UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

ADMINISTRATIVE ORDER 2021-92

IN RE:

AMENDMENTS TO THE LOCAL RULES
_____/

THE COURT has given notice and an opportunity to be heard in accordance with Fed. R. Civ. P. 83 and Fed. R. Crim. P. 57, has conducted an *en banc* hearing, and has considered the comments of the public and the report of the Court's Ad Hoc Committee on Rules and Procedures with regard to proposed amendments, in the form attached, that amend the Local General Rules and the Rules Governing the Admission, Practice, Peer Review, and Discipline of Attorneys. Upon consideration of the public comments received and the report of the Ad Hoc Committee, it is hereby

ORDERED that the rules identified are amended in the form attached (with the language to be deleted ~~stricken~~ and the language to be added double underlined).

IT IS FURTHER ORDERED that the foregoing rule amendments shall take effect on December 1, 2021 and shall govern all proceedings thereafter commenced and, insofar as just and practicable, all proceedings then pending.

IT IS FURTHER ORDERED that the Clerk of the Court is directed to: (a) publish an abbreviated notice once in the *Daily Business Review* (in each edition published in Miami-Dade, Broward, and Palm Beach Counties, Florida) alerting the public of the newly amended local rules; (b) post this Order (with attachments) prominently on the Court's website for the next 60 days; and (c) provide notice of the local rule amendments to the Court's bar through the CM/ECF electronic noticing system.

DONE AND ORDERED at Miami, Florida this 27th day of October, 2021.

Cecilia M. Altonaga

CECILIA M. ALTONAGA
CHIEF UNITED STATES DISTRICT JUDGE

Copies furnished to:

Hon. William H. Pryor, Jr., Chief Judge, United States Court of Appeals for the Eleventh Circuit
All Southern District of Florida District Judges, Magistrate Judges, and Bankruptcy Judges
James Gerstenlauer, Circuit Executive, Eleventh Circuit
Angela E. Noble, Court Administrator · Clerk of Court
Scott M. Dimond, Chair, Ad Hoc Committee on Rules and Procedures
All members of the Ad Hoc Committee on Rules and Procedures
Library
Daily Business Review

RULE 7.1 MOTIONS, GENERAL

(a) Filing.

(1) Every motion when filed and served shall incorporate a memorandum of law citing supporting authorities, except that the following motions need not incorporate a memorandum:

(A) petition for writ of habeas corpus ad testificandum or ad prosequendum;

(B) motion for out-of-state process;

(C) motion for order of publication for process;

(D) application for default;

(E) motion for judgment upon default;

(F) motion to withdraw or substitute counsel;

(G) motion for continuance, provided the good cause supporting it is set forth in the motion and affidavit required by Local Rule 7.6;

(H) motion for confirmation of sale;

(I) motion to withdraw or substitute exhibits;

(J) motion for extensions of time providing the good cause supporting it is set forth in the motion;

(K) motion for refund of bond, provided the good cause supporting it is set forth in the motion;

(L) application for leave to proceed in forma pauperis; and

(M) motion for admission pro hac vice.

(2) Those motions listed in (a)(1) above, as well as any motion seeking emergency or ex parte relief or a temporary restraining order, shall be accompanied by a proposed order that is filed and served submitted via e-mail to the Court as prescribed by Section 3I(6) of the CM/ECF Administrative Procedures.

(3) *Pre-filing Conferences Required of Counsel.* Prior to filing any motion in a civil case, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, for pro hac vice admission, or to involuntarily dismiss an action, for garnishment

or other relief under Federal Rule of Civil Procedure 64, or otherwise properly filed ex parte under the Federal Rules of Civil Procedure and these Local Rules, or a petition to enforce or vacate an arbitration award, counsel for the movant shall confer (orally or in writing), or make reasonable effort to confer(orally or in writing), with all parties or non-parties who may be affected by the relief sought in the motion in a good faith effort to resolve by agreement the issues to be raised in the motion. Counsel conferring with movant's counsel shall cooperate and act in good faith in attempting to resolve the dispute. At the end of the motion, and above the signature block, counsel for the moving party shall certify either: (A) that counsel for the movant has conferred with all parties or non-parties who may be affected by the relief sought in the motion in a good faith effort to resolve the issues raised in the motion and has been unable to do so; or (B) that counsel for the movant has made reasonable efforts to confer with all parties or non-parties who may be affected by the relief sought in the motion, which efforts shall be identified with specificity in the statement (including the date, time, and manner of each effort), but has been unable to do so. If certain of the issues have been resolved by agreement, the certification shall specify the issues so resolved and the issues remaining unresolved. Failure to comply with the requirements of this Local Rule may be cause for the Court to grant or deny the motion and impose on counsel an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee. See forms available on the Court's website (www.flsd.uscourts.gov).

