

## FAMILY LAW PROCEDURES

### January 2013

**Application of These Procedures:** These procedures govern attorneys and their clients as well as parties who are not represented by attorneys.

**Contacting the Judge's Office:** Neither attorneys nor parties may contact Judges directly. Attorneys should never tell their clients to contact a Judge's office. ONLY Judicial Assistants (JA) may be contacted and then only regarding scheduling and related procedural issues. The JA can NOT give legal advice. Nor will the JA relay substantive communications (*any information other than scheduling*) to the Judge.

**Electronic Access to Clerk's Court Files and Notice of Filings:** It is possible for attorneys to have access to the Collier County Clerk's court files via internet. Go to [www.collierclerk.com](http://www.collierclerk.com).

**Forms Available for Download:** Some of the forms referred to in these procedures are available for down-loading on the Judges' 20<sup>th</sup> Circuit web-pages ([www.ca.cjis20.org](http://www.ca.cjis20.org), See Tab titled "Downloads")

#### **Court's Calendar and Dockets**

- The Judges' calendars and dockets can be accessed at their 20<sup>th</sup> Circuit web-pages.
- Generally the family law Judges' court schedules include:
  - One week of trials per month
  - One week of motion hearings per month

#### **Forwarding Documents to the Judge's Office**

- Please forward orders and judgments for the Court's execution to the Judge's office, rather than the Clerk's Office.
- When sending anything to the Judge's Office, please enclose it in a few-sentence letter, e.g. '...enclose please find a final judgment for the Court's execution... '
- Do NOT use letter or email correspondence to set forth any substantive matters. Anything other than "Enclosed please find..." should be set forth in a motion, notice, etc. (See also procedures regarding obtaining emergency or long hearing time).

#### **Case Captions**

- Section 61.043 requires that in commencing a dissolution of marriage proceeding, the parties should be designated as "Husband" and "Wife" rather than "Petitioner" and "Respondent" as follows: "In re the marriage of \_\_\_\_, Husband, and \_\_\_\_ Wife."

#### **Filing Documents in Court Files**

- Petitions and Counter-Petitions should indicate whether they are: "With Children" or "Without Children." Example: "Petition for Dissolution of Marriage With Children"
- Every document filed with the Clerk's Office should be correctly titled, including orders. Order titles should reflect the motions that they refer to, e.g. "Order on Husband's Motion for Temporary Support."

- Every title of a document filed with the Clerk's Office should include the party for whom it is filed e.g. "Wife's Financial Affidavit."
- Other than what is required by the Rules or Statutes, do not file discovery documents in the court file, e.g. banking records, tax returns, etc.
- Do not file deposition transcripts in the court file until you need them in a court proceeding and then do so at the time of that court proceeding.
- With the exception of orders and judgments that require the Judge's signature, all documents that are required to be filed in the court file, should be forwarded to the Collier County Clerk's Office for such purpose. Judges' offices are not responsible for filing documents with the Clerk's Office. If a request is being made of a Judge's office to schedule a proceeding or for a purpose as set forth below, forward COPIES of the relevant notices, requests, and/or motions with an enclosure letter to the Judge's Office.
- Motions for Rehearing should be filed with the Clerk's Office and a copy forwarded to the Judge's Office for review.

#### **Parenting Plans:**

- **Form:** The Supreme Court approved form may be used or a form in substantial compliance with same.
- **Temporary Parenting Plan Required within 60 Days:** The Standing Order in dissolution of marriage cases involving children and paternity cases has been modified to require that the parties file an agreed temporary parenting plan within 60 days of the filing of the initial Petition OR a hearing on such issues MUST be held shortly thereafter. **NOTE that this is a significant change in the Standing Order and Court procedures.**

**Parenting Courses:** The parties may fulfill their parenting-course requirement by completing any such course that has been approved by the Department of Children and Families, including on-line courses. The current approved courses are: Parenting and Divorce (live and on-line) and Putting Children First (live only). **To enroll go to: [www.onlinedivorceprogram.com](http://www.onlinedivorceprogram.com) or Call (239) 693-8893 or Toll-free 1 (800) 767-8193.** The Court may excuse a party from attending the parenting course only for good cause as determined by the Court.

