

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

IN RE:
AMENDMENTS TO THE LOCAL RULES -
NOTICE OF PROPOSED AMENDMENTS,
OF OPPORTUNITY FOR PUBLIC COMMENTS,
AND OF HEARING TO RECEIVE COMMENTS

Administrative Order 2006-27

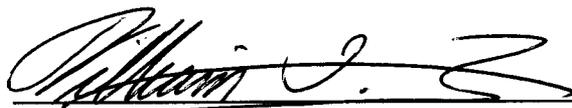
FILED by <u>W</u> D.C.
NOV 28 2006
CLARENCE MADDOX CLERK U.S. DIST. CT. S.D. OF FLA. - MIAMI

The Court's Ad Hoc Committee on Rules and Procedures has recommended that this Court amend the Local Rules with various stylistic edits to the general rules as well as to the Discovery Practices Handbook, the form interrogatories, the speedy trial waiver, the Admiralty and Maritime Rules and forms, the Magistrate Judge Rules and forms, the Special Rules Governing the Admission and Practice of Attorneys, and the Rules Governing Attorney Discipline. The Committee also recommends substantive changes to address electronic evidence discovery in Local Rules 16.1.B, 16.1.E, & 26.1, in sections I, III, IV & V of the Discovery Practices Handbook, and in Appendix B; amendments to address CM/ECF implementation in Local Rules 3.4.D, 5.1, 5.2, 5.3, 5.4, 5.5, 7.1.C, 9.1, 15.1, & 16.2.F, and admission Rule 4.B; other changes to Local Rules 3.3, 3.8, 16.2.G.2, 26.1.H.2; the adoption of a new Local Rule 34.1; amendments to Rule 4 of the Special Rules Governing the Admission and Practice of Attorneys; and minor amendments to Local Rules 7.3, 5.1.A.5, 7.1.B.3, & 88.2, and Rule 2 of the Special Rules Governing the Admission and Practice of Attorneys. In accordance with Fed.R.Civ.P. 83(a)(1) and Fed.R.Crim.P. 57(a)(1), it is hereby

ORDERED that the Clerk of the Court is directed, for the next 30 days: (a) to publish this Order (without the attachments) three times per week in the Daily Business Review (in the editions published in Miami-Dade, Broward, and Palm Beach Counties, Florida); and (b) to offer every person who files any papers in any action in this Court, and to give to anyone who so desires, a copy of this Order with the attached proposed rule amendments.

IT IS FURTHER ORDERED that the Court will conduct an *en banc* public hearing on the proposed rule amendments on the 2nd day of February, 2007, at one-thirty p.m. at the David W. Dyer Federal Building and United States Courthouse, 300 Northeast First Avenue, Central Courtroom, Miami, Florida. Those who desire to appear and offer oral comments on the proposed rule amendments at this hearing shall file written notice to that effect with the Clerk of the Court no later than five days prior to the hearing. Those who desire to offer only written comments on the proposed rule amendments must file their written comments with the Clerk of the Court no later than ten days prior to the hearing.

29th **DONE AND ORDERED** in Chambers at Fort Lauderdale, Broward County, Florida this day of November, 2006.



WILLIAM J. ZLOCH
CHIEF UNITED STATES DISTRICT JUDGE

Copies furnished as follows:
See attached

- c: Honorable J.L. Edmondson, Chief Judge,
United States Court of Appeals for the Eleventh Circuit
All Southern District Judges
All Southern District Magistrate Judges
Norman E. Zoller, Circuit Executive, Eleventh Circuit
Clarence Maddox, Court Administrator • Clerk of Court
Thomas Meeks, Chair, Ad Hoc Committee on Rules & Procedures
All members of the Ad Hoc Committee on Rules and Procedures
Library
Daily Business Review

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**LOCAL RULES
OF THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF FLORIDA**

GENERAL RULES

RULE 1.1 SCOPE OF THE LOCAL RULES

A. Title and Citation. These ~~rules~~ Local Rules shall be known as the Local Rules of the United States District Court for the Southern District of Florida. They may be cited as "S.D. Fla. L.R."

B. Effective Date. These ~~rules~~ Local Rules ~~become~~became effective February 15, 1993, provided, however, that the 1994 amendments ~~shall take~~took effect on December 1, 1994, the 1996 amendments ~~shall take~~took effect on April 15, 1996, and each subsequent year's amendments ~~shall~~ take effect on April 15 of that year, and shall govern all proceedings thereafter commenced and, insofar as just and practicable, all proceedings then pending.

C. Scope of Rules. These ~~rules~~ Local Rules shall apply in all proceedings in civil and criminal actions except where indicated otherwise. Additional ~~rules~~ Local Rules governing procedures before Magistrate Judges and in admiralty may be found herein.

D. Relationship to Prior Rules. These ~~rules~~ Local Rules supersede all ~~previous~~prior ~~rules~~ Local Rules promulgated by this Court or any Judge of this ~~e~~Court.

E. Rules of Construction and Definitions. Title 1, United States Code, ~~Title 1~~, Sections 1 to 5, shall, as far as applicable, govern the construction of these ~~rules~~ Local Rules.

Effective Dec. 1, 1994; amended effective April 15, 1996; April 15, 1997; April 15, 1998; April 15, 1999; April 15, 2000; April 15, 2001; April 15, 2002; April 15, 2003; April 15, 2004; April 15, 2005; April 15, 2006.

Authority

(1993) Model Rule 1.1 (All references to "Model Rules" refer to the Local Rules Project of the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States.)

Comment

(1994) The following ~~local rules~~ Local Rules were amended or adopted by Administrative Order 94-51, In Re Amendments ~~To~~ To the Local Rules: Local ~~General~~ Rules 1.1.B., 5.1.A.9., 5.2.D., 7.3., 16.1.B., 16.1.B.K., 26.1, 88.2 and 88.9; Local Magistrate Rule 4(a)(1); and Rule 4F of the Special Rules Governing the Admission and Practice of Attorneys.

1
2 **RULE 3.1 DOCKETING AND TRIAL**
3

4 **A.** This ~~c~~Court shall be in continuous session at Miami, ~~Ft.~~Fort Lauderdale and West Palm Beach,
5 Florida, for transacting business on all business days throughout the year.
6

7 **B.** Sessions of this Court shall be held at the places enumerated above as required by Title 28,
8 U.S.C. § United States Code, Section 89, and as ordered by the Court.
9

10 **C.** ~~Dade~~Miami-Dade County actions and proceedings shall be tried at Miami, Florida.
11

12 **D.** Monroe County actions and proceedings shall be tried at Key West, Florida.
13

14 **E.** Broward County actions and proceedings shall be tried at Fort Lauderdale, Florida.
15

16 **F.** Palm Beach County actions and proceedings shall be tried at West Palm Beach, Florida.
17

18 **G.** Highlands, Indian River, Martin, Okeechobee and St. Lucie County actions and proceedings
19 shall be tried at ~~Ft.~~Fort Pierce, Florida.
20

21 **H.** Notwithstanding the foregoing, any civil or criminal proceeding or trial may upon Order of
22 Court, in the interest of justice, the status of the docket, or to assure compliance with requirements
23 imposed under the Speedy Trial Act, be conducted at any jury division within the ~~d~~District.
24

25 Effective Dec. 1, 1994.
26

27 **Authority**
28

29 (1993) Former Local Rules 1 and 2. Collier, Hendry and Glades Counties were transferred to the
30 Middle District of Florida by P.L. 100-702.
31

32 **Comment**
33

34 (1993) Renumbered per Model Rules.
35

36 **RULE 3.2 SEPARATE DOCKETS**
37

38 **A.** Separate dockets for all actions and proceedings shall be maintained in the following
39 categories:
40

41 1. Civil.
42

43 2. Criminal.
44

1 **B.** Within each docket all actions or proceedings shall be numbered consecutively upon the filing
2 of the first document.

3
4 Effective Dec. 1, 1994.

5
6 **Authority**

7
8 (1993) Former Local Rule 3.

9
10 **Comment**

11
12 (1993) Renumbered per Model Rules.

13
14 **RULE 3.3 CIVIL COVER SHEET**

15
16 Every Complaint or other document initiating a civil action shall be accompanied by a completed
17 civil cover sheet, on a form available from the ~~clerk~~ Clerk's Office. This requirement is solely for
18 administrative purposes, and matters appearing only on the civil cover sheet have no legal effect in
19 the action. In the event counsel becomes aware of an error in the civil cover sheet, a written notice
20 shall be filed identifying the error and serving same upon all counsel of record.

21
22 Effective Dec. 1, 1994.

23
24 **Authority**

25
26 (1993) Former Local Rule 4. Model Rule 3.1; paragraph allowing for filing certain cover sheets
27 to be added nunc pro tunc and pro se exemption omitted.

28
29 **RULE 3.4 ASSIGNMENT OF ACTIONS AND PROCEEDINGS**

30
31 **A.** All civil and criminal cases, including those within a weighted category, shall be assigned on
32 a blind random basis so that the ~~d~~District workload is fairly and equally distributed among the active
33 Judges irrespective of jury division; provided that, whenever necessary in the interest of justice and
34 expediency, the Court may modify the assignments made to active or senior Judges.

35
36 **B.** The Clerk of the Court shall not have any power or discretion in determining the ~~j~~Judge to
37 whom any action or proceeding is assigned, the ~~Clerk's~~ Clerk of the Court's duties being ministerial
38 only. The method of assignment shall assure that the identity of the assigned Judge shall not be
39 disclosed to the Clerk of the Court nor to any other person, until after filing.

40
41 **C.** The assignment schedule shall be designed to prevent any litigant from choosing the Judge to
42 whom an action or proceeding is to be assigned, and all attorneys shall conscientiously refrain from
43 attempting to vary this ~~rule~~ Local Rule.

1 **D.** The District is divided into five Divisions: the Fort Pierce Division (Highlands, Indian River,
2 Martin, Okeechobee and St. Lucie Counties); the West Palm Beach Division (Palm Beach County);
3 the Fort Lauderdale Division (Broward County); the Miami Division (Miami–Dade County); and
4 the Key West Division (Monroe County). Cases are assigned by the Automated Case Assignment
5 System to provide for blind, random assignment of cases and to equitably distribute the District's
6 case load. Each Judge in the District has chambers in one of three Divisions (Miami, Fort
7 Lauderdale or West Palm Beach). A Judge with chambers in one Division may be assigned a case
8 with venue in another Division. ~~Once the case has been assigned, all papers required to be served~~
9 ~~on a party shall be filed with the clerk where the assigned Judge is chambered (even if different from~~
10 ~~the Division in which venue is located) pursuant to Local Rule 5.1.B.~~

11
12 Effective Dec. 1, 1994.

13
14 **Authority**

15
16 (1993) Former Local Rule 4.

17
18 **Comments**

19
20 (1993) New Subsection D reflects actual practice and is informational. Renumbered per Model
21 Rules.

22
23 (2000) Clarifies the Divisions of the Court and the manner in which cases are assigned.

24
25 (2007) Amended to conform to CM/ECF Administrative Procedures by eliminating language
26 directing that papers be filed with the Clerk of the Court where the assigned Judge is chambered.

27
28 **RULE 3.5 RESPONSIBILITY FOR ACTIONS AND PROCEEDINGS**

29
30 Every application for an order, including those made in connection with appellate proceedings, shall
31 be made to the Judge to whom the action or proceeding is assigned. The assigned Judge shall have
32 full charge thereof and no changes in assignment shall be made except by order of the Judges
33 affected; provided, that upon the failure or inability of any Judge to act by reason of death or
34 disability, a change in assignment may be made by the Chief Judge.

35
36 Effective Dec. 1, 1994.

37
38 **Authority**

39
40 (1993) Former Local Rule 5.1.

41
42 **Comment**

43
44 (1993) Renumbered per Model Rules.

1
2 **RULE 3.6 RECUSALS**
3

4 In the event of recusal in any matter, the assigned Judge shall enter the fact of recusal on the record
5 and refer the matter to the Clerk of the Court for permanent reassignment to another Judge in
6 accordance with the blind random assignment system.
7

8 Effective Dec. 1, 1994.
9

10 **Authority**

11
12 (1993) Former Local Rule 5.2, minor language modification.
13

14 **Comment**

15
16 (1993) Renumbered per Model Rules.
17

18 **RULE 3.7 REASSIGNMENT OF CASES DUE TO RECUSAL, TEMPORARY**
19 **ASSIGNMENT OR EMERGENCY**
20

21 **A.** The procedure for reassignment of cases due to recusal, temporary assignment or emergency
22 shall be similar to the blind filing assignment for newly-filed cases and shall be administered in a
23 manner approved by the Court so as to assure fair and equitable distribution of all such matters
24 throughout the ~~d~~District.
25

26 **B.** Any emergency matter arising in a case pending before a Judge who is physically absent from
27 the ~~Southern District of Florida~~ or who is unavailable due to illness, or is on vacation, may, upon
28 written certification as to each matter from the Judge's office setting forth such grounds therefor, be
29 referred to the Clerk of the Court for reassignment under a blind random assignment procedure.
30 Such assignment, when effected, shall be of temporary duration, limited only to the immediate relief
31 sought, and the case for all other purposes or proceedings shall remain on the docket of the Judge
32 to whom it was originally assigned.
33

34 **C.** Uncontested matters wherein the parties cannot be prejudiced through delay occasioned by the
35 normal course of business shall not be deemed emergency matters for referral.
36

37 **D.** The Clerk of the Court shall not have any discretion in determining the Judge to whom any
38 such matter is assigned, nor shall the Clerk of the Court disclose the name of the Judge to attorneys
39 or other persons until after the assignment has been made.
40

41 Effective Dec. 1, 1994.
42

43 **Authority**
44

1 (1993) Former Local Rules 5.3 and 5.4.

2
3 **Comment**

4
5 (1993) Renumbered per Model Rules.

6
7 **RULE 3.8 NOTICE OF TRANSFER OF REFILED AND SIMILAR ACTIONS AND**
8 **PROCEDURES**

9
10 It shall be the continuing duty ~~of the Clerk and~~ of the attorneys of record in every action or
11 proceeding to bring promptly to the attention of the Court and opposing counsel the existence of
12 other actions or proceedings as described in Section 2.15.00 of the Court's Internal Operating
13 Procedures, as well as the existence of any similar actions or proceedings then pending before
14 another court or administrative agency. Such notice shall be given by filing with the Court and
15 serving on counsel a "Notice of Pendency, Refiled, Related or Similar of Other Actions,"
16 containing a list and description thereof sufficient for identification.