(b) Hearings.

(1) No hearing will be held on motions unless set by the Court.

(2) A party who desires oral argument or a hearing of any motion shall request it within the motion or opposing memorandum in a separate section titled "request for hearing." The request shall set forth in detail the reasons why a hearing is desired and would be helpful to the Court and shall estimate the time required for argument. The Court in its discretion may grant or deny a hearing as requested, upon consideration of both the request and any response thereto by an opposing party.

(3) Discovery motions may be referred to and heard by a United States Magistrate Judge.

(4) With respect to:

(A) any motion ~~or other matter~~ in a civil case or any post-conviction motion in a criminal case ~~which~~ that has been pending and fully briefed with no hearing set thereon for a period of ninety (90) days, and

(B) any motion ~~or other matter~~ in a civil case or any post-conviction motion in a criminal case as to which the Court has conducted a hearing but has not entered an order or otherwise determined the motion or matter within ninety (90) days of the hearing, the movant ~~or applicant~~, whether party or non-party:

shall file and serve on all parties and any affected non-parties within fourteen (14) days thereafter a "Notice ~~Notification~~ of Ninety Days Expiring~~,~~" which shall contain the following information:

(i) the title and docket entry number of the subject motion ~~or other application~~, along with the dates of service and filing;

(ii) the title and docket entry number of any and all responses or opposing memoranda, along with the dates of service and filing, or~~,~~ if no such papers have been filed, the date on which such papers were due;

(iii) the title and docket entry number of any reply memoranda, or any other papers filed and served in connection with the motion ~~or other matter~~, as well as the dates of service and filing; and

(iv) the date of any hearing held on the motion ~~or other matter~~.

(C) Any motion filed in a proceeding pursuant to 28 U.S.C. § 2255 is not subject to the ninety-(90)-day notice provision set forth above.

(c) Memorandum of Law.

(1) *Requirements and Timing*. For all motions, except motions served with the summons and complaint, each party opposing a motion shall file and serve an opposing memorandum of law no later than fourteen (14) days after service of the motion. Failure to do so may be deemed sufficient cause for granting the motion by default. The movant may, within seven (7) days after service of an opposing memorandum of law, file and serve a reply memorandum in support of the motion, which reply memorandum shall be strictly limited to rebuttal of matters raised in the memorandum in opposition without reargument of matters covered in the movant's initial memorandum of law. No further or additional memoranda of law shall be filed and served without prior leave of Court. All materials in support of any motion, response, or reply, including affidavits and declarations, shall be served with the filing. For a motion served with the summons and complaint, the opposing memorandum of law shall be due on the day the response to the complaint is due.

Time shall be computed under this Local Rule in accordance with applicable federal rules of procedure (e.g., Fed. R. Civ. P. 6(a) and Fed. R. Crim. P.45(a)).

(2) *Length.* Absent prior permission of the Court, neither a motion and its incorporated memorandum of law nor the opposing memorandum of law shall exceed twenty (20) pages; a reply memorandum shall not exceed ten (10) pages. As long as no substantive part of the submission appears on the same page(s), the following items do not count toward page limitations for purposes of this rule and any other rules or orders setting forth page limitations: title pages preceding the first page of text, tables of contents, tables of citations, "request for hearing" sections, signature pages, certificates of good faith conferences, and

certificates of service. ~~Filing and service of multiple motions for partial summary judgment is prohibited, absent prior permission of the Court. This prohibition does not preclude a party from filing both a motion for summary judgment asserting an immunity from suit and a later motion for summary judgment addressing any issues that may remain in the case. This prohibition also is not triggered when, as permitted by Fed. R. Civ. P. 12(d), the Court elects to treat a motion filed pursuant to Fed. R. Civ. P. 12(b) or 12(c) as a summary judgment motion.~~

(d) Emergency Motions and Expedited Motions. The Court may, upon written motion and good cause shown, waive the time requirements of this Local Rule and grant an immediate or expedited hearing on any matter requiring such expedited procedure. A filer may seek expedited consideration through either an emergency motion or an expedited motion in accordance with the following requirements:

