

HONORABLE PHILIPPE MATTHEY
Pasco County Probate & Guardianship Division
7530 Little Road, Room 318, New Port Richey, Florida 34654
727-815-7174 (Phone)
Judicial Assistant: Peggy Van Vliet - Preynold@jud6.org

Practice Preferences

1. **Contacting the Judge's Office:** Please remember that the Judicial Assistant (JA) cannot answer your legal questions or provide legal advice, or tell you how she thinks the Judge will rule. Judge Matthey's judicial preferences are addressed in this document. Other than as set out in this document, your opportunity to speak to the Judge happens in Court only, not through a message delivered by the JA.

It is expected that attorneys and their legal staff as well as self-represented parties will be polite and courteous in their contact with the JA and the Judge. It is also expected that all attorneys and self-represented parties will adhere to Administrative Order 2013-075 PA/PI-CIR RE: STANDARDS OF PROFESSIONAL COURTESY FOR THE SIXTH JUDICIAL CIRCUIT.

2. **Scheduling Hearings and Case Status Inquiries:** This office communicates primarily via phone communication for coordinating and scheduling of any hearings. Motions must be e-filed via FSX with the Clerk of the Court and posted on the docket **prior** to requesting hearing time.

When calling the Judge's office, please have readily available: (a) the case number, (b) the style of case, (c) the type of motion/petition you wish to schedule for hearing, and (d) the length of time you wish to have set aside for said hearing. Please do not send out the Notice of Hearing until the hearing time has been confirmed by the JA.

You must seek permission of the Judge's office to add a motion/petition to a scheduled hearing and said motion/petition must be cleared with opposing counsel. Motions and/or petitions that are added and noticed *without* permission of the Court will not be heard.

Notice(s) of Cancellation of Hearing(s) must be filed via File and Serve with the Clerk of Court. Please also notify the JA when a hearing is being canceled.

If you are inquiring as to the status of the case/orders, please first check *File and ServeXpress* ("FSX") to make sure the Order has not already been entered [or you

may call the Clerk's probate department (727-847-2411 Ext. 2216) to discuss the status of a case].

The Clerk's office will often have case(s) pended before they are sent to the Judge's queue for review (usually because of missing documents). Once the Clerk sends a file/proposed Order(s) to the Judge, please allow at least three business days (a) for entry of the Order(s); (b) for the Clerk to docket the Order(s); and (c) for the Clerk to notify counsel via e-mail (if applicable). If the order(s) cannot be signed at that time, the Judge will either forward the case to the JA for further action or return the case to the Clerk for preparation of an Order Checklist. Please call the Judge's office to inquire about the status of orders only after you have confirmed with the Clerk that the case has been sent to the Judge.

3. **E-Filing:** Please review Administrative Order 2013-006PI-CIR. All pleadings including proposed orders must be electronically submitted through via *File & ServeXpress* (www.FileandServeExpress.com). ("FSX") In most cases, proposed orders sent directly to the Judge's office will be returned unsigned to be properly e-filed. To create an account either contact FSX directly (1-888-529-7587) or contact the Clerk of Court for direction.

The Judge's office cannot accept original documents for filing with the Pasco County Clerk of the Circuit Court or checks for certified copies of orders. You must send those documents directly to the Clerk of Court.

In all but the most exceptional circumstances, documents must be e-filed via FSX and posted on the docket before the Court will take any action. Notifications that e-filings are "accepted" are not the same as documents being processed, reviewed and posted on the docket by the Clerk's office.

Please also note that even though you have e-filed a pleading, it does not mean the pleading will be automatically forwarded to the Judge. There are several essential processes the Clerk's office performs before documents are forwarded to the Judge.

4. **Bonds (Estates):** In setting an appropriate bond, the Judge evaluates each case and assets individually, however, typically, the minimum bond set is \$18,000 as that is the highest bond available for the minimum bond premium; i.e., it costs the same for a bond of \$18,000 as it does for a bond of a lesser amount. The bond schedule has been adjusted to reflect that minimum and is set out below.

