

Judge Foster's Civil Division Procedures **Collier County**

These procedures are intended to ensure that all parties and their attorneys have equal access to justice through the organized administration of the courts.



EDUCATE YOURSELF

ATTORNEYS: Please read and follow the Standards of Professional Courtesy and Conduct for Lawyers Practicing in the Twentieth Judicial Circuit found at www.ca.cjis20.org/pdf/ao/ao_2_20.pdf.

LEGAL ASSISTANTS and PARALEGALS: Please read these procedures and remind your attorneys to do so also.

JUDGE FOSTER'S WEBSITE INFORMATION: Available on Judge Foster's 20th Judicial Circuit webpage (<https://www.ca.cjis20.org/home/collier/colljudge.asp?Judge=foster>) are the following:

- ✓ Judge Foster's trial calendars
- ✓ Downloads, including forms
- ✓ Zoom Information

GENERAL POLICIES AND PROCEDURES

CONTACTING Judge Foster's Office: You may contact Judge Foster's office via email or phone at: dshepherd@ca.cjis20.org or (239) 252-4260. **Email is preferred!** Judge Foster's judicial assistant is Didi. You may forward proposed orders and judgments by emailing such to the judicial assistant **IN WORD FORMAT** subject to the limitations set forth herein. Judge Foster's office does NOT accept faxes or paper orders. Paper orders will NOT be signed.

- ✓ Office hours for contacting the Judge's office are 8:30 AM to 4:30 PM. Due to the high volume of phone calls and emails that the civil division receives, you may not reach the judicial assistant in person. Therefore, when calling and receiving voice mail or sending an email, please indicate: your name; the name of the attorney if contacting us for an attorney; case number; and a brief message.

- ✓ It is not necessary for the judicial assistant to call back to confirm that your message was received. Calls of that nature are not returned.

TRANSMITTAL LETTERS OR EMAILS: Please send a transmittal letter or email when you submit documents to Judge Foster's office indicating: (1) Case number and caption; (2) what is being submitted if anything; (3) the reasons for such being submitted; (4) the date of the court proceeding to which they pertain; AND (5) a list of those copied with the letter and such submissions. (**ALL attorneys and self-represented parties should be copied on ANY communications with the Judge's office!**) HOWEVER, such communications should be short. If more than a few sentences are necessary, you should put your concerns or requests in a MOTION. Judge Foster does not take action on letters or emails, ONLY motions and pleadings.

IDENTIFY COURT DOCUMENTS WITH SPECIFICITY - For judicial economy and in accordance with Administrative Order No. 2.35: When a party to a proceeding before the Courts of the Twentieth Judicial Circuit, or counsel, files a pleading, document or notice of hearing, or submits a proposed order, which includes a reference to a previously filed pleading, document or to the motion being scheduled for hearing, the party or counsel shall, for ease of further reference: (1) identify with specificity the previously filed pleading or document referenced therein, or the motion being scheduled for hearing; (2) identify the previously filed pleading or document referenced therein, or the motion being scheduled for hearing, by the date it was filed with the Clerk of Court; **AND** (3) identify the previously filed pleading or document referenced therein or the motion being scheduled for hearing, by the docket line or docket number, as may be reflected on the Clerk's online web portal, if accessible by the party or counsel. For Judge Foster, always include the **date of filing** of the pleading, motion, order etc to which you are referring.

MOTIONS

IMPORTANT: Motions or other court proceedings not scheduled pursuant to the procedures set forth below, may be cancelled by the Judicial Assistant (JA) without notice.

TYPES OF MOTIONS HEARD BY JUDGE: All motions except as specifically set forth herein that are to be referred to the Magistrate, will be heard by Judge Foster and scheduled on the Judge's motion-calendar including: probate, foreclosure and all other motions in all types of civil cases.

