PROCEDURES AND PREFERENCES:

The policies and procedures outlined below are meant to aid parties and counsel. The term "parties" includes people who are representing themselves because they do not have an attorney. The legal term description for such self-represented people is pro se. All of the policies and procedures outlined below apply to represented and unrepresented people.

I. Communication with the Court

The preferred form of communication for setting and canceling hearings is by e-mail at Gutshall.Tilena@jud3.flcourts.org. Such e-mails must be copied to all parties. No *ex parte* communications are permitted. Generally, e-mails should only be used for scheduling issues. The Court cannot answer legal questions. Contacting the Judicial Assistant is the same as contacting the Court. The Judicial Assistant may not answer legal questions.

The subject line of the e-mail should contain:

- the case name, case number, and relevant document number(s).

The body of the e-mail should contain:

- the document number from the docket and the corresponding title of each pleading to be set; and
- the duration of time needed for the hearing and whether both sides agree that the amount of time requested is sufficient.

Incomplete requests generate multiple e-mails and occasionally multiple phone calls, all of which delay setting a hearing.

Except for emergency and expedited hearing requests, requests for hearing time are handled on a first-come, first-served basis. Response times may vary. The Court receives a substantial number of requests every day. If you have not received a response after four (4) business days, you may contact chambers at (386) 758-2147 to check the status of the request. Please reserve such calls for pressing requests.

II. E-mail in Relation to Service Between Parties and Counselors

All parties should use e-mail and, if necessary, file an appropriate Form 12.915.

Per Florida Rules of General Practice and Judicial Administration 2.516(b)(1)(C), "[i]f a party not represented by an attorney does not designate an e-mail address for service in a proceeding, service on and by that party must be by the means provided in subdivision (b)(2)." The

referenced Rule (b)(2) provides service by regular mail, hand delivery, fax, and other means. Self-represented people (pro se litigants) may designate an e-mail address by filing an e-mail address on Form 12.915, (titled "Designation of Current Address and E-mail Address"). Providing an e-mail address on any other document does NOT allow documents to be delivered to self-represented parties for the purpose of counting as service. Regular mail (or other service such as hand delivery) must be used regardless of whether the document was sent via e-mail. If a self-represented person does not designate an e-mail address on Form 12.915, documents may still be e-mailed to the litigant but must also be served by other means as defined in section (b)(2). E-mail alone is not sufficient. Counsel should act accordingly.

III. Virtual Court: Appearances by Video Conference

Generally, the Court uses the Zoom platform for video conferences of virtual court proceedings. The Zoom App is available for free and for mobile devices as well as desktop and laptop computers. You do not need an account or pay a fee to use this service. If you are attending a virtual court proceeding, you are responsible for familiarizing yourself with the Zoom platform and can do so by visiting the Zoom Help Center at https://support.zoom.us.

The more complex the matter, the less likely it will be heard by video conference. The Court will not set hearings by video conference for parties who have demonstrated an inability to properly use the technology or comply with the basic good video conferencing and Court etiquette.

Everyone who chooses to use video conference technology shall abide by the following:

- must use sufficient bandwidth to permit smooth and clear audio and video. Connection difficulties will be charged against the unprepared party and may lead to hearings being converted to in-person only.
- must dress in a manner appropriate for court. Parties may not appear unclothed. Counsel should appear in professional attire and, if necessary, use a professional background.
- must have an appropriate location and background. A bed is not an appropriate location from which to appear in court. Virtual backgrounds are acceptable so long as they are professional.
- must use his or her best efforts not to appear from a public location during the hearing.
- must use the mute setting when not speaking to avoid background noise or other interference.
- must use his or her full legal name as the caption in the area reserved for identifying the participant. This will help the Court identify the speaker and who is present at the hearing. In Zoom, the name to be displayed should be changed before joining the hearing (also referred to as a "meeting"). If you join a hearing without updating your name, you must perform the following:

(1) click on the "Participants" button at the top of the Zoom window, and

(2) click over the current log-in name you are using in the "Participants" list on the right side of the Zoom window, and

(3) click on "Rename" to change the log-in name to your actual name.

- must disclose if anyone else is present with him or her.
- must not have any children of the parties present during the hearing or be where the children can hear or see the hearing.
- must have paper copies of both parties' exhibits, which are easily accessible. Electronic versions of the exhibits are acceptable for a non-party witness if the witness is skilled with the use of electronic documents and has all exhibits available on a separate screen. It is the responsibility of the presenters to ensure the easy availability of such exhibits to their clients and any witnesses they intend to call.
- Must have the cameras in a fixed position, preferably on a flat surface, and not be holding the device through which they are connecting.

