

Supreme Court of Florida

500 South Duval Street
Tallahassee, Florida 32399-1925

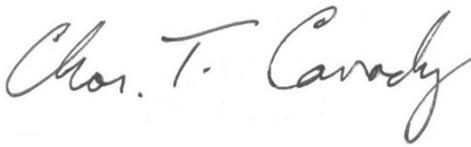
CHARLES T. CANADY
CHIEF JUSTICE
RICKY POLSTON
JORGE LABARGA
C. ALAN LAWSON
CARLOS G. MUÑIZ
JUSTICES

JOHN A. TOMASINO
CLERK OF COURT

SILVESTER DAWSON
MARSHAL

MEMORANDUM

TO: Chief Judges of the Trial Courts
Trial Court Administrators

FROM: Chief Justice Charles T. Canady 

DATE: May 21, 2020

SUBJECT: Proceeding Priority When Limited In-Person Contact is
Authorized in Phase 2

The Workgroup on the Continuity of Court Operations and Proceedings During and After COVID-19 has considered the priority in which proceedings should resume in person if the proceedings cannot be remotely conducted when the court has transitioned to Phase 2 of the pandemic because an exception applies.¹ Courts are encouraged to consider the guidance in the attached Workgroup report.

CTC:aqj

Attachment

cc: Workgroup on the Continuity of Court Operations and Proceedings During and After COVID-19

¹ The conditions for transitioning to Phase 2 are specified in AOSC20-32 and the authorization for certain limited in-person proceedings is provided in AOSC20-23, Amendment 2.



PHASE 2

Recommendations for the Priority in Which to Resume Certain In-Person Trial Court Proceedings

May 19, 2020

Introduction

This guide provides recommendations for the priority in which trial courts may wish to conduct in-person, non-essential court proceedings, which cannot be conducted remotely, for civil, criminal, and family cases when limited, in-person proceedings become authorized in Phase 2. See Florida Supreme Court Administrative Order 20-23, 2nd Amended (AOSC20-23, 2nd Amended), for the conditions that must be met to conduct in-person, non-essential proceedings during Phase 2.

Civil

The Workgroup recommends the prioritization below for the conduct of in-person, non-essential civil proceedings when authorized by AOSC20-23, 2nd Amended:

1. Petitions to determine incapacity and other guardianship matters
2. Authorized ex parte matters, e.g., administrative, emergency, or settlement matters
3. Cases in which a statutory timeframe may soon expire
4. Actions subject to summary procedure under Chapter 51, Florida Statutes
5. Claims of exemption from a garnishment of wages
6. Approvals of settlements, structured settlements (e.g., annuities), and transfers of structured settlement payment rights

Family/Unified Family Court

The Workgroup recommends the prioritization below for the conduct of in-person, non-essential family and Unified Family Court proceedings when authorized by AOSC20-23, 2nd Amended:

1. Termination of parental rights trials, advisory hearings, and dependency arraignment hearings
 - The presiding judge should be given discretion as to the order in which the cases are tried with considerations that include, but are not limited to, the length of time the child has been in care, the age of the child, or the number of people involved in the case.
2. Juvenile delinquency trials

- The presiding judge should have discretion as to the order in which the cases are tried.
3. Child Support Contempt Hearings
 - Efforts should be made to limit the number of cases that are set for each docket with the appropriate amount of time set between each hearing in order to limit congestion in the courtroom or hallways.¹
 4. Other family court hearings that do not use mass calendar docketing, e.g., final judgments for dissolution of marriage, name changes, adoptions, or evidentiary hearings

Criminal

The Workgroup recommends the prioritization below for the conduct of in-person, non-essential criminal proceedings when authorized by AOSC20-23, 2nd Amended. Priorities were assigned based on the following scale:

- Priority One means highest importance.
- Priority Two means medium importance.
- Priority Three means lowest importance.¹

1. Priority One Proceedings

- Motions to dismiss (e.g., C4, double jeopardy, or defect)
- Motions related to custody (e.g., pretrial detention, non-adversarial probable cause, adversarial preliminary hearings, 33-day motions, or post-trial release)
- Motions to suppress if dispositive
- Motions related to evidence if dispositive (e.g., Williams rule/sex crimes, motions in limine, or Daubert issues)
- Stand Your Ground hearings
- Motions and hearings (except status hearings) related to incompetence, mental health experts, intellectual disability, or insanity
- Motions relating to indigent for costs or to appoint mitigation experts
- Pleas, including out-of-custody pleas
- Jimmy Ryce Act proceedings (except for trial proceedings)
- Sentencings or violation of probation or violation of community control hearings

¹ The Workgroup notes, however, that each criminal case is often unique on its own facts and similarly, that each of the proceedings listed may be qualitatively different from one case to the next. For these reasons, the priority in any given case may be dictated by factors including, but not limited to, the nature of the underlying charge, the stage of the case, or the potential consequences based on the outcome of the proceeding.

2. Priority Two Proceedings

- Nelson/Faretta hearings
- Discovery-related motions (e.g., orders to show cause, subpoenas for medical records, protective orders, or motions relating to the perpetuation of testimony or fingerprint, DNA, or handwriting issues)
- Motions to suppress if not dispositive
- Motions related to evidence if not dispositive (e.g., Williams rule/sex crimes, motions in limine, or Daubert issues)
- Problem-solving court staffings, hearings, and wellness checks
- Motions to withdraw plea
- Motions for furlough
- Motions for new trial or in arrest of judgment (however, may wish to assign as Priority One if the motion may result in release)
- Motions for early termination of probation

3. Priority Three Proceedings

- Status hearings related to incompetence, mental health experts, intellectual disability, or insanity
- Motions to consolidate, sever, or join
- Motions for a change of venue
- Motions for the return of property (however, may wish to assign a higher priority based on the nature of the property)
- Motions to seal and expunge
- Post-conviction motions (e.g., Fla. R. Crim. P. 3.800(b) or (c), 3.850, or 3.851 or jail credit, juvenile sentencing review, DNA testing, or Brady issues) (however, may wish to assign as Priority Two if the motion may result in release)
- Contempt hearings