

Magistrate Bernardo's Motion Guidelines

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

MAGISTRATE BERNARDO WILL HEAR ANY CIVIL, GUARDIANSHIP, OR PROBATE MOTION/NON-JURY TRIAL THAT IS REFERRED BY THE ASSIGNED JUDGE EXCEPT AS NOTED BELOW. WITH RESPECT TO HURRICANE RELATED CASES, REFERRALS WILL BE LIMITED TO DISCOVERY MOTIONS LONGER THAN TEN (10) MINUTES, AND ALL OTHER MATTERS SHOULD BE SCHEDULED WITH THE ASSIGNED JUDGE'S JUDICIAL ASSISTANT.

Scheduling Hearings:

Notice: In compliance with the Twentieth Circuit Standards of Professionalism, all notices of hearing shall reflect whether the date and time of the hearing have been 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.

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.

NO MOTION WIL BE SET FOR HEARING unless, and until, the above requirements have been met.

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.

You may consult the JACS Calendar for available hearing times using the following link, [Judicial Automated Calendaring System \(cjis20.org\)](https://www.cjis20.org/judicial-automated-calendar). Choose Lee County, then "View Time Slots" under the links on the right side of the page. In order to see all available time slots, do not enter a duration. Once dates have been coordinated with all parties, you must contact the Magistrate's assistant, Barbara at mag-bernardohearings@ca.cjis20.org to schedule hearing on the Magistrate's calendar. 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. The attorney

or party scheduling the hearing shall promptly file and serve a notice of hearing, and email a courtesy copy to the Magistrate's assistant at the email address listed above. **The notice of hearing must include the Zoom meeting information and instructions provided by the Magistrate's assistant. Failure to include the Zoom information on the hearing notice may result in cancellation of the hearing.**

Contact hours (by telephone – 239-533-2654) are 8:00am to 12:00pm and 1:00pm to 4:30pm, Monday through Friday.

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.

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.

Orders of Referral:

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. If you are submitting an Order of Referral, please add the following to the service tab in the e-filing portal so the Magistrate's office will receive a copy of the referral when it is signed: lc-civ-mag@ca.cjis20.org.

Telephonic Appearance:

All motions are being heard via Zoom unless scheduled otherwise.

- 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.

Cancellations:

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 mag-bernardohearings@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:

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 as discussed above.

Exceptions:

If you elect to file an exception pursuant to the applicable rule of procedure, promptly send a courtesy copy to the Magistrate's assistant, Barbara, at mag-bernardohearings@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 Bernardo's Guidelines for Submitting Documents

IMPORTANT NOTE: (Please read)

When you efile proposed documents, please put the case number first, then the name of your document in the "Document Title" field on the "Add/Edit Document" screen when you submit the document. Do not put the words "case number" before the numerals. Please use the following format for the case number, 20CA-123, (two digit year, case type (CA, CP, GA, MH) and case number with no leading zeros).

You must select the parties to be served before submitting the document for review. If you have pro se parties who should receive a copy of the order, you must put them in the e-filing portal with their email address, if you have one, and select them to receive service, prior to submitting the order for review.

If your document is an emergency or time-sensitive, please put the word "emergency or urgent" before the case number in the "Document Title" field and call the office to let me know you have submitted a document that is time-sensitive.

Please download the template for the Report and Recommendation of General Magistrate and Order Adopting Report and Recommendation 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 "should" happen regarding the motion/matter, and the "Recommendation" section should state what the Court "shall" order 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, Order Adopting and any proposed orders/letters relating to the motions that were heard, to all counsel and *pro se* parties prior to submitting the Report and proposed orders/letters 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, Barbara, at mag-bernardohearings@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.

Documents Submitted to the Court:

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.

The movant shall e-file any legal authority or memoranda of law to be considered by the Magistrate at the scheduled hearing seven (7) business days prior to the hearing date.

Memoranda of law shall be double-spaced, and shall otherwise comply with Florida Rule of Appellate Procedure 9.100(1). 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.

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. If submitting a proposed report or order, 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 and orders must be submitted to the Magistrate within seven (7) calendar days of the date of the hearing. Failure to timely provide proposed order may result in the matter being referred back to the presiding judge for the appropriate action.