

THE GUIDE TO JUDICIAL PRACTICES IN FLORIDA'S FEDERAL COURTS: AN INVALUABLE SOURCE OF INFORMATION FOR FEDERAL PRACTITIONERS

by Jerry M. Gewirtz*

Federal practitioners are well advised to review the federal rules, local rules, case management and scheduling orders, and any discovery practice manuals that may exist in their district.¹ These sources of information, however, do not completely address each of the practices and procedures of the individual federal judges. Indeed, Fed. R. Civ. P. 83(b) expressly recognizes that “A judge may regulate practice in any manner consistent with federal law, rules adopted under 28 U.S.C. §§ 2072 and 2075, and the district’s local rules.” Accordingly, because the judicial practices and procedures may vary from one judge to another judge even within the same district, it is particularly important that practitioners become familiar with individual practices and procedures of the judge before whom they are appearing in federal court.

In an effort to assist attorneys familiarize themselves with the judicial practices and procedures of many of the federal judges in the State of Florida, the Federal Court Practice Committee of The Florida Bar provides a free online resource: The Guide to Judicial Practices in Florida’s Federal Courts (“the Guide”). The Guide is found by visiting The Florida Bar’s website, and selecting the page for the Federal Court Practice Committee (under “Standing Committees”), then clicking on the Guide, or by visiting this link directly: <https://www.floridabar.org/directories/courts/fcpc-guide/>. First published by the Committee approximately twenty-three years ago,² the Guide is one of the only statewide federal practice resources in the nation that is provided at no cost to practitioners.

The Guide includes completed judicial practice surveys of approximately one hundred federal judges including appellate judges serving on the United States Court of Appeals for the Eleventh Circuit, and United States District Judges, United States Magistrate Judges, and United States Bankruptcy Judges from the Middle, Southern, and Northern Districts of Florida. Some of the topics that are addressed in the Guide are as follows:

1. The judge’s policy concerning communications with the judicial staff including:
 - whether it is appropriate to telephone chambers regarding questions of procedure on pending matters, and
 - whether it is appropriate to telephone chambers regarding the status of pending matters;

¹ There is an excellent handbook on civil discovery practice in the United States District Court for the Middle District of Florida which, on June 5, 2015, was revised and approved by the Magistrate and District Judges of the Court. The Middle District Discovery Handbook is found by visiting the website for the Middle District of Florida and selecting the page for lawyers, and then clicking on Civil Discovery Handbook.

² In 1995, under the leadership of United States District Judge Patricia C. Fawsett, who then served as the Chair of the Federal Court Practice Committee of The Florida Bar, the Committee began working on the concept of the Guide by preparing, and distributing to federal judges, judicial practice surveys. During her tenure as the Chair of the Committee, Judge Fawsett was also responsible for creating the concept and format of the highly acclaimed Federal Judicial Roundtable Program which is held at the Annual Meeting of the Florida Bar. The Committee remains extremely grateful to Judge Fawsett for her outstanding contributions, inspiration, and service to The Florida Bar.

2. The judge's criminal pretrial procedures including:
 - whether the defendant is required to be present at the status conferences,
 - whether the district judge prefers conducting suppression hearings or refers them to the magistrate judge,
 - whether hearings are conducted on pretrial motions to dismiss or to sever,
 - whether the district judge takes the plea or regularly refers plea hearings to the magistrate judge,
 - whether the judge has a regular plea deadline,
 - the judge's policy concerning *nolo contendere* or Alford pleas, and
 - the judge's policy concerning plea arrangements that involve sentencing recommendations;

3. The judge's civil pretrial procedures including:
 - whether the judge issues a standard pretrial order,
 - whether the judge conducts preliminary pretrial hearings pursuant to Fed. R. Civ. P. 16 and, if so, what matters the court typically discusses during the preliminary pretrial hearings,
 - whether the judge has any requirements - beyond those found in the federal rules and the local rules - as to motions for extension of time or motions for continuance,
 - whether the judge prefers that moving parties submit proposed orders along with non-dispositive motions,
 - whether the judge has any requirements - beyond those found in the federal rules and the local rules - as to *ex parte* temporary restraining orders,
 - whether the judge generally hears preliminary injunction motions and, if so, whether the court permits evidence to be introduced,
 - whether the district judge routinely refers preliminary injunctions for report and recommendations by the magistrate judge,
 - whether copies of cases cited on motions and memoranda should be forwarded to chambers and, if copies of cases are submitted, whether the court accepts copies that have portions highlighted by counsel,
 - whether the judge regularly sets aside time during a given week/month for hearings on motions,
 - the circumstances under which the judge allows telephonic hearings,
 - the judge's practice concerning oral arguments on dispositive motions, and
 - whether the judge will entertain motions in limine prior to trial and if so how far in advance should they be filed;

