

## PALM BEACH JUDICIAL PRACTICES SURVEY

Name: Robert S. Schwartz

Jurisdiction: County Judge

Spouse's Name: Christine

Judicial Assistant's Name: Sue Newberry

Law School Attended: University of Baltimore School of Law

Practice Background: Criminal, Assistant State Attorney

Previous Judicial Division Assignments: Criminal, Circuit Criminal Trial Division, North County, Civil

Rose to Bench On: January 6, 1987

### MOTION PRACTICE

1 Do you allow hearings by conference call? *Yes, in most situations with short hearings for out-of-town attorneys/witnesses; in cases of exigent circumstances, also; for any good reason.*

If so, what procedures are required? *File ex parte motion requesting same, where time allows.*

2. Do you have any standard order with reference to scheduling and conduct of specially set hearings? *File motion and arrange with my J.A. for a convenient hearing time.*

3. Do you allow specially set hearings to be canceled by agreement of counsel? *Yes, but expect to be so informed ASAP before the hearing.*

If so, is an order required and are there time restrictions? *No order necessary; no time restrictions, but would appreciate an early call or other notice of cancellation so that other hearings may be set.*

4. What is the maximum amount of time you allow for a specially set hearing (without requiring the hearing to be placed on a non-jury docket)? *I have no particular time. But, there is no motion calendar, per se, so that all motion hearings are special set.*

5. What is the procedure for allowing matters to be set? (i.e. clear with opposing counsel) *Counsel should file the motion to be heard, then it is up to a party, by agreement when possible to call my J.A. to set for a hearing and she will attempt to set it at a convenient time chosen by my J.A.*

6. Do you prefer to receive memoranda in support/opposition to motions? *Yes, but it's optional and the court would prefer short, concise memoranda.*

a. Prior to the hearing, with a courtesy copy of the Notice of Hearing and if so, how long before the hearing? *Within 2 days of the hearing if possible; earlier, it may be lost, later, I may not have an opportunity to read them.*

b. At the hearing? *It is fine as it may help the court when making the decision.*

7. Do you have any preference regarding the presentation of proposed orders for specially set hearings? *I appreciate and welcome them.*

8. What procedures do you have for scheduling emergency motions? *Call my J.A., explain the emergency and she*

*will attempt to set it at the earliest possible time, based upon the degree of exigency.*

9. What procedures do you have for scheduling hearings on motions for temporary injunctions? The same as other motions.
10. What procedures do you have for scheduling hearings on motions for rehearing or new trials? *File a concise motion, setting out error and authority and I will examine it and have it set as other motions or rule on it's face, depending on the legal merits or questions.*

### **CRIMINAL**

1. Do you require suppression hearings to be scheduled in advance of trial or may they be heard at beginning of trial? *For Jury trials, they must be heard prior to trial; for nonjury, they may be heard during trial. In emergencies, they will be heard during jury trials if necessary.*
2. Do you accept a plea at docket call or require specially set hearings? *I will accept a plea any time.*
3. Which motions can be heard at 8:45 hearings?
  - d. Bond Hearings? *Yes.*
  - e. Sworn Motion to Dismiss? *Yes*
  - f. Evidentiary Hearings? *Not if taking more than 15 minutes.*
  - g. Others? *Depends on length of time required; 15 or less, yes; more time, specially set in the afternoon.*
4. Policy on work release and house arrest? *Shall be considered on individual basis only. The Sheriff will not accept any that I don't order specifically and the court will not overrule the Sheriff if a Defendant does not fit within the criteria set up by them.*
5. Do you require judgment and sentence forms to be filled out by the attorney in advance of pleas conference? *I prefer it, but don't require it.*
6. Special requests or docket call. Will you give more than one hour notice for trial on special request and if so, under what circumstances? *Yes on a case-by-case basis.*
7. If a case is settled, what procedure should be followed to advise your office? *ASAP*
8. Do you require Defendant to be personally present at calendar call or may the attorney appear alone? Defendant's presence mandatory, except when previously requested that they not be required to be there, on a case-by-case basis.
9. Circuit—What is the policy on Circuit Court allowing felonies to be pled to misdemeanor in Circuit Court?
10. County—Do you defer sentences on DUI pleas until completion of AIDE school? *No preference.*

## DISCOVERY

1. Do you require counsel to certify that a good faith effort has been made to resolve discovery disputes before motions are brought before you? *Yes.*
2. Do you consider motions to compel responses to written discovery where no response or objection whatsoever has been received or filed without the necessity of a hearing? *Yes, pursuant to administrative rule.*
3. Do you have any standard limitations or procedures involving discovery matters which are not addressed by the Florida Rules of Civil Procedure? *No.*

