

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR SEMINOLE COUNTY,
FLORIDA

ADMINISTRATIVE ORDER NO.:
05-02-S

RE: JUDGES - ACTING AS MAGISTRATES/FIRST APPEARANCE DUTIES

1. Duty of Judges to act as Magistrates
All Seminole County Circuit Judges and County Court Judges shall perform the duties of magistrates and shall consider and issue, when appropriate, during regular business hours, upon request by a duly authorized agency or organization, arrest warrants, search warrants and other process. County Court Judges shall perform these duties in felony cases as well as misdemeanor cases.
2. Applications for search warrants and other process
Law enforcement officers requesting these services during the regular work week shall call the main office of Court Administration to arrange an appointment at 407-665-4200. The Court staff will make arrangements with a Judge to entertain these requests. Criminal Judges who are not in trial will be contacted first. The main office of Court Administration is located on the third floor of the Downtown Civil Courthouse at 301 North Park Ave., Sanford, Florida. Absent an emergency, these services should be requested before 9:00 a.m. or at 1:00 p.m.
3. First Appearances Hearings.
 - A. County Court Judges shall preside over first appearance hearings during the regular work week in both felony and misdemeanor cases. A judge who has issued an arrest warrant in a particular case may designate himself or herself as the first appearance

judge and shall preside over the first appearance within the time limits provided by the rules of criminal procedure. Otherwise, the first appearance shall be conducted by the first appearance judge. First appearance judges shall comply with the rules of criminal procedure and shall entertain motions to set or reduce bond in cases where a defendant is entitled to bond as a matter of right from time of arrest until the case is heard on the first arraignment docket. Thereafter, bond motions shall be scheduled before the judge assigned to the case.

- B. Persons in custody for violation of probation or community control have already been determined to be guilty of an offense and are presumed not to be entitled to release on conditions other than stated in the warrant. Bond motions in violation of probation or community control cases shall be scheduled before the judge who is permanently assigned to the case unless that judge defers hearing the motion to the first appearance judge or the Chief Judge designates another judge to hear the motion.
- C. Persons taken into custody on out of county warrants shall be scheduled for review on the third business day after first appearance. If the sheriff of the county in which the warrant was issued has not made arrangements to transport the defendant by that time, the first appearance judge may release the defendant on recognizance or set such other conditions of release as are deemed appropriate.
- D. After first appearance, unless there is an emergency, bonds shall not be increased in felony cases without a written motion made by the State Attorney and duly noticed for hearing.
- E. The State Attorney shall make arrangements with the clerk of the court to obtain arrest reports on the first business day following the date of arrest. The arrest report contains the date of arrest and shall constitute notice pursuant to Rule 3.134. Persons held in custody for thirty three days after the date of arrest shall, upon motion made by the defense, be placed on the first appearance docket and be released

from custody unless the State Attorney files a charge in the case before first appearance. The release shall be on recognizance without other conditions.

- F. The following categories of arrested persons shall not be brought to first appearance:
 - 1. Military deserters.
 - 2. Parolees whose parole has been revoked.
 - 3. Persons turned in by their bondsman.
 - 4. Federal prisoners.
 - 5. Prisoners transferred temporarily to testify.

4. Conditions of Release.

The Seminole County Bond Schedule allows defendants to post bond prior to first appearance and is not a schedule that is presumptively reasonable in individual cases. First appearance judges shall comply with Rule 3.131 and shall presume the defendant is entitled to release unless the offense is not bondable or if the defendant is in custody for violation of probation or community control. With these exceptions, the first appearance judge shall consider release conditions in the following order:

- A. Personal recognizance or release into a pretrial release program.
- B. Execution of an unsecured (cash) appearance bond, provided that the defendant shall have the option to post a surety bond. If the unsecured bond is less than \$500.00 the defendant shall be given the option of posting a \$500.00 surety bond.
- C. Placement of restrictions on the travel, association, or place of abode of the defendant during the period of release. In considering these restrictions the first appearance judge shall consider (1) whether or not the named victim(s) in the case are in danger or have been provided adequate protection, (2) whether the defendant is truly an immediate danger to the community; (3) whether the defendant has a lawyer who is in control of the defense of the case; (4) whether the victim is residing in a residence that is owned by or jointly owned with the victim; (5) based upon the defendant's prior record or other information the defendant is likely to commit another crime while released from custody or (6) whether the defendant is

already on some form of release for another offense and probable cause exists to believe the defendant committed a new offense.

- D. Placement of the defendant in the custody of a designated person or organization agreeing to supervise the defendant.
- E. Execution of a bail bond with sufficient solvent sureties or the deposit of cash in lieu thereof.
- F. Any other condition reasonably necessary to assure appearance as required, including requiring the defendant to comply with day reporting, pretrial release or to return to custody after specified hours.
- G. The first appearance judge shall consider all available relevant factors to determine what form of release is necessary to assure the defendant's appearance. If a monetary bail is required, the judge shall determine the amount.
- H. In determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, the court may consider the nature and circumstances of the offense charged and the penalty provided by law; the weight of the evidence against the defendant; the defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition; the defendant's past and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings; the nature and probability of danger that the defendant's release poses to the community; the source of funds used to post bail; whether the defendant is already on release pending resolution of another criminal proceeding or is on probation, parole, or other release pending completion of sentence; and any other facts the court considers relevant.
- I. All information provided by a defendant in connection with any application for or attempt to secure bail, to any court, court personnel, or individual soliciting or recording such information for the purpose of evaluating eligibility for or securing bail for the

defendant, under circumstances such that the defendant knew or should have known that the information was to be used in connection with an application for bail, shall be accurate, truthful, and complete, without omissions, to the best knowledge of the defendant. Failure to comply with the provisions of this subdivision may result in the revocation or modification of bail. However, no defendant shall be compelled to provide information regarding his or her criminal record.

J. Information stated in, or offered in connection with setting conditions of release need not strictly conform to the rules of evidence.

5. Appointment of Counsel for Indigent Defendants.

Any prisoner charged with a felony and in custody in the John E. Polk Correctional Facility who does not have a lawyer shall be presumed to be indigent and the Public Defender shall be appointed to represent that prisoner unless the prisoner indicates that private counsel shall be retained immediately. In that event, a counsel review hearing shall be scheduled before the thirty-third day after arrest unless the prisoner is released from custody before that time. The Public Defender shall be appointed to represent any prisoner who does not have private counsel for the purpose of Rule 3.134 motions.

6. Rule 3.134 Motions

(Failure of State to file charges within 33 days.)

This section is for the purpose of establishing procedures to implement the provisions of Rule 3.134 in Seminole County.

A. The Clerk of the Court shall provide the assistant state attorney attending first appearance hearings with a copy of the first appearance docket. Receipt of the docket shall be notice from the court that the defendant is in custody and the date of the first appearance. No further notice shall be required for the defendant or defense counsel to make a motion for release under the provisions of Rule 3.134. The motion may be made ore tenus at first appearance on the 33rd day following arrest.

B. At the hearing on the Rule 3.134 motion, the presiding

judge shall presume the defendant is entitled to release from custody unless (1) an information or indictment is filed in the court file or (2) the assistant state attorney attending first appearance presents the original information or indictment or a copy of it with the clerk's filing stamp on it to the presiding judge.

- C. Defendants released under the provisions of Rule 3.134 shall be released on their recognizance without further conditions except to appear and answer to the charges.

DONE AND ORDERED this 7TH day of January, 2005.

JAMES E.C. PERRY
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CHIEF JUDGE

Distribution:

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