Bond Schedule:

Estate Gross Value:	\$0 – \$75,000 *	\$75,001 – \$100,000	\$100,001 – \$175,000	\$175,001 – \$250,000	\$250,001 - \$500,000	\$500,001 - Unlimited
Bond:	\$18,000	\$25,000	\$35,000	\$50,000	\$75,000	\$100,000 minimum**

- * Every wrongful death estate will have a minimum bond of \$18,000.
- ** Do multipliers of \$100,000 for each \$500,000 of estate (i.e. \$1,100,000 estate calls for a bond of \$225,000).

Generally, the value of homestead property and exempt assets is excluded from the total amount of assets in setting the bond. It is recommended that you propose a bond amount in accordance with the bond schedule. The bond exists to insure the performance of the Personal Representative (PR) to both beneficiaries and creditors and only in exceptional circumstances will it be waived. If you wish to seek that bond be waived, e-file a motion setting out the specific facts of your case that merit consideration for waiver of bond, along with a proposed order.

5. **Ex-Parte:** Judge Matthey sets aside 2 hours per month for ex-parte hearings. These hearings are held in-person in New Port Richey in Hearing Room 2H and also via video conference from Dade City **the first and third Tuesday of each month from 9AM to 10AM**. Judge Matthey’s J.A. Peggy will have updated calendars with open ex-parte dates. Attorneys are encouraged to confirm via email or phone that the court is open prior to appearing. These hearings are heard on a first come, first served basis rotating between NPR and DC attorneys until all of the cases on the sign-up sheets have been resolved. A signup sheet will be available at both locations. Attorneys are encouraged to arrive no later than 8:50AM to sign up. **Note:** The Judge will not wait in chambers until 10AM. If you arrive after all of the cases on the sign-up sheets have been resolved, your case will not be heard.

Rules for ex-parte hearings:

- At this time, these hearings are for uncontested, non-adversarial probate matters only;
- The matter to be heard must take no more than 5-10 minutes;
- No matters relating to attorney’s fees will be entertained;
- No evidence or testimony will be taken at the hearing;
- Attorneys **MUST** file all pleadings, motions, orders, etc. that the court will need no later than 5:00PM the Friday before the hearing. Additionally, the filing must include a cover letter advising the clerk’s office that the matter will be presented to the court the following Tuesday on the ex-parte calendar.

Note: If you file pleadings with a cover letter for ex-parte and do not show up, the matter will be placed in the clerk's regular queue for normal (30 business days) review.

6. **EXTENSIONS OF TIME:**

The court reviews and rules on many Petitions for Extension of Time every day. Every Petition for Extension of Time must include the reason(s) the extension is needed. Petitions which simply state that "more time is needed" are insufficient. The Petitions must allege why more time is needed.

Petitions which seek a reasonable extension and provide a facially legitimate reason are granted without hearing. Because of this process, occasionally an objection is not docketed until after the order is entered. In these circumstances, the judge may rescind the order of extension or may treat the objection as a motion for rehearing.

7. **"Homestead" or "Exempt" Property Sales Prior to the Expiration of Creditor's Period:** Creditors of the estate have the right to object to petitions that may result in a determination that property is exempt from their claims. Nevertheless, the Court recognizes that there often may be a need to conduct a sale prior to the end of the creditor period. Therefore, the Court will consider petitions to sell property which PRs will eventually seek to determine to be "homestead" or "exempt" as long as the proceeds are held in escrow or trust until such time as the creditors have been ascertained and are noticed of the petitions to determine property to be protected from their claims. The proposed orders authorizing any sales prior to the expiration of the creditor period must not contain any language stating that the court finds the property to be exempt or to be the homestead of the decedent or otherwise protected from claims of creditors.

8. **Judicial Review of Matters Forwarded by the Clerk:** The Judge normally receives 30-50 cases per day from the Clerk requiring review. These cases must be addressed by the Judge in between hearings and requirements of the Judge's non Probate & Guardianship assignments and caseloads. While every matter is important and will be addressed by the Court on a timely basis, it is not always possible to get to everything as quickly as desired.