Counselors are responsible for advising their clients of the requirements for a virtual court appearance. If parties cannot effectively appear in virtual court, please advise the Court at least three (3) business days before a hearing so that an in-person hearing may be arranged. Virtual court is actual live court and, therefore, the proceeding as well as the parties shall be treated with respect.

Occasionally, the Court will permit hybrid hearings, that is, some people appearing in-person and some people appearing by video conference. This is generally disfavored. The agreement of the parties to permit someone to appear by video conference is not dispositive of the issue. If the Court permits a hybrid hearing, all present in the courtroom need to have the appropriate equipment to be able to see any individuals appearing via video conference and to be seen by them. An inadequate plan to address the ability of the in-court participants' or out-of-court participants' ability to hear and see each other will lead to a denial of the request for a hybrid hearing. Technical issues on the day of a hybrid hearing are not themselves grounds for a continuance. Please plan accordingly.

IV. Scheduling Hearings

Unless the Court orders a specific hearing date and time sua sponte, the parties are required to coordinate with each other in the setting of court dates. The requesting party should contact the Judicial Assistant via e-mail, as outlined below, to request a hearing. The requesting party will be offered at least two potential dates. The parties should attempt to agree upon the dates provided. If none of the dates provided work for both parties, the Judicial Assistant may offer additional

dates. If the parties cannot agree on a hearing date after a second offer, the Court may select a date unilaterally. Further, once a second set of dates and times has been offered, any party (or attorney) rejecting those dates and times shall plainly and precisely specify the basis for rejecting each additional date and time proposed for hearing that motion. The goal is to ensure that the parties get prompt and fair access to the Court and to eliminate any sense of gamesmanship, both real and perceived, in the setting of hearings.

Clients and pro se litigants are generally expected to make themselves available for hearings during regular business hours, and scheduling a hearing to accommodate the clients' or pro se litigants' schedules is the exception rather than the rule. Often individuals are employed during hearing hours and are nonetheless expected to make arrangements to be available, although unusual circumstances such as previously scheduled significant events may be accommodated. An attorney rejecting dates and times proposed for a hearing shall specify whether the attorney or their client is unavailable for each of the proposed dates, and if the client is the basis for the unavailability the reason for the unavailability

The parties and any involved attorneys shall cooperate in providing their availability for hearings even if they do not agree that the amount of time requested for the hearing is sufficient, or do not agree that the matter is ripe for hearing, or have other legal or procedural objections to the hearing. If the responding party fails to respond to e-mails attempting to set a hearing by providing their availability within three (3) full business days (72 hours, non-court holiday Monday through Friday) without good cause, the requesting party may select the hearing date and time unilaterally and, if unilateral, should indicate on the notice of hearing that it was unilateral based on non-responsiveness.

With respect to the amount of time requested for a hearing, the parties should remember that both sides should be allocated equal time, with some time reserved for the Court to rule. For example, a thirty (30) minute hearing might be broken down as thirteen (13) minutes per side with four (4) minutes for the ruling. The parties and counselors are expected to reserve sufficient time. If the responding party fails to respond to the request for availability, then the movant shall reserve an amount of time for the nonresponding party that is equal to the amount of time the movant needs.

Bad faith conduct in the setting of the hearings may result in sanctions. Motions alleging bad faith conduct in the setting of hearings and seeking the Court's intervention in scheduling must contain details of the alleged bad faith conduct. Such motions shall be filed in the Court file and then forwarded to the Judicial Assistant by e-mail. The motions may be either handled without a hearing (if the procedure for such handling is followed and the court deems such handling appropriate) or set for a hearing on short notice. If known, the correct contact information for the

opposing party or counsel must be included in the motion, including e-mail addresses and phone numbers. If the movant does not have contact information for the opposing party, please state so in the motion.

V. Identification of Documents in the Court File

Due to the fact that many case dockets include years of filings and many filings may be filed on the same date, it is the preference of the Court that all filings in the court file be referred to by their document number, if available. For example, "the petition (Doc. 3)." If no document number is available, the parties should include the date of filing, e.g., "the petition (June 14, 2014)."

Most court files may be viewed remotely through the Florida Courts E-Filing Authority at: https://www.myflcourtaccess.com/authority/ or the Online Court Records Search at: https://www.civitekflorida.com/ocrs/county/ . Note, however, that not all offices of the Clerks of Courts subscribe to the Online Court Records Search platforms.

VI. Motions – General Requirements

A motion must comply with the following:

- consist of no more than twenty-five (25) pages inclusive of all parts; and
- include a concise statement of the precise relief requested; and
- include a statement of the basis for the request; and
- include the legal authority (e.g., statute, Family Law Rule of Procedure, case-law) supporting the request (failure to include the appropriate legal authority may be stricken or denied as facially insufficient).