#### **Case Management**

- The purpose of case management conferences is to comply with Rule of Judicial Administration 2.250(a)(1)(C) that establishes "presumptively reasonable" time standards for dissolution of marriage cases. This will be accomplished by scheduling cases for trial within a reasonable time period, based on their nature and how far along they are in the process.
- All parties AND the attorneys representing them are REQUIRED to be present at case management conferences, unless otherwise ordered by the Judge.
- Case management conferences will be conducted by Judges and Magistrates in conjunction with Case Managers.

- Unless otherwise specified by a Case Management Order, the Family Law Division Judges will conduct case management conferences of cases in which at least one party is represented by an attorney. A Magistrate will conduct those involving only pro se parties. Cases will be scheduled for such conferences as follows:
  - **By a Judge's office.** The Judges' offices in conjunction with the family law Case Managers will schedule cases for case management conferences via the appropriate Orders. Such Orders will set forth the time and date for the Conference and requirements for said Conference. OR
  - **Upon request** by either of the parties and/or one or both of their attorneys. If a Conference is requested, such should be scheduled with the office of the Judge or Magistrate in the same manner as a hearing, including:
    - Filing a Motion for Judicial Case Management Conference;
    - Agreeing on a date and time for said conference with the Judge's JA and each other; and
    - Filing a Notice of said conference with copies to the opposing attorney/party AND the Judge's office accompanied by stamped addressed envelopes for use in sending the Order Scheduling Case Management.

## Hearings

- All hearings before a Judge must be scheduled via Judges' JA's. (*See Judge's 20<sup>th</sup> Circuit web-page for contact information*)
  - A motion MUST be filed prior to a hearing for it to be scheduled.
  - Hearing scheduling process:
    - (1) Request possible hearing times from Judge's JA;
    - (2) Communicate with opposing party or attorney regarding agreeable dates and times;
    - (3) Communicate agreed upon hearing time and receive **confirmation number** for such;
    - (4) File a Notice of Hearing with the Clerk's Office and forward a copy to the opposing party or attorney. The **confirmation number** must be set forth in the Notice of Hearing.
- Parties or their attorneys are advised to request adequate hearing time – you will be held to it. Each party will be allotted one-half of the total reserved hearing time. Each party's time will include cross-examination of the other party's witnesses.
- Parties MUST mediate certain issues that are the subject of hearings BEFORE the hearings occur. Hearing time MAY be secured prior to these mediations actually occurring. However, if mediation does not occur prior to the hearing, the hearing will be continued to another time. If a party or an attorney is not cooperative with the scheduling of or attendance at such mediations, be advised that the Court may assess or award attorney fees, costs and other related expenses against the uncooperative party and/or attorney. The issues that must be mediated are: (1) temporary support and related issues; (2) temporary parenting plan; (3) possession of marital residence; (4) interim distribution of assets; and (5) temporary attorney fees and costs.
  - An in-person conference of at least one hour that includes **the parties AND their attorneys**, may suffice as the above mediation requirement. This option is only available in cases in which both parties are represented by attorneys. If this conference does not result

in a settlement, the attorneys should file a notice that reflects that an “impasse” occurred prior to their scheduled hearing. These conferences should NOT occur the day OF the hearing. (NOTE: this is a modification of the former procedure.)