## TRIAL RELATED MATTERS

1. Continuance of trials:
  - b. When should motions for continuance be heard? *ASAP in consideration of the exigencies involved.*
  - b. Which of the following factors do you consider important in determining whether to continue a trial?
    - (1) Parties Stipulate? *Yes.*
    - (2) Counsel's conflict with other trials? *Yes, required to by rules of Judicial Administration.*
    - (3) Unavailability of a party? *Yes, but depends on the reasons therefore, and length of time of setting.*
    - (4) Unavailability of "key" expert witness? *Yes.*
    - (5) Unavailability of "key" fact witness? *Yes.*
    - (6) Incomplete discovery? *It depends on the reason for it, age of case, who noticed case for trial, etc.*
    - (7) Discovery violation by party opposing continuance? *Yes.*
    - (8) Vacations of counsel? *Depends on length of time between the setting of the trial and the motion hearing.*
    - (9) Others? *Yes. Illness of attorney, party, witness, and their close family members; weather exigencies, nature of cause of action, i.e., Landlord/Tenant, or Replevin, v. debt, insurance claim, etc.*
2. When a case on the calendar is not reached:
  - a. What is the procedure to get back on calendar? *The case is reset at as convenient a time as possible by my J.A.*
  - b. If the case automatically carried over? *No.*
  - c. If so, is it to the next calendar or the next available calendar?
  - d. Are pretrial deadlines automatically extended? *No.*
  - e. Does the case need to be renoticed? *No.*
3. How much notice do you give to counsel to begin trial after docket has commenced?

4. Do you specially set cases for trial and if so, under what circumstances? *Yes. All trials, so far.*
  
5. Do you generally try the oldest case first? *Yes.*
  
6. Do you use the uniform "Order Setting Trial" and pretrial instructions? *Yes.*
  
7. What witnesses must be disclosed pursuant to your Pretrial Orders?
  - a. Impeachment witnesses? *All witnesses reasonably expected to be called to testify.*
  - b. Rebuttal witnesses? *All witnesses reasonably expected to be called to testify.*
  
8. Do you have any special rules/procedures for marking evidence prior to trial? *It is appreciated in non-jury trials that the evidence be pre-marked and in jury trials, required that the evidence be so marked and to be in order and consistent with the evidence listed in the pretrial packet required.*
  
9. Do you utilize a written trial conflict form for docket call? *I haven't yet?*
  
10. Under what circumstances do you transfer cases over to the Trial Division? *When I can't reach a case specifically scheduled and there is a judge ready, willing and able to try the case for me.*

#### **JURY SELECTION**

1. Describe the extent of involvement by the Court? *In criminal division, extensive, in civil, minimal.*
  
2. Are time limitations imposed on the parties? *Yes.*
  
3. Describe the method for the exercise of peremptory challenges. *Alternating between the parties, starting with the State or Plaintiff, and then the defendant, one at a time until all are used, out of the jury's presence.*
  
4. Describe the method of impaneling the prospective jurors (i.e. how many in the box/order). *In criminal there was room for as many as necessary in the jury box and they were placed in the order as listed by the jury office. In civil, there is a much smaller box, so they are seated in the back of the court, the parties are turned around to face them and they are arrayed by the order in which they were listed by the jury room.*

5. Do you permit the use of a jury questionnaire? *I have never used one, but don't have any reason to exclude its use upon request (I didn't want to draw attention to those prospective jurors unable to read).*
6. Do you permit jurors to take notes? *Yes, required by law now and I always did as a matter of course. If so, are there any limitations that you impose? No, but I describe the dangers of so using them.*

**TRIAL ARGUMENTS-OPENING/CLOSING**  
**JURY            NONJURY**

1. While recognizing that each case is unique, do you have any general guidelines concerning time constrains for:
- a. Opening (how long) *I have never needed to set a time and I've tried thousands of cases.*
  - b. Closing (how long) I ask the parties how long they need and give them whatever is reasonable and requested.  
*None, in 14 years has been longer than 45 minutes*

**DOMESTIC**

1. What is your procedure for temporary relief hearings? *N/A*
2. What is your procedure for emergency hearings? (Custody/support) *N/A*
3. What is your procedure for emergency hearings? (Restraining orders) *N/A*
4. When is your uncontested divorce calendar? *N/A*
5. In an uncontested divorce, do you require the respondent to testify? *N/A*

**MEDIATION**

1. Required? *Yes, in all cases, regardless of request or objection..*
2. Only if both parties agree?

3. Summarily grant if one party requests?
4. Do you require parties to be present or just persons who have settlement authority? *Parties, or those having absolute settlement authority.*
5. Do you have a standard order on mediation? *Yes.*
6. Do you permit the parties to select their own mediator? *Yes.*
7. Do you allow summary trials/advisory juries and if so under what circumstances? *I have never been requested to and have never suggested doing so, but am open to it upon agreement of counsel.*