17
18 Effective Dec. 1, 1994. ~~A;~~ amended effective April 15, 2006.

19
20 **Authority**

21
22 (1993) Former Local Rule 6.

23
24 **Comments**

25
26 (1993) Renumbered per Model Rules. Minor stylistic changes. Change to last sentence of B.

27
28 (2006) Amendment to conform to Court's adoption of Internal Operating Procedures.

29
30 **RULE 5.1 FILING AND COPIES**

31
32 **A. Form of Conventionally Filed Documents.** All civil and criminal pleadings, motions, and
33 other papers tendered for conventional (non-CM/ECF) filing shall:

34
35 1. Be bound only by easily-removable paper or spring-type binder clips, and not stapled or
36 mechanically bound or fastened in any way. Voluminous pleadings, motions, or documents
37 may be bound with a rubber band. Attachments may not be tabbed; reference characters
38 should be printed or typed on a blank sheet of paper separating each attached document.

39
40 2. Be accompanied by one clear ~~photo-copy~~photocopy. The ~~photo-copy~~photocopy is not
41 subject to the restrictions of section 1, *supra*. Although the photocopy must be in all other
42 respects identical to the file copy, it should be bound or fastened, and tabbed, if appropriate,
43 in a way that facilitates its use by the Judge. When filing a civil complaint for which issuance
44 of initial process is requested, three additional copies for each summons must be submitted.

1 Exceptions:

2
3 (a) Those litigants who have been allowed to proceed in forma pauperis shall not be
4 required to submit duplicate copies. However, they are encouraged to do so.

5
6 (b) Transcripts of state court hearings/trials, administrative records in Social Security
7 cases, and extensive exhibits to motions for summary judgment, unless otherwise directed
8 by eCourt order.

9
10 3. Be on standard size 8-1/2" x 11" white, opaque paper, to the extent practicable with a
11 standard two hole punch located at the top center (required for original only).

12
13 4. Be plainly typed or written on one side with 1" margins on each side, not less than one and
14 one-half spaces between lines except for quoted material, and properly paginated at the bottom
15 of each page.

16
17 5. Include a caption with:

18
19 (a) The name of the eCourt centered across the page;

20
21 (b) The docket number, category (civil or criminal), and the last names of the assigned
22 District Judge and Magistrate Judge, centered across the page;

23
24 (c) The style of the action, which fills no more than the left side of the page, leaving
25 sufficient space on the right side for the Clerk of the Court to affix a filing stamp; and

26
27 (d) The title of the document, including the name and designation of the party (as plaintiff
28 or defendant or the like) in on whose behalf the document is submitted, centered across
29 the page.

30
31 Exception:

32
33 The requirements of 3, 4 and 45(a)-(d) do not apply to: (1) exhibits submitted for filing;
34 and (2) papers filed in removed actions prior to removal from the state courts.

35
36 6. Include (a) a signature block with the name, street address, telephone number, facsimile
37 telephone number, e-mail address, and Florida Bar identification number of all counsel for the
38 party and (b) a certificate of service which refers to an attached Service List containing the
39 name, street address, telephone number, facsimile telephone number, and e-mail address of all
40 counsel for all parties, including the attorney filing the pleading, motion, or other paper. See
41 See Form following this rule Local Rule.

42
43 7. Not be transmitted to the Clerk of the Court or any Judge by facsimile telecopier.
44

1 8. Be submitted with sufficient copies to be filed and docketed in each matter if styled in
2 consolidated cases.
3

4 **B. ~~Place and Time of Filing~~ Form of CM/ECF Filed Documents.** ~~All papers~~ Except those
5 documents exempted under Section 5 of the CM/ECF Administrative Procedures, all documents
6 required to be served upon a party after the complaint required to be served upon a party shall be
7 filed with the clerk where the assigned Judge is chambered either before service or within three
8 business days, thereafter. Only in certified emergency situations where the statute of limitations is
9 a factor, or the death of a prisoner is imminent, will pleadings be accepted in a clerk's office other
10 than where the assigned Judge is chambered. That office will then expedite a copy to the assigned
11 Judge for review. Failure to comply with this rule is not grounds for denial of the motion or
12 dismissal of the paper filed in compliance with the CM/ECF Administrative Procedures; however,
13 pro se parties are exempted from this requirement pursuant to Section 2C of the CM/ECF
14 Administrative Procedures. The requirements of paragraphs A.2-A.5 above shall apply to
15 documents filed via CM/ECF. See Section 3A of the CM/ECF Administrative Procedures.
16

17 **C. ~~Three-Judge District Courts.~~** See Rule 9.1 for filing requirements.
18

19 **DC. Restriction on Courtesy Copies.** Counsel shall not deliver extra courtesy copies to a Judge's
20 Chambers except when requested by a Judge's office to deliver a courtesy copy to Chambers.
21

22 **ED. Notices of Filing; Form and Content.** The title of a notice of filing shall include (a) the
23 name and designation of the party (as plaintiff or defendant or the like) on whose behalf the filing
24 is submitted, and (b) a description of the document being filed. A notice of filing shall identify by
25 title the pleading, motion or other paper to which the document filed pertains and the purpose of the
26 filing, such as in support of or in opposition to a pending motion or the like.
27

28 Effective Dec. 1, 1994; amended effective April 15, 1996; April 15, 1998; April 15, 1999; April
29 15, 2000; April 15, 2001; paragraph E added effective April 15, 2003.
30

31 Authority

32
33 (1993) Former Local Rule 7; Model Rule 5.1; Administrative Order 90-64 (A.96, B).
34

35 Comments

36
37 (1993) Telecopies not permitted to be filed. Adds reference to number of copies required for
38 issuance of summonses, per ~~clerk's office~~ Clerk's Office. Adds restriction on courtesy copies.
39

40 (1994) The addition of counsel's facsimile ~~phonetelephone~~ number in A.96. is consistent with the
41 ~~local rule~~ Local Rule amendment to permit counsel to serve each other via facsimile transmission.
42 The other changes are grammatical or designed to make the ~~rule~~ Local Rule gender neutral.
43

44 (1996) In recognition of the logistical problems posed by the requirement that papers must be filed

1 with the ~~clerk~~ Clerk of the Court where the assigned Judge is chambered, the ~~rule~~ Local Rule is
2 amended to make clear that filing within three business days after service is reasonable under
3 Federal Rule of Civil Procedure Fed.R.Civ.P: 5(d). The pre-1993 version of Local ~~General~~ Rule
4 7.B. required filing of papers either before service or within five days thereafter.

5
6 (1999) Subsection A has been rewritten to conform to current practice and the format of most word
7 processors. The Clerk's Office prefers the new format because it reserves ample space for the filing
8 stamp. Former subsections A.2, A.3 and A.4 are rewritten and renumbered, effecting changes in
9 clarity, not substance. An updated sample form is appended to the ~~rule~~ Local Rule, replacing the
10 old form. Despite a stylistic change, subsection DC continues to refer to both District Judges and
11 Magistrate Judges.

12
13 (2000) Amendments to subpart 45(a) dispenses with the need for reference to the Division of the
14 Court to avoid confusion resulting from the requirement to file papers, in accordance with Local
15 ~~General~~ Rule 5.1.B, in the Division where the assigned Judge is chambered, which is different from
16 the Division in which the case is venued. A corresponding change is made to the sample form
17 following the ~~rule~~ Local Rule.

18
19 (2001) The amendments to Subsection A are intended to facilitate the process of document imaging
20 by reducing the time spent on disassembling documents in preparation for scanning and decreasing
21 the frequency of equipment failure caused by undetected fastening material.

22
23 (2003) The addition of Local Rule 5.1.ED is intended to assist the Court in understanding the
24 purpose for which materials are filed.

25
26 (2007) Amended to conform to CM/ECF Administrative Procedures by making distinction between
27 form required for papers filed conventionally and those filed electronically (paragraphs A & B),
28 eliminating the reference to three-judge court filings (paragraph C), and renumbering the paragraphs
29 accordingly (D becomes C; E becomes D).
30

1 **SAMPLE FORM FOLLOWING RULE 5.1**

2
3 (Two hole punched at top of page)
4 (1" from top of page, and centered,
5 begin title of Court)
6

7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF FLORIDA**
9

10 **Case No. ____-Civ or Cr-(USDJ's last name/USMJ's last name)**

11
12 A.B.,

13
14 Plaintiff

[Leave space for
Clerk's Clerk of the Court's filing stamp]

15
16 vs.

17
18 C.D.,

19
20 Defendant.
21 _____/

22
23 **TITLE OF DOCUMENT**
24

25 Dated: Month, day, year
26 City, State

Respectfully submitted,

27
28 _____
Attorney Name (Bar Number)

29 Attorney E-mail aAddress

30 Firm Name

31 Street Address

32 City, State, Zip Code

33 Telephone: (xxx)xxx-xxxx

34 Facsimile: (xxx)xxx-xxxx

35 Attorneys for Plaintiff/Defendant [Party Name(s)]
36

37 **Certificate of Service**
38

39 **I hereby certify** that a true and correct copy of the foregoing was served by [specify method
40 of service] on [date] on all counsel or parties of record on the attached service list.
41
42
43
44

45 _____
Attorney Name

1
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SERVICE LIST

Case No. ____-Civ or Cr-(USDJ's last name/USMJ's last name)

Attorney Name	Attorney Name
Attorney E-mail Address	Attorney E-mail Address
Firm Name	Firm Name
Street Address	Street Address
City, State, Zip Code	City, State, Zip Code
Telephone: (xxx)xxx-xxxx	Telephone: (xxx)xxx-xxxx
Facsimile: (xxx)xxx-xxxx	Facsimile: (xxx)xxx-xxxx
Attorneys for Plaintiff/Defendant [Party's Name(s)]	Attorneys for Plaintiff/Defendant [Party's Name(s)]

Effective Dec. 1, 1994; amended effective April 15, 1999; April 15, 2000; April 15, 2006.

20
21
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RULE 5.2 PROOF OF SERVICE AND SERVICE BY PUBLICATION

A. Certification of Service. Each pleading or paper required by ~~Local Rule 5~~, Federal Rules of Civil Procedure 5 to be served on the other parties shall include a certificate of service ~~stating that~~ complies with Form B to the CM/ECF Administrative Procedures and, if service includes a method other than CM/ECF, that states the persons or firms served, their relationship to the action or proceeding, the date, method and address of service. Signature by the party or its attorney on the original constitutes a representation that service has been made.

B. Initial Process. Initial process shall be issued by the Clerk's Office upon submission of an original and three copies.

C. Publication. Publication required by law or rule of court shall be made in a newspaper of general circulation. *The Daily Business Review* and such other newspapers as the Court from time to time may indicate are designated as official newspapers for the publication of notices pertaining to proceedings in this Court; provided, however, that publication shall not be restricted to the aforesaid periodicals unless an order for publication specifically so provides.

D. Service of Pleadings and Papers Subsequent to Original Complaint. ~~See~~ See Local Rule 7.1.A.3(a) and Administrative Order 2001-72 In Re: Repeal of ~~S.D. Fla. L.R. Local Rule 5.2.D~~; and the CM/ECF Administrative Procedures.

Effective Dec. 1, 1994; ~~A~~; amended effective December 1, 2001.

40
41
42
43
44
45

Authority

(1993) Former Local Rule 7; Model Rule 5.2 (does not require certificate of service); ~~Clerk's~~ Clerk of the Court's administrative rule on issuance of initial process.

1
2 (1994) D. Rule 1.07(c), Local Rules, Middle District of Florida.

3
4 (2007) Amended to conform to CM/ECF Administrative Procedures and the form of certificate of
5 service attached to those Procedures.

6
7 **RULE 5.3 FILES AND EXHIBITS**

8
9 **A. Removal of Original Papers.** No original papers in the custody of the Clerk of the Court shall
10 be removed by anyone without order of the Court until final adjudication of the action or proceeding
11 and disposition of the appeal, if one is filed, or expiration of the appeal period without appeal being
12 filed, and then only with permission and on terms of the Clerk of the Court. However, official court
13 reporters, special masters, or commissioners may remove original papers as may be necessary.

14
15 **B. Exhibits.** Except as provided by Section 51 of the CM/ECF Administrative Procedures, All
16 exhibits received or offered in evidence at any hearing shall be delivered to the Clerk of the Court,
17 who shall keep them in the ~~Clerk's~~ Clerk of the Court's custody, except that any narcotics, cash,
18 counterfeit notes, weapons, precious stones received, including but not limited to other exhibits
19 which, because of size or nature, require special handling, shall remain in possession of the party
20 introducing same during pendency of the proceeding and any appeal. Nothing contained in this ~~rule~~
21 Local Rule shall prevent the Court from entering an order with respect to the handling, custody or
22 storage of any exhibit. The Clerk of the Court shall permit United States Magistrate Judges and
23 ~~Official Court Reporters~~ to have custody of exhibits as may be necessary.

24
25 **C. Removal of Exhibits.** All models, diagrams, books, or other exhibits received in evidence or
26 marked for identification in any action or proceeding shall be removed by the filing party within
27 three months after final adjudication of the action or proceeding and disposition of any appeal.
28 Otherwise, such exhibits may be destroyed or otherwise disposed of as the Clerk of the Court may
29 deem proper.

30
31 **D. Closed Files.** Upon order of the Chief Judge, the files in all actions or proceedings not
32 pending nor on appeal may be forwarded to the Federal Records Center serving this District.
33 Thereafter, persons desiring use of any such files may, upon payment of the appropriate fee and
34 completion of a request form furnished by the Clerk of the Court, request that such files be returned
35 for examination in the Clerk's Office.

36
37 Effective Dec. 1, 1994.

38
39 **Authority**

40
41 (1993) Former Local Rule 8, as amended by Administrative Order 91-54.

42
43 **Comments**

1 (1993) Corrects typographical error. Renumbered per Model Rules. Minor stylistic changes to A,
2 B and C; deletion of reference to Magistrate Judges.

3
4 (2007) Amended to conform to CM/ECF Administrative Procedures.

5
6 **RULE 5.4 FILINGS UNDER SEAL; DISPOSAL OF SEALED MATERIALS**

7
8 **A. General Policy.** Unless otherwise provided by law, Court rule or Court order, proceedings in
9 the United States District Court are public and Court filings are matters of public record. Where not
10 so provided, a party seeking to file matters under seal shall follow the procedures prescribed by this
11 rule Local Rule. Pursuant to Section 5A of the CM/ECF Administrative Procedures, attorneys are
12 prohibited from filing sealed documents electronically.