It is very helpful to the Court, and expedites review and action, if sufficient information is provided in the petition itself, or in separate correspondence, to enable the judge to address the matter without conducting a time-consuming search through the case file. A common area of concern is consent by or notice to interested persons. Another is the

applicable time periods and dates regarding Notice of Administration and Notice to Creditors as they relate to homestead and exempt property petitions.

9. **Motions for Rehearing**: Such Motions are not set for hearing without review by the Judge. You must electronically submit the Motion first, and then forward a copy of the Motion for Rehearing via US Mail to the assigned Judge to ensure that it comes to the Judge's attention. If the Judge determines a hearing is required, the JA will contact the moving party to schedule the hearing.

10. **Orders on Review, Orders to File Required Documents, Orders to Show Cause and Orders Disapproving (Guardianship) Reports – Written Response Required**: Attorneys often have legitimate reasons to disagree with orders of this nature or can demonstrate they have already complied with requirements. In all of these circumstances, the attorney must electronically file a written response to the particular order stating why the attorney should be excused from, or has complied with, the requirement.

Neither the attorney nor any member of his or her staff should contact the Judge's office by telephone or email to "explain" the circumstances or ask the Judge for reconsideration. The Court will have the opportunity to consider any explanation or request for reconsideration in its review of the electronically filed written response. The Clerk's office will forward the written response to the Court for its consideration as well as any Priority Request that has been made.

11. **Petitions for Authorization to Act or Approve**:

Contents of petitions seeking the Court to authorize or approve of actions of PRs or guardians should be as thorough and specific as possible. It is difficult for the Judge to take the time to search through the court file to find information which should have been included in the petition. Examples are set out below:

Sale of Real Property: In guardianship cases, sufficient evidence of the market value of real property is required. In most circumstances, mere reference to records of the Pasco County Property Appraiser is insufficient. An appraisal or a market analysis by a real estate professional is necessary unless there are exceptional circumstances. Typically in estates, if the beneficiaries consent to the sale of the property at a particular price, the court will not require further evidence of value.

Sale of Vehicles: In guardianship cases, a petition to sell a vehicle should include reference to the market value of the vehicle by some generally recognized source such as Kelley Blue Book or Edmunds. If the vehicle is being sold by the

guardian through a bidding process, the petition should include an explanation of how it was advertised for bid or how bidders were chosen. In addition, in most cases, either a bid or written statement declining to bid must be included from a generally recognized dealer such as CarMax.

Approval for Medicaid Planning: Petitions seeking authority to act related to Medicaid planning should contain as much information as possible including, but not limited to, the amount of the Ward's assets and monthly income, whether or not any known beneficiaries of the ward's estate have been made aware of, and agree with, the plan, and the types of actions that will be taken in the process including whether a personal services contract is included and, if so, the general terms of the contract.

12. **NOTICE (DUE PROCESS REQUIREMENTS):** Attorneys should be familiar with applicable notice requirements including, but not limited to, Fla. Prob. R. 5.040 and 5.041. Generally, interested persons are required to receive appropriate notice of relief sought. Thus, every petition or motion should contain a certificate of service stating who has been served and the manner of service. If there are no interested persons, it must be so stated in the petition or motion.

In most cases, a hearing will be required when interested persons have been noticed. However, if formal notice is served on all interested persons in accordance with Fla. Prob. R. 5.640 and no objections have been filed, a hearing is typically not necessary.

13. **Pre-trials and Non-Jury Trials:** Mediation must be scheduled and held, prior to noticing a case for Trial. If an impasse is reached at mediation, counsel may contact the JA to set a Case Management Conference. Counsel and/or the pro se parties will be required to bring their calendars to the Case Management Conference for the purpose of scheduling a Pre-Trial Conference and/or Trial, if applicable.

14. **Priority (ASAP) Matters:** If you have a matter that requires priority handling, you must notify the Clerk's office of such. It will then be flagged as an "ASAP" for the Judge's review.

