

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT  
IN AND FOR POLK COUNTY, FLORIDA

**ADMINISTRATIVE ORDER NO. 2-56.7**

**IN RE: GUIDELINES FOR SETTING THE FIRST APPEARANCE DOCKET**

WHEREAS, Florida Rule of Criminal Procedure 3.130, mandates that “[e]xcept when previously released in a lawful manner, every arrested person shall be taken before a judicial officer, either in person or by electronic audiovisual device in the discretion of the court, within 24 hours of arrest . . .”; and

WHEREAS, the interpretation of the phrase “every arrested person” is not uniform throughout the state; and

WHEREAS, the First Appearance Hearing docket has grown to nearly unmanageable proportions, with many arrestees presented for a First Appearance Hearing who do not have pending local criminal charges; and

WHEREAS, a procedure is necessary for determining whether the State Attorney’s Office will present evidence at a preliminary hearing requested by the defense in felony cases; and

WHEREAS, separate procedures are necessary for juveniles facing adult charges in order to prevent juvenile defendants from coming into contact with adult defendants; and

WHEREAS, this court is mindful of its duty pursuant to Florida Rule of General Practice and Judicial Administration 2.215, to review the status of the jail population and ensure due process for all, and of the public purpose served by cooperating with other jurisdictions, and of the importance of informing arrested individuals of the cause of, and authority for, their arrest, even if it is not based on the process of this court; and

WHEREAS, the Polk County Pretrial Release Program (PTR) staff are in contact with the booking section of the Polk County Jail and are available to interview persons placed in custody shortly after their arrival there to determine their eligibility for pretrial release; and

WHEREAS, because the PTR staff members are in the best position to assist the court with minimizing the First Appearance Docket and at the same time maximizing the inmates’ information about their situation, and

WHEREAS, in accordance with the authority vested in the Chief Judge under article V, section 2(d), Florida Constitution; section 43.26, Florida Statutes; and Florida Rule of General Practice and Judicial Administration 2.215(b)(2); and

NOW, THEREFORE, it is ORDERED that:

PTR staff will interview persons admitted to the Polk County Jail upon initial arrest or rearrest if they have not previously been to a First Appearance Hearing. Staff will communicate to appropriate officials any concerns or complaints about the defendant’s identity or the court’s

jurisdiction, in accordance with the scope of duties outlined in this Circuit's Administrative Order Number 2-12.2 regarding the Pretrial Release Program.

To help minimize the First Appearance docket and accord due process to all, the following procedure will be followed:

1. Early each weekday morning, a list of all persons booked into the Polk County Jail before 5:00 a.m. that morning shall be reviewed. If possible, the list shall be arranged by category of detainee, e.g. new arrest, out-of-county warrant, parole warrant, extradition, writ of bodily attachment, civil writ, etc.
2. Persons in custody on writs of bodily attachment for failure to pay child support or alimony shall be scheduled before the child support hearing officer or magistrate that day, or if impractical, the following day at 1:30 p.m. for a First Appearance Hearing. This procedure does not apply to an arrest that occurs on Friday after 9:00 a.m. through 1:00 a.m. of the day before the next regular business day. Those persons shall be scheduled for a First Appearance Hearing in the normal course before the duty judge who may, if appropriate, set a continued First Appearance Hearing before the hearing officer or magistrate on the next business day at 1:30 p.m.
3. Persons in custody on civil writs of bodily attachment because of a finding of contempt in a Marchman Act proceeding may have the opportunity to purge their contempt, if such is explicitly outlined in the writ itself, by agreeing to go to Tri-County Detox (2725 Hwy 60 E., Bartow, Florida) AND agreeing to appear at a hearing before the magistrate on the following Tuesday at 1:30 p.m. If such language is explicitly contained within the writ of bodily attachment, the First Appearance Judge shall inquire of the inmate of his desire to purge the contempt in this manner. If the inmate declines or if this explicit language is not contained within the writ itself, the inmate shall be scheduled for a hearing before the magistrate on the following Tuesday at 1:30 p.m. and held in custody without bond until that time.
4. Persons taken back into custody because his or her bondsman has gone "off bond" shall not be scheduled for a First Appearance Hearing if the person has previously appeared at a First Appearance hearing. This applies only where "off bond" instances are not the result of new criminal offenses. The bail amount originally authorized at the First Appearance Hearing shall remain authorized. On the other hand, if a person posted bail and/or bond and had previously been released after arrest but before appearing at a First Appearance Hearing, then the person shall remain scheduled for such a hearing.
5. Persons arrested on a capias for failure to appear at Weekend Work Release or for failure to report to jail at a designated time shall not be scheduled for a First Appearance Hearing unless they have also been arrested for a new criminal offense.
6. Persons in custody pursuant to a motion and order to have the person transported to the Polk County Jail shall not be scheduled for a First Appearance Hearing if the Order plainly states the purpose of the transportation and the upcoming court date, deposition date, or other court proceeding date for which the person is being held. If the Order