4. The judge's discovery procedures including:
 - whether the judge has special discovery deadlines or procedures for certain types of cases,
 - whether the district judge routinely refers discovery matters to the magistrate judge, and
 - whether when a dispute arises during a deposition it is appropriate to call the judge to seek an immediate ruling;

5. The judge's procedures concerning settlement including;
 - the judge's preference regarding using alternative dispute resolution methods such as arbitration or mediation,
 - whether the judge requires counsel to submit a proposed order referring the case to mediation,
 - whether the judge has a procedure for counsel to request referral to a magistrate judge for settlement conferences, and
 - whether the judge has any special procedures for the settlement of FLSA cases;

6. The judge's trial procedures including:
 - how the judge handles voir dire, opening statements, and use of experts,
 - the judge's preference for trial briefs, and scheduling of trial dates,
 - any procedures for use of demonstrative aids,
 - any procedures for objections at trial,
 - use of exhibits during opening statements,
 - whether plaintiffs are permitted to make rebuttal during opening statements,
 - the ability of jurors to take notes and ask questions,
 - when counsel are required to file proposed jury instructions,
 - whether jury instructions should also be submitted to chambers electronically,
 - whether the judge prefers that attorneys submit condensed versions of the standard jury instructions, and
 - whether the judge requires proposed findings of fact and conclusions of law to be filed in bench trials and, if so, when the judge requires that the proposed findings of fact and conclusions of law be filed; and

7. The judge's policy concerning sentencing including:
 - whether the judge requires sentencing memos from the parties,
 - whether the judge requires counsel to notify the court if counsel anticipates a contested or extensive sentencing hearing,
 - whether the judge provides notice orally or in writing if it is considering an upward departure under the United States Sentencing Guidelines, and
 - whether in a proceeding for a violation of supervised release conditions the district judge personally conducts the admission/findings of fact hearing or refers the matter to the magistrate judge.

The Guide also allows the judges the opportunity to provide general advice to practitioners, and to submit sample orders, biographical information, and articles they may have authored on the topic of federal practice.

Although each of the completed judicial practice surveys in the Guide is unique and must be reviewed to ascertain the practices and procedures of the individual federal judges, there are at least some common themes that can be gleaned. Judges expect that: (1) counsel will comply with any applicable federal rules, local rules, case management and scheduling orders, and discovery

practice manual approved by the judges; (2) counsel will be prepared and thoroughly familiar with the evidence to be presented at trial and the record on appeal; (3) counsel will prepare well-written briefs and state the facts accurately, clearly, and succinctly, and discuss the relevant legal precedent; (4) counsel will be courteous, polite, professional and exercise appropriate courtroom decorum; (5) counsel will be punctual; (6) counsel will take the time to know the courtroom and technology available, and check courtroom equipment prior to trial or hearing to confirm how it works; (7) counsel will directly and precisely answer questions from the court and counsel will be forthright; and (8) counsel will not reargue after the court has ruled. Appellate judges have also suggested that counsel should be prepared, at oral argument, to engage in a dialogue or discussion with the court rather than summarize what is already in the briefs. Practitioners should appreciate that the judges asking the questions are being helpful by directing counsel to those portions of the case that may be of concern to the court.

In conclusion, the Guide provides an invaluable source of information concerning the individual practices and procedures of numerous federal judges serving the State of Florida. In addition, the Guide provides keen insights and suggestions by the judiciary to enhance the skills and performance level of practitioners in federal court. The Florida Bar's Federal Court Practice Committee is proud to offer this resource, and encourages all attorneys practicing in Florida's federal courts to avail themselves of this wealth of information, which has been voluntarily – and graciously – furnished by the judiciary. As astutely observed by the Honorable William Matthewman, United States Magistrate Judge for the Southern District of Florida and a member of the Federal Court Practice Committee, "it is important for attorneys and litigants who appear in federal court to know the procedures of the judges assigned to their cases, and this resource provides important information to assist both the Bench and the Bar."

*Jerry M. Gewirtz is a member, and a former Chair, of the Federal Court Practice Committee of The Florida Bar. The author, and the entire Committee, acknowledge and thank the federal judges serving the State of Florida for taking their valuable time to contribute to the development and expansion of the Guide.