

## **MAGISTRATE NEAHER'S HEARING GUIDELINES**

**PLEASE REVIEW THESE GUIDELINES IN FULL PRIOR TO SCHEDULING A HEARING WITH THE MAGISTRATE.**

### **ORDERS OF REFERRAL**

Magistrate Neaheer will hear any Civil, Guardianship or Probate Motion/Non/Jury Trial that is longer than 10 minutes and referred by the assigned Judge.

Orders of Referral will be prepared by the Magistrate's assistant or the presiding judge's judicial assistant, depending on the nature of the matter referred and the reason for the referral. Counsel should not submit proposed orders of referral to the Court unless specifically requested by the judge or the judge's judicial assistant. If so requested, the proposed order of referral should be directed to the presiding judge for entry in the manner specified or otherwise permitted by that judge.

Once an Order of Referral is filed, the parties have five days to coordinate a hearing date. Failure to do so will result in the Court unilaterally scheduling a hearing date. The unilaterally scheduled hearing will not be cancelled or moved by the parties without first speaking to the Magistrate's assistant.

### **HEARINGS**

**PRIOR TO SCHEDULING A HEARING PLEASE ADHERE TO THE FOLLOWING:**

1. In the spirit of the Florida Rules of Civil Procedure and the Rules of Professional Courtesy and Conduct governing members of the Florida Bar, prior to filing a motion, attorneys must first talk directly to opposing counsel in person or by telephone in a good faith effort to mutually resolve any outstanding issues. If counsel has conferred directly in such a good faith effort to resolve an issue or issues and resolution cannot be reached, the moving party shall include in the motion, or in a separately filed certification, a certification that such direct attorney-to-attorney conference has been conducted and reporting the result of such conference. If partial resolution of the issues has been achieved or the issues have been narrowed as a result of the conference, that information shall also be reported.
2. Your motion must be filed and visible on the court docket prior to scheduling a hearing.
3. In compliance with the Twentieth Circuit Standards of Professionalism, all hearings must be coordinated with opposing counsel. If the attorney has been unable to coordinate the hearing with opposing counsel, the notice shall state the specific good faith efforts the attorney undertook to coordinate and why the coordination was not obtained. Please note that one email to opposing counsel is not by itself a good faith attempt to coordinate.

### **SCHEDULING A HEARING:**

1. All hearings will be scheduled in 15-minute increments. The time reserved for hearing is the total time allowed for the hearing divided evenly between or among the parties. Counsel shall realistically evaluate the time necessary for the hearing, as the parties will be limited thereto. Failure to reserve the appropriate time for a hearing may result in the hearing being continued or cancelled by the Magistrate.
2. You may consult the JACS Calendar for available hearing times. In order to see all available time slots, do not enter a duration.

NOTE: The 2nd and 4th Thursdays of each month between 9:00am and 11:00am are reserved for routine Guardianship hearings (except when rescheduled to avoid conflicts with legal holidays.) If Guardianship matters are contested or otherwise expected to take more than 15 minutes, please contact the Magistrate's assistant to re-schedule the matter for a special-set hearing. Guardianship matters also may be set during any other available hearing time if necessary to accommodate counsels' or the parties' schedules.

3. Once dates have been coordinated with all parties, to schedule a hearing on the Magistrate's calendar, you must contact the Magistrate's assistant, Kaylee Wagner at KWagner@ca.cjis20.org. The Magistrate's assistant will confirm the hearing time and schedule the hearing in JACS. Attorneys of record will receive a confirmation e-mail directly from JACS.

Contact hours (by telephone – 239-533-2583) are 8:00am to 12:00pm and 1:00pm to 4:30pm, Monday through Friday.

4. The attorney or party scheduling the hearing shall within 24 hours of scheduling the hearing, file and serve a notice of hearing, and email a courtesy copy to the Magistrate's assistant. The notice of hearing must include the Zoom meeting information and instructions provided by the Magistrate's assistant.
5. Once a motion is scheduled, subsequent motions may not be "piggy-backed" or "cross-noticed" onto the time reserved for the first motion absent prior approval of the Magistrate and the original scheduling attorney. Any changes to the matters set during a hearing, even by agreement of the parties, must be coordinated with the Magistrate's assistant to ensure that an order of referral exists for each matter to be heard. This applies equally to "amended" motions seeking additional or different relief or asserting additional or different arguments.