(1) *Emergency Motions.* A filer requesting emergency action must include the words "Emergency Motion" in the title of the motion and must set forth in detail the nature of the emergency, the date by which a ruling is necessary, and the reason the ruling is needed by the stated date. The unwarranted designation of a motion as an emergency motion may result in sanctions. The filer must certify that the matter is a true emergency by including the following certification before the motion's signature block:

> After reviewing the facts and researching applicable legal principles, I certify that this motion in fact presents a true emergency (as opposed to a matter that may need only expedited treatment) and requires an immediate ruling because the Court would not be able to provide meaningful relief to a critical, non-routine issue after the expiration of seven days. I understand that an unwarranted certification may lead to sanctions.

As prescribed by Section 10 of the CM/ECF Administrative Procedures, a party seeking to file an emergency motion must file and serve the documents electronically via CM/ECF using the events specifically earmarked for emergency matters. Motions are not considered emergencies if the urgency arises because of the attorney's or party's own dilatory conduct. Generally, unless a motion will become moot if not ruled on within seven (7) days, the motion should not be filed as an emergency motion.

(2) *Expedited Motions.* A filer whose time-sensitive motion does not qualify as an emergency motion but who nonetheless requires an expedited ruling by a date certain may file an expedited motion in lieu of an emergency motion. The motion must include the words "Expedited Motion" in the title and must set forth in detail the date by which an expedited ruling is needed and the reason the ruling is needed by the stated date.

In criminal cases, emergency motions and expedited motions that are also ex parte or sealed must be conventionally filed.

A party appearing pro se must conventionally file emergency motions and expedited motions.

(e) Applications Previously Refused. Whenever any motion or application has been made to any Judge or Magistrate Judge and has been refused in whole or in part, or has been granted conditionally, and a subsequent motion or application is made to a different District Judge or Magistrate Judge for the same relief in whole or in part, upon the same or any alleged different state of facts, it shall be the continuing duty of each party and attorney seeking such relief to present to the District Judge or Magistrate Judge to whom the subsequent application is made an affidavit setting forth the material facts and circumstances surrounding each prior application, including: (1) when and to what District Judge or Magistrate Judge the application was made; (2) what ruling was made thereon; and (3) what new or different facts and circumstances are claimed to exist which did not exist, or were not shown, upon the prior application. For failure to comply with the requirements of this Local Rule, any ruling made on the subsequent application may be set aside sua sponte or on ex parte motion.

Effective December 1, 1994. Amended effective April 15, 1996; April 15, 1997; April 15, 2000; April 1, 2004; April 15, 2005; April 15, 2006; April 15, 2007; April 15, 2009; April 15, 2010; April 15, 2011; December 1, 2011; December 1, 2014; December 1, 2015; December 1, 2016; December 1, 2017; December 3, 2018; December 2, 2019; December 1, 2020; December 1, 2021.

RULE 7.8 NOTICE OF SUPPLEMENTAL AUTHORITY.

If one or more pertinent and significant authorities come to a party's attention after the party's motion or memorandum of law has been filed or after oral argument but before a decision has been rendered, a party may promptly file a notice of supplemental authority. Such authority may pre-date the motion, memorandum, or oral argument. The notice shall contain citations to the supplemental authority and shall state the reasons for the filing of the supplemental citations, referring either to the page of the motion or memorandum of law or to a point argued orally. Within seven (7) days of the filing of such a notice, an opposing party may file a response that: (i) shall be limited to discussion of the notice and authorities cited therein; and (ii) may refer to a page of a previously filed motion or memorandum of law or to a point argued orally. The bodies of the notice and the response shall not exceed 200 words each. No replies are permitted.

Effective December 1, 2021.

RULE 26.1 DISCOVERY AND DISCOVERY MATERIAL (CIVIL)

(e) Interrogatories and Production Requests.