### MISCELLANEOUS GENERAL COMMENTS

1. What suggestions/advice do you have for litigants, counsel, and witnesses?

*For all, common sense suggestions are all that are needed. Be pleasant and courteous with everyone; do not interrupt one another, or the court; be absolutely honest with all, having an eye toward the big picture (call it conscience, God, your neighbor or whatever) and not just toward the present case. Let your word and handshake be your bond. Compromise all you can. Never lie or be disingenuous.*

*For counsel, specifically, be prepared and take that extra amount of time to follow the spirit of our ethics codes, laws, aspirations and oaths. Do not hurt anyone by your actions or failures to act, words, or attitude. No one case is worth your self-esteem nor the esteem of the others with whom you have to work on a regular basis. Do unto others as you would have them do unto you or unto yours. Try to make the world, the country, our justice system a little bit better for you having been there.*

*For litigants specifically, don't stand on principle to the exclusion of common sense and proportion. Not every hurt, wrong, mistake or failure need be addressed by the court. Your anger hurts you more than the object of your anger. Compromise.*

*For witnesses especially, tell the truth no matter whom you may think it hurts, for lies hurt you beyond proportion to the perceived good you think you are doing for yourself or others by lying. One day you may be in a situation where someone telling the truth will save your life; pretend that this is what your telling the truth will do, because, it very well might. Act as if God is really there when you swear to tell the truth. It is easier to remember the truth and as much as a cliché as all of the above is, the truth will set you free. If someone is angry with your telling the truth, then you have to assess whether they are truly worth your soul, or piece of mind that lying might cause you to lose.*

2. What is the most interesting or notable case over which you have presided and why? *A Circuit Criminal case of kidnaping, wherein the victim was kidnaped, while a passenger in a cab, by the defendant forcing the cab to pull over and pulling the victim out of the cab while she was holding on to the inside, begging for help and screaming; the cab driver didn't help nor call the police. Later, when the defendant was arrested and bonded out, he kidnaped her again, took her to the west of town and shot her five times, leaving her for dead. The victim survived, walked bleeding for help. The defendant, had successfully kept the subsequent kidnaping and attempted murder case out under the Williams Rule, pretrial; but during his testimony, he stated he had only*

*kidnaped her for her own protection to protect her from drug use. I then, upon motion, let the subsequent bad act evidence in and after some pretty dramatic testimony, he was convicted. I then exceeded the guideline sentence to the maximum sentence. The case was sustained all the way up the line on appeal.*

3. What practices and habits of attorneys irritate you the most? *(In the, still, small percentage of attorneys, though, unfortunately growing each year) Lying and discourteousness toward the court and all others. The failure to follow the rules of ethics; citing cases which have been overturned, as authority for propositions that have been disavowed by the courts. Treating the judge as an adverse party. Trying to build appellate issues into every case, rather than trying ethically to win the case in the first place. Not having the courtesy to inform the court when a case has settled, allowing the court to free up it's docket. Trying to keep certain cases in litigation as long as possible when attorney fees are available, long after the Plaintiff and Defendants have lost interest. The loss of interest in pure problem solving and the concentration on making as much money as is possible.*

*Judicial Biography*

FIFTEENTH JUDICIAL CIRCUIT  
PALM BEACH COUNTY, FLORIDA

**Honorable Robert Steven Schwartz**

BIRTHPLACE: Baltimore, Maryland

MARITAL STATUS: Married with two children

EDUCATION: Undergraduate degree from University of Maryland in Elementary Education  
Law Degree, Juris Doctorate, graduated Cum Laude as a Heusler Honor Society Member from University of Baltimore School of Law

LAW PRACTICE: Assistant State Attorney 1980 thru election to Judge in 1986; Worked in Juvenile, Felony, Intake and came up with idea for, set up, and ran, the Crimes Against Children Division in 1984 through 1986, one of the first such divisions in the state and country.

SERVICE AS A JUDGE: Began January 6, 1987, in County Criminal for the major portion of my 14 years as a judge, Circuit Criminal for a year as TD judge, Juvenile-filled, in as needed for the first couple years under Chief Judge Emory Newell, Single Person Courthouse (North County in 1989 to 1990) where I handled Probate, Uncontested Divorce, Criminal, Civil, Traffic, Injunctions Against Repeat Violence, Injunctions Against Family Violence County Civil, Circuit Civil.

For about 5 years wrote and published criminal newsletter for judges sent throughout the state of Florida to other judges and professors. Wrote booklet on Landlord/Tenant Law for the Non Lawyer. Wrote booklet on how to try a case in small claims court for the pro se litigant, concentrating on practice and procedure not in books, tips on effective advocacy and demeanor, also scripts on how to ask proper questions.

Started in 1987 writing and publishing opinions and certifying import issues to the district court, making important case law in the field of DUI, in particular, and in 4<sup>th</sup> and 5<sup>th</sup> amendment issues relating to DUI and traffic stops.

JUDICIAL ASSISTANT:

Name: Sue Newberry

Chamber: Room Number 6.2203

Telephone:561-35-2598

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