

**CIRCUIT JUDGE ELIZABETH METZGER'S
STANDARD ORDER COVERING PRE-TRIAL
AND TRIAL PROCEDURES IN FELONY CASES**

- (1) Lawyers must object before the court will get involved.

The court assumes that the lawyers in the case know the Rules of Evidence, Rules of Procedure, the Rules of Judicial Administration and all other applicable laws. If a lawyer fails to object to inadmissible evidence, the court will assume that the attorney is failing to do so for strategic reasons. The court will not interject itself unless the matter presented is so outrageous as to constitute fundamental error, or interferes with the administration of justice.

- (2) No speaking objections 1

See *Michaels v. State*, 773 So. 2d 1230 (Fla. 3d DCA 2000)

PROCEDURE TO FOLLOW:

Whenever you object, please stand and simply follow the word “objection” with your precise legal objection (three or four words, i.e., argumentative, leading, hearsay, etc.). If your objection requires any type of discussion which exceeds more than three or four words after the word objection, ask to approach the bench and make your speaking objection there. Do not make a lengthy argument in the presence of the jury.

- (3) Direct examination, cross-examination, re-direct examination, and re-cross-examination only.

- (4) When examining or cross-examining a witness, counsel shall refrain from making gratuitous comments regarding the witness’s testimony or demeanor.

- (5) No impermissible arguments allowed during opening statements and closing arguments.

The types of improper arguments identified in Paragraph (15) can lead to a mistrial. Please review them carefully and familiarize yourself with them.

SPEAKING OBJECTIONS

In *Michaels v. State*, 773 So. 2d 1230 (Fla. 3d DCA 2000), the third district included the following statement from the trial judge; all trial lawyers know that so-called speaking objections are improper, as they constitute nothing less than unauthorized communications with the jury. Such objections characteristically consist of impermissible editorials or comments, strategically made by unscrupulous lawyers to influence the jury. They are distinguishable from legitimate objections which simply state legal grounds that arguably preclude the introduction of the evidence at issue. Where an objection requires more than a simple statement of such legal grounds, experienced trial lawyers know they need to seek a side bar conference or ask the court to excuse the jury so that more thorough arguments can be made”.

On the other hand, judges cannot go overboard either. In *Gonzalez v. State*, 777 So. 2d 1068 (Fla. 3d DCA 2001), the trial court refused to hear the legal grounds for objections. The judge had an established policy of allowing trial counsel to articulate objections by stating only the single word, “objection”. The third district held that where the trial judge refuses to permit trial counsel to articulate the ground for the objection, it has no alternative but to consider *any* legal ground which would have supported the stated objection. In doing so, the third district noted, “We feel compelled to observe that trial judges must be flexible in the exercise of this discretion.” *Id.* at 1072.

(6) We will try to begin each morning at 8:45 a.m. and to break for lunch at 12:00. We will try to reconvene at 1:15 and will stop at 5:00, unless special circumstances exist requiring us to complete the case, or to accommodate a participant.

(7) Please stay away from the jury box and do not have any conversation with the jurors. Please ask permission to approach the witness stand.

(8) Expert witnesses: Do not ask the court to recognize a witness as an “expert”.

Go through the expert’s qualifications and then go right into the opinion testimony. If there is an objection to the expert’s qualifications to render an opinion, it will be made at the bench. Thereafter, the objecting party may be permitted to *void dire* the expert only as to his or her qualifications or basis for opinion. If need be, in the absence of the jury.

(9) If a motion is granted prohibiting the admission of certain testimony and a lawyer believes that the “door has been opened,” DO NOT WALK IN. Always approach the bench and discuss it at the bench first. If needed, a proffer will be conducted in order to avoid a motion for mistrial.

(10) All comments and arguments of counsel should be addressed to the Court. Counsel shall not engage in exchanges or arguments with opposing counsel.

(11) **MOTIONS**

All pretrial motions shall be in writing. Motions can be set for hearing by request in open court or by contacting the appropriate Judicial Assistant.

(12) **MOTIONS FOR CONTINUANCE**

If a continuance is requested at the monthly docket call, counsel will be required to advise the court how many times the case has been previously continued and at whose request. If the defense has already been given three (3) prior continuances, good cause must be shown before any further continuance shall be granted. A written motion for continuance shall recite the information required by this provision. Joint requests for continuances shall be charged to the defense, and shall be subject to the terms and conditions of this provision.

(13) **MOTIONS TO SUPPRESS/IN LIMINE/TO EXCLUDE**

1. Unless good cause is shown, all pretrial motions to suppress, motions in limine requiring evidentiary hearings, and motions to exclude shall be filed and served upon opposing counsel at least five (5) days prior to trial. *See Powell v. State*, 717 So. 2d 1050 (Fla. 5th DCA 1998). Motions filed in violation of this paragraph, absent good cause, will not be considered and their grounds deemed waived.

2. Motions to suppress, motions in limine, and motions to exclude shall clearly set forth the evidence sought to be suppressed or excluded, the specific reasons for the suppression, and a general statement of facts in support of the motion. *See Fla.R.Crim.P. 3.190(h)*. “Boilerplate” motions or motions devoid of specific supporting allegations will be stricken as legally insufficient.

