

HONORABLE JUDGE MARK I. SHAMES
Section 4 – Probate Division

545 First Avenue North, Room 312
St. Petersburg, Florida
727-582-7734 (Phone)
727-582-7409 (Fax)

Practice Preferences

(Revised July, 2016)

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 Shames’ 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 (Section 4):** This office communicates primarily via phone communication for coordinating and scheduling of any hearings. Motions must be e-filed 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 e-filed 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 the Clerk of Court’s website to make sure the Order has not already been entered [or

you may call the Clerk's probate department (727-464-3321) 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 2016-018PI-CIR ("AO"). All pleadings including proposed Orders must be electronically submitted through the Florida Courts E-Filing Portal. (Note: Paragraph 3 of the AO lists those **original** documents which must be filed with the Clerk of Court.) In most cases, proposed Orders sent directly to the Judge's office will be returned unsigned to be properly e-filed.

The Judge's office cannot accept original documents for filing with the Pinellas 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 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.

The Pinellas Clerk's office offers tours of their Probate Department, which include how documents are processed from the e-filing portal. It is highly recommended that you or someone from your office take the tour as it will answer questions and avoid unnecessary inquiries with both the Judge's office and the Clerk's office. To schedule a tour, use the link below and scroll down to the Probate Attorneys section where you will see "***Schedule A Tour Of Our Probate Department***".

<http://www.pinellasclerk.org/aspInclude2/ASPInclude.asp?pageName=ATTYS.htm>

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**: Ex-Parte time with the Judge is by appointment most Thursday mornings from 10:00 am – 11:00 am. To schedule an appointment, please call the JA (727-582-7734) for ex-parte dates. Appointments are scheduled in advance so that the electronic file can be previewed by the Judge as, in some circumstances, the Judge may be able to resolve your problem without the need of the ex-parte conference.

Occasionally, you may receive a call from the JA requesting an Ex-Parte appointment be scheduled. This contact typically occurs after the Judge has reviewed a file and has questions for the attorney.

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. **Guardianship and Trust/Guardianship Fee Petitions:** All fee petitions in guardianship cases are reviewed by the Magistrate's office once they have been e-filed, and are not set for hearing. Once the fee petition has been e-filed and processed by the Clerk's office, it will be forwarded to the Magistrate's office for review. If there are any questions or problems with the petition, the Magistrate's office will contact you. **Please note that fee petitions are pended for a 25 day objection period. When the order is ready for signature, it will be forwarded to the Judge.**

It is the policy of this court to require that the guardianship fee petition process be followed in cases where the court has established a trust within a guardianship (typically for Medicaid planning purposes) and guardianship assets have been transferred to that trust. In these cases, the fees of the trustee and the attorney for the trustee must be approved by the court in the same manner as guardianship fee petitions.

8. **"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.

9. **Judicial Review of Matters Forwarded by the Clerk:** The Judge normally receives 50-100 cases per day from the Clerk requiring review. These cases must be addressed by the Judge in between hearings, trials and emergencies. 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.

10. **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.

11. **Order Checklists, 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.

12. **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 Pinellas 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.

13. **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. When hearings are necessary, if counsel does not believe anyone will appear, the matter may be set on the UMC Calendar.

14. **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.

15. **Priority Matters:** When a Priority Request is filed, it will be forwarded to the Judge for review along with a form which the Judge will use to indicate whether or not the request is "Approved." If the Judge approves the request, the case will be reviewed by the Clerk on a priority basis. If the Judge does not approve the request, the case will be reviewed in the order of the filing of all cases.

The process set out below is also posted on the Pinellas County Clerk of Court website www.pinellasclerk.org and click on Attorneys' Page. Priority Requests shall include the following information:

CASE STYLE/NUMBER

TITLE: Title of document shall be "PRIORITY REQUEST"

CONTENTS:

The document shall contain a detailed and specific explanation of why the case should be given priority over all other cases accepted for filing. Brief statements such as "real estate closing" are insufficient and will not be approved. If the basis for the priority request involves the sale of real estate, the reason for any alleged urgency must be set out in detail. Delay on the part of a real estate agent, beneficiary or attorney in preparing documents is not a sufficient basis for a priority request. There must be circumstances that cannot be addressed by an extension of a sales contract.

If, for example, the request involves the need for documents to be signed because a proposed Personal Representative is traveling from out of state to Florida, explain why the trip must occur at a specific time and why documents could not have been prepared earlier thereby avoiding the need for a priority. Proposed Personal Representatives should be routinely advised by counsel at the earliest opportunity of the amount of time it takes for cases to be processed and their need to wait to plan a trip to Florida until the Order Appointing Personal Representative and Letters of Administration have been signed. There may be a valid priority for cases involving travel by a Personal Representative to tend to property which is perishable or rapidly deteriorating. If so, the nature of the property and the circumstances requiring urgency must be described in detail.

If a Priority Request is being made because the Judge is awaiting the documents, the specific date and manner of communication of this circumstance must be stated (e.g. "Judge told attorney during hearing on [state type and date of hearing] to file a Priority Request when these documents were filed." Or, "Judge's Judicial Assistant instructed me on [date] [in person at the court house or in a telephone conversation or by email, etc.] to file a priority request regarding [explain]."

SIGNATURE

The Priority Request Form must be signed by the attorney or *pro se* party. Any form not signed, will not be approved. Further, information below the signature shall include the typed name of the individual who signed, street address, email address, telephone number and, if applicable, bar number.

16. **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 nor should it contain any reference to the name of the judge.

The following format should be used:

ORDERED

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.

17. **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.).

18. **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 (727-582-7734).** 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).

19. **UNIFORM MOTION CALENDAR (UMC):**

You may be contacted by the JA to set your petition/motion on a UMC calendar. UMC calendars are most Thursdays starting at 11:00 am. The JA will provide specific information and scheduling instructions to the attorney’s office. The attorney does not need to appear at the hearing, but must be available to appear at the hearing by telephone in the event any interested party appears. If a party appears, the Judge’s office will call the attorney for a hearing. If no interested party appears at the hearing, the Judge will enter the order. The hearing may be noticed for 15 minutes.

Typically, cases set on the UMC calendar are those where notice needs to be given to satisfy due process requirements to interested parties but no one is expected to object. In some cases, it may not be necessary to set a UMC hearing if the attorney has either formally noticed interested parties or filed their consents. Sometimes, the notices and consents of all interested parties are not easily evident to the Judge in review of the docket. If you believe your case does not require a UMC, you should communicate that to the JA with specific references to the notices or consents of each interested person on the docket.

20. **Helpful Contact Information:**

Probate Division of the Pinellas County Clerk of Court: (727) 464-3321
General Magistrate’s Office (727) 582-7243
Clearwater Bar Lawyer Referral Service: (727) 461-2800
St. Petersburg Bar Lawyer Referral Service: (727) 821-5450

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