

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.

Orders of Referral:

Orders of Referral listing the specific name of the motion(s) and filing date of the motion(s) to be heard must be submitted through the e-filing portal to the assigned judge or prepared by the presiding judge's judicial assistant, depending on the nature of the matter referred and the reason for the referral. 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: mag-bernardohearings@ca.cjis20.org. Once the Order of Referral has been signed and a date and time has been coordinated between the parties, please contact Magistrate Bernardo's office to set the hearing at the e-mail address listed above.

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 should 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 WILL BE SET FOR HEARING unless, and until, the above requirements have been met. The original motion must be filed with the clerk of court prior to scheduling a hearing.

Motions 15 minutes or longer can be heard by the Magistrate. All time slots listed will be 15 minutes; however, they can be combined to accommodate longer hearings. If you need more than 15 minutes, please choose consecutive time slots so they can be combined. Please make sure to request the correct amount of time required when setting your hearing. 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://cjis20.org). 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 or comply with Magistrate Bernardo’s JACS procedures 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 or opposing 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 motion to be heard. This applies equally to “amended” motions seeking additional or different relief or asserting additional or different arguments.

Any pleadings, legal authority, memoranda of law or other items to be considered by the Magistrate at the scheduled hearing should be e-filed at least 7 business days prior to (not including) the date of the hearing.

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.

NOTE: The 1st and 3rd Thursdays of each month 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.

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 they 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:

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.

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 phone or 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 via the e-filing portal 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

All submissions shall be made via the e-filing portal unless specifically directed by the Magistrate.

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. Documents can only be filed in the case in which they were submitted.

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’s findings were 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 Recommendation to all counsel and *pro se* parties prior to submitting the Report. Please submit the proposed documents via the e-filing portal under the Magistrate's name and state in the cover letter 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.

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 via the e-portal 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.