### **PRIOR TO A HEARING:**

1. *Any legal authority that total over 10 pages and the parties will rely on during the hearing shall be provided in a hard copy via hand delivery or US mail to the Magistrate for consideration at least 10 business days prior to the hearing.* If the legal authority and/or Memoranda of Law total under 15 pages it may be emailed to the Magistrate's assistant for consideration at least 5 business days prior to the hearing. When submitting documents or proposed reports for the Magistrates consideration, counsel also shall submit contemporaneously a cover letter outlining the materials being directed to the magistrate and stating the reasons for such submissions. All counsel and/or pro se parties shall be copied on the cover letter or e-mail must list the names of the counsel or pro se parties to whom copies were sent.
2. *Memoranda of Law shall be efiled at least 10 business days prior to the hearing. Any Memoranda of Law that total over 10 pages shall be provided in a hard copy via hand delivery or US mail to the Magistrate for consideration at least 10 business days prior to the hearing.*
3. *Memoranda of law shall be double-spaced, and shall otherwise comply with Florida Rule of Appellate Procedure 9.100(l). When legal authority is provided, the important points thereof should be highlighted. String cites should be used sparingly and any conflict among the District courts of Appeals should be noted.*

Please do not send a hard copy of the Notice of Hearing and the Motion to the Magistrate, only the legal authority/Memoranda of Law and a cover letter.

### **TELEPHONIC APPEARANCE:**

1. *All motions are being heard via Zoom unless scheduled otherwise.*
2. *When appearing on Zoom, please identify yourself with the case number and your name. Please instruct clients and witnesses to do the same. This will insure no party accidentally gets left in the waiting room.*
3. *Except when applicable rules are suspended by Administrative Order as noted above and the magistrate may swear in a witness she can see, hear, and positively identify. In the event any testimony is to be presented via videoconference or telephone, a certified notary of the State where the witness is located shall be present with the witness to properly administer the oath.*
4. *If a party objects to Zoom, the hearing shall be held in person if all of the parties reside in Lee, Charlotte or Collier County.*
5. *Any Evidentiary hearing that is scheduled for over two hours shall be in person.*

### **CANCELLATIONS:**

1. As a courtesy to the Court, please cancel hearings no later than 2 business days prior to the date of hearing. Last minute cancellation requests may be denied and you may still be required to appear for the hearing.
2. Hearings with the Magistrate may not be cancelled by counsel through JACS, but rather must be cancelled by the Magistrate's assistant. To cancel a hearing, you must file and serve a Notice of Cancellation and immediately notify the magistrate's assistant by e-mail at [KWagner@ca.cjis20.org](mailto:KWagner@ca.cjis20.org). Said Notice should be filed with the Clerk of the Court as soon as counsel becomes aware that the hearing is to be cancelled, and shall serve a copy thereof upon all counsel of record and any pro se parties. The Notice should indicate that the opposing party either agreed to the cancellation or otherwise has been given reasonable notice of the cancellation.

### **STIPULATIONS:**

1. If the parties reach a stipulation as to a motion or other matter set before the Magistrate, the parties shall submit their stipulation and agreed order to the presiding Judge for entry and shall promptly cancel the hearing set before the Magistrate per the above.

### **SUBMISSION OF DOCUMENTS AFTER A HEARING:**

1. Unless otherwise specified when requested by the Magistrate, all proposed reports and orders must be submitted to the Magistrate within **three (3) calendar days** of the date of the hearing via the e-filing portal. Failure to timely provide proposed order may result in the matter being referred back to the presiding judge for the appropriate action.
2. **When filing your pleadings please label them with the case number first followed by the pleading title.**
3. When submitting a proposed report or order, a cover letter must be included to indicate that all counsel or pro se parties have reviewed the proposed submission and whether they have any objection to the same. If there is an objection, both parties should submit their proposed submissions in the envelope or e-mail to the Magistrate, outlining and copying all parties with enclosures.
4. Please follow Magistrate Neaher's Guidelines for Submitting Proposed Reports and Recommendations and Orders.