Please do not use the Priority (ASAP) Request as a means to have all routine issues handled with priority.

15. **Proposed Orders:** All proposed orders must be electronically submitted via the Florida Courts E-Filing Portal. Proposed orders sent directly to the Judge's office will be returned unsigned so they can be properly e-filed.

With regard to the placement of the date and signature, the electronic signing system includes the full date as well as the judge's name and status as a circuit court judge. Thus, your proposed order should NOT contain multiple blanks for the date to be entered and should simply have "Circuit Judge" under the signature line.

The following format should be used:

Proposed orders should be filled out as completely as possible. Because of the electronic signing process, the filling in of blanks by the Judge is a very time consuming process. Only in exceptional circumstances should there be any blanks in the body of the order for the Judge to fill in. Attorneys should submit proposed orders containing the relief that is sought. For example, when seeking an extension of time, the proposed order should include the proposed time being sought. If the Judge does not agree with the relief sought, the Judge may change the language of the order, ask that a new order be submitted, or deny the order.

If you are submitting a proposed order from a hearing, please electronically submit the proposed order along with a cover letter to the Judge to advise the proposed order is from a hearing on "X" date and that the proposed order has been approved by opposing counsel, if any. If you need the order on an expedited basis, you must also e-file a priority request along with the proposed order. If opposing counsel does not agree to the proposed order, please also file a cover letter so indicating and stating that opposing counsel will file an alternative proposed order within if desired. Of course, your cover letter should also be sent to opposing counsel.

Please note that when new cases are e-filed, they take longer to process and must be thoroughly reviewed and audited by the Clerk's office. Unless there is a priority and a Priority Request has been e-filed with the case, please allow a few weeks for the Clerk's office to thoroughly review all of the documents of the new filing *before* requesting hearing time or inquiring if a hearing will be required. Often documents are missing so the Clerk's office will prepare an Order Checklist and therefore it is not appropriate to schedule a hearing until the required documents have been filed.

16. **Substitution and Withdrawal of Counsel:** Rule of Judicial Administration 2.505(e) (2) requires that the client agree **in writing** to substitution of counsel. Proposed Orders approving stipulation for substitution of counsel submitted without the written consent of the client will not be signed by the Judge.

The Court will consider proposed orders for withdrawal of counsel if accompanied by stipulations for same signed by all parties. Otherwise a motion and hearing will be

required. Also, a hearing will be required in circumstances where the attorney is seeking to withdraw from representing either a PR or a guardian unless a substitution of counsel has been filed. When the withdrawal of counsel will result in a party being without counsel, the proposed order must contain the complete contact information for the party (i.e. address, phone number, e-mail address, etc.).

17. **Telephonic Appearances and Testimony:** In most cases for hearings of 15 minute duration, the attorney will be permitted to appear by phone. Telephonic appearances should be requested at the time of scheduling the hearing.

If you asked for a party to appear by phone for hearing, your Notice of Hearing must indicate which party is appearing by phone. If more than one party is appearing by phone, you will need to coordinate a conference call, getting all parties on the line, before calling the Judge's chambers (727-815-7174). The Court does not initiate telephonic hearings. Any attorney seeking to present telephonic testimony must follow the procedure set out in Florida Rule of Judicial Administration 2.530(d).

18. **Eastside (Dade City) vs. Westside (NPR) Hearings:** Judge Matthey is currently assigned to all Probate & Guardianship matters for Pasco Court. Judge Matthey's chambers are in New Port Richey. As such, Judge Matthey conducts all* hearings in person from the New Port Richey courthouse. For all Eastside cases, video conference equipment has been set up. Attorneys and/or clients may attend hearings at either location according to their preference and convenience. For all Westside cases, the attorneys and clients must attend in person at the New Port Richey courthouse as no video conference equipment will be available for those hearings. Eastside trials and long hearings will be scheduled on either side according to litigant preference and availability of staff and facilities. Note: No Westside cases will be set in Dade City.

Updated May 2017.

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