

HONORABLE JAMES R. STEARNS
Pasco County Probate & Guardianship Division
7530 Little Road, Room 316, New Port Richey, Florida 34654
Hearing Room 2H (NPR) and Video Advisory Room (DC)
727-847-8095 (Phone)
Judicial Assistant: Jessica L. Smith - JSmith@jud6.org
Conference/Hearing Line (as of May 1, 2021) **727-815-7105**

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 Stearns'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) pending 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 via *File & ServeXpress* (“FSX”) (www.FileandServeExpress.com). 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. Please note that the Court must also consider potential creditors.

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**

* Wrongful death estates will usually 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 are excluded from the total amount of assets in setting the bond. 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. Examples of those circumstances include cases in which the proposed PR is a licensed attorney or cases in which all beneficiaries consent to bond being waived and the decedent has been dead for more than two (2) years. 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. Petitions to Waive Bond are routinely denied which merely state “boilerplate” language that doesn’t explain the facts and circumstances of the case.

5. **Ex-Parte**: Judge Stearns does not do Ex-Parte appointments. Please inform the clerk’s office if you have an uncontested, non-adversarial probate matter that needs to be addressed on an expedited basis, and the Court will special set a hearing, if necessary.

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. All Orders shall include the correct date of the extension.

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, in addition to his delinquency and family law hearings. These cases must be addressed by the Judge in between hearings and requirements of the Judge’s non Probate & Guardianship assignments and caseloads.

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.

Petition Seeking Authorization for a Do Not Resuscitate (DNR) Order: File a Petition and proposed Order which includes the following:

- 1 Information as to any advanced directives the Ward may have executed in the past (Living Will, Health Care Surrogate, Organ Donation Intent, previous DNR);
- 2 Medical condition of the Ward, including any physician recommendations; is Hospice involved;
- 3 Family or friend input or consents;

- 4 Any knowledge of the Ward's preferences considering the Ward's values, culture, religious preference and a statement as to how the Guardian has complied with Rule 58M-2.009(10):

Professional Guardians shall determine the extent to which Wards under guardianship identify with particular ethnic, religious, and cultural values.

Professional Guardians shall consider the following:

- a) The Ward's attitudes regarding illness, pain and suffering;
 - b) The Ward's attitudes regarding death and dying;
 - c) The Ward's views regarding quality of life issues;
 - d) The Ward's views regarding societal roles and relationships; and
 - e) The Ward's attitudes regarding funeral and burial customs.
- 5 If the request for DNR is an emergency, file a Priority Request and be sure to include DNR in the title of your Petition.
 - 6 If the Petition or attachments include the Ward's medical records, consider filing a "**Motion to Determine Confidentiality of Court Records**" [See Rule 2.420(e)] and proposed Order. A person's medical records enjoy a confidential status. First, the right to privacy contained in Art. I §23, Fla. Const.; second, §456.057(7)(a), Fla. Stat. and third, §90.503(2), Fla. Stat. all provide a basis for medical records to remain confidential. And, also consider Judicial Administration Rule 2.420 records pertaining to Baker Act, substance abuse services, tuberculosis, and specific Guardianship reports, if applicable.

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. All Notices of Hearing shall state the date, time, location and amount of time that has been set for the hearing or trial.

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 *File & ServeXpress* ("FSX") (www.FileandServeExpress.com). Proposed orders sent directly to the Judge's office will be returned unsigned so they can be properly e-filed.

NOTE: Proposed Orders that contain a watermark or overlay of any type will not be signed and will be rejected by the Clerk as directed by the Court.

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 and amount of attorney's fees, costs, paralegal fees, etc. For example, when seeking an extension of time, the proposed order shall include the proposed time (extension date) 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.

All Orders Authorizing Payment of Fees and Expenses shall have the correct amounts in the proposed order and shall not include regular office expenses such as postage and photocopies. Any Order Authorizing Payment of Fees and Expenses without the proper amounts in the proposed order shall be returned unsigned.

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.

Proposed Amended Orders must normally be submitted with a properly filed Petition to Amend Order. However, in cases involving an amendment to correct a scrivener's or other technical error, a short letter of explanation for the need of an amended order is acceptable. Proposed amended orders submitted without any written explanation in either motion or letter form will not be signed.

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, Zoom and Testimony:** In light of the COVID-19 pandemic, the Courts are undertaking very significant measures to ensure the health of everyone involved in the court system. Any case law or memoranda shall be provided to the Court at least forty-eight (48) hours prior to the hearing and shall be shared with all parties. All exhibits must be pre-marked and submitted to the Clerk of Court forty-eight (48) hours prior to the hearing. All probate and guardianship hearings will be heard telephonically or by Zoom until further notice from the Supreme Court of Florida. Beginning May 1, 2021, Judge Stearns will conduct any telephonic hearings using conference line number **727-815-7105**. All probate and guardianship hearings in excess of fifteen (15) minutes will be conducted via Zoom. Only hearings of fifteen (15) minutes or less will be conducted telephonically. Below are the instructions to place your call:

The telephone number to call at your designated hearing time is **727-815-7105**. After you dial the number the line will ring, then go to “dead air.” Your call is connected, just wait patiently for the judge to connect to this line. There may be a delay, but your case will be called. **Please remain on the line.** Additionally, other hearings may be taking place, so please mute your phone and do not speak until the Court calls your name. Press *2 to mute or unmute your audio. **Please do not call prior to your scheduled hearing time.**

18. **Eastside (Dade City) vs. Westside (NPR) Hearings**: Judge Stearns is currently assigned to all Probate & Guardianship matters for Pasco County. Judge Stearns’s chambers are in New Port Richey. As such, Judge Stearns 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 must be set in New Port Richey. Note: No Westside cases will be set in Dade City.