge or whether the party must call in to the judicial assistant at a specific time - must be worked out in advance with each judicial assistant for each hearing. No *testimony* may be given over the telephone at any hearing without the consent of all parties. Rule 2.071(d).

O. . Continuance of hearing; contents of motion If the parties cannot agree to reschedule a hearing, the movant can cancel the hearing time at any time but the opponent must make a motion to continue the hearing, which can be set on the regular hearing docket. If the parties agree to reschedule a hearing, or if the parties settle the matter to be heard and the hearing time is no longer needed, it is the responsibility of the party who asked for the hearing time in the first place to notify the court's judicial assistant so that the hearing time is removed from the court's calendar. If a party opposing a hearing files a motion to continue, the motion must state good cause for granting the motion. Note: For continuances of trials, if the parties agree to a continuance, a written stipulation signed by the parties themselves, as well as their attorneys, if any, must be filed before the court can grant a continuance. Rule 2.085; Rule 12.460.

P. . Hearings in DV or RV cases; call DV Unit not JA If hearing time is needed in a DV or RV case, the party or counsel must call the DV Unit of the clerk's office, (239) 335-2884, not the judge's judicial assistant. The DV Unit will schedule a time for the hearing. As with any hearing, it is the responsibility of the party scheduling the hearing to tell the DV clerks how much time will be required for the hearing. As in any other case, the movant will be limited to one-half of the time requested, the other half being for the opponent.

Q. . Case management conference At any time, a party or the judge may schedule a case management conference with counsel or the parties, as provided in Rule 12.200. If a party wants the judge to rule on a particular motion, the motion must be noticed for hearing at the case management conference. If a party wants to discuss a particular matter, including the items listed in Rule 12.200, the items to be discussed should be listed in the Notice of Hearing for the case management conference

Motions

R. . Motions, in general; files are read before the hearings Judges read the files before hearings. Motions should state the factual and legal basis for relief. Any legal authority relied upon for the motion should be cited in the motion so the judge has an opportunity to look up the law before the hearing. It is often impossible for a judge to decide a matter at the hearing when he or she is presented with the cases or statutes for the first time at the hearing. If you want a prompt ruling, help the judge prepare by citing your authority in the motion itself. If you oppose the motion, you may send copies of your opposing legal authority to the judge's office a day or so before the hearing. The clerk brings the files to the judge's office 24 hours before the hearing. **Remember: any motion or other document you put into the court file within 10 days of the hearing will not be in the court file and the judge will not see it before the hearing** although a copy should be in the clerk's computer and available to the judge through the computer. Documents are also microfilmed in the clerk's office, which delays them being filed in the court file. Therefore, you must send a copy of anything filed within 10 days of the hearing to the judge's office, by fax or hand delivery, a day or so before the hearing if you want the judge to see it before the hearing.

S. . All motions; suggested certificate on Notice of Hearing The judges notice that motions are filed and scheduled for hearing without any contact between opposing attorneys. Very often, attorneys discuss the motion for the first time when waiting for the hearing and immediately resolve the matter by stipulation before the court. This wastes hearing time needed for unresolved matters. Therefore, before filing any Notice of Hearing, except for a motion for judgment on the pleadings or summary judgment, attorneys should confer and attempt to resolve the issues prior to setting a hearing. Again, cooperation is expected. If one or both of the parties is not represented by an attorney, the parties are not required to confer before the hearing. A suggested legend for all Notices of Hearing is the following:

> **"I certify that before filing this Notice of Hearing, I have spoken to the opposing attorney and have in good faith attempted to resolve this matter without a hearing; or, I placed a telephone call to the opposing attorney's office on two occasions on two different dates, (give dates and times) regarding this matter and my calls have not been returned prior to filing this Notice of Hearing."**

By following this procedure and including this legend on Notices of Hearing, a party builds a case for a finding that the other party is not cooperating and is litigating unnecessarily or unreasonably and therefore fees and costs should be assessed against the other party.

T. . All discovery motions to compel; **required** certificate For all motions to compel, unless one or both parties do not have a lawyer, the certificate above must appear in the motion or the Notice of Hearing on the motion. The judicial assistant will not schedule a hearing on a discovery motion to compel without this certificate being made.

U. . Certificates of service; addresses and phone numbers All motions, Notices of Hearing, petitions and other pleadings filed in the court file must contain a certificate of service as required by the Family Rules of Procedure certifying that the party making the pleading has delivered a copy of the pleading to the other party and stating the method of delivery. As required by the Rules, the motion or other pleading must also contain the signature, printed name, address and phone number of the party filing it.

V. . No letters to the judges; only motions filed with the clerk and noticed for hearing Before or after a hearing or while a matter is pending, parties will sometimes mail further argument or evidence directly to the judge's office. According to the law of "due process," judges can only receive

evidence and argument concerning a case through special or general master recommendations or at hearings or trials duly noticed. There is no authority for a judge to "hear" parties' motions by letters sent through the mail or by fax transmission. Further, letters from counsel or pro se parties requesting relief in a pending case are not "pleadings" or "motions." A judge has no authority to enter an order upon a letter from a party; to do so would violate due process and the other party's right of confrontation, even if a copy is sent to the adversary. Therefore, if a party has argument for some action he or she wants the judge to take or evidence he or she wishes to present to the judge, he or she must file and serve a motion, set it for hearing and file and serve a notice of hearing. That the matter is "urgent" or "an emergency" is no exception. Therefore, letters to the judge containing further argument or evidence are not considered by the judge and are mailed back to the party with a copy to the other side.

W. No "ex parte" communications; procedure for "ex parte" motions In general, "ex parte" communications are prohibited. The law of "due process" requires that a judge cannot do anything in a case or hear anything about a case unless both parties are present or were given reasonable notice to be present and an opportunity to be heard and to hear and see what the judge hears and sees. An "ex parte" communication is a communication with the judge in person or by letter to the judge about a pending case without notice to the opposing party or without affording the opposing party an opportunity to hear what is communicated to the judge and to respond.

X. . Title of motion & Notice of Hearing must be the same When a Notice of Hearing is prepared, the movant must provide the judicial assistant with the **exact** title that appears on the motion, and the **same exact** title of the motion should appear in the Notice of Hearing. If the title of the motion is not the same as that listed in the Notice of Hearing, the court may have to continue the hearing for lack of notice. A notice for "all pending motions" without a listing of the motions, is no notice at all; all of the motions to be heard must be listed, by the exact title of the motion, in the Notice of Hearing. It is also helpful to the judge if the date the motion was served is also stated in the Notice of Hearing, to help the court find the particular motion to be heard in the court file.

Y. . Notice of Hearing is prepared, filed and served by the party Parties must prepare, file and serve a Notice of Hearing for any hearing time scheduled with the judicial assistant. The judicial assistants schedule the hearing time on the judge's calendar; it is the responsibility of counsel or the party scheduling the hearing to prepare, serve and file a Notice of Hearing. If a Notice of Hearing is not served on the opponent and filed with the clerk within a reasonable amount of time before the hearing, the court cannot hold the hearing and the matter must be continued.

Z. . Speaking motions; argument alone insufficient If the court is asked to consider a speaking motion, that is, a motion for which testimony or other evidence is required, counsel and the parties are reminded that if the court receives only argument or paraphrase of the evidence at the hearing, the court cannot decide the motion. Argument is no substitute for proof.