

TENTH CIRCUIT

# Legal Advisor

Jerry Hill, State Attorney



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## **CHANGES IN POLK FELONY INTAKE**

During the last two years, the Felony Intake Division in Polk County began to reassign the workload of its attorneys so that attorneys were assigned to handle all cases from a particular department or unit within a department. As of this month, that reassignment process is complete. My hope is that there will be a closer working relationship between our attorneys and the officers making the cases. I am encouraging our attorneys to regularly visit their assigned agencies. I encourage the officers of each department to take advantage of these visits to get to personally know the attorney assigned to their department. I think the exchange of ideas, information and the review of current legal issues will assist law enforcement as well the attorneys of this office.

A handwritten signature in blue ink, appearing to read "Jerry Hill".

# ASSIGNMENT OF FELONY CASES IN POLK COUNTY

by Mike Cusick

Cases are being assigned in Polk County to Felony Intake Division attorneys based upon the agency or unit within the agency. We are encouraging officers to call the particular attorney assigned to their department when they have legal questions regarding felony charges. The office and home numbers for these attorneys are being distributed to each agency. When an officer calls the Felony Intake Division, the call will be transferred to the assigned attorney. All arrest and search warrants should also be directed to the assigned attorney. The only exception to this policy deals with crimes which are handled by special divisions within the Polk office. The four special divisions are: 1) Homicide, 2) Child Sex/Abuse, 3) Vice, and 4) Economic/Environmental. If the attorney is not available and a prompt response is needed, another attorney will handle the call. The attorney and the assigned agencies are as follows:

John Berndt	Polk County Sheriff's Office West Region	John will regularly attend West Region Pro-Cap meetings.
Joseph Williams	Polk County Sheriff's Office East Region	Joe will regularly attend East Region Pro-Cap meetings
Jack Riley	Polk County Sheriff's Office Special Units (Non-First Degree Murder Homicides, Traffic Homicides, Sex Crimes, Robberies, Agriculture and Drug) Winter Haven Police Department - <u>Drug Unit only</u> Florida Highway Patrol, State Fire Marshall, Florida Game and Freshwater Fish Commission, FDLE, Florida Division of Alcohol and Tobacco All Traffic Homicide Cases	Jack will meet regularly with the drug units. He is available to meet with any other agency or unit upon request.
Karen Trussell	Auburndale, Bartow, Eagle Lake, Fort Meade, Lake Alfred, Mulberry and Winter Haven Police Departments Florida Division of Insurance Fraud Florida Department of Labor Florida Department of Revenue	In late June, Karen will be visiting all of the municipal police departments. Additional meetings with officers at the individual departments will be set up on a regular basis.
Wade Warren	Davenport, Dundee, Frostproof, Haines City, Lake Hamilton and Lake Wales Police Departments Florida Department of Agriculture Florida Department of Corrections Capitol Police	Wade is available at the Haines City Police Department on the first and third Fridays of each month from 8:30 a.m. to 11:30 a.m. and at the Lake Wales Police Department on the second and fourth Fridays during the same times.
Vince Patrucco	Lakeland Police Department	Vince visits the detective and drug units several times a month.

# FILING FELONY CHARGES

By Joe Williams

It has been a year since Felony Intake Director Mike Cusick wrote the article in the Legal Advisor entitled “Filing Felony Charges.” That article set forth many of the requirements and explanations of what was necessary to file a proper felony case. During the past year, many excellent cases were filed. There is, however, still room for improvement. With the regular turnover in law enforcement, it is important to review filing practices on a regular basis.

1. In order to file a felony case, it must be based on sworn testimony of the victim and any other witnesses. (Criminal Procedure Rule 3.140 [g]). This requirement of obtaining sworn testimony from the victim and witnesses is not our policy, but a mandate which we are required to follow. Sometimes we receive a felony case filing packet stating that the sworn statements/transcripts will follow. Usually, we cannot do anything with this type of case, but have our liaison person call your agency and inquire when to expect these essential statements. It is best to hold off sending in the felony packet on arrest cases until the transcripts are ready. As you may have noticed from reading the Request for Information (RFI), the first three items listed start with the word “**sworn**,” to-wit: officer reports, victim statements, and eyewitness statements. In order to assist you, in cases where the victim is not an eyewitness or has very little information regarding the case, we allow for an affidavit to be used or substituted for a sworn statement. An affidavit is a written document, under oath, executed by the affiant (person who swears to the affidavit). As a law enforcement officer you have the statutory authority to notarize the affidavit. In using the affidavit, a little common sense should be employed. It is by no means a substitution for a taped statement. Affidavits are usually employed in the non eyewitness situation.

2. Another area where we still see omissions is the failure to question the defendant/suspect about the criminal episode. We cannot emphasize enough the importance of locking the suspect/defendant into a story, confession or otherwise, for it prevents the suspect from later changing his story without damaging his credibility.

3. The mere admission that the defendant committed a crime without evidence of the crime itself creates a technical legal problem. The “corpus delicti” rule, which has existed for centuries, states that a defendant’s confession may not be entered as evidence in a case unless the prosecution has presented some other evidence as to the elements of the crime. A typical example of where this rule creates a problem is with the crime of Dealing in Stolen Property. Often a defendant will admit that not only did he steal the property but that he traded the property to someone for drugs or sold it to someone. Unless we have that “someone” as a witness, we cannot prove the elements of the dealing charge outside the defendant’s confession. Therefore, in order to file the dealing charge, a taped statement is needed from the person who received the property. We realize that sometimes it is not possible to obtain the statement (i.e., a witness is uncooperative or denies buying the item). In those situations, please understand that the dealing charge cannot be filed.