13
14 **B. Procedure for Filings Under Seal.** A party seeking to make a filing under seal shall:

15
16 1. Deliver to the Clerk's Office an original and one copy of the proposed filing, each
17 contained in a separate plain envelope clearly marked as "sealed document" with the case
18 number and style of the action noted on the outside. The Clerk's Office shall note on each
19 envelope the date of filing and docket entry number.

20
21 2. File an original and a copy of the motion to seal with self-addressed postage-paid
22 envelopes, setting forth a reasonable basis for departing from the general policy of a public
23 filing, and generally describing the matter contained in the envelope. The motion shall
24 specifically state the period of time that the party seeks to have the matter maintained under
25 seal by the Clerk's Office. Unless permanent sealing is sought, the motion shall set forth how
26 the matter is to be handled upon expiration of the time specified in the Court's sealing order.
27 Absent extraordinary circumstances, no matter sealed pursuant to this ~~rule~~ Local Rule may
28 remain sealed for longer than five (5) years from the date of filing.

29
30 3. Accompany the motion with a completed sealed document tracking form, which can be
31 obtained from the Clerk's Office in any ~~Division~~ or downloaded from the forms section of
32 the Court's Web~~_~~site (www.flsd.uscourts.gov/).

33
34 **C. Court Ruling.** If the Court grants the motion to seal, the Clerk's Office shall maintain the
35 matter under seal as specified in the Court order. If the Court denies the motion to seal, the original
36 and copy of the proposed filing shall be returned to the party in its original envelope.

37
38 **D. Disposition of Sealed Matter.** Unless the Court's sealing order permits the matter to remain
39 sealed permanently, the Clerk of the Court will dispose of the sealed matter upon expiration of the
40 time specified in the Court's sealing order by unsealing, destroying, or returning the matter to the
41 filing party.

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43 Effective April 15, 2000; amended effective April 15, 2001; April 15, 2005.

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Comments

(2000) ~~The rule~~ This Local Rule codifies existing procedure. By its terms, this ~~rule~~ Local Rule does not apply to materials covered by specific statutes, rules or court orders authorizing, prescribing or requiring secrecy. However, the Clerk's Office and litigants may find it helpful to complete a "Sealed Filing Cover Sheet" in the form set forth at the end of this ~~rule~~ Local Rule for materials being filed under seal after the entry of, and pursuant to, a protective order governing the use and disclosure of confidential information.

(2001) The current amendments are intended to reflect more accurately existing procedures, and to assist the ~~e~~Court in the maintenance and ultimate disposition of sealed records by creating a form order which specifies how long the matter is to be kept under seal and how it is to be disposed of after the expiration of that time. By its terms, this ~~rule~~ Local Rule does not apply to materials covered by specific statutes, rules or court orders authorizing, prescribing or requiring secrecy. However, litigants are required to complete an "Order Re: Sealed Filing" in the form set forth at the end of this ~~rule~~ Local Rule for materials being filed under seal after the entry of, and pursuant to, a protective order governing the use and disclosure of confidential information.

(2005) The form order previously prescribed by ~~the rule~~ this Local Rule has been deleted. ~~The local rule~~ This Local Rule is intended to conform to current case law. *See, e.g., Press-Enterprise Co. v. Super. Ct.*, 478 U.S. 1 (1986); *Globe Newspaper Co. v. Super. Ct.*, 457 U.S. 596 (1982); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980); *Nixon v. Warner Communications, Inc.*, 435 U.S. 589 (1978); *United States v. Valenti*, 987 F.2d 708 (11th Cir. 1993); *Newman v. Graddick*, 696 F.2d 796 (11th Cir. 1983). The sealed document tracking form is an administrative requirement.

(2007) Amended to conform to CM/ECF Administrative Procedures.

RULE 5.5 ELECTRONIC FILING THROUGH CM/ECF

~~Pursuant to Fed.R.Civ.P. 5(e), the Clerk will accept in certain actions documents filed, signed, and/or verified by electronic means. The types of actions in which electronic filing will be permitted, the practices and procedures governing the electronic filing process, and the standards with which electronic filers must comply will be established by Administrative Order. A document filed by electronic means pursuant to this Rule and in compliance with Court-established standards, processes, and procedures constitutes a written document for the purposes of applying these Rules and the Federal Rules of Civil and Criminal Procedure.~~

Documents shall be filed in compliance with the CM/ECF Administrative Procedures.

Effective April 15, 2003.

Comments

(2003) Federal Rule of Civil Procedure 5(e) gives the federal courts the authority to permit

1 electronic filing. This Local Rule only authorizes the Clerk of the Court to accept electronic filings,
2 leaving the processes, procedures, standards, etc., to be established by subsequent order of the Court.
3 This was done in order to give the Court the flexibility to adapt, refine, and redefine the process as
4 it grows in acceptance. Relevant Administrative Orders will be available on the Court's InternetWeb
5 site (<http://www.flsd.uscourts.gov>) as they are issued. Upon payment of copying costs, copies also
6 may be obtained at any courthouse or intake counter in the the District or by mailing a written request
7 to the following address: E-Filing Administrator, Office of the Clerk, U.S. District Court, 301 North
8 Miami Avenue, Room 321, Miami, Florida 33128.

9
10 (2007) Amended to conform to CM/ECF Administrative Procedures by supplanting original
11 electronic filing requirements with reference to those applicable to CM/ECF.

12 13 **RULE 7.1 MOTIONS, GENERAL**

14 15 **A. Filing.**

16
17 1. Every motion when filed shall include or be accompanied by a memorandum of law citing
18 supporting authorities, except that the following motions need not be accompanied by a
19 memorandum:

20
21 (a) petition for writ of habeas corpus ad testificandum or ad prosequendum;

22
23 (b) motion for out-of-state process;

24
25 (c) motion for order of publication for process;

26
27 (d) application for default;

28
29 (e) motion for judgment upon default;

30
31 (f) motion to withdraw or substitute counsel;

32
33 (g) motion for continuance, provided the good cause supporting it is set forth in the
34 motion and affidavit required by Local Rule 7.6;

35
36 (h) motion for confirmation of sale;

37
38 (i) motion to withdraw or substitute exhibits;

39
40 (j) motion for extensions of time providing the good cause supporting it is set forth in the
41 motion;

42
43 (k) motion for refund of bond, provided the good cause for granting the motions supporting
44 it is set forth in the motion; and

1
2 (l) application for leave to proceed in forma pauperis.
3

4 2. Those motions listed in A.1 above shall be accompanied by a proposed order.
5

6 3. Pre-filing Conferences Required of Counsel. Prior to filing any motion in a civil case,
7 except a motion for injunctive relief, for judgment on the pleadings, for summary judgment,
8 to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim
9 upon which relief can be granted, or to involuntarily dismiss an action, counsel for the movant
10 shall confer (orally or in writing), or make reasonable effort to confer (orally or in writing),
11 with all parties or non-parties who may be affected by the relief sought in the motion in a good
12 faith effort to resolve by agreement the issues to be raised in the motion. Counsel conferring
13 with movant's counsel shall cooperate and act in good faith in attempting to resolve the
14 dispute. At the time of filing the motion, counsel for the moving party shall file with the Clerk
15 of the Court a statement certifying either: (a) that counsel for the movant has conferred with
16 all parties or non-parties who may be affected by the relief sought in the motion in a good faith
17 effort to resolve the issues raised in the motion and has been unable to do so; or (b) that
18 counsel for the movant has made reasonable efforts to confer with all parties or non-parties
19 who may be affected by the relief sought in the motion, which efforts shall be identified with
20 specificity in the statement, but has been unable to do so. If certain of the issues have been
21 resolved by agreement, the statement shall specify the issues so resolved and the issues
22 remaining unresolved. Failure to comply with the requirements of this ~~rule~~ Local Rule may
23 be cause for the eCourt to grant or deny the motion and impose on counsel an appropriate
24 sanction, which may include an order to pay the amount of the reasonable expenses incurred
25 because of the violation, including a reasonable attorney's fee.
26

27 **B. Hearings.** No hearing will be held on motions unless set by the Court. Hearings shall be set
28 by the Court under the following circumstances:
29

30 1. A party who desires oral argument or a hearing of any motion shall request it in writing
31 by separate request accompanying the motion or opposing memorandum. The request shall
32 set forth in detail the reasons why a hearing is desired and would be helpful to the Court and
33 shall estimate the time required for argument. The Court in its discretion may grant or deny
34 a hearing as requested, upon consideration of both the request and any response thereto by an
35 opposing party.
36

37 2. Discovery motions may be referred to and heard by a United States Magistrate Judge.
38

39 3. With respect to:

40 a. any motion or other matter which has been pending and fully briefed with no hearing
41 set thereon for a period of ~~90~~ ninety days, and
42

43 b. any motion or other matter as to which the Court has conducted a hearing but has not
44

1 entered an order or otherwise determined the motion or matter within ~~90~~ninety days of
2 the hearing,

3
4 the movant or applicant, whether party or non-party, shall file and serve on all parties and any
5 affected non-parties a "Notification of ~~90~~Ninety Days Expiring" which shall contain the
6 following information:

7
8 (1) the title and docket entry number of the subject motion or other application, along
9 with the dates of service and filing;

10
11 (2) the title and docket number of any and all responses or opposing memoranda,
12 along with the dates of service and filing, or if no such papers have been filed, the
13 date on which such papers were due;

14
15 (3) the title and docket entry number of any reply memoranda, or any other papers
16 filed in connection with the motion or other matter, as well as the dates of service and
17 filing; and

18
19 (4) the date of any hearing held on the motion or other matter.

20
21 The "Notification of ~~90~~Ninety Days Expiring" shall be filed within ten days of the expiration
22 of the applicable ~~90~~ninety day period.

23
24 **C. Memorandum of Law.** Each party opposing a motion shall serve an opposing memorandum
25 of law not later than ten days after service of the motion as computed in the Federal Rules of Civil
26 Procedure. Failure to do so may be deemed sufficient cause for granting the motion by default.

27
28 The movant may, within five days after service of an opposing memorandum of law, serve a reply
29 memorandum in support of the motion, which reply memorandum shall be strictly limited to rebuttal
30 of matters raised in the memorandum in opposition without reargument of matters covered in the
31 movant's initial memorandum of law. No further or additional memoranda of law shall be filed
32 without prior leave of Court.

33
34 1. *Time.* Time shall be computed under this ~~Rule~~ Local Rule as follows:

35
36 (a) If the motion or memorandum was served by mail; or filed via CM/ECF, count ten
37 (~~10~~) days (five (~~5~~) days for a reply) from the date the motion, response, or memorandum
38 to which one is responding was certified as having been mailed; or filed via CM/ECF.
39 Do not include Saturdays, Sundays, or legal holidays. Beginning on the next calendar
40 day, including Saturday, Sunday, or a legal holiday, count three (~~3~~) days. The third day
41 is the due date for the opposing memorandum or reply. If the third day falls on a
42 Saturday, Sunday, or legal holiday, the due date is the next business day.

43
44 (b) If the motion or memorandum was served by hand delivery, start counting ten (~~10~~) or

1 five (5) days on the business day after receipt of the motion or memorandum, excluding
2 Saturdays, Sundays and legal holidays. The tenth or fifth day is the due date for the
3 opposing memorandum or reply, respectively.
4

5 2. *Length.* Absent prior permission of the Court, no party shall file any legal memorandum
6 exceeding twenty (20) pages in length, with the exception of a reply which shall not exceed
7 ten (10) pages in length. The practice of filing multiple motions for partial summary judgment
8 shall be prohibited, absent prior permission of the Court.
9

10 3. *Supporting and Opposing Materials.* To the extent a party wants the Court to consider
11 affidavits, declarations, or other materials in support of or in opposition to the motion, then:
12 (a) the movant must serve with the motion all such materials; and (b) the opposing party must
13 serve with the opposing memorandum all such materials in opposition to the motion. The
14 movant may serve a reply memorandum with affidavits, declarations, or other materials
15 provided that all such materials are strictly limited to rebuttal of matters raised in the opposing
16 memorandum.
17

18 **D. Orders Made Orally in Court.** Unless the Court directs otherwise, all orders orally
19 announced in Court shall be prepared in writing by the attorney for the prevailing party and taken
20 to the Judge within two days thereafter, ~~with sufficient copies for all parties and the Court, and~~
21 ~~accompanied by stamped addressed envelopes for mailing to the parties.~~
22

23 **E. Emergency Motions.** The Court may, upon written motion and good cause shown, waive the
24 time requirements of this ~~rule~~ Local Rule and grant an immediate hearing on any matter requiring
25 such expedited procedure. The motion shall set forth in detail the necessity for such expedited
26 procedure.
27

28 **F. Applications Previously Refused.** Whenever any motion or application has been made to any
29 Judge or Magistrate Judge and has been refused in whole or in part, or has been granted
30 conditionally, and a subsequent motion or application is made to a different District Judge or
31 Magistrate Judge for the same relief in whole or in part, upon the same or any alleged different state
32 of facts, it shall be the continuing duty of each party and attorney seeking such relief to present to
33 the District Judge or Magistrate Judge to whom the subsequent application is made an affidavit
34 setting forth the material facts and circumstances surrounding each prior application, including: (1)
35 when and to what District Judge or Magistrate Judge the application was made; (2) what ruling was
36 made thereon; and (3) what new or different facts and circumstances are claimed to exist which did
37 not exist, or were not shown, upon the prior application. For failure to comply with the requirements
38 of this ~~rule~~ Local Rule, any ruling made on the subsequent application may be set aside sua sponte
39 or on ex parte motion.
40

41 Effective Dec. 1, 1994; amended effective April 15, 1996; April 15, 1997; April 15, 2000; April
42 1, 2004; April 15, 2005; April 15, 2006.
43
44

Comments

1
2 (1996) The contemporaneous service and filing requirements have been relaxed in recognition of
3 the logistical problems posed by the requirement of Local ~~General~~ Rule 5.1.B. that papers must be
4 filed with the ~~clerk~~ Clerk of the Court where the assigned Judge is chambered. Under amended
5 Local Rules 5.1.B. and 7.1.C., opposing and reply memoranda must be filed within three business
6 days after service of the memoranda.

7
8 (1997) Addition of language to Local Rule 7.1.C.2. prohibiting the practice of filing multiple
9 motions for summary judgment to evade page limitations.

