

## General Probate Procedures

1. Petitions or motions must be e-filed with the clerk before a hearing will be scheduled. State in your petition or motion the position of opposing counsel – whether they object or not to the relief requested.
2. All hearings must be coordinated with opposing counsel. For Volusia cases (for the time being), all hearings must be set through the Judicial Assistant, Brooke McCormick. For Flagler cases attorney direct scheduling is available on the Benchmark system (see Benchmark Scheduling Instructions). For a hearing over 1 hour you must call the Judicial Assistant to schedule a hearing at 386-822-5073. “Emergency” hearings are rarely granted, and must be requested in writing, giving reasons.
3. Notice of Hearing: the location must be in the notice of hearing (courthouse and hearing room/courtroom #); name of the motion you are calling up for hearing and the clerk’s docket #. A copy of the Notice of Hearing must be e-mailed to the Judicial Assistant at [bmccormick@circuit7.org](mailto:bmccormick@circuit7.org). Do not notice additional matter(s) for hearing at the time reserved by another party, unless consent has been obtained from the other party and the Judicial Assistant is notified.
4. Phone appearances will be permitted in compliance with Court Call Telephonic Hearings Procedures. Telephone appearance is not permitted, absent court orders, for:
  - a) Evidentiary hearings on any issue
  - b) Trials
  - c) Any other matters where the court specifically requires personal attendance (i.e., Order to Show Cause).
5. Cancellation of hearings. The Judicial Assistant should be advised of any hearing cancellations **immediately**; if advised in advance, the Judicial Assistant can make the time available to other parties.
6. Proposed Orders:
  - a) All proposed orders should be emailed to [division10@circuit7.org](mailto:division10@circuit7.org) in an up-to-date WORD format. PDF orders will be rejected and the subject line should state “case # and case style” and be properly circulated between the parties BEFORE submitting the proposed order. [Division10@circuit7.org](mailto:Division10@circuit7.org) is solely for the purpose of submitting PROPOSED ORDERS, so please do NOT submit other

- pleadings or requests via this email address.
- b) It is extremely helpful if proposed orders are accompanied by a letter or memo stating: the proposed order is agreed to by all affected parties; or, the proposed order is in accordance with the ruling announced by the court on \_\_\_\_\_ (date); or, other basis on which the court should enter the proposed order.
  - c) Place a title on all proposed orders: i.e., Order Dismissing Complaint, Order Extending Time, Order Determining Homestead; not simply "Order".
  - d) An order granting a motion should grant the relief requested instead of merely reciting that the motion is granted (for example, an order granting a motion to dismiss does not, without more, dismiss the complaint). Similarly, an order approving a stipulation should also, at a minimum, order the parties to comply with its terms. An order denying a motion may merely recite that the motion is denied, unless other orders/directives are necessary because of the denial.
  - e) Format proposed orders so that the date and Circuit Judge are not on a separate page by themselves without substantive text. Circuit Judge needs to be right aligned and no signature line is required.
7. Changing Caption: Unless a specific court order is entered mandating it, **do not** change the caption ("style") of the case from that of the original petition, on all pleadings and orders. Even if a party (or even all parties) is dropped or added, the caption may not be changed by counsel or the parties, absent a court order.
8. Withdrawal/substitution of Counsel: Withdrawal can only be accomplished by order, which will be entered only upon stipulation signed by client(s) or after a hearing. If after hearing, there must be service of the motion and the notice of hearing to the client(s) as well as all other parties and this service should be reflected on the certificate of service. Fla. R. Jud. Admin. 2.505(f)(1). The address where the client can be served in the future should be in the motion and included in the proposed order. Similarly, a substitution of counsel requires an order of court, upon either a written consent of the client(s) which shall be filed with the court or a hearing. Fla. R. Jud. Admin. 2.505(e)(2).

9. Continuances: When moving for a continuance, the rule requires that the party (not just the attorney) requesting the continuance should sign the motion or stipulation. Fla. R. Civ. P. 1.460 and Fla. R. Jud. Admin. Rule 2.545(e). This is not always practicable, but when it is not, the motion should recite the reason. The proposed order should reflect the name of the party or parties who moved for the continuance. The proposed order shall state the newly established trial or hearing date. No continuance is granted as a matter of right, and no party or counsel should assume that a continuance will be granted.
10. When a case is settled: Any party who sought affirmative relief in the case has a duty to notify the court's Judicial Assistant of the settlement as soon as practicable. This is independent of and in addition to any report to the court by a mediator. Similarly, any party who has requested and received hearing time has a duty to notify the court's Judicial Assistant that the hearing(s) is cancelled (our computers do not automatically cancel hearings when a case is settled). Stipulations and proposed orders of dismissal should be sent as soon as practicable (a mediation report does not close the file).