TYPES OF MOTIONS HEARD BY MAGISTRATES: ANY civil motion may be heard by the Magistrates assigned to your case upon agreement of attorneys and self-represented parties. The following motions SHOULD be heard by the Magistrate:

- ✓ Discovery motions
- ✓ Claims of exemption
- ✓ Forfeiture-preliminary adversarial hearing
- ✓ Guardianship incompetency hearings

SCHEDULING HEARINGS BEFORE MAGISTRATES: Before obtaining court time before a Magistrate, please obtain agreement from the other attorneys or parties to same. While parties or their attorneys in civil cases may object to proceedings occurring before a Magistrate at any time up to the beginning of said proceedings, **failure to obtain prior agreement to using the Magistrate or last-minute withdrawal of such agreement, may be grounds for the assessment of fees and costs.**

- ✓ Magistrate Pamela Barger is the civil Magistrate for Judge Foster. Please refer to the [Magistrate downloads](#)
- ✓ Magistrate Dente hears all initial guardianship and ETG hearings. Hearings may be scheduled through her assistant, Sherry Lucas, at (239) 252-8670.
- ✓ If you are requesting a hearing on a Motion to Compel Discovery, please follow the directions below regarding these types of Motions.
- ✓ **Orders of Referral must be issued by the Judge for all motions heard before Magistrates. Movants and/or their attorneys are responsible for preparing such Orders and forwarding them to the Judge. (See Orders of Referral above or at 20th Circuit website, “Magistrates” tab, under Collier County)**

SCHEDULING HEARINGS BEFORE JUDGE FOSTER:

- ✓ **JUDGE’S MOTION CALENDAR:** Judge Foster regularly hears Motions requiring 30 minutes or less on Monday, Tuesday and Thursday mornings prior to any trials occurring. These hearings must be scheduled via the JACS scheduling system. If you can’t find a time slot on JACS within a reasonable period of time, you may contact Judge Foster’s JA via her email address. Longer hearings may be scheduled through Judge Foster’s JA via her email address. (DShepherd@ca.cjis20.org)
- ✓ **ZOOM HEARINGS:**
 - **Beginning 9/1/2020** and until the Covid-19 restrictions are lifted, all court proceedings are conducted using Zoom. Judge Foster’s Zoom connection information is available on his 20th Circuit webpage.
 - **After the Covid-19 restrictions are lifted**, the Court does NOT anticipate requiring in-person-appearances. All such appearances shall occur via Zoom. Court Call or other phone services may NOT be used. In-person-appearances will not be prohibited

however. If you are appearing by Zoom after the Covid-restrictions are lifted, you must give opposing attorneys notice of such appearance unless the Court has scheduled the proceeding on Zoom via Order.

- Witnesses testifying via Zoom must have a picture ID available that can be show to the Court via a witness' camera so that the Court can ID the witness and administer the oath.

- ✓ **IMPORTANT: When scheduling hearings, please schedule enough time for you to present your argument and information as well as the opposing attorney(s) or self-represented party(ies). Judge Foster holds attorneys and self-represented parties to the time that they have reserved. The time allotment that you choose will be divided by the number of parties involved in your case, e.g. one-half of a hearing time will be allotted to each party in cases involving 2 parties. The time allotted to each party includes direct and cross examination of witnesses, any opening statements and closing or other argument.** (*Judge Foster has a timer and knows how to use it.*)
- ✓ **Important JACS Log-On Information for scheduling civil motions:** For first time users, click the “Schedule Time Slots” link, enter your bar number for both user ID and password, select a Judge and then click “Log in”. If you are able to log in, the system will give you the opportunity to set a password of your choice. Please enter the case in the following format; 4 digit year, letters assigned to the case type and the base case number, for example “2010ca1234”. If you are unable to successfully log-in, send an email with your bar number to CollierJacs@ca.cjis20.org.
- ✓ **For all hearings longer than 30 minutes, please contact the Judge’s office to schedule same at DShepherd@ca.cjis20.org.** You do NOT need to send a letter to the Judge for a hearing of up to 1 hour. Just email Judge Foster’s judicial assistant. Judge Foster’s judicial assistant will give you a couple of dates and times. The movant or movant’s attorney then must coordinate with the other parties or their attorneys. **DO NOT INCLUDE US ON THE EMAILS** between attorneys, **EXCEPT** let us know which date and time you would like for your motion. **Judge Foster’s judicial assistant does not actually schedule your motion until you email her as to which date and time is acceptable to all parties or their attorneys.** She will then give you a confirmation number. **We do not hold dates**, so act quickly to confirm the date you have agreed on.
- ✓ **For hearings longer than one (1) hour**, please submit your request in an email and attach the Motion upon which you are requesting a hearing.
- ✓ **No Piggybacking of Motions:** Once a motion is scheduled, subsequent motions may not be “piggybacked” or “cross-noticed” onto the time reserved for the first Motion, absent prior approval of the Court AND the original scheduling attorney.