4. The general rule is that we do not file cases based solely upon co-defendant testimony. It is the position of the courts that co-defendant testimony is not reliable without corroboration. In addition, there is a practical problem. Once an individual is charged and represented by an attorney, his level of cooperation declines significantly absent being given a “deal” by the state. If a “deal” is made with a cooperating defendant, that “deal” is then used by the attorney representing the other defendant to attack the credibility of the cooperating defendant. There is an exception, used very rarely, which takes the approval of the State Attorney.

5. The same requirements are used in both the arrest and non-arrest cases. The primary difference between these two types of cases is the time constraint on arrest cases. There are strict rules for arrest cases, which do not apply to non-arrest cases. Please note, however, that if a suspect has ever been placed into custody and released, speedy trial may be running. In that instance, the suspect may have the same rights

as if he had been arrested.

In addition to the speedy trial rule, which requires that the defendant be tried within 180 days on felony cases and 90 days on misdemeanor cases, other time periods apply to felony cases. If a defendant is in custody on a felony arrest case, an Information must be filed by the state within 21 days of the arrest of the defendant or he may be eligible to be released from jail. Even on defendants who are not in custody, the state must file an Information by the Arraignment which is approximately four weeks after the date of arrest.

6. We are aware that you have different divisions to deal with at the State Attorney's Office, to-wit: Felony Intake, Homicide, Child Sex/Abuse, Economic Crime, Misdemeanor Intake, and Juvenile. Many of these divisions have their own time elements and formal filing requirements. The basic rule is when in doubt, please call. Communication between our two parts of prosecution cannot be stressed enough. Communication is a key element in law enforcement and it cannot be over emphasized or used. The prosecutors who do intake work are available 24 hour hours a day. If you have a question, then please call. We will be glad to assist you. If you have questions about the flow of paperwork in Polk County, Royce Adkins (534-4885) for PCSO and Ron Feschak (534-4884) for all other agencies can help you

For the most part, law enforcement officers have been excellent in following our policies and procedures regarding Felony Intake. But we all know there will be exceptions and we are here to assist you with those individuals. We, law enforcement officers and prosecutors, handle a lot of cases. Sometimes we communicate by written Case Filing Evaluations (CFE) which request additional information or which tell you what has happened to the case. These are sometimes referred to by law enforcement as "nasty grams." They are not meant to be such. They are not meant to be personal criticism, but professional inquiries, a way to seek additional information or explain the legal or factual problems which prevent the filing of the case. I am certain that sometimes our wording is looked upon as critical of an officer's work. We are human, but we try to be professional and write accordingly. That again is why communication is the key to solving any of these misunderstandings. We each have a job to do, and what makes it so very difficult is that we are working under two different burdens. As law enforcement you basically work under a probable cause standard for making an arrest. As prosecutors, we must be able to swear under an oath that there is sufficient legally admissible evidence to prove the defendant's guilt beyond a reasonable doubt. If the evidence is not there to satisfy that legal burden, we are under an obligation to not file the case even if there was probable cause to believe that the defendant committed the crime. This is not a reflection upon you. It is a professional legal decision. If you disagree with any of our filing decisions, then please call or communicate with us. There may be evidence or facts that we missed. There may be additional information which would change our decision. At the very least, we may be able to explain in better detail why we cannot prosecute the case.

We would appreciate the opportunity to visit your agency. As we switch to departmental and unit assignments in Polk County, we can discuss legal matters, either on an individual basis or with a group. If you would like for us to make such a visit, please contact us so that arrangements can be made. This would be another excellent form for mutual communication.

In closing, once again, we would like to thank you for the job you are doing. All of us can stand to improve. None of us are exempt from making mistakes. By working together as a team, however, we can reduce mistakes and improve the quality of the cases that we prosecute. We share same goals of achieving justice in an imperfect system.

## PLEASE HELP US OUT

1. It is very important that officers submitting criminal charges to the State Attorney's Office disclose to us, at the time of the case submission, any and all statements and/or detailed summaries of statements made by the defendant, co-defendant, victim or witness on the case. This applies even in misdemeanor cases. The Florida Rules of Criminal Procedure provide that the prosecution must supply all of this information at the time that Discovery documents are sent to defense counsel. The failure of the state to provide all of this information may result in the exclusion of some evidence at trial. As can be seen by the recent case involving Timothy McVeigh, the failure to disclose information in the possession of law enforcement can also be used as grounds on appeal to overturn a trial verdict or sentence. Even if the statements appear to be self-serving or untruthful, they should be included in the reports.

2. Please include the officer's full name and identification number in the reports. When responding to discovery demands, it is sometime frustrating for the attorney to identify which Officer Williams, Jones or Thomas the report is referring to.

3. We need to be able to distinguish between Mary Smith, the witness, and Mary Smith, the shoplifter if they are different individuals. It is important that your reports contain critical identification information. It is very helpful to include the date of birth, race and sex of the witness as well as the complete home and work addresses and telephone numbers. This assists us in determining whether Mary Smith the witness is also Mary Smith the shoplifter.

Tenth Circuit  
**LEGAL ADVISOR**  
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