- If a party or an attorney is uncooperative in scheduling mediation, the cooperative party or attorney may file a motion describing the efforts that he/she has made to schedule the mediation and requesting that such be scheduled by the Court on a certain date or within a certain range of dates. The Judge may execute an Order scheduling same without a hearing. If the parties/attorneys cannot agree on a mediator, one or both should file a motion requesting that the Court appoint one from a suggested list. If no mediators are suggested, the Court may appoint a mediator from the list of Supreme Court certified mediators who work in the Collier County area.
- There are limited situations in which the Court might relieve parties of this requirement. To make such a request: (1) file a Motion for Relief from Mediation Requirement that sets for the reasons that mediation is not appropriate for the parties and/or issues; and (2) forward it to the Judge’s office along with an Order, copies and stamped addressed envelopes. The Court will review this Motion and make a ruling without a hearing. Such Order should allow for the Court to indicate if the Motion for Relief from Mediation is “Granted” or “Denied.”
- Hearings MAY always be cancelled by the party or attorney who noticed the hearing. If a motion has been cross-noticed, cancellation requires two Notices of Cancellation – one for each Notice and/or from each attorney who noticed the motion. The cancelling party or attorney:
  - Must notify the Judge’s office by phone of the cancellation.
  - Must file a Notice of Cancellation of Hearing and forward it to opposing party/attorney on a timely basis.
  - May be responsible for the fees of opposing counsel or other expenses incurred in preparing for the cancelled hearing, if said opposing party or attorney was not given reasonable notice of the cancellation. The Court would determine such at a subsequent hearing or at trial.
- Parties/attorneys may NOT include additional motions in already scheduled hearing time without clearing it with the Judge’s JA, obtaining an additional confirmation number from the JA, and noticing said additional motion with the additional confirmation number set forth in the Notice.
- **Long Hearings**
  - A “long hearing” is one for which an attorney/party is requesting more than one (1) hour.
  - Long hearings will be scheduled on the Judge’s trial docket.
  - In order to obtain a long hearing, file a “**Request for Long Hearing**” and the relevant motion with the Collier County Clerk’s Office and send copies to the Judge’s Office with a letter enclosing them and stamped addressed envelopes for the Judge’ Office to forward copies of the Order described below.
  - In response to the above Request, the Court will issue an Order Scheduling Long-Hearing.

### ➤ **Emergency Hearings**

- Use a “**Request for Emergency Hearing**” to request such a hearing along with the Motion setting forth the relief requested, the basis and the reasons that the Motion should be heard on an emergency basis. Do NOT set forth the request for such in a letter.
- All Emergency Motions must be signed by the proponent party under oath.
- File the Request and Motion with the Clerk’s Office and forward copies of these to the Judge’s Office for consideration.
- The Judge’s JA will contact the proponent/attorney of the Motion with either emergency hearing time or hearing time on the Judge’s regular motion-docket

### **Referrals to Magistrates**

- In cases in which a party that is not represented by an attorney is requesting that a Magistrate hear a court proceeding, the Magistrates’ Office will print and send the Order of Referral to the Magistrate.
- In cases in which an attorney is or attorneys are requesting that a Magistrate hear a court proceeding, that attorney should print the “**Order of Referral to the Magistrate**” and send it to the Judge’s JA with copies and stamped addressed envelopes.
- If one or both of the parties/attorneys object to using a Magistrate, they are NOT required to submit an Order of Referral to said Magistrate and then file Objections prior to obtaining hearing time with the Judge. Please inform the Judge’s JA regarding objections to using the Magistrate at the time you call to obtain hearing time.

### **Trials**

#### ➤ **Scheduling a case for trial**

- Parties/attorneys can schedule their cases for trial by filing a Notice for Trial when their cases are at issue as defined by procedural rules.
  - Original Notices should be filed with the Clerk’s Office and a copy should be forwarded to the Judge’s Office with **stamped addressed envelopes** for the Judge’s Office to send copies of the Trial Order. Notices should include the following information:
    - The length of time needed for the trial; AND
    - The month agreed upon that would be best for the trial – that would allow for proper preparation and attendance of witnesses.

- The Court may schedule cases for trial on its own motion including via case management conferences.

#### ➤ **Trial and Pre-Trial Order:** A case will be scheduled for trial via a Trial and Pre-Trial Order which the parties/attorney will receive from the Judge’s office.

- The Order will:
  - Schedule your case for a **pre-trial conference** during the family-law-motion-week preceding your scheduled trial week.
  - Schedule your case for **trial** on a designated trial-week.
  - Set forth the time allotted for the trial.