- ✓ **No back to back scheduling:** Attorneys may NOT schedule the SAME Motion for back to back hearings to acquire a longer block of hearing time (e.g. scheduling two 5-minute hearings to acquire 10 minutes, etc.) Any hearings scheduled in this manner may be cancelled. Contact Judge Foster’s judicial assistant via email if you are having difficulty scheduling.

- ✓ **Notices of Hearings:** In compliance with the 20th Circuit Standards of Professionalism, all Notices of Hearing shall reflect the following in addition to the date and time of the Motion:
 - If the hearing is to be evidentiary, this MUST be reflected in the Notice of Hearing.
 - The title of the motion or motions to be addressed at the hearing along with their docket line number AND the **date** that they were filed.
 - The amount of time reserved for the hearing.
 - Whether the date and time have been coordinated with opposing counsel. If the attorney has been unable to coordinate the hearing with opposing counsel, the notice should state the specific good faith efforts the attorney undertook to coordinate or why coordination was not obtained.
 - Confirmation number that you have received from JACS or from the Judge’s judicial assistant.
 - **Please do NOT send courtesy copies of hearing notices, motions or proposed orders in advance, other than as specifically instructed herein.**

SPECIFIC MOTION PROCEDURES

- ✓ **Motions to Compel Discovery:**
 - You are required to file a Certificate of Good Faith as a part of these Motions.
 - Certain Motions to Compel may be reviewed, decided and an order issued without a hearing. A Motion to Compel discovery in a civil action may be submitted to the Court without a hearing if the moving party has complied with the following procedures:
 - The moving party must serve the Motion on the opposing party at least seven (7) days prior to submission of the Order to the Court.
 - The Motion must include the following:
 - ✓ The nature of the discovery and the date upon which the discovery was propounded and due;

- ✓ That there has been a complete failure to respond or object to discovery, and the non-moving party has failed to request an extension of time to respond to discovery; and
 - ✓ That the moving party has otherwise complied with Fla.R.Civ.P. 1.380(a)(2), certifying that he/she has conferred, or attempted to confer, with the person or party failing to make the discovery in an effort to secure the information or material without court action.
 - In the event that the non-moving party fails to provide the requested discovery, or fails to request an extension of time to respond to the discovery within seven (7) days of service of the Motion, the moving party may submit an order to the Court.
 - In entering the above Order, the Court may direct that the non-moving party comply with the outstanding discovery request within fifteen (15) days or such other time, within the discretion of the Court. The Court may also, in its discretion, order the non-moving party to pay costs and/or attorney-fees if appropriate.
- ✓ **Motions to Cancel Foreclosure Sales**
 - **THE PROCEDURE is:**
 - You may submit a Stipulated Order to Cancel Foreclosure Sale (at least 24 hours before the sale date – on a business day) to Judge Foster. **HOWEVER, a Stipulation does not guarantee that the Judge will cancel the sale.** Stipulations that do not set forth good cause for the Court to cancel a sale, may be DENIED.
 - If the Motion is not stipulated, a party seeking to cancel a foreclosure sale shall file and serve on all parties a Motion as contained in Form 1.996(b) of the Florida Rules of Civil Procedure. The Motion shall be noticed for hearing, with service on all parties, at least five (5) business days BEFORE the hearing.
 - The Clerk of Courts will not cancel any foreclosure sale without the entry of an order canceling and resetting the sale except if a Petition for Bankruptcy has been filed in federal court and a Notice of such has been filed in the Court file.
- ✓ **Motions for Rehearing or New Trial:** Such Motions must be submitted in writing and must be reviewed by the Judge before they may be scheduled for hearing. Such Motions should be filed with the Clerks' Office. The Clerk's Office generally forwards them to the presiding judge. However, if you want to ensure that it does reach the Judge, you may email it to the Judge's judicial assistant after you have filed it in the Court file. A hearing may only be scheduled for hearing time IF the Judge so directs and approves. You will receive an Order if

the Court denies the Motion without a hearing. Judge Foster's judicial assistant will contact you regarding hearing time if the judge directs a hearing to be held.