does not so plainly state, the person shall remain scheduled for a First Appearance Hearing to be apprised of the reason he or she is being held in the Polk County Jail.

7. Persons in custody either by warrant or warrantless arrest on a violation of probation or a parole violation as a transfer from another state, shall be scheduled for a First Appearance Hearing with the judge assigned to the Felony Violation of Probation division on weekday afternoons at 1:30 p.m., and shall be transported to the courthouse for those hearings, pursuant to a separate administrative order.
8. Persons in custody on a warrant from another jurisdiction, with the exception of out of state probationers and parolees as outlined in paragraph eight hereinabove, shall remain scheduled for a First Appearance Hearing. If sufficient information is presented to the First Appearance Judge to confirm the warrant, bond amount, if any, and extradition by the other jurisdiction, then the judge shall schedule a status hearing approximately seven days later on a weekday First Appearance Docket. The Sheriff's Office SHALL immediately notify the other jurisdiction of the detainee's availability for transportation and confirm in writing to the clerk's office that they have done so. At the status hearing, the court shall confirm that the detainee has, in fact, been transported to the other jurisdiction. In the event the detainee has not been transported accordingly AND the other jurisdiction has been properly notified of the detainee's availability for transport, the detainee may be held for additional days if the status hearing is continued by the Court for good cause. However, a status hearing is NOT required if the detainee has new criminal charges pending in Polk County.
9. Juveniles in custody facing adult charges are governed by a separate administrative order.
10. Doubts about whether an inmate should be taken to a first appearance hearing should be resolved in favor of taking the inmate before the first appearance judge.
11. Upon filing a motion for an adversary preliminary hearing, the defense must file a notice of hearing scheduling a status conference on the first appearance docket. Provided the motion and notice are filed with the Polk County Clerk of Court by 11:00 a.m., the status conference must be conducted on the next business day unless all parties agree on a different date. At the status conference, the State Attorney's Office will inform the Court and the defense whether it intends to present evidence at the preliminary hearing. If the Court and the defense are informed that no such evidence presentation is to be made, the defendant shall be released from custody on the charge(s) for which a preliminary hearing was sought "unless an information or indictment has been filed, in which event the defendant shall be released on recognizance subject to the condition that he or she appear at all court proceedings or shall be released under a summons to appear before the appropriate court at a certain time." Fla. R. Crim. P. 3.133(b)(5). If the State Attorney's Office informs the Court and the defense that evidence will be presented at the preliminary hearing, the defense must schedule the motion for an adversary preliminary hearing on the assigned Felony Division docket. Every effort must be made to schedule the evidentiary hearing within five (5) working

days; however, in no event will the evidentiary hearing be scheduled later than ten (10) days unless otherwise ordered by the Court upon agreement of the parties.

12. Effective immediately, this Order VACATES and SUPERCEDES Administrative Order No. 2-56.6, entered on December 8, 2023.

DONE AND ORDERED on this 15th day of December, 2023.

s/ JAMES A. YANCEY, Chief Judge

Original to:  
Polk County Clerk of Courts

Copies to:  
All Judges  
Polk County Clerk of Courts  
Office of the State Attorney  
Office of the Public Defender  
Office of Criminal Conflict and Civil Regional Counsel, 2nd District Region  
Polk County Sheriff's Office  
Polk County Court Services Division (PTS)  
Electronic Bar Mailing