

RULE 3.130 | FIRST APPEARANCE

(a) Prompt First Appearance. Except 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. In the case of a child in the custody of juvenile authorities, against whom an information or indictment has been filed, the child shall be taken for a first appearance hearing within 24 hours of the filing of the information or indictment. The chief judge of the circuit for each county within the circuit shall designate 1 or more judicial officers from the circuit court, or county court, to be available for the first appearance and proceedings. The state attorney or an assistant state attorney and public defender or an assistant public defender shall attend the first appearance proceeding either in person or by other electronic means. First appearance hearings shall be held with adequate notice to the public defender and state attorney. An official record of the proceedings shall be maintained. If the defendant has retained counsel or expresses a desire to and is financially able, the attendance of the public defender or assistant public defender is not required at the first appearance, and the judge shall follow the procedure outlined in subdivision (c)(2).

(b) Advice to Defendant. At the defendant's first appearance the judge shall immediately inform the defendant of the charge, including an alleged violation of probation or community control and provide the defendant with a copy of the complaint. The judge shall also adequately advise the defendant that:

- (1) the defendant is not required to say anything, and that anything the defendant says may be used against him or her;
- (2) if unrepresented, that the defendant has a right to counsel, and, if financially unable to afford counsel, that counsel will be appointed; and
- (3) the defendant has a right to communicate with counsel, family, or friends, and if necessary, will be provided reasonable means to do so.

(c) Counsel for Defendant.



(1) Appointed Counsel. If practicable, the judge should determine prior to the first appearance whether the defendant is financially able to afford counsel and whether the defendant desires representation. When the judge determines that the defendant is entitled to court-appointed counsel and desires counsel, the judge shall immediately appoint counsel. This determination must be made and, if required, counsel appointed no later than the time of the first appearance and before any other proceedings at the first appearance. If necessary, counsel may be appointed for the limited purpose of representing the defendant only at first appearance or at subsequent proceedings before the judge.

(2) Retained Counsel. When the defendant has employed counsel or is financially able and desires to employ counsel to represent him or her at first appearance, the judge shall allow the defendant a reasonable time to send for counsel and shall, if necessary, postpone the first appearance hearing for that purpose. The judge shall also, on request of the defendant, require an officer to communicate a message to such counsel as the defendant may name. The officer shall, with diligence and without cost to the defendant if the counsel is within the county, perform the duty. If the postponement will likely result in the continued incarceration of the defendant beyond a 24-hour period, at the request of the defendant the judge may appoint counsel to represent the defendant for the first appearance hearing.

(3) Opportunity to Confer. No further steps in the proceedings should be taken until the defendant and counsel have had an adequate opportunity to confer, unless the defendant has intelligently waived the right to be represented by counsel.

(4) Waiver of Counsel. The defendant may waive the right to counsel at first appearance. The waiver, containing an explanation of the right to counsel, shall be in writing and signed and dated by the defendant. This written waiver of counsel shall, in addition, contain a statement that it is limited to first appearance only and shall in no way be construed to be a waiver of counsel for subsequent proceedings.

(d) Pretrial Release. The judicial officer shall proceed to determine conditions of release pursuant to rule 3.131. For a defendant who has been arrested for violation of his or her probation or community control by committing a new violation of law, the judicial officer:

(1) May order the offender to be taken before the court that granted the probation or community control if the offender admits the violation;

(2) If the offender does not admit the violation at first appearance hearing, the judicial officer may commit and order the offender to be brought before the court that granted probation or community control, or may release the offender with or without bail to await further hearing, notwithstanding section 907.041, Florida Statutes, relating to pretrial detention and release. In determining whether to require or set the amount of bail, the judicial officer may consider whether the offender is more likely than not to receive a prison sanction for the violation.

Committee Notes

1972 Amendment. Same as prior rule except (b), which is new.