✓ **Emergency Hearings:** In order for the Court to consider a request for an emergency hearing, the following procedures MUST be followed:

- (1) The Motion must be filed with the Clerk of Court, and unless the request is for ex parte¹ relief, the Motion must be served on opposing party/counsel.
- (2) All factual allegations must be sworn to by the movant. The Motion *must* state under oath the facts which the party believes constitutes the "emergency", meaning the reasons the matter should be considered on an expedited basis rather than being scheduled in due course. The relief requested should be limited to that required to address the emergency, indicating how much time is needed for the Court to hear the emergency matters, recognizing that the hearing time will be divided equally among the parties.
- (3) If you are asking for ex parte relief, you must comply with Rule 1.610.
- (4) Once you have filed your Motion with the Clerk of Court (the title of the Motion must contain the language "emergency"), the Clerk's office will e-mail same to the judicial assistant who, in turn, will provide the Judge with a copy for his review/determination. You may also scan and email such a Motion to Judge Foster's judicial assistant AFTER you have filed said Motion.
- (5) After the Judge has had an opportunity to review the Motion, the judicial assistant will contact the moving party's office advising them as to whether the hearing will be scheduled on an emergency basis.

If the Court grants emergency hearing time, the moving party will be required to serve opposing part(ies) with written notice of the hearing date/time. If the Court, based on the allegations in the sworn pleading, finds no emergency exists, an Order will be entered denying the request for an emergency hearing, in which event, the matter must proceed on a non-emergency basis on the Court's regular hearing docket.

✓ **Motions to Advance Case** pursuant to statutes, rules of procedure or case law are also reviewed without a hearing. Simply file your Motion with the Clerk of Courts and forward a copy to the Judge's judicial assistant. You will receive an Order on the Judge's decision.

✓ **Motions to Continue Trial:**

- This Court strictly adheres to *Fla.R.Jud.Admin. 2.085(e)* and *Fla.R.Civ.P. 1.460*. As such, continuances will rarely be granted and then only upon a showing of an unanticipated event and good cause.

¹ "Ex Parte" means when a judicial proceeding, order, injunction, etc. is taken or granted at the instance and for the benefit of only one party AND without notice to or contestation by any person adversely interested." *Black's Law Dictionary*. "Ex parte" does NOT mean without a hearing. It means without NOTICE to the other parties.

- Stipulations to Continue Trial, do not automatically continue the trial. Such Stipulations should set forth the reasons for the continuance and be signed by all parties, as well as by their attorneys, if they are so represented. Motions or Stipulations for Continuance of Trial must be heard by the Judge at or before Pre-Trial Conference. Such Motions may only be heard at Pre-Trial Conferences if the Judge allows for such prior to the Pre-Trial. Better practice is to schedule such Motions prior to Pre-Trial. If this is not possible, you may contact the Judicial Assistant to inquire about setting the Motion during the Pre-Trial Conference. If the Court allows for such, the Motion must be properly noticed for hearing at the Pre-Trial Conference time and date. All parties shall continue to prepare for trial as scheduled unless an Order is entered granting a continuance.

- Opposed Motions to Continue must include the moving party's written consent and be coordinated for hearing using JACS.

CANCELLATIONS OF MOTION HEARINGS: If you cancel a hearing, you are required to file a Notice of Cancellation and to cancel the hearing on JACS if scheduled through this service or through the Judge's judicial assistant if not, **no later than 4PM the business day next preceding the hearing day**. The Notice of Cancellation should be filed with the Clerk's Office, with copies being provided to all parties and counsel of record, as well as the Judge's office, as soon as counsel becomes aware that a hearing is to be cancelled or is otherwise given reasonable notice of the cancellation. If a hearing has been cross-noticed by self-represented parties or counsel, then they must agree to the cancellation of the subject hearing and file a Notice of Cancellation of Cross-Notice of Hearing.

NO CHANGES TO SCHEDULED HEARINGS: Except for cancellations as set forth above, there can be no changes, additions, swapping or other alterations of the motion calendar. Attempts to accommodate such requests in the past have resulted in unnecessary confusion and inadequate notice to opposing counsel.