10
11 (2000) The addition of subsection 7.1.A.3.(a) is intended to eliminate unnecessary motions and is
12 based on M.D.Fla. Local Rule 3.01(g) and ~~S.D.Fla.~~ Local ~~General~~ Rule 26.1.I. Subsection
13 7.1.A.3.(b) is intended merely to direct counsel to the pre-filing conference requirements of Local
14 Rule 26.1.I for discovery motions.

15
16 (2004) Local Rule 7.1.A.3 is amended in conjunction with deletion of Local Rule 26.1.I's text to
17 avoid confusion and clarify pre-filing conference obligations. Local Rule 7.1.A.4 is deleted in light
18 of almost universal participation in the District's automated noticing program ("FaxBack"). The last
19 sentence in Local Rule 7.1.C.2 is amended to prohibit, absent prior permission from the Court, the
20 filing of multiple motions for partial summary judgment. This amendment is made in conjunction
21 with the amendment of Local Rule 16.1.B.2 to emphasize the need to discuss at the scheduling
22 conference of parties and/or counsel the number and timing of motions for summary judgment or
23 partial summary judgment, and have the Scheduling Order address these issues.

24
25 (2005) The addition of subsection 7.1.C.3 is intended to clarify the procedure for filing materials in
26 support of or in opposition to a motion.

27
28 (2006) Local ~~General~~ Rule 7.1.B.3 is amended to assist the Court's expeditious determination of
29 motions or other matters. Local ~~General~~ Rule 7.1.C.1 is amended to correspond to Federal Rule of
30 Civil Procedure Fed.R.Civ.P. 6(e).

31
32 (2007) Amended to conform to CM/ECF Administrative Procedures.

33 **RULE 7.2 MOTIONS PENDING ON REMOVAL OR TRANSFER TO THIS COURT**

34
35
36 When a court transfers or a party removes an action or proceeding to this Court and there is a
37 pending motion for which the moving party has not submitted a memorandum, the moving party
38 shall file a memorandum in support of its motion within ten days after the filing of the notice of
39 removal or the entry of the order of transfer. Each party shall then comply with the briefing
40 schedule provided in Local Rule 7.1.C. above.

41
42 Effective Dec. 1, 1994. ~~A;~~ amended effective April 15, 2003.

43 **Authority**

1
2 (1993) Former Local Rule 10D.
3

4 **Comments**
5

6 (1993) Addition of language to define date of "removal"; amended to add transferred cases.
7

8 (2003) Unifies the time within which a moving party must file a memorandum in support of a
9 motion pending at the time of removal or transfer by eliminating the option of waiting until the
10 Court denies a motion to remand. The moving party now has ten days from the date of the filing of
11 the notice of removal or the entry of an order of transfer within which to file a supporting
12 memorandum, irrespective of any motion to remand.
13

14 **RULE 7.3 ATTORNEYS FEES AND COSTS**
15

16 **A. Motions for Attorneys Fees and/or Costs Upon Entry of Final Judgment or Order.** Any
17 motion for attorneys fees and/or costs: (i) must specify the judgment and the statute, rule, or other
18 grounds entitling the moving party to the award; (ii) must state the amount or provide a fair estimate
19 of the amount sought; (iii) shall disclose the terms of any agreement with respect to fees to be paid
20 for the services for which the claim is made; (iv) describe in detail the number of hours reasonably
21 expended, the bases for those hours, the hourly rate(s) charged, and identity of the timekeeper(s);
22 (v) shall describe in detail all reimbursable expenses; (vi) shall be verified; (vii) shall be supported
23 by an affidavit of an expert witness; and (viii) shall be filed and served within ~~30~~ thirty days of entry
24 of a Final Judgment or other appealable order that gives rise to a right to attorneys fees and/or costs.
25 Any such motion shall be accompanied by a certification that counsel has fully reviewed the time
26 records and supporting data and that the motion is well grounded in fact and justified. Prior to filing
27 a motion for attorneys fees and/or costs, counsel shall confer with opposing counsel and make a
28 certified statement in the motion in accordance with Local ~~General~~ Rule 7.1.A.3. The motion shall
29 also state whether a hearing is requested by any party and indicate the length of time desired for the
30 hearing. The prospects or pendency of supplemental review or appellate proceedings shall not toll
31 or otherwise extend the time for filing of a motion for fees and/or costs with the ~~district c~~ourt.
32

33 **B. Motions for Attorneys Fees and/or Costs Prior to Entry of Final Judgment.** Any motion
34 for attorneys fees and/or costs made before entry of final judgment or other appealable order must:
35 (i) specify the statute, rule, or other grounds entitling the moving party to the award; (ii) must state
36 the amount or provide a fair estimate of the amount sought; (iii) shall disclose the terms of any
37 agreement with respect to fees to be paid for the services for which the claim is made; (iv) shall
38 describe in detail the number of hours reasonably expended, the bases for those hours, the hourly
39 rate(s) charged, and identity of the timekeeper(s); (v) shall describe in detail all reimbursable
40 expenses; (vi) shall be verified; and (vii) shall be supported by an affidavit of an expert witness.
41 Any such motion shall be accompanied by a certification that counsel has fully reviewed the time
42 records and supporting data and that the motion is well grounded in fact and justified. Prior to filing
43 a motion for attorneys fees and/or costs, counsel filing the motion shall confer with opposing
44 counsel and make a certified statement in the motion in accordance with Local ~~General~~ Rule 7.1.A.3.

1 The motion shall also state whether a hearing is requested.

2
3 **C. Bill of Costs.** A bill of costs pursuant to Title 28, U.S.C. § United States Code, Section 1920
4 shall be filed and served within ~~30~~ thirty days of entry of Final Judgment or other appealable order
5 which gives rise to a right to tax costs under the circumstances listed in Title 28, U.S.C. § United
6 States Code, Section 1920. An application for a bill of costs must be submitted on form (or in form
7 substantially similar to) AO 133 of the Administrative Office of the United States Courts. The bill
8 of costs should attach copies of any documentation showing the amount of costs. The prospects or
9 pendency of supplemental review or appellate proceedings shall not toll or otherwise extend the time
10 for filing a bill of costs with the ~~district c~~Court.

11
12 Effective Dec. 1, 1994; amended effective April 15, 1999; April 15, 2001; April 15, 2005; April
13 15, 2006.

14 **Authority**

15
16
17 (1993) Former Local Rule 10F, renumbered per Model Rules.

18 **Comments**

19
20
21 (1993) There are considerable modifications to the existing ~~rule~~ Local Rule, including an attorney's
22 certification, plus a requirement to confer in ~~3~~ three days.

23
24 The authority of the Judges to regulate the mechanics of fee applications is clear. *See White v. New*
25 *Hampshire Dept. of Employment*, 455 U.S. 445 (1982); *Knighton v. Watkins*, 616 F.2d 795 (5th
26 Cir.1980); *Brown v. City of Palmetto*, 681 F.2d 1325 (11th Cir.1982); *Zaklama v. Mount Sinai*
27 *Med. Center*, 906 F.2d 645 (11th Cir.1990).

28
29 (1994) The changes are designed to make certain portions of the ~~local rule~~ Local Rule (but not the
30 time period for filing) consistent with ~~Fed.R.Civ.P.~~ Federal Rule of Civil Procedure 54(d)(2)(B), as
31 amended effective December 1, 1993, and to correct grammatical or typographical errors which
32 appear in the current ~~rule~~ Local Rule. Local Rule 54(d)(2)(B) as amended leaves the disclosure of
33 the fee agreement to the discretion of the Court. This ~~local rule~~ Local Rule directs disclosure in
34 every case.

35
36 (1999) ~~The rule~~ This Local Rule has been amended to clarify that a motion for fees and costs must
37 only be filed when a judgment or appealable order has been entered in the matter. A motion for fees
38 and costs may be made before such a judgment or order has been entered where appropriate, such
39 as when sanctions have been awarded during the course of such proceeding. However, in no event
40 may a motion for fees or costs be made later than the date provided for in this ~~rule~~ Local Rule.

41
42 (2001) Applicability to interim fee applications clarified.

43
44 (2005) The amendments are designed to provide attorneys with more particularized information as

1 to what must be included and filed contemporaneously with a motion for attorneys fees and/or costs.
2 *See Norman v. Housing Auth.*, 836 F.2d 1292 (11th Cir. 1988), and progeny. The amendment to ~~the~~
3 rule this Local Rule separates a bill to tax costs from that of a motion for attorneys fees and/or costs.
4 The changes also require attorneys to confer in good faith prior to the filing of a motion for attorneys
5 fees and/or costs ~~or a bill to tax costs~~, which is a change from the 1993 amendment.
6

7 (2006) The amendments are designed to distinguish between a bill of costs, which is authorized by
8 Title 28, U.S.C. § United States Code, Section 1920, and a motion for costs, which arises in
9 circumstances other than those listed in Title 28, U.S.C. § United States Code, Section 1920.
10

11 **RULE 7.5 MOTIONS FOR SUMMARY JUDGMENT**

12
13 **A. Motions for Summary Judgment.** Motions for summary judgment shall be accompanied by
14 a memorandum of law, necessary affidavits, and a concise statement of the material facts as to which
15 the movant contends there ~~is~~exists no genuine issue to be tried.
16

17 **B. Opposition Papers.** The papers opposing a motion for summary judgment shall include a
18 memorandum of law, necessary affidavits, and a single concise statement of the material facts as to
19 which it is contended that there exists a genuine issue to be tried.
20

21 **C. Statement of Material Facts.** The statement of material facts submitted either in support of
22 or in opposition to a motion for summary judgment shall:
23

- 24 1. Not exceed ten pages in length; and
- 25 2. Be supported by specific references to pleadings, depositions, answers to interrogatories,
26 admissions, and affidavits on file with the Court.
27

28
29 **D. Effect of Failure to Controvert Statement of Undisputed Facts.** All material facts set forth
30 in the movant's statement filed and supported as required by Local Rule 7.5.C will be deemed
31 admitted unless controverted by the opposing party's statement, provided that the Court finds that
32 the movant's statement is supported by evidence in the record.
33

34 **E. Briefing Schedule.** As oral argument is not always scheduled on motions for summary
35 judgment, the briefing schedule in Local Rule 7.1 shall apply.
36

37 Effective Dec. 1, 1994; amended effective April 15, 1999; April 15, 2002; April 15, 2005.
38

39 **Authority**

40 (1993) Former Local Rule 10J.
41

42 **Comments**

1 (1993) Deletes specific briefing schedule and reference to submitting envelopes. These are covered
2 by the general motion rule Local Rule.

3
4 (1999) Adds a page limit for the statement of material facts and makes clear that only one such
5 statement shall be submitted with a motion for summary judgment.

6
7 (2002) ~~The rule~~ This Local Rule is amended to require specific references to materials on file with
8 the Court to support or controvert the movant's statement of undisputed facts. The "on file with the
9 Court" language will require litigants to file any materials on which they intend to rely or to which
10 they refer. This is in accord with the practice contemplated by ~~Fed.R.Civ.P.~~ Federal Rule of Civil
11 Procedure 5(d)(1), as amended effective December 1, 2000. The Advisory Committee Notes to the
12 December 2000 amendments make clear that, with regard to voluminous materials, only those parts
13 actually used need to be filed, with any other party free to file other pertinent portions of the
14 materials that are so used. See See Fed. R. Evid. 106; cf. cf. Fed. R. Civ. P. 32(a)(4). Therefore,
15 only the portions of deposition transcripts actually "used" need be filed.

16
17 (2005) Local Rule 7.5.D is amended to clarify that the Court will not grant summary judgment
18 unless supported by a review of evidence in the record. *See United States v. One Piece of Real Prop.*
19 *Located at 5800 S.W. 74th Ave., Miami, Fla.*, 363 F.3d 1099, 1103 n. 6 (11th Cir. 2004).

20 **RULE 7.6 CONTINUANCES OF TRIALS AND HEARINGS**

21
22
23 A continuance of any trial, pretrial conference, or other hearing will be granted only on exceptional
24 circumstances. No such continuance will be granted on stipulation of counsel alone. However,
25 upon written notice served and filed at the earliest practical date prior to the trial, pretrial
26 conference, or other hearing, and supported by affidavit setting forth a full showing of good cause,
27 a continuance may be granted by the Court.

28
29 Effective Dec. 1, 1994.

30 **Authority**

31
32
33 (1993) Former Local Rule 11. Renumbered in accordance with Model Rules.

34 **RULE 7.7 CORRESPONDENCE TO THE COURT**

35
36
37 Unless invited or directed by the presiding jJudge, attorneys and any party represented by an
38 attorney shall not: (a) address or present to the Court in the form of a letter or the like any
39 application requesting relief in any form, citing authorities, or presenting arguments; ~~and or~~ (b) ~~shall~~
40 ~~not~~ furnish the Court with copies of correspondence between or among counsel, or any party
41 represented by an attorney, except when necessary as an exhibit when seeking relief from the Court.
42 Local Rule 5.1.~~DC~~. above governs the provision of "courtesy copies" to a jJudge.

43
44 Effective Dec. 1, 1994. ~~A~~; A amended effective April 15, 2003.