(14) **PLEAS**

Negotiated pleas should be conveyed to, and fully discussed with, the defendant prior to announcing the plea to the Court. Such discussion should include the maximum and minimum penalties and the issues covered by Rule 3.172. If counsel wishes to address the Court on any issue regarding the plea (e.g., early termination of probation, length of time to pay fine or costs), this should be done at the time the plea is first announced, not after the plea colloquy has been concluded. At the time the plea is to be entered, please make sure the plea form is fully and legibly completed, and that the negotiated disposition of each count is separately and clearly set forth.

(15) **CLOSING ARGUMENT**

1. Counsel shall refrain from expressing personal opinion as to any issue in the case, especially the guilt or innocence of the defendant or the credibility of a witness. *Bauta v. State*, 698 So. 2d 860 (Fla. 3d DCA 1997); *State v. Ramos*, 579 So. 2d 360 (Fla. 4th DCA 1991).
2. Counsel shall avoid making arguments that place the jury, or ask the jury to place itself, in the place of the victim or defendant. *Garron v. State*, 528 So. 2d 353 (Fla. 1988).
3. Counsel shall avoid making arguments that are not based on facts in evidence or reasonable inferences that can be drawn therefrom. *Spencer v. State*, 645 So. 2d 377 (Fla. 1994).
4. Counsel shall avoid commenting on the other party's failure to call a witness without first showing the court at side bar that the requirements of Haliburton are satisfied or do not apply. *Haliburton v. State*, 561 So. 2d 248 (Fla. 1990).
5. Counsel shall avoid using derogatory terms when referring to the defendant, a witness, or opposing counsel and shall not make any disparaging comments about counsel's occupation or performance in court. *Walker v. State*, 707 So. 2d 300 (Fla. 1997); *Pacifico v. State*, 642 So. 2d 1178 (Fla. 5th DCA 1994); *Hightower v. State*, 592 So. 2d 689 (Fla. 3d DCA 1991).
6. Counsel shall avoid making arguments whose sole purpose is to elicit sympathy from the jury. *Urbain v. State*, 714 So. 2d 411 (Fla. 1998).
7. Counsel shall refrain from commenting on defendant's demeanor in the courtroom, other than on the witness stand. *Rodriguez v. State*, 609 So. 2d 493 (Fla. 1992).
8. Counsel shall refrain from commenting on objections made by opposing counsel. *Knight v. State*, 672 So. 2d 590 (Fla. 4th DCA 1996).
9. Counsel shall refrain from commenting on possible penalties for any charged offense or lesser included offense. *Legette v. State*, 718 So. 2d 878 (Fla. 4th DCA 1998).

10. The prosecution shall not make any argument that is “fairly susceptible” of being interpreted as a comment on the defendant’s silence. *Dailey v. State*, 594 So. 2d 254 (Fla. 1991).

11. The prosecution shall not make any argument that urges the jury to be the conscience of the community or to “send a message” to anyone with its verdict or that urges the jury to convict the defendant for the safety of the community. *Esty v. State*, 642 So. 2d 1074 (Fla. 1994).

12. The prosecution shall not make any argument that suggests that police officers should be believed simply because they are officers or that they would not jeopardize their careers by lying in this case. *Sinclair v. State*, 717 So. 2d 99 (Fla. 4th DCA 1998).

13. Arguments urging “jury nullification” will not be permitted and will be stopped by the court without objection from the opposing party. *United States v. Abbell*, 271 F. 3rd 1286, 1304 (11th Cir. 2001); *United States v. Trijillo*, 714 F. 2d 102, 106 (11th Cir. 1983); *Harding v. State*, 736 S. 2d 1230, 1231 (Fla. 2d DCA 1999).

(16) **MAINTAINING AND ENHANCING PROFESSIONALISM**

Please be punctual for scheduled hearings and docket calls.

I am aware that attorneys often have more than one case set for hearing or trial, requiring them to be in different courts at the same time. If a scheduling conflict arises, it is expected that attorneys will communicate this to their client, the Court, and opposing counsel. This demonstrates respect to all involved in the system. Punctuality and common courtesy are simple but essential ingredients to maintaining and enhancing professionalism.

The Court attempts to provide timely access to the parties, especially for purposes of pretrial motions and discovery matters. However, only a limited number of cases can be placed on each calendar. Therefore, if you set a motion for hearing, please make certain that you appear for the hearing. If you are unable to appear due to unforeseen circumstances, it is incumbent upon you to call the Court to advise us of those circumstances.

This Court solicits input and feedback from attorneys. You are in a unique position to provide comment and insight on courtroom procedures and how they can be improved. If there are procedures you would like to see implemented in Court, or if you have an opinion regarding the existing procedures, please share those opinions with us.

DONE and ORDERED this 21st day of January, 2014.



Elizabeth Metzger
Circuit Judge

cc: Defense Counsel
Assistant State Attorney