(2) Assertion of Privilege:

(B) Where a claim of privilege is asserted in objecting to any interrogatory or production demand, or sub-part thereof, and a complete answer is not provided on the basis of such assertion, within the time provided by subpart (D) below:

(i) The party asserting the privilege shall in the objection to the interrogatory or document demand, or subpart thereof, identify the nature of the privilege (including work product) which is being claimed and if the privilege is being asserted in connection with a claim or defense governed by state law, indicate the state's privilege rule being invoked; and

(ii) The following information shall be provided in the objection, unless divulgence of such information would cause disclosure of the allegedly privileged information:

(a) For documents or electronically stored information, to the extent the information is readily obtainable from the witness being deposed or otherwise: (1) the type of document (e.g., letter or memorandum) and, if electronically stored information, the software application used to create it (e.g., MS Word, MS Excel); (2) general subject matter of the document or electronically stored information; (3) the date of the document or electronically stored information; and (4) such other information as is sufficient to identify the document or electronically stored information for a subpoena duces tecum, including, where appropriate, the author, addressee, and any other recipient of the document or electronically stored information, and, where not apparent, the relationship of the author, addressee, and any other recipient to each other;

(b) For oral communications: (1) the name of the person making the communication and the names of persons present while the communication was made and, where not apparent, the relationship of the persons present to the person making the communication; (2) the date and the place of communication; and (3) the general subject matter of the communication.

(c) For documents, electronically stored information, things, or oral communications withheld on the basis of a claim of trade-secret privilege (other than the alleged trade secrets at issue in any claim for misappropriation of trade secrets asserted under the Defend Trade Secrets Act, 18 U.S.C. § 1836 *et seq.*, the Uniform Trade Secrets Act as adopted by any State, or any other law), the party asserting the objection shall generally describe: (1) the documents, electronically stored

information, things, or oral communications being withheld; and (2) the general nature of the alleged trade secret (without revealing the alleged trade secret)

contained therein.

(C) This rule requires preparation of a privilege log with respect to all documents, electronically stored information, things and oral communications withheld on the basis of a claim of privilege or work product protection except the following: written and oral communications between a party and its counsel after commencement of the action and work product material created after commencement of the action.

Effective December 1, 1994. Amended effective April 15, 1996; April 15, 1998; April 15, 2001; paragraph G.3 amended effective April 15, 2003; April 15, 2004; April 15, 2005; April 15, 2007; April 15, 2009; April 15, 2010; April 15, 2011; December 1, 2011; December 1, 2014; December 1, 2015; December 1, 2016; December 3, 2018; December 2, 2019; December 1, 2021.

RULE 56.1 MOTIONS FOR SUMMARY JUDGMENT

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(e) Prohibition Against Multiple Motions for Summary Judgment. Filing and service of multiple motions for partial summary judgment are prohibited, absent prior permission of the Court. This prohibition does not preclude a party from filing both a motion for summary judgment asserting an immunity from suit and a later motion for summary judgment addressing any issues that may remain in the case. This prohibition also is not triggered when, as permitted by Fed. R. Civ. P. 12(d), the Court elects to treat a motion filed pursuant to Fed. R. Civ. P. 12(b) or 12(c) as a summary judgment motion.

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Effective December 1, 1994. Amended effective April 15, 1999; April 15, 2002; April 15, 2005; April 15, 2007; April 15, 2008; April 15, 2010; April 15, 2011; December 1, 2011; December 1, 2015; December 2, 2019; December 1, 2021.

RULE 5. STUDENT PRACTICE

(a) Purpose. The following Rule for Student Practice is designed to encourage law schools to provide clinical instructions in litigation of varying kinds, and thereby enhance the competence of lawyers in practice before the United States courts.

(b) Student Requirements. An eligible student must:

(1) be duly enrolled in a law school;

(2) have completed at least four semesters of legal studies or the equivalent or, for Bankruptcy Clinical Placement Program students seeking to practice in Bankruptcy Court, at least two semesters of legal studies or the equivalent;

(3) have knowledge of the Federal Rules of Civil and Criminal Procedure and of Evidence, and the Code of Professional Responsibility;

(4) be enrolled for credit in a law school clinical program which has been certified by the Court;

(5) be certified by the Dean of the law school, or the dean's designee, as being of good character and sufficient legal ability, and as being adequately trained, in accordance with paragraphs (1)—(4) above, to fulfill his or her other responsibilities as a legal intern to both his or her client and the Court;

(6) be certified by the Court to practice pursuant to this Rule;

(7) neither ask for nor receive any compensation or remuneration of any kind for the student's services from the person on whose behalf the student renders services, but this shall not prevent a lawyer, legal aid bureau, law school, public defender agency, or the state from paying compensation to the eligible law student (nor shall it prevent any agency from making such charges for its services as it may otherwise properly require).

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Effective December 1, 1994. Amended effective April 15, 1996; April 15, 2002; April 15, 2007; April 15, 2010; December 1, 2015; December 1, 2017; December 2, 2019; December 1, 2020; December 1, 2021.