1
2 **Authority**
3

4 (1993) Former Local Rule 10M.
5

6 **Comments**
7

8 (2003) Because correspondence between or among counsel may be relevant to a motion before the
9 Court, e.g. compliance with the pre-filing conferences required of counsel, see S.D.Fla. L.R. *see*
10 Local Rules 7.1.A.3, 26.1.I, copies of such correspondence may be appended as exhibits to motions
11 or memoranda.
12

13 (2007) Amended to reflect renumbering of paragraphs of Local Rule 5.1.
14

15 **RULE 9.1 REQUEST FOR THREE-JUDGE DISTRICT COURT**
16

17 **A.**—In any action or proceeding which a party believes is required to be heard by a three-judge
18 district court, the words "Three-Judge District Court Requested" or the equivalent shall be included
19 immediately following the title of the first pleading in which the cause of action requiring a
20 ~~three-judge~~three-judge district court is pleaded. Unless the basis for the request is apparent from
21 the pleading, it shall be set forth in the pleading or in a brief statement attached thereto. The words
22 "Three-Judge District Court Requested" or the equivalent on a pleading is a sufficient request under
23 Title 28, U.S.C. § United States Code, Section 2284.
24

25 **B.**—~~In any action or proceeding in which a three-judge court is requested, parties shall file the~~
26 ~~original and three copies of every pleading, motion, notice or other document with the clerk until~~
27 ~~it is determined either that a three-judge court will not be convened or that the three-judge court has~~
28 ~~been convened and dissolved, and the case remanded to a single judge. The parties may be~~
29 ~~permitted to file fewer copies by order of the court.~~
30

31 **C.**—~~A failure to comply with this rule is not a ground for failing to convene or for dissolving a~~
32 ~~three-judge court.~~
33

34
35 Effective Dec. 1, 1994.
36

37 **Authority**
38

39 (1993) Model Rule 9.2; Former Local Rule 7C.
40

41 **Comment**
42

43 (2007) Amended to conform to CM/ECF Administrative Procedures.
44

1 **RULE 11.1 ATTORNEYS**
2

3 **A. Roll of Attorneys.** The Bar of this Court shall consist of those persons heretofore admitted
4 and those who may hereafter be admitted in accordance with the Special Rules Governing the
5 Admission and Practice of Attorneys in this District.
6

7 **B. Contempt of Court.** Any person who before his or her admission to the Bar of this Court or
8 during his or her disbarment or suspension exercises in this District in any action or proceeding
9 pending in this Court any of the privileges of a member of the Bar, or who pretends to be entitled
10 to do so, may be found guilty of contempt of Court.
11

12 **C. Professional Conduct.** The standards of professional conduct of members of the Bar of this
13 Court shall include the current Rules Regulating The Florida Bar. For a violation of any of these
14 canons in connection with any matter pending before this Court, an attorney may be subjected to
15 appropriate disciplinary action.
16

17 **D. Appearance by Attorney.**
18

19 1. The filing of any pleading shall, unless otherwise specified, constitute an appearance by
20 the person who signs such pleading.
21

22 2. An attorney representing a witness in any civil action or criminal proceeding, including
23 a grand jury proceeding, or representing a defendant in a grand jury proceeding, shall file a
24 notice of appearance, with consent of the client endorsed thereon, with the Clerk of the Court
25 on a form to be prescribed and furnished by the Court, except that the notice need not be filed
26 when such appearance has previously been evidenced by the filing of pleadings in the action
27 or proceeding. The notice shall be filed by the attorney promptly upon undertaking the
28 representation and prior to the attorney's appearance on behalf of the attorney's client at any
29 hearing or grand jury session. When the appearance is in connection with a grand jury session,
30 the notice of appearance shall be filed with the Clerk of the Court in such manner as to
31 maintain the secrecy requirements of grand jury proceedings.
32

33 3. No attorney shall withdraw the attorney's appearance in any action or proceeding except
34 by leave of the Court after notice served on the attorney's client and opposing counsel.
35

36 4. Whenever a party has appeared by attorney, the party cannot thereafter appear or act on
37 the party's own behalf in the action or proceeding, or take any step therein, unless an order of
38 substitution shall first have been made by the Court, after notice to the attorney of such party,
39 and to the opposite party; provided, that the Court may in its discretion hear a party in open
40 court, notwithstanding the fact that the party has appeared or is represented by an attorney.
41

42 5. When an attorney dies, or is removed or suspended, or ceases to act as such, a party to an
43 action or proceeding for whom the attorney was acting as counsel must, before any further
44 proceedings are had in the action on the party's behalf, appoint another attorney or appear in

1 person, unless such party is already represented by another attorney.
2

3 6. No agreement between parties or their attorneys, the existence of which is not conceded,
4 in relation to the proceedings or evidence in an action, will be considered by the Court unless
5 the same is made before the Court and noted in the record or is reduced to writing and
6 subscribed by the party or attorney against whom it is asserted.
7

8 7. Only one attorney on each side shall examine or cross-examine a witness, and not more
9 than two attorneys on each side shall argue the merits of the action or proceeding unless the
10 Court shall otherwise permit.
11

12 **E. Relations With Jury.** All attempts to curry favor with juries by fawning flattery, or pretend
13 solicitude for their personal comfort are unprofessional. Suggestions of counsel, looking to the
14 comfort or convenience of jurors, and propositions to dispense with argument, should be made to
15 the Court out of the jury's hearing. Before, during, and after the trial, a lawyer should avoid
16 conversing or otherwise communicating with a juror on any subject, whether pertaining to the case
17 or not. Provided, however, after the jury has been discharged, upon application in writing and for
18 good cause shown, the Court may allow counsel to interview jurors to determine whether their
19 verdict is subject to legal challenge. In this event, the Court shall enter an order limiting the time,
20 place, and circumstances under which the interviews shall be conducted. The scope of the
21 interviews should be restricted and caution should be used to avoid embarrassment to any juror and
22 to avoid influencing the juror's action in any subsequent jury services.
23

24 **F. Relation to Other Rules.** This ~~General~~ Local Rule governing ~~A~~attorneys is supplemented by
25 the Special Rules Governing the Admission and Practice of Attorneys, the Rules of the Grievance
26 Committee and the Rules of Disciplinary Enforcement of this District.
27

28 Effective Dec. 1, 1994. ~~A~~; amended effective April 15, 2002.
29

30 **Authority**

31
32 (1993) Former Local Rule 16. Renumbered per Model Rules.
33

34 **Comments**

35
36 (1994) Changed to make ~~rule~~ the Local Rule gender neutral.
37

38 (2002) Local Rule 11.1.D.7. deleted, as the issue addressed by this ~~local rule~~ Local Rule deals with
39 an ethical rule, *see* Rule 4–3.7 of the Rules of Professional Conduct of the Rules Regulating the
40 Florida Bar, subject to exceptions and distinctions not encompassed by the ~~local rule~~ Local Rule.
41

42 **RULE 12.1 CIVIL RICO CASE STATEMENT**

43
44 Except as otherwise ordered by a Judge of this Court in a particular case or except pursuant to

1 written stipulation of all affected parties, in all civil actions where a pleading contains a RICO cause
2 of action pursuant to ~~18 U.S.C. §§ Title 18, United States Code, Sections 1961–1968 or §§~~
3 ~~772.101–772.104, Fla.Stat. Florida Statutes Sections 772.101-772.104~~, the party filing the RICO
4 claim shall, within thirty (30) days of the filing (including filing upon removal or transfer), serve a
5 RICO Case Statement.

6
7 Consistent with counsel's obligations under ~~Fed.R.Civ.P. Federal Rule of Civil Procedure~~ 11 to make
8 a reasonable inquiry prior to filing a pleading, the RICO Case Statement shall include the facts relied
9 upon to initiate the RICO claim. In particular, the statement shall be in a form which uses the
10 numbers and letters set forth below, unless filed as part of an amended pleading (in which case the
11 allegations of the amended pleading shall reasonably follow the organization set out below), and
12 shall provide in detail and with specificity the following information:

- 13
14 1. State whether the alleged unlawful conduct is in violation of ~~18 U.S.C. §§ Title 18, United~~
15 ~~States Code, Sections 1962(a),(b), (c), and/or (d) or §§ Florida Statutes Sections 772.101(1),~~
16 ~~(2), (3) and/or (4), Fla.Stat.~~ If you allege violations of more than one subsection of ~~§Section~~
17 ~~1962 or §Section 772.103~~, each must be treated or should be pled as a separate RICO claim.
- 18
19 2. List each defendant, and separately state the misconduct and basis of liability of each
20 defendant.
- 21
22 3. List the wrongdoers, other than the defendants listed above, and separately state the
23 misconduct of each wrongdoer.
- 24
25 4. List the victims, and separately state when and how each victim was injured.
- 26
27 5. Describe in detail the pattern of racketeering/criminal activity or collection of an unlawful
28 debt for each RICO claim. A description of the pattern of racketeering/criminal activity shall:
29
 - 30 a. separately list the predicate acts/incidents of criminal activity and the specific statutes
31 violated by each predicate act/incident of criminal activity;
 - 32
33 b. separately state the dates of the predicate acts/incidents of criminal activity, the
34 participants and a description of the facts surrounding each predicate act/incident of
35 criminal activity;
 - 36
37 c. if the RICO claim is based on the predicate offenses of wire fraud, mail fraud, fraud
38 in connection with a case under ~~U.S.C. Title 11, United States Code~~, or fraud as defined
39 under ~~Chapter 817, Fla.Stat. Florida Statutes Chapter 817~~, the "circumstances constituting
40 fraud or mistake shall be stated with particularity;[.]" ~~Fed.R.Civ.P. Federal Rule of Civil~~
41 ~~Procedure 9(b)~~ (identify the time, place, and contents of the misrepresentation or
42 omissions, and the identity of persons to whom and by whom the misrepresentations or
43 omissions were made);
- 44

1 d. state whether there has been a criminal conviction for any of the predicate
2 acts/incidents of criminal activity;

3
4 e. describe in detail the perceived relationship that the predicate acts/incidents of
5 criminal activity bear to each other or to some external organizing principle that renders
6 them "ordered" or "arranged" or "part of a common plan"; and
7

8 f. explain how the predicate acts/incidents of criminal activity amount to or pose a threat
9 of continued criminal activity.

10
11 6. Describe in detail the enterprise for each RICO claim. A description of the enterprise
12 shall:

13
14 a. state the names of the individuals, partnerships, corporations, associations, or other
15 entities constituting the enterprise;

16
17 b. describe the structure, purpose, roles, function, and course of conduct of the
18 enterprise;

19
20 c. state whether any defendants are employees, officers, or directors of the enterprise;

21
22 d. state whether any defendants are associated with the enterprise, and if so, how;

23
24 e. explain how each separate defendant participated in the direction or conduct of the
25 affairs of the enterprise;

26
27 f. state whether you allege (i) that the defendants are individuals or entities separate
28 from the enterprise, or (ii) that the defendants are the enterprise itself, or (iii) that the
29 defendants are members of the enterprise; and
30

31 g. if you allege any defendants to be the enterprise itself, or members of the enterprise,
32 explain whether such defendants are perpetrators, passive instruments, or victims of the
33 racketeering activity.
34

35 7. State whether you allege, and describe in detail, how the pattern of racketeering/criminal
36 activity and the enterprise are separate or have ~~they~~ merged into one entity.
37

38 8. Describe the relationship between the activities and the pattern of racketeering/criminal
39 activity. Discuss how the racketeering/criminal activity differs from the usual and daily
40 activities of the enterprise, if at all.
41

42 9. Describe what benefits, if any, the enterprise and each defendant received from the pattern
43 of racketeering/criminal activity.
44

1 10. Describe the effect of the enterprise's activities on interstate or foreign commerce.
2

3 11. If the complaint alleges a violation of ~~18 U.S.C. § Title 18, United States Code, Section~~
4 1962(a) or § Florida Statutes Section 772.103(1), Fla.Stat., provide the following information:
5

6 a. describe the amount of income/proceeds derived, directly or indirectly, from a pattern
7 of racketeering/criminal activity, or through the collection of an unlawful debt;
8

9 b. state who received the income/proceeds derived from the pattern of
10 racketeering/criminal activity or through the collection of an unlawful debt and the date
11 of that receipt;
12

13 c. describe how and when such income/proceeds were invested or used in the acquisition
14 of the establishment or operation of the enterprise;
15

16 d. describe how you were directly injured by the investment or use; and
17

18 e. state whether the same entity is both the liable "person" and the "enterprise" under the
19 § Title 18, United States Code, Section 1962(a)~~§~~ or Florida Statutes Section 772.103(1)
20 claim.
21

22 12. If the complaint alleges a violation of ~~18 U.S.C. § Title 18, United States Code, Section~~
23 1962(b) or § Florida Statutes Section 772.103(2), Fla.Stat., provide the following information:
24

25 a. describe in detail the acquisition or maintenance of any interest in or control of the
26 enterprise;
27

28 b. describe when the acquisition or maintenance of an interest in or control of the
29 enterprise occurred;
30

31 c. describe how you were directly injured by this acquisition or maintenance of an
32 interest in or control of the enterprise; and
33

34 d. state whether the same entity is both the liable "person" and the "enterprise" under the
35 § Title 18, United States Code, Section 1962(b)~~§~~ or Florida Statutes Section 772.103(2)
36 claim.
37

38 13. If the complaint alleges a violation of ~~18 U.S.C. § Title 18, United States Code, Section~~
39 1962(c) or § Florida Statutes Section 772.103(3), Fla.Stat., provide the following information:
40

41 a. state who is employed by or associated with the enterprise;
42

43 b. describe what each such person did to conduct or participate in the enterprise's affairs;
44

1 c. describe how you were directly injured by such person's conducting or participating
2 in the enterprise's affairs; and
3

4 d. state whether the same entity is both the liable "person" and the "enterprise" under the
5 § Title 18, United States Code, Section 1962(c) ~~§~~ or Florida Statutes Section 772.103(3)
6 claim.
7

8 14. If the complaint alleges a violation of ~~18 U.S.C. § Title 18, United States Code, Section~~
9 1962(d) or § Florida Statutes Section 772.103(4), describe in detail the conspiracy, including
10 the identity of the co-conspirators, the object of the conspiracy, and the date and substance of
11 the conspiratorial agreement.
12

13 15. Describe the injury to business or property.
14

15 16. Describe the nature and extent of the relationship between the injury and each separate
16 RICO violation.
17

18 17. For each claim under a subsection of § Title 18, United States Code, Section 1962 or §
19 Florida Statutes Section 772.103, list the damages sustained by reason of each violation,
20 indicating the amount for which each defendant is liable.
21

22 18. Provide any additional information you feel would be helpful to the Court in processing
23 your RICO claim.
24

25 Effective April 15, 1998—~~A~~; amended effective April 15, 2006.
26

27 **Comments**

28 (1998) Local Rule 12.1, modeled on section 41.54 of the Manual for Complex Litigation, Third
29 (1995), is designed to establish uniform and efficient procedure for handling civil RICO claims
30 asserted under federal and Florida law.
31

32 (2006) Local ~~General~~ Rule 12.1.5.c is amended to delete "fraud in the sale of securities" as a
33 predicate act to conform with Section 107 of the Private Securities Litigation Reform Act of 1995,
34 which amended ~~18 U.S.C. § Title 18, United States Code, Section 1964(c)~~ to eliminate this act as
35 a predicate for a federal civil RICO claim.
36

37 **RULE 15.1 FORM OF A MOTION TO AMEND AND ITS SUPPORTING**

38 **DOCUMENTATION**

39 A party who moves to amend a pleading shall attach the original of the amendment to the motion:
40 in the manner prescribed by Section 3H(1) of the CM/ECF Administrative Procedures. Any
41 amendment to a pleading, whether filed as a matter of course or upon a successful motion to amend,
42 must, except by leave of cCourt, reproduce the entire pleading as amended, and may not incorporate
43
44

1 any prior pleading by reference. When a motion to amend is granted, the amended pleading shall
2 be separately filed and served forthwith. ~~A failure to comply with this rule is not grounds for denial~~
3 ~~of the motion.~~

4
5 Effective Dec. 1, 1994.