Attaching the full version of the filings already in the court file is unnecessary. For example, attaching the final judgment to a motion is unnecessary. Instead, the parties should cite the filing as necessary and pinpoint precisely the reference being made in the filing. For example, "the Final Judgment (Doc. 72 at 12, ¶8(a)), requiring that 'the parents confer regarding school selection.'"

If the interested parties agree to the relief sought in a motion, the title must include "unopposed" or "stipulated," as appropriate.

Parties shall confer in good faith prior to filing a motion. See, e.g., Florida Family Law Rules of Procedure 12.380(b)(" The motion must include a certification that the movant, in good faith, has conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action."). Communication, cooperation, and compromise may resolve many issues in domestic relations. For the parties, direct communication is often more efficient than legal proceedings. If the parties have conferred and could not agree, the Court prefers that the movant disclose that the parties could not agree in the motion. If the parties have not conferred, the Court prefers the movant disclose that as well.

Not all motions require a hearing. Ruling on the motion is an efficient way to manage the docket, save the parties needless expenses, and eliminate the necessity of coordinating calendars. If the law does not require the Court to hold a hearing before ruling, the movant should say so in the motion.

When the movant believes the motion does not require a hearing and believes the Court should rule on the paper, the movant must forward a copy of the motion to chambers by e-mail. The subject line must be "REQUEST FOR RULING WITHOUT A HEARING." The Court's judicial assistant will forward the motion to the Court. The Court may, (1) rule on the motion, (2) order the opposing party to file a response to the motion (and include in the response whether the law requires a hearing), (3) ask the parties to set a hearing, or (4) request a proposed order from either party.

VII. Emergency Motions – Including *Ex Parte* Motions

Emergency motions are treated as emergencies and are reviewed by the Court forthwith. The designation of something as an emergency accords the pleading extraordinary treatment. No party or attorney should file a motion as an emergency without first studying *Smith v. Crider*, 932 So.2d 393 (Fla. 2d DCA 2006). The moniker "emergency" should be reserved for true emergencies. The unwarranted designation of a motion as an emergency may result in a sanction.

Upon filing an emergency motion, the movant shall provide a copy of the emergency motion directly to the Judge and Judicial Assistant. The movant shall contact the Judicial Assistant via telephone to ensure receipt of the emergency motion. The Court then promptly reviews the motion, often by taking a recess during hearings of other matters or in between hearings of other matters which necessarily delays the start of the next hearing. The Court will notify the movant or parties in writing of the Court's decision.

A prayer for emergency relief signals to the Court that the parties will treat the issue as an emergency that requires their and the Court's immediate attention. Due to the safety and well-being of children being of paramount concern to the Court, previously set hearings may be rescheduled so that a true emergency may be addressed. If a party or counsel files an emergency motion, the Court expects that they will be immediately available for an emergency hearing, including at night or on weekends and in-person.

If a party or counsel files an emergency motion, the correct contact information for the opposing party must be included, if possible. This includes e-mail addresses and phone numbers. This includes motions filed *ex parte*. If the movant does not have any contact information for the opposing party, such shall be stated in the motion.

Constitutionally, parties are entitled to notice and an opportunity to be heard. Thus, as a general rule, *ex parte* motions are strongly disfavored and should only be filed in rare and appropriate circumstances, e.g., where disclosure of the motion will cause immediate and irreparable harm.

VIII. Expedited Motions

Some motions will not qualify for emergency relief but may still be time sensitive. Such motions should be identified as requiring expedited relief. The parties shall include in the pleading how quickly a ruling must be made and an explanation for the urgency. The movant shall provide a copy of the expedited motion directly to the Judge and Judicial Assistant. The movant shall contact the Judicial Assistant via telephone to ensure receipt of the expedited motion. As a matter of general practice, the Court attempts to review all expedited motions the same day they are received and gives such motions priority in scheduling.

If a party or counsel files an expedited motion, the Court expects that they will be available for an expedited hearing, including at night or on weekends and in-person. A prayer for expedited relief signals to the Court that the parties will treat the issue as one that requires their and the Court's prompt attention. Abuse of the moniker "expedited" may subject the movant to sanctions.

If a party or counsel files an expedited motion, the correct contact information for the opposing party must be included, if at all possible. This includes e-mail addresses and phone numbers. This includes motions filed *ex parte*. If the movant does not have any contact information for the opposing party, such shall be stated in the motion.