**EXCEPTION:**

If you elect to file an exception pursuant to the applicable rule of procedure, promptly send a courtesy copy to the Magistrate's assistant, Kaylee, at KWagner@ca.cjis20.org in order to ensure that a proposed order adopting the Report is not sent to the presiding Judge in error. **Please bear in mind that court personnel cannot view recently-filed documents until they are approved by the Clerk, which usually takes 48-72 hours.**

**MAGISTRATE NEAHER'S GUIDELINES FOR SUBMITTING DOCUMENTS**

**If you have any documents that list multiple case numbers, you must submit documents in each case separately to ensure they are filed in each case.**

**Please note that in Guardianship/Mental Health cases, a cover letter and proposed Report and Recommendation must be submitted under each case number. We are not able to file documents requiring a signature in multiple cases. You may submit the same cover letter and proposed Report and Recommendation, with the case number changed to reflect which case (GA or MH) the documents are being submitted for.**

**Guardianship case**

**Cover letter and proposed Report and Recommendation**

**Order Appointing Guardian and Letters of Guardianship (if applicable)**

**Mental Health case**

**Cover letter and proposed Report and Recommendation**

**Order Determining Incapacity (if applicable)**

Please download the template for the Report and Recommendation of General Magistrate here: <https://www.ca.cjis20.org/Documents/magistratedownloads.aspx>. Click on "View" to the right of the applicable template to open the template in Word and save the file.

Please insert the following information where noted:

- case caption,
- date of hearing,
- title of motion/petition/other matter, with date of filing,
- appearances of counsel/parties,
- date of entry (not filing) of order of referral,
- court reporter's name, address, and telephone number, if applicable,
- selection regarding retention/waiver of exceptions period, and
- all mailing addresses for *pro se* parties, including next of kin for guardianship cases only, who have not designated an e-mail address in the Certificate of Service (designated e-mail addresses for attorneys of record will be included automatically).

In addition to the above matters, **the Report should include all information necessary to support the Magistrate's recommended ruling**. This will include identifying all pleadings, motions, responses, or other papers which are relevant to the matter being heard and the parties' respective assertions/positions on the matter. The "Findings of Fact and Conclusions of Law"

section should state what the Magistrate finds regarding the motion/matter, and the “Recommendation” section should state what the Court orders regarding the motion/matter.

Please do not make changes to the form language in the template, and note that any such changes are subject to being stricken by the Magistrate. However, you may delete paragraphs related to a live court reporter if no live court reporter was present at the hearing and other paragraphs which do not apply under the facts of the case.

Please circulate the proposed Report and Order Adopting the Report and Recommendation to all counsel and *pro se* parties prior to submitting the Report and Order Adopting to the Magistrate. Please submit the proposed documents via the e-filing portal under the Magistrate’s name and state whether all parties are in agreement. Please note that all proposed Reports are subject to review and editing by the Magistrate, who reserves the right to make any changes to a proposed Report to ensure that it accurately reflects the Magistrate’s findings and recommendations.

If you elect to file an exception pursuant to the applicable rule of procedure, promptly send a courtesy copy to the Magistrate’s Assistant, Kaylee, at [kwagner@ca.cjis20.org](mailto:kwagner@ca.cjis20.org) in order to ensure that a proposed Order adopting the Report is not sent to the presiding judge in error. Please bear in mind that court personnel cannot view recently filed documents until they are approved by the Clerk, which usually takes 48 to 72 hours.

**All submissions shall be made via the e-filing portal unless specifically directed by the Magistrate. The original motion must be filed with the clerk of court prior to scheduling a hearing.**

When submitting documents or proposed reports for the Magistrates consideration, counsel also shall submit contemporaneously a cover letter outlining the materials being directed to the magistrate and stating the reasons for such submissions. The cover letter must list all counsel and/or *pro se* parties to whom copies were sent. When submitting a proposed report, the cover letter must indicate that all counsel or *pro se* parties have reviewed the proposed submission and whether they have any objection to the same. If there is an objection, both parties should submit their proposed documents indicating their objections in the cover letter to the Magistrate, outlining and copying all parties with enclosures. Unless otherwise specified when requested by the Magistrate, all proposed reports must be submitted to the Magistrate within **three (3) calendar days** of the date of the hearing. Failure to timely provide proposed order may result in an Order to Show Cause and/or the matter being referred back to the presiding judge for the appropriate action.