6
7 **Authority**

8
9 (1993) Model Local Rule 15.1.

10
11 **Comments**

12
13 (1993) This ~~rule~~ Local Rule has been circulated within the Clerk's Office and the comments were
14 favorable. The Clerk's Office thinks this ~~rule~~ Local Rule would be helpful.

15
16 (2007) Amended to conform to CM/ECF Administrative Procedures.

17
18 **RULE 16.1 PRETRIAL PROCEDURE IN CIVIL ACTIONS**

19
20 **A. Differentiated Case Management in Civil Actions.**

21
22 1. *Definition.* "Differentiated Case Management" is a system for managing cases based on
23 the complexity of each case and the requirement for judicial involvement. Civil cases having
24 similar characteristics are identified, grouped and assigned to designated tracks. Each track
25 employs a case management plan tailored to the general requirements of similarly situated
26 cases.

27
28 2. *Case Management Tracks.* There shall be ~~3~~ three case management tracks, as follows:

29
30 (a) Expedited—a relatively non-complex case requiring only ~~1~~ one to ~~3~~ three days of
31 trial may be assigned to an expedited track in which discovery shall be completed within
32 the period of ~~90~~ ninety to 179 days from the date of the Scheduling Order.

33
34 (b) Standard Track—a case requiring ~~3~~ three to ~~10~~ ten days of trial may be assigned to
35 a standard track in which discovery shall be completed within 180 to 269 days from the
36 date of the Scheduling Order.

37
38 (c) Complex Track—an unusually complex case requiring over ~~10~~ ten days of trial may
39 be assigned to the complex track in which discovery shall be completed within 270 to 365
40 days from the date of the Scheduling Order.

41
42 3. *Evaluation and Assignment of Cases.* The following factors shall be considered in
43 evaluating and assigning cases to a particular track: the complexity of the case, number of
44 parties, number of expert witnesses, volume of evidence, problems locating or preserving

1 evidence, time estimated by the parties for discovery and time reasonably required for trial,
2 among other factors. The majority of civil cases will be assigned to a standard track.
3

4 4. The parties shall recommend to the Court in their proposed Scheduling Order filed
5 pursuant to ~~Local Rules 16~~ Rule 16.1.B., to which particular track the case should be assigned.
6

7 **B. Scheduling Conference and Order.**
8

9 1. *Party Conference.* Except in categories of proceedings exempted from initial disclosures
10 under Federal Rule of Civil Procedure Rule 26(a)(1)(E), Fed.R.Civ.P., or when otherwise
11 ordered, counsel for the parties (or the party, if proceeding pro se), as soon as practicable and
12 in any event at least ~~21~~ twenty-one days before a scheduling conference is held or a
13 scheduling order is due under Federal Rule of Civil Procedure Rule 16(b), Fed.R.Civ.P., *must*
14 meet in person, by telephone, or by other comparable means, for the purposes prescribed by
15 Federal Rule of Civil Procedure 26(f), Fed.R.Civ.P.
16

17 2. *Conference Report and Order.* The attorneys of record and all unrepresented parties that
18 have appeared in the case are jointly responsible for submitting to the Court, within fourteen
19 ~~(14)~~ days of the conference, a written report outlining the discovery plan and discussing:
20

21 (a) the likelihood of settlement;
22

23 (b) the likelihood of appearance in the action of additional parties;
24

25 (c) proposed limits on the time:
26

27 (i) to join other parties and to amend the pleadings;
28

29 (ii) to file and hear motions; and
30

31 (iii) to complete discovery.
32

33 (d) proposals for the formulation and simplification of issues, including the elimination
34 of frivolous claims or defenses, and the number and timing of motions for summary
35 judgment or partial summary judgment;
36

37 (e) the necessity or desirability of amendments to the pleadings;
38

39 (f) the possibility of obtaining admissions of fact and of documents, electronically stored
40 information or things which will avoid unnecessary proof, stipulations regarding
41 authenticity of documents, electronically stored information or things, and the need for
42 advance rulings from the Court on admissibility of evidence;
43

44 (g) suggestions for the avoidance of unnecessary proof and of cumulative evidence;

- 1
2 (h) suggestions on the advisability of referring matters to a ~~m~~Magistrate ~~j~~Judge or master;
3
4 (i) a preliminary estimate of the time required for trial;
5
6 (j) requested date or dates for conferences before trial, a final pretrial conference, and
7 trial; and
8
9 (k) any other information that might be helpful to the Court in setting the case for status
10 or pretrial conference.
11

12 3. Joint Proposed Scheduling Order. The Report shall be accompanied by a Joint Proposed
13 Scheduling Order which shall contain the following information:
14

- 15 (a) Assignment of the case to a particular track pursuant to Local Rule 16.1.A-~~F~~ above;
16
17 (b) The detailed discovery schedule agreed to by the parties; including provisions for
18 disclosure or discovery of electronically stored information;
19
20 (c) Any agreements the parties reach for asserting claims of privilege or protection of trial
21 preparation material after production;
22
23 (d) A limitation of the time to join additional parties and to amend the pleadings;
24
25 (e) A space for insertion of a date certain for filing all pretrial motions;
26
27 (f) A space for insertion of a date certain for resolution of all pretrial motions by the
28 Court;
29
30 (g) Any proposed use of the Manual on Complex Litigation and any other need for rule
31 variations, such as on deposition length or number of depositions;
32
33 (h) A space for insertion of a date certain for the date of pretrial conference (if one is to
34 be held); and
35
36 (i) A space for insertion of the date certain for trial.
37

38 In all civil cases (except those expressly exempted below) the Court shall enter a
39 Scheduling Order as soon as practicable but in any event within ~~90~~ ninety days after the
40 appearance of a defendant and within 120 days after the complaint has been served on a
41 defendant. It is within the discretion of each ~~j~~Judge to decide whether to hold a scheduling
42 conference with the parties prior to entering the Scheduling Order.
43

44 34. Notice of Requirement. Counsel for plaintiff, or plaintiff if proceeding pro se, shall be

1 responsible for giving notice of the requirements of this subsection to each defendant or
2 counsel for each defendant as soon as possible after such defendant's first appearance.

3
4 45. Exempt Actions. The categories of proceedings exempted from initial disclosures under
5 Federal Rule of Civil Procedure 26(a)(1)(E) are exempt from the requirements of this
6 subsection. The Court shall have the discretion to enter a Scheduling Order or hold a
7 Scheduling Conference in any case even if such case is within an exempt category.

8
9 56. Compliance With Pretrial Orders. Regardless of whether the action is exempt pursuant
10 to Federal Rule of Civil Procedure Rule 26(a)(1)(E), Fed.R.Civ.P., the parties are required to
11 comply with any pretrial orders by the Court and the requirements of this Rule Local Rule
12 including, but not limited to, orders setting pretrial conferences and establishing deadlines by
13 which the parties' counsel must meet, prepare and submit pretrial stipulations, complete
14 discovery, exchange reports of expert witnesses, and submit memoranda of law and proposed
15 jury instructions.

16
17 **C. Pretrial Conference Mandatory.** A pretrial conference pursuant to Federal Rule of Civil
18 Procedure Rule 16(a), Fed.R.Civ.P., shall be held in every civil action unless the Court specifically
19 orders otherwise. Each party shall be represented at the pretrial conference and at meetings held
20 pursuant to paragraph D hereof by the attorney who will conduct the trial, except for good cause
21 shown a party may be represented by another attorney who has complete information about the
22 action and is authorized to bind the party.

23
24 **D. Pretrial Disclosures and Meeting of Counsel.** Unless otherwise directed by the Court, at
25 least thirty (~~30~~) days before trial each party must provide to the other party and promptly file with
26 the Court the information prescribed by Federal Rule of Civil Procedure Rule 26(a)(3), Fed.R.Civ.P.
27 No later than ten days prior to the date of the pretrial conference, or if no pretrial conference is held,
28 ten days prior to the call of the calendar, counsel shall meet at a mutually convenient time and place
29 and:

- 30
31 1. Discuss settlement.
32
33 2. Prepare a pretrial stipulation in accordance with paragraph E of this rule Local Rule.
34
35 3. Simplify the issues and stipulate to as many facts and issues as possible.
36
37 4. Examine all trial exhibits, except that impeachment exhibits need not be revealed.
38
39 5. Exchange any additional information as may expedite the trial.
40

41 **E. Pretrial Stipulation Must Be Filed.** It shall be the duty of counsel to see that the pretrial
42 stipulation is drawn, executed by counsel for all parties, and filed with the Court no later than five
43 days prior to the pretrial conference, or if no pretrial conference is held, five days prior to the call
44 of the calendar. The pretrial stipulation shall contain the following statements in separate numbered

1 paragraphs as indicated:
2

- 3 1. A short concise statement of the case by each party in the action.
- 4
- 5 2. The basis of federal jurisdiction.
- 6
- 7 3. The pleadings raising the issues.
- 8
- 9 4. A list of all undisposed of motions or other matters requiring action by the Court.
- 10
- 11 5. A concise statement of uncontested facts which will require no proof at trial, with
12 reservations, if any.
- 13
- 14 6. A statement in reasonable detail of issues of fact which remain to be litigated at trial. By
15 way of example, reasonable details of issues of fact would include: (a) As to negligence or
16 contributory negligence, the specific acts or omissions relied upon; (b) As to damages, the
17 precise nature and extent of damages claimed; (c) As to unseaworthiness or unsafe condition
18 of a vessel or its equipment, the material facts and circumstances relied upon; (d) As to breach
19 of contract, the specific acts or omissions relied upon.
- 20
- 21 7. A concise statement of issues of law on which there is agreement.
- 22
- 23 8. A concise statement of issues of law which remain for determination by the Court.
- 24
- 25 9. Each party's numbered list of trial exhibits, other than impeachment exhibits, with
26 objections, if any, to each exhibit, including the basis of all objections to each document;
27 electronically stored information and thing. The list of exhibits shall be on separate schedules
28 attached to the stipulation, should identify those which the party expects to offer and those
29 which the party may offer if the need arises, and should identify concisely the basis for
30 objection. In noting the basis for objections, the following codes should be used:

31
32 A—Authenticity

33
34 I—Contains inadmissible matter (mentions insurance, prior conviction, etc.)

35
36 R—Relevancy

37
38 H—Hearsay

39
40 UP—Unduly prejudicial-probative value outweighed by undue prejudice

41
42 P—Privileged

43
44 Counsel may agree on any other abbreviations for objections, and shall identify such codes in

1 the exhibit listing them.

2
3 10. Each party's numbered list of trial witnesses, with their addresses, separately identifying
4 those whom the party expects to present and those whom the party may call if the need arises.
5 Witnesses whose testimony is expected to be presented by means of a deposition shall be so
6 designated. Impeachment witnesses need not be listed. Expert witnesses shall be so designated.

7
8 11. Estimated trial time.

9
10 12. Where attorney's fees may be awarded to the prevailing party, an estimate of each party
11 as to the maximum amount properly allowable.

12
13 **F. Unilateral Filing of Pretrial Stipulation Where Counsel Do Not Agree.** If for any reason
14 the pretrial stipulation is not executed by all counsel, each counsel shall file and serve separate
15 proposed pretrial stipulations not later than five days prior to the pretrial conference, or if no pretrial
16 conference is held, five days prior to the call of the calendar, with a statement of reasons no
17 agreement was reached thereon.

18
19 **G. Record of Pretrial Conference Is Part of Trial Record.** Upon the conclusion of the final
20 pretrial conference, the Court will enter further orders as may be appropriate. Thereafter the pretrial
21 stipulation as so modified will control the course of the trial, and may be thereafter amended by the
22 Court only to prevent manifest injustice. The record made upon the pretrial conference shall be
23 deemed a part of the trial record. ~~P~~ provided, however, any statement made concerning possible
24 compromise settlement of any claim shall not be a part of the trial record, unless consented to by all
25 parties appearing.

26
27 **H. Discovery Proceedings.** All discovery proceedings must be completed no later than ten days
28 prior to the date of the pretrial conference, or if no pretrial conference is held, ten days prior to the
29 call of the calendar, unless further time is allowed by order of the Court for good cause shown.

30
31 **I. Newly Discovered Evidence or Witnesses.** If new evidence or witnesses ~~be~~ are discovered
32 after the pretrial conference, the party desiring their use shall immediately furnish complete details
33 thereof and the reason for late discovery to the Court and to opposing counsel. Use may be allowed
34 by the Court in furtherance of the ends of justice.

35
36 **J. Memoranda of Law.** Counsel shall serve and file memoranda treating any unusual questions
37 of law, including motions in limine, no later than five days prior to the pretrial conference, or if no
38 pretrial conference is held, five days prior to the call of the calendar.

39
40 **K. Exchange Expert Witness Summaries/Reports.** Where expert opinion evidence is to be
41 offered at trial, summaries of the expert's anticipated testimony or written expert reports (including
42 lists of the expert's qualifications to be offered at trial, publications and writings, style of case and
43 name of court and judge in cases in which the expert has previously testified and the subject of that
44 expert testimony, the substance of the facts and all opinions to which the expert is expected to

1 testify, and a summary of the grounds for each opinion) shall be exchanged by the parties no later
2 than ~~90~~ ninety days prior to the pretrial conference, or if no pretrial conference is held, ~~90~~ ninety
3 days prior to the call of the calendar; provided, however, that if the expert opinion evidence is
4 intended solely to contradict or rebut evidence on the same subject matter identified by another
5 party's expert, then the expert summary or report for such evidence shall be served no later than ~~30~~
6 thirty days after the expert summary or report is served by the other party.

7
8 **L. Proposed Jury Instructions or Proposed Findings of Facts and Conclusions of Law.** At
9 the close of the evidence or at an earlier reasonable time that the Court directs, counsel may submit
10 proposed jury instructions or, where appropriate, proposed findings of fact and conclusions of law
11 to the Court, with copies to all other counsel. At the close of the evidence, a party may file
12 additional instructions covering matters occurring at the trial that could not reasonably be
13 anticipated; and, with the Court's permission, file untimely requests for instructions on any issue.

14
15 **M. Penalty for Failure to Comply.** Failure to comply with the requirements of this ~~rule~~ Local
16 Rule will subject the party or counsel to appropriate penalties, including but not limited to dismissal
17 of the cause, or the striking of defenses and entry of judgment.

