

**R. Thomas Corbin, Circuit Judge**  
1700 Monroe Street, Fort Myers, Florida 33901  
Courtroom 4-I

**Motion Practice**

1. Emergency motions True emergencies are very rare in family cases. All matters considered to be an emergency by a party or counsel must be stated in a written motion that is filed with the clerk and served on the opposing party or counsel, if any. A copy of the motion must be delivered to the judge's office after the original has been filed and served. The judge will review the motion to determine if there is an emergency. If so, the judge will decide how to address the emergency, with an order to show cause, expedited hearing time, or other appropriate relief. If there is no emergency, hearing time in the ordinary course will be given.

2. Ex parte orders An *ex parte* order is one that is entered without notice to the opposing party and without an opportunity to the opposing party to be heard before the order is entered. In other words, an *ex parte* order violates due process of law, and, in general, orders that violate due process are void, unenforceable, and a nullity. Nevertheless, the law does allow *ex parte* orders in some situations, e.g., F.S. §741.30(5)(a), which allows an *ex parte* injunction to be entered for protection against domestic violence. Motions for an *ex parte* order must contain specific citations to the legal authority that gives the judge the authority to enter an *ex parte* order in the situation alleged in the motion. Without such legal citations, *ex parte* relief may be denied.

3. Motions to Withdraw - no hearing required A "motion to withdraw" is a motion filed by a lawyer to withdraw from representation of a party. Attorneys do not have to set motions to withdraw for a hearing before Judge Corbin in a family division case. Rule 2.505(f)(1) requires a "hearing" on a motion to withdraw, but that is not required in a family case. Rule 12.040(b), which applies to family cases, does not require a hearing on the motion. It requires only that the motion be served on the client and the opposing party. The point is that the client must have notice of the attorney's withdrawal, and the court and the opposing party must have an address at which the unrepresented party may be served after the lawyer has withdrawn.

So, the withdrawing lawyer must file the motion, serve copies on the client and the opposing party or counsel, if any, and deliver a copy of the motion, the original order, copies of the order and stamped envelopes to Judge Corbin's office. The client's name and last known mailing address must be included in the withdrawing lawyer's certificate of service in the motion and must also be stated in the order.

The order of withdrawal must not include an order that stays or abates the case in order to give the unrepresented client time to retain new counsel. If the client needs additional time, that is, if the client wants to stay or abate the action in order to find and hire new counsel, the client must file and serve a motion for that relief and notice the motion for a hearing, which is the procedure for any relief that is sought in a case short of the ultimate relief in the case. The ultimate relief in a case is the subject of a petition or supplemental petition.

4. Pre-judgment temporary relief Before a motion for temporary relief on an initial petition may be set on Judge Corbin's docket, the request for temporary relief must be brought before the case manager and the opposing party at the first case management conference. The first conference is set soon after filing and temporary relief may be discussed at that conference and any other conference, if necessary. If an agreement cannot be reached regarding temporary relief at that first conference or otherwise, a party may file a motion for temporary relief and set it for hearing. The motion may be filed before or after the first case management conference or may be included in the initial petition or counter petition.

Motions for temporary relief are expedited by Judge Corbin. Every effort is made to hear motions for temporary relief within 15 days after a request for hearing is made to the court's Judicial Assistant, Dorina Soumastre, (239) 533-2500. The case manager, Tanya Disapio, can be contacted at (239) 533-8477.

As for post-judgment temporary relief, that is, temporary relief on a supplemental petition or supplemental counter petition to modify an order in a final judgment, in general this is not allowed by law. The final judgment fixed the rights and obligations of the parties and until it is changed by a trial on a supplemental petition, the judgment is the order that the parties must obey. An order in a final judgment cannot be modified by a motion. A final judgment can be changed only after a trial on a supplemental petition or other final disposition of a supplemental petition, such as a judgment on the pleadings or motion for summary judgment. The exceptions are rare and extraordinary.

5. Post judgment motions Post-judgment motions for contempt or to enforce a judgment must be reviewed by the Mediation Department before a hearing will be set on the motion. In general, Judge Corbin requires mediation on all post- judgment motions. The number of the Mediation Department is (239) 335-2347. They will review the motion and set it for mediation. If that department determines the motion is not appropriate for mediation, it will be referred back to the Judge's office and a hearing will be set.

6. Length of hearings Hearing time up to 90 minutes will be set on the regular hearing docket. Requests for more than 90 minutes will be placed on the next trial docket calendar and a time certain hearing time will be provided in the next trial cycle. In such event, the parties must attend the docket sounding hearing with their calendars in order to agree on the hearing time.

On any motion, a party must ask for enough time. Failure to ask for enough time may result in the hearing being continued. One-half of the time requested will be allowed for the movant and the other half to the other side. A common mistake is to assume that a request for a long hearing time, say one hour, will be set further into the future. Judge Corbin's calendar is arranged so that shorter hearing times are set together on some days, with other days reserved for longer hearing time.

Attorneys should tell their legal assistants the amount of time needed for a hearing before calling the Judge's office for hearing time. Please allow sufficient for both sides to complete their arguments and evidence. Each side is entitled to equal time. Hearings will end when the time requested is exhausted.

**R. Thomas Corbin, Circuit Judge**

MEMO

**Re:** Continuances

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Rule of Judicial Administration 2.085(c) provides:

**"(c) Continuances** All judges shall apply a firm continuance policy. Continuances should be few, good cause should be required, and all requests should be heard and resolved by a judge. All motions for continuance shall be in writing unless made at a trial and, except for good cause shown, shall be *signed by the party (emphasis supplied)* requesting the continuance."

Further, the movant must state in the motion a time when the movant will be prepared to proceed with the matter. Otherwise, the motion may not be made in good faith and may be considered made only for delay.

Rule of Civil Procedure 1.460 provides:

"A motion for continuance shall be in writing unless made at a trial and, except for good cause shown, shall be *signed by the party (emphasis supplied)* requesting the continuance. The motion shall state all of the facts that the movant contends entitle the movant to a continuance. If a continuance is sought on the ground of nonavailability of a witness, the motion must show when it is believed the witness will be available."

Therefore, all requests to continue any trial or hearing must be (1) in writing, (2) signed by *the party or parties whether by stipulation or motion*, and (3) noticed for hearing if contested. Motions or stipulations to continue signed only by counsel are not sufficient. Motions to continue trials may be noticed at the same time as the docket sounding date and time, if a docket sounding is set by the trial order.

Motions to continue should also be supported by facts proven in affidavits or proven with witnesses at the hearing, unless the motion is based on a legal ground or facts for which counsel is a competent witness.

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