IX. Pick-Up Orders

A child pick-up order is generally a form of extraordinary relief. Such orders are effectively warrants. Law enforcement may execute them, using the necessary force to compel compliance with the order. Children subject to such orders may be seized by law enforcement potentially through the employment of the full panoply of available tools, e.g., potentially including the use of Special Weapons and Tactics (SWAT). The execution of such orders can be traumatic for the child and potentially dangerous for all involved, particularly if the situation escalates.

Thus, the Court grants such requests only in accordance with the statutes, rules, and binding legal authority. Parties should calibrate such requests with due care for the best interests of the child in question. Non-ex parte and non-emergency enforcement and contempt motions are generally preferred.

X. Motions to Continue Other Than Contested Final Hearings

Professionalism is expected when both requesting a hearing continuance and when agreeing to or declining a request for a continuance. A continuance shall not be used to gain a perceived tactical advantage. Conversely, all counsel and litigants are reminded that parties and counsel are doing their best and, sometimes, a continuance is unavoidable.

With respect to motions to continue, strict adherence to Florida Rules of General Practice and Judicial Administration 2.545(e), and Florida Family Law Rules of Procedure 12.460 shall be enforced. Unless made at the hearing, all motions for continuance shall be in writing, and except for good cause shown, all motions to continue must be signed by the party requesting the continuance and the attorney. The movant must also describe the reason for the request to continue the hearing.

XI. Notices of Hearing

All notices of hearing must contain the title of each motion set for a hearing and the corresponding document number (Doc. #) of the motion. The notice of hearing must be filed no later than four (4) business days from the time of requesting availability. Otherwise, the time slot will likely be given to another case.

In the event of a cancellation, please notify the Judicial Assistant via e-mail and file a Notice of Cancellation. Notices of Cancellation do not apply to hearings set by order of the Court. Those may only be canceled by filing a motion or an agreement resolving all issues that were noticed

for hearing. Please note that e-mails to chambers are appreciated for scheduling purposes but are not a substitute for motions.

XII. Contested Final Hearings

All contested final hearings must be set by order. *See* Florida Family Law Rules of Procedure 12.440. Generally, this division does not employ pretrial conferences unless requested by the parties or otherwise deemed necessary by the Court. The Court will enter an order outlining the final hearing requirements. A final hearing set because of the other party's default is a contested hearing for this provision. An order must also set such final hearings.

Unless otherwise specified in the order setting the final hearing, at least three (3) business days before the start of the final hearing, the Court requires the parties to file, in addition to filings mandated by either court rule or statute, the following:

(1) a brief memorandum that summarizes the issues that remain to be tried (legal citations are not necessary but may be included), and

(2) a true exhibit list, and

(3) a true witness list, and

(4) an equitable distribution worksheet if marital property is sought to be divided.

XIII. Continuances of Contested Final Hearings

Continuances of contested final hearings previously set by order of the Court are disfavored absent good cause. To continue a final hearing, parties must file a verified motion to continue, providing a courtesy copy of the motion to chambers. The parties are required to confer prior to filing such a motion. The motion must include the reason for the continuance. The movant must certify that (1) they conferred with the other party or explain precisely why the movant could not confer and, after conferring, (2) the position of the other party on the motion.

XIV. Proposed Orders

Proposed orders agreed upon by the parties can be submitted to the Judicial Assistant for signature via e-mail as a Word (.docx) formatted document. The counselors are responsible for providing a copy of an electronically signed Order to any pro se parties. If the pro se litigant has included an e-mail address on Form 12.915 (titled “Designation of Current Address and E-mail Address”), filed within the case, it may be provided electronically. If not, it is the responsibility of counsel to provide a copy of the Order by regular U.S. mail.

Proposed orders not agreed upon by the parties or competing Orders should be submitted to the Judicial Assistant by e-mail and attached as a Word (.docx) formatted document, which will be forwarded to the Judge upon receipt of both proposed competing Orders. The cover letter should include the hearing date if there was a hearing. If the proposed order is a proposed final judgment, the cover letter should also include the date the initial jurisdictional testimony was taken and the document number for the initial jurisdictional testimony order.

Proposed orders must be submitted to the opposing party by e-mail to the e-mail address on the service notice or as otherwise designated by the party. If the opposing party does not respond within five (5) business days, the proposed order shall be deemed an agreed-upon proposed order. The cover letter submitted with the proposed order should note that the other side failed to respond within five (5) business days.

As a matter of preference for this Court, the style of the pleading should be:

IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT

IN AND FOR [enter the name of the county here] COUNTY, FLORIDA

[In re …] [In the …] … Case No.: [#]

(*See* Florida Family Law Rules of Procedure 12.100(c))

_____/

…

The signature block should be as follows:

DONE AND ORDERED on the ____ day of _____, 20___, or the date set forth in the electronic signature block.

_____
Fred L. Koberlein, Jr.
Circuit Judge