18
19 Effective Dec. 1, 1994; amended effective April 15, 1996; April 15, 1997; April 15, 1998; April
20 15, 2001; April 15, 2004.

21 22 **Authority**

23
24 (1993) Former Local Rule 17. Changes have been made in recognition of the fact that the call of
25 the calendar is a benchmark for deadlines if no ~~final~~ pretrial conference is held; the need for more
26 specificity in expert resumes; and some modifications were needed to pretrial stipulation rule. All
27 counsel now share responsibility to prepare a pretrial stipulation. Codes are provided for the
28 customary objections to exhibits.

29 30 **Comments**

31
32 (1993) Sections A and B.7 added in accordance with recommendation of the Civil Justice Advisory
33 Group.

34
35 (1994)[K.] This ~~rule~~ Local Rule is based in part on the disclosure requirements of Federal Rule of
36 Civil Procedure 26(a)(2), as amended, effective December 1, 1993, and in part on superseded
37 Federal Rule of Civil Procedure 26(b)(4) concerning expert interrogatories.

38
39 (1996)[B.1.] In order to avoid uncertainty as to which documents, electronically stored information
40 or things were produced at a scheduling conference, ~~the rule~~ this Local Rule is amended to require
41 that a party producing documents, electronically stored information or things at the conference either
42 uniquely stamp the ~~documents~~ materials produced or provide a particularized list of what is being
43 produced.

1 (1996)[K.] The change is intended to make the timing of disclosing expert witness information
2 consistent with that prescribed by ~~Fed.R.Civ.P.~~ Federal Rule of Civil Procedure 26(a)(2)(c), to
3 delete the language referring to an expert "resume" as being superfluous, and to make clear the
4 expert witness information to be disclosed may be either a summary prepared by counsel or a report
5 prepared by the expert (both of which are required to provide the information specified).
6

7 (1997)[B.] Letters rogatory and registrations of foreign judgment made exempt from scheduling
8 requirements as unnecessary.
9

10 (1998) Local Rule 16.1.B.6 is modified to make clear that, at the time of the scheduling conference,
11 counsel should discuss whether there is a need to modify any standard procedure, not just whether
12 the Manual for Complex Litigation should ~~read~~be used. Local Rule 16.1.B.7(f) ~~is~~is modified to
13 make clear that the Joint Proposed Scheduling Order should contain any joint or unilateral requests
14 to exceed deposition limitations in length and number, as well as any other proposed variations from
15 these ~~rules~~ Local Rules or the Federal Rules of Civil Procedure that are not specifically addressed
16 in other paragraphs of this ~~rule~~ Local Rule.
17

18 (2001) Local Rules 16.1.B, D and E amended to conform with the December 2000 amendments to
19 Federal Rule of Civil Procedure ~~Rule 26~~, Fed.R.Civ.P.
20

21 (2004) Local Rule 16.1.B.2 is amended, in conjunction with the amendment of the last sentence in
22 Local Rule 7.1.C.2, to emphasize the need to discuss at the scheduling conference of parties and/or
23 counsel the number and timing of motions for summary judgment or partial summary judgment, and
24 have the Scheduling Order address these issues. Local Rule 16.1.L is amended to conform to the
25 December 2003 amendment to ~~Fed.R.Civ.P.~~ Federal Rule of Civil Procedure 51.
26

27 **RULE 16.2 COURT ANNEXED MEDIATION**

28 **A. General Provisions.**

29
30
31 1. *Definitions.* Mediation is a supervised settlement conference presided over by a qualified,
32 certified, and neutral mediator, or anyone else whom the parties agree upon to serve as a
33 mediator, to promote conciliation, compromise and the ultimate settlement of a civil action.
34

35 A certified mediator is an attorney, certified by the ~~e~~Chief judge in accordance with these
36 ~~rules~~ Local Rules, who possesses the unique skills required to facilitate the mediation process
37 including the ability to suggest alternatives, analyze issues, question perceptions, use logic,
38 conduct private caucuses, stimulate negotiations between opposing sides, and keep order.
39

40 The mediation process does not allow for testimony of witnesses. The mediator does not
41 review or rule upon questions of fact or law, or render any final decision in the case. Absent
42 a settlement, the mediator will report to the presiding judge only as to whether the case settled
43 (in full or in part) or was adjourned for further mediation, whether the mediator declared an
44 impasse, and pursuant to Local Rule 16.2.E, whether any party failed to attend the mediation.

1
2 2. *Purpose.* It is the purpose of the Court, through adoption and implementation of this
3 ~~rule~~Local Rule, to provide an alternative mechanism for the resolution of civil disputes leading
4 to disposition before trial of many civil cases with resultant savings in time and costs to
5 litigants and to the Court, but without sacrificing the quality of justice to be rendered or the
6 right of the litigants to a full trial in the event of an impasse following mediation. Mediation
7 also enables litigants to take control of their dispute and encourages amicable resolution of
8 disputes.
9

10 **B. Certification; Qualification of Certified Mediators; Compensation of Mediators.**
11

12 1. *Certification of Mediators.* The ~~e~~Chief ~~j~~Judge shall certify those persons who are eligible
13 and qualified to serve as mediators under this ~~rule~~Local Rule, in such numbers as the ~~e~~Chief
14 ~~j~~Judge shall deem appropriate. Thereafter, the ~~e~~Chief ~~j~~Judge shall have complete discretion
15 and authority to withdraw the certification of any mediator at any time.
16

17 2. *Lists of Certified Mediators.* Lists of certified mediators shall be maintained in the offices
18 of the Clerk of the Court and shall be made available to counsel and the public upon request.
19

20 3. *Qualifications of Certified Mediators.* An individual may be certified to serve as a
21 mediator in this ~~d~~District provided that the individual shall have completed a minimum of
22 forty ~~(40)~~ hours in a Florida Circuit Court Mediation Training course certified by the Florida
23 Supreme Court and also; ~~;~~ is a former state court judge who presided in a court of general
24 jurisdiction and was also a member of the bar in the state in which he or she presided; or is a
25 retired federal judicial officer; or has been admitted to a State Bar or the Bar of the District of
26 Columbia for at least ten ~~(10)~~ years and is currently admitted to the Bar of this Court. The
27 advisory committee may recommend for certification an individual to serve as a mediator in
28 this ~~d~~District if it determines that, for exceptional circumstances, an individual who does not
29 otherwise qualify under the terms above should be certified.
30

31 Any individual who seeks certification as a mediator shall agree to accept at least two ~~(2)~~
32 mediation assignments per year in cases where at least one party lacks the ability to
33 compensate the mediator, in which case the mediator's fees shall be reduced accordingly or the
34 mediator shall serve pro bono (if no litigant is able to contribute compensation).
35

36 The ~~e~~Chief ~~j~~Judge shall constitute an advisory committee from lawyers who represent those
37 categories of civil litigants who may utilize the mediation program and lay persons to assist
38 in formulating policy and additional standards relating to the qualification of mediators and
39 the operation of the mediation program and to review applications of prospective mediators
40 and to recommend certification to the ~~e~~Chief ~~j~~Judge as appropriate.
41

42 4. *Standards of Professional Conduct for Mediators.* All individuals who mediate cases
43 pending in this ~~d~~District shall be governed by the Standards of Professional Conduct in the
44 Florida Rules ~~adopted by the Supreme Court of Florida~~ for Certified and Court-Appointed

1 Mediators adopted by the Florida Supreme Court.

2
3 5. *Oath Required.* Every certified mediator shall take the oath or affirmation prescribed by
4 ~~28 U.S.C. §~~ Title 28, United States Code, Section 453 upon qualifying as a mediator.

5
6 6. *Disqualification of a Mediator.* Any person selected as a mediator may be disqualified
7 for bias or prejudice as provided in ~~28 U.S.C. §~~ Title 28, United States Code, Section 144, and
8 shall be disqualified in any case in which such action would be required of a justice, judge, or
9 ~~m~~Magistrate jJudge governed by ~~28 U.S.C. §~~ Title 28, United States Code, Section 455.

10
11 7. *Compensation of Mediators.* Mediators shall be compensated (a) at the rate provided by
12 standing order of the Court, as amended from time to time by the ~~e~~Chief jJudge, if the
13 mediator is appointed by the Court without input or at the request of the parties; or (b) at such
14 rate as may be agreed to in writing by the parties and the mediator, if the mediator is selected
15 by the parties. Absent agreement of the parties to the contrary, the cost of the mediator's
16 services shall be borne equally by the parties to the mediation conference. A mediator shall
17 not negotiate or mediate the waiver or shifting of responsibility for payment of mediation fees
18 from one party to the other. All mediation fees payable under this rule shall be due within
19 forty-five ~~(45)~~ days of invoice and shall be enforceable by the Court upon motion.

20
21 **C. Types of Cases Subject to Mediation.** Unless expressly ordered by the Court, the following
22 types of cases shall not be subject to mediation pursuant to this rule:

- 23
24 1. Habeas corpus cases;
25
26 2. Motion to vacate sentence under ~~28 U.S.C. §~~ Title 28, United States Code, Section 2255;
27
28 3. Social Security cases;
29
30 4. Civil forfeiture matters;
31
32 5. IRS summons enforcement actions;
33
34 6. Land condemnation cases;
35
36 7. Default proceedings;
37
38 8. Student loan cases;
39
40 9. Naturalization proceedings filed as civil actions;
41
42 10. Statutory interpleader actions;
43
44 11. Truth-in-Lending Act cases not brought as class actions;

- 1
2 12. Letters rogatory; and
3
4 13. Registration of foreign judgments.
5

6 **D. Procedures to Refer a Case or Claim to Mediation.**
7

8 1. *Order of Referral.* In every civil case excepting those listed in Local Rule 16.2.C., the
9 Court shall enter an order of referral similar in form to the proposed order attached hereto
10 which shall:

11
12 (a) Direct mediation be conducted not later than sixty (~~60~~) days before the scheduled trial
13 date which shall be established no later than the date of the issuance of the order of
14 referral.
15

16 (b) Direct the parties, within fifteen (~~15~~) days of the date of the order of referral, to agree
17 upon a mediator. The parties are encouraged to utilize the list of certified mediators
18 established in connection with Local Rule 16.2.B. but may by mutual agreement select
19 any individual as mediator. The parties shall advise the Clerk's ~~o~~Office as to such choice
20 within that period of time, failing which the Clerk of the Court will designate a mediator
21 from the aforementioned list of certified mediators on a blind random basis.
22

23 (c) Direct that, at least ten (~~10~~) days prior to the mediation date, each party give the
24 mediator a confidential written summary of the case identifying issues to be resolved.
25

26 2. *Coordination of Mediation Conference.* Plaintiff's counsel (or another attorney agreed
27 upon by all counsel of record) shall be responsible for coordinating the mediation conference
28 date and location agreeable to the mediator and all counsel of record.
29

30 3. *Stipulation of Counsel.* Any action or claim may be referred to mediation upon stipulation
31 of the parties.
32

33 4. *Withdrawal From Mediation.* Any civil action or claim referred to mediation pursuant
34 to this rule may be exempt or withdrawn from mediation by the presiding jJudge at any time,
35 before or after reference, upon application of a party and/or determination for any reason that
36 the case is not suitable for mediation.
37

38 **E. Party Attendance Required.** Unless otherwise excused by the presiding jJudge in writing,
39 all parties, corporate representative, and any other required claims professionals (insurance adjusters,
40 etc.), shall be present at the mediation conference with full authority to negotiate a settlement. If
41 a party to a mediation is a public entity required to conduct its business pursuant to Florida Statutes
42 Chapter 286, and is a defendant or counterclaim defendant in the underlying litigation, that party
43 shall be deemed to appear at a mediation conference by the physical presence of a representative
44 with full authority to negotiate on behalf of the entity and to recommend settlement to the

1 appropriate decision-making body of the entity. The mediator shall report non-attendance and may
2 recommend that the Court enter sanctions for non-attendance. Failure to comply with the attendance
3 or settlement authority requirements may subject a party to sanctions by the Court.
4

5 **F. Mediation Report; Notice of Settlement; Judgment.**
6

7 1. *Mediation Report.* Within five (5) days following the mediation conference, the mediator,
8 if an authorized user of the Court's electronic filing system (CM/ECF), shall electronically file
9 a Mediation Report. If the mediator is not an authorized CM/ECF user, the mediator shall file
10 the Mediation Report in the conventional manner. The report shall indicate whether all
11 required parties were present. ~~The report shall also indicate~~ and whether the case settled (in
12 full or in part), whether the mediation was adjourned or whether the mediator declared an
13 impasse.
14

15 2. *Notice of Settlement.* In the event that the parties reach an agreement to settle the case or
16 claim, counsel shall promptly notify the Court of the settlement by ~~the filing of~~ a notice of
17 settlement signed by counsel of record within ten (10) days of the mediation conference.
18 Thereafter the parties shall forthwith submit an appropriate pleading concluding the case.
19

20 **G. Trial ~~U~~pon Impasse.**
21

22 1. *Trial ~~U~~pon Impasse.* If the mediation conference ends in an impasse, the case will be
23 tried as originally scheduled.
24

25 2. *Restrictions on the Use of Information Derived During the Mediation Conference.* All
26 proceedings of the mediation shall be confidential and are privileged in all respects: as
27 provided under federal law and Florida Statutes Section 44.405. The proceedings may not be
28 reported, recorded, placed into evidence, made known to the ~~trial~~ eCourt or jury, or construed
29 for any purpose as an admission against interest. A party is not bound by anything said or
30 done at the conference, unless a written settlement is reached, in which case only the terms of
31 the settlement are binding.
32
33
34

35 [Remainder of page
36

37 intentionally left blank]

1 **H. Forms for Use in Mediation.**

2
3 UNITED STATES DISTRICT COURT
4 SOUTHERN DISTRICT OF FLORIDA
5 Case No. _____-CIV-[JUDGE/MAGISTRATE]
6
7

8 _____
9 :
10 :
11 :
12 :
13 CAPTION :
14 :
15 :
16 :
17 _____.