NOTE: Local Rules and Standards of Professionalism regarding motions are strictly enforced. Any motions not in full compliance with these rules may not be heard. Motions or other court proceedings not scheduled pursuant to these procedures and those set forth herein, **may be cancelled by the JA without notice**.

DOCUMENTS Submitted to the Judge regarding Motions:

- ✓ Please do NOT forward copies of items that have been filed in the Court file including Hearing-Notices, Motions, and Memoranda.

- ✓ You do not need to forward case law that is cited in your court filings. The Judge knows how to access West Law. If you plan to rely on case law that is NOT cited in your court filings, you may forward such a case if you believe it is important for the Judge to read.

- ✓ Please forward proposed orders and judgments to the Judge's JA AFTER the court proceeding, NOT before it. **Please forward such via email in WORD format.** Your email attaching said orders or judgments should indicate whether there is any disagreements as to the form of such documents. If there is disagreement, the conflicting orders or judgments should be attached to the SAME email and clearly designated.

- ✓ **EXHIBITS TO BE USED IN ZOOM HEARINGS:**
 - Please refer to **Administrative Order 2.40.**

 - Please forward all exhibits to the Judge's JA via email 5 days prior to your court proceeding. All exhibits must be marked with an exhibit number or letter and you must provide an index. You must also provide paper copies to the Clerk's Office 5 days prior to the court proceeding.

 - You are required to forward to opposing counsel and any self-represented parties, copies of what is forwarded to the Judge and Clerk's office. (You aren't required to send copies of both because presumably these are the same.)

TRIAL PROCEDURES AND DOCKETS

COVID-19 - no jury trials are scheduled in civil cases until the Florida Supreme Court allows them to begin in Collier County. Please see 20th Circuit web site or Judge Foster's 20th Circuit web page for notification of such.

TRIAL DOCKETS

- ✓ Judge Foster's trial docket schedules are set forth on his 20th Circuit webpage at: <https://www.ca.cjis20.org/home/collier/colljudge.asp?Judge=foster>

- ✓ Judge Foster will be issuing trial orders that schedule cases for a pre-trial conference and a trial period based upon the Case Management Plan entered into in each case. Unless the trial period requested in the Plan far exceeds the Florida Supreme court guidelines set forth in Rule of Administration 2.250, Judge Foster generally schedules trials based on the trial period requested in the Case Management Plan. Judge Foster issues such trial orders simultaneously when approving Case Management Plans.

- ✓ For each trial period, trials will be called from the list of the trials scheduled for that trial period for which your case has been set. The Court will issue an Order after the Pre-Trial Conference that will attach the list of trials scheduled for the trial period for which you are

scheduled and their sequence. Generally, the oldest cases as determined by date of filing will be scheduled first. You are expected to be ready for trial for the entire trial period for which you have been scheduled. You should contact the attorneys in the cases scheduled before yours or our office to receive information as to when your case will be called for trial as cases settle. Generally, Judge Foster does not schedule date certain trial times. As your case is reached on the trial list, your offices will be contacted. If you believe you are legally entitled to a date certain trial date or priority trial scheduling, a motion should be filed and addressed with the Court at a hearing no later than the Pre-Trial Conference.

PRE-TRIAL CONFERENCES

- ✓ Beginning 9/1/2020, attendance at Pre-Trial Conferences shall be via Zoom. Judge Foster does NOT anticipate changing this after the Covid-19 restrictions are lifted.
- ✓ A Pre-Trial Conference Order must be forwarded to the Court prior to Pre-Trial Conferences. (See the Court's Trial Order issued in your Case.)

TRIAL ORDERS

- ✓ The Court's Trial Order imposes deadlines for hearings on certain motions and other trial preparation activities, including hearings on Motions for Summary Judgment, Motions in Limine, Daubert Motions and hearings on Objections to Deposition Designations.
- ✓ The Court strictly enforces the terms of its Trial Order, including hearing deadlines and witness and exhibit disclosure.

SETTLEMENT

- ✓ If you settle your case, please notify the Judge's office and forward a copy of Notice or Stipulation of Dismissal. The Judge will not take you off the trial docket until his office has received copies of the Notice or Stipulation of Dismissal and a Final Disposition Report in conformance with Rule 1.998 of the Rules of Civil Procedure.

Thank you for your cooperation.

'Under the reign of law, sanity and wisdom prevail ever among people.'

-Solon