- Set forth pre-trial requirements including: the filing of Pre-Trial Statements<sup>1</sup> and exchanges of witness lists.
- Judge Krier's cases will be scheduled for trial **by the Judge** at the pre-trial conferences scheduled pursuant to the Trial and Pre-Trial Order. Attorneys are required to appear at said pre-trial conferences.<sup>2</sup> Parties are NOT required to attend unless they are not represented by an attorney. Attorneys are advised to bring their calendars and know their witnesses' availability. *(This replaces the former procedure of Judge Krier's JA calling attorneys to schedule her trials.)*
  - First priority will be given to any cases that were involuntarily continued from the previous trial docket.
  - More than one case may be scheduled for the same time period – one as back up for another.
- The Trial and Pre-Trial Order requires the filing of Pre-Trial Statements or Stipulation. (See Trial and Pre-Trial Order)
- Failure to comply with the Trial and Pre-Trial Order may result in:
  - Exclusion of witnesses and/or exhibits for failure to comply with the instructions regarding exchange or use of such information;
  - Attorney's fees and costs; and/or
  - Fines and/or sanctions

## **Orders and Judgments**

### ➤ **“Standing Order”**

- There are three (3) different “Standing Orders,” one for: Paternity, Dissolution of Marriage involving Children, and Dissolution of Marriage Without Children.
- The purpose of these Orders is to:
  - Maintain the status quo until cases can be resolved by agreement or trial;
  - Require the parties to resolve their parenting issues as soon as possible, including establishing a temporary parenting schedule; AND
  - Put the parties and attorneys on notice of the consequences if this Order is violated.
- The applicable “**Standing Order**” will be generated by the Clerk's Office complete with electronic signature and filed simultaneously with the initial Petition. This Order will be filed in the court file and then be served on the Respondent with the Petition. The Petitioner will be deemed to be governed by the Order when the Petitioner or his/her attorney receives it with a file stamped copy of the Petition. Attorneys should arrange to receive copies of said filed documents by: (1) providing a stamped self-addressed envelope to the Clerk at the time of filing; or (2) arranging for staff to pick it up at the time of filing or later. If petitioner-attorneys fail to make arrangements to receive copies of the filed Petition and Standing Order, the Petitioner shall be deemed to be governed by said Order at the time of filing of his/her Petition.

### ➤ **Orders**

- Best practice is to bring a proposed order to court at the time of the related hearing. If attorneys fail to do so, be advised that the Judge may require that they prepare an order in the courtroom immediately subsequent to their hearing.

<sup>1</sup> Attorneys may choose to file a joint pre-trial Stipulation or separate pre-trial Statements.

<sup>2</sup> On a limited basis, attorneys may appear by telephone, IF previously arranged with the Judge's JA.

- The Judge may alternatively designate that one attorney prepare an order at his/her office. If this occurs, follow the instructions for preparing and submitting final judgments set for below.

➤ **Final Judgments**

- The Court will designate one attorney to prepare a Final Judgment.
- The designated attorney should forward the prepared Final Judgment to the opposing attorney.
- This opposing attorney should make comments electronically so they are reflected in one copy of the document.
- The composite judgment (including both attorneys' proposed language) should then be forwarded to the Judge's Office by email (*to the JA- See 20<sup>th</sup> Circuit web-site for email address*) and in paper form including stamped-addressed envelopes.
- Attorneys are encouraged to format their Judgments using the criteria required by Statute for the relief awarded.

**Uncontested Dissolution of Marriage Hearings** –The Collier County Family Law Division Judges have adopted this procedure as of August 2012. (*See "Instructions for Submitting an Uncontested Dissolution of Marriage Packet" at Judge Krier's 20<sup>th</sup> Circuit web-page and related downloadable forms*)

- Attorneys will forward all required documents to the Collier County Clerk's Office for filing, EXCEPT the Final Judgment to be executed by the Judge. Said Judgment should be forwarded to the Judge's office in paper form as well as the appropriate number of copies AND stamped addressed envelopes.
- REMINDER: all "jurats" (the notarization paragraph) must use the legally required form. (See *Fla.Stat. §117.05(3)(a)*) If this is not used, you will be requested to correct this and re-file whatever documents contain the incorrect form.
- IF all required documents have been filed and the Judge approves the Marital Settlement Agreement and Parenting Plan (the latter only if there are children), Final Judgments will be put on the record within a few weeks, unless a Judge's office is notified of some emergency that requires a more expedited process.