18
19 ORDER OF REFERRAL

20
21 Trial having been set in this matter for _____, 20____, pursuant to Federal Rule of Civil
22 Procedure 16 and ~~Southern District~~ Local Rule 16.2, it is hereby

23
24 ORDERED AND ADJUDGED as follows:

- 25
26 1. All parties are required to participate in mediation. The mediation shall be completed no later
27 than sixty ~~(60)~~ days before the scheduled trial date.
28
29 2. Plaintiff's counsel, or another attorney agreed upon by all counsel of record and any
30 unrepresented parties, shall be responsible for scheduling the mediation conference. The parties are
31 encouraged to avail themselves of the services of any mediator on the List of Certified Mediators,
32 maintained in the office of the Clerk of ~~this~~the Court, but may select any other mediator. The parties
33 shall agree upon a mediator within fifteen ~~(15)~~ days from the date hereof. If there is no agreement,
34 lead counsel shall promptly notify the Clerk of the Court in writing and the Clerk of the Court shall
35 designate a mediator from the List of Certified Mediators, which designation shall be made on a
36 blind rotation basis.
37
38 3. A place, date and time for mediation convenient to the mediator, counsel of record, and
39 unrepresented parties shall be established. The lead attorney shall complete the form order attached
40 and submit it to the Court.
41
42 4. Pursuant to Local Rule 16.2.E, the appearance of counsel and each party or representatives of
43 each party with full authority to enter into a full and complete compromise and settlement is
44 mandatory. If insurance is involved, an adjuster with authority up to the policy limits or the most

1 recent demand, whichever is lower, shall attend.

2
3 5. All proceedings of the mediation shall be confidential and privileged.

4
5 6. At least ten (~~10~~) days prior to the mediation date, each party shall present to the mediator a
6 confidential brief written summary of the case identifying issues to be resolved.

7
8 7. The Court may impose sanctions against parties and/or counsel who do not comply with the
9 attendance or settlement authority requirements herein who otherwise violate the terms of this Order.
10 The mediator shall report non-attendance and may recommend imposition of sanctions by the Court
11 for non-attendance.

12
13 8. The mediator shall be compensated in accordance with the standing order of the Court entered
14 pursuant to Local Rule 16.2.B.6, or on such basis as may be agreed to in writing by the parties and
15 the mediator selected by the parties. The cost of mediation shall be shared equally by the parties
16 unless otherwise ordered by the Court. All payments shall be remitted to the mediator within
17 forty-five (~~45~~) days of the date of the bill. Notice to the mediator of cancellation or settlement prior
18 to the scheduled mediation conference must be given at least three (~~3~~) full business days in advance.
19 Failure to do so will result in imposition of a fee for two hours.

20
21 9. If a full or partial settlement is reached in this case, counsel shall promptly notify the Court
22 of the settlement in accordance with Local Rule 16.2.F., by the filing of a notice of settlement signed
23 by counsel of record within ten (~~10~~) days of the mediation conference. Thereafter the parties shall
24 forthwith submit an appropriate pleading concluding the case.

25
26 10. Within five (~~5~~) days following the mediation conference, the mediator shall file a Mediation
27 Report indicating whether all required parties were present. The report shall also indicate whether
28 the case settled (in full or in part), was adjourned, or whether the mediator declared an impasse.

29
30 11. If mediation is not conducted, the case may be stricken from the trial calendar, and other
31 sanctions may be imposed.

32
33
34 DONE AND ORDERED this _____ day of _____, 20__.

35
36
37 _____
38 U.S. District Judge

39 Copies furnished:
40 All counsel of record

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA
3 Case No. _____-CIV-[JUDGE/MAGISTRATE]
4
5

6 _____
7 :
8 :
9 :
10 :
11 CAPTION :
12 :
13 :
14 :
15 _____.

16
17 ORDER SCHEDULING MEDIATION

18
19 The mediation conference in this matter shall be held with _____ on
20 _____, 20____, at _____(am/pm) at _____, Florida.

21
22 ENTERED this _____ day of _____, 20____.

23
24 _____
25 U.S. District Judge

26
27 Copies furnished:
28 All counsel of record

29
30 Effective Dec. 1, 1994; amended effective April 15, 1996; April 15, 1997; April 15, 1999; April
31 15, 2004; April 15, 2005.

32 **Comments**

33
34 (1996)[B.3(c).] Deletion of reference to Trial Bar to conform to new Local Rules 1 through 4 of the
35 Special Rules Governing the Admission and Practice of Attorneys, effective January 1, 1996.

36
37 (1997)[C.] Letters rogatory and registrations of foreign judgment made exempt from mediation
38 requirements as unnecessary.

39
40 (1997)[E.] Florida's "Government in the Sunshine" Law, Florida Statutes-§ Section 286.011, as
41 incorporated into the Florida Government Cooperation Act, Florida Statutes-§ Section 164.106016,
42 does not permit public entities to settle litigation against them without a public hearing preceded by
43 due public notice. Public entities have therefore at times found themselves unable to comply with
44 Local Rule 16.2.E. and have had to seek an exception from the rule in order to permit mediation.

1 This amendment relaxes the requirement that parties be present with full authority to consummate
2 a settlement where a public entity is a defendant, and provides instead that a representative be
3 present who can negotiate settlement on the entity's behalf and recommend settlement to the entity.
4

5 (1999) [B.6] Language is added to clarify that mediators appointed by the Court without input by
6 the parties are compensated at the rate set by the standing administrative order.
7

8 (2005) [B.3 and B.4] In addition to the requirement of completing the forty ~~(40)~~ hour Florida
9 Supreme Court Circuit Court ~~m~~Mediation ~~t~~Training course, a mediator will now also be governed
10 by the Standards of Professional Conduct in the Florida Rules for Certified and Court-Appointed
11 Mediators ~~Standards of Professional Conduct~~, which provide ethical standards of conduct for
12 certified and ~~e~~Court appointed mediators and incorporate procedures for the discipline and/or
13 suspension of certified mediators or non-certified mediators appointed to mediate a case pursuant
14 to Court rules. The purpose of these ~~rules~~ Rules of discipline, specifically under Part III, is to
15 provide a means for enforcing the ethical requirements set forth therein.
16

17 [B.7] This revision is intended to prevent the parties from using mediator fees as a negotiating
18 wedge. The mediator is now prohibited from engaging in fee shifting negotiations. In addition, a
19 provision was added to assist the Court in enforcing payment of mediation fees.
20

21 [C.] This revision expands the types of cases subject to mediation based on experience
22 demonstrating the effectiveness of mediation in resolving disputes.
23

24 [F.1] Under the Florida Rules for Certified and Court-Appointed Mediators, now adopted by these
25 ~~rules~~Local Rules, a mediator, pursuant to Rule 10.420(b) of the Florida Rules for Certified and
26 Court-Appointed Mediators *shall* adjourn the mediation under any of five ~~(5)~~ specified
27 circumstances, four ~~(4)~~ of which do not require the parties' consent.
28

29 [G.2] This revision makes "all proceedings" of the mediation confidential, leaving no room for
30 misinterpretation of the definition of what is considered to be confidential. It is intended to broaden
31 the confidentiality provision.
32

33 (2007) Amended to conform to CM/ECF Administrative Procedures.
34

35 [G.2] This revision is intended to make the privileges and confidentiality of mediation in the District
36 consistent with state law. The adoption of what constitutes privileged and confidential information
37 under Florida Statutes Section 44.405 is exclusive of any remedies.
38

39 **RULE 16.3 CALENDAR CONFLICTS** 40

41 When an attorney is scheduled to appear in two courts at the same time and cannot arrange for other
42 counsel to represent the clients' interests, the attorney shall give prompt written notice of the conflict
43 to opposing counsel, the ~~e~~Clerk of each ~~e~~Court, and the presiding ~~j~~Judge of each case, if known, and
44 shall present a copy of any prior written trial setting or other conflicting scheduling order. If the

1 presiding ~~j~~Judge of the case cannot be identified, written notice of the conflict shall be given to the
2 ~~e~~Chief ~~j~~Judge of the court having jurisdiction over the case, or to the ~~e~~Chief ~~j~~Judge's designee.

3
4 Effective April 15, 2000—~~A~~; amended effective April 15, 2006.

5
6 **Authority**

7
8 (2000) Resolution of the Florida State—Federal Council Regarding Calendar Conflicts Between State
9 and Federal Courts. *See also* Fla.R.Judim.Admin. 2.052.

10
11 (2006) *Krasnow v. Navarro*, 9 F.2d 451 (11th Cir. 1990).

12
13 **Comments**

14
15 (2000) The adoption of this ~~rule~~—Local Rule was prompted by the Resolution of the Florida
16 State—Federal Judicial Council Regarding Calendar Conflicts Between State and Federal Courts.

17
18 (2006) Portions of Local ~~General~~ Rule 16.3 were deleted as being duplicative of the Court's Internal
19 Operating Procedures.

20
21 **RULE 23.1 CLASS ACTIONS**

22
23 In any case sought to be maintained as a class action:

- 24
25 1. The complaint shall bear next to its caption the legend "Complaint—Class Action."
26
27 2. The complaint shall contain under a separate heading, styled "Class Action Allegations:"
28
29 (a) A reference to the portion or portions of Federal Rule of Civil Procedure Rule 23;
30 Fed. R. Civ. P., under which it is claimed that the suit is properly maintainable as a class
31 action.
32
33 (b) Appropriate allegations thought to justify such claim, including, but not necessarily
34 limited to:
35
36 (i) the size (or approximate size) and definition of the alleged class
37
38 (ii) the basis upon which the plaintiff (or plaintiffs) claims
39
40 (A) to be an adequate representative of the class, or
41
42 (B) if the class is composed of defendants, that those named as parties are
43 adequate representatives of the class
44

1 (iii) the alleged questions of law and fact claimed to be common to the class, and

2
3 (iv) in actions claimed to be maintainable as class actions under ~~subdivision~~ Federal
4 Rule of Civil Procedure 23(b)(3) ~~of Rule 23, Fed. R. Civ. P.~~, allegations thought to
5 support the findings required by that subdivision.
6

7 3. In ruling on any motion by a putative class action plaintiff for a determination under
8 ~~subdivision~~ Federal Rule of Civil Procedure 23(c)(1) ~~of Fed. R. Civ. P. 23~~ as to whether an
9 action is to be maintained as a class action, the Court may allow the action to be so maintained,
10 may disallow and strike the class action allegations, or may order postponement of the
11 determination pending discovery or such other preliminary procedures as appear to be
12 appropriate and necessary in the circumstances. Whenever possible, where it is held that the
13 determination should be postponed, a date will be fixed by the Court for renewal of the
14 motion.
15

16 4. The foregoing provisions shall apply, with appropriate adaptations, to any counterclaim
17 or crossclaim alleged to be brought for or against a class.
18

19 Effective Dec. 1, 1994; amended effective April 15, 1996; April 15, 2001; April 15, 2004.
20

21 **Authority**

22
23 (1993) Former Local Rule 19. Renumbered per Model Rules. In accordance with Model Rule 23.1.
24

25 **Comments**

26
27 (1996) Local Rule 23.1 ~~of the Local Rules of the United States District Court for the Southern~~
28 ~~District of Florida~~ has been amended to delete Sections B and C in their entirety. Sections B and
29 C of Local Rule 23.1 had been modeled *verbatim* from the Manual for Complex Litigation App. Sec.
30 1.41. Section B barred counsel for parties in class actions to communicate directly or indirectly with
31 potential or actual class members without advance approval from the Court. Section C created
32 exceptions for attorney-client communications initiated by a client or a prospective client, and
33 communications by public officials in the regular course of business or in the performance of their
34 duties.
35

36 Section B has been deleted to conform to the United States Supreme Court's ruling in *Gulf Oil Co.*
37 *v. Bernard*, 452 U.S. 89 (1981). In that case the Supreme Court found that a district court order
38 using language identical to Sections B and C was inconsistent with the general policies embodied
39 in Federal Rule of Civil Procedure ~~Rule 23, Fed. R. Civ. P.~~ The Court held that any order limiting
40 communications between parties and potential class members "should be based on a clear record and
41 specific findings that reflect a weighing of the need for a limitation and the potential interference
42 with the rights of the parties." *Id.* at 101. Because *Gulf Oil* requires that such orders be issued on
43 a case-by-case basis, the general prohibition of Section B is unacceptable.
44

1 In light of the deletion of Section B, the exceptions to that section created by Section C have also
2 been deleted.

3
4 (2001) Corrects typographical error.

5
6 (2004) Local Rule 23.1.3 is amended to delete the requirement that a class action plaintiff move,
7 within ~~90~~ ninety days after the filing of the complaint, for a determination under ~~Fed.R.Civ.P~~
8 Federal Rule of Civil Procedure 23(c)(1) as to whether the action should be maintained as a class
9 action, to conform to the December 2003 amendment to ~~Fed.R.Civ.P~~ Federal Rule of Civil
10 Procedure 23(c)(1)(A), which clarifies that a Court may defer the decision on whether to certify a
11 class if it is prudent to do so.

12
13 **RULE 24.1 CONSTITUTIONAL CHALLENGE TO ACT OF CONGRESS OR STATE**
14 **STATUTE**

15
16 **A. Act of Congress.** Upon the filing of any action in which the constitutionality of an Act of
17 Congress affecting the public interest is challenged, and to which action the United States or an
18 agency, officer, or employee thereof is not a party in its or their official capacity, counsel
19 representing the party who challenges the Act shall forthwith notify the Court of the existence of the
20 constitutional question. The notice shall contain the full title and number of the action and shall
21 designate the statute assailed and the grounds upon which it is assailed, so that the Court may
22 comply with its statutory duty to certify the fact to the Attorney General of the United States as
23 required by ~~28 U.S.C. §~~ Title 28, United States Code, Section 2403. The party challenging
24 constitutionality shall also so indicate on the pleading or paper which first does so by stating,
25 immediately following the title of the pleading or paper, "Claim of Unconstitutionality."

26
27 **B. State Statute.** Upon the filing of any action in which the constitutionality of a state statute,
28 charter, ordinance, or franchise is challenged, counsel shall comply with the notice provisions of
29 ~~Section 86.091~~, Florida Statutes Section 86.091.

30
31 **C. No Waiver.** Failure to comply with this Local Rule will not be grounds for waiving the
32 constitutional issue or for waiving any other right the party may have. Any notice provided under
33 this rule, or lack of notice, will not serve as a substitute for, or as a waiver of, any pleading
34 requirements set forth in the Federal Rules of Civil Procedure or statutes.

35
36 Effective Dec. 1, 1994.

37
38 **Authority**

39
40 (1993) Former Local Rule 9; Model Rule 24.1.

41
42 **RULE 26.1 DISCOVERY AND DISCOVERY ~~DOCUMENTS~~MATERIAL (CIVIL)**

43
44 **A. Initial Disclosures.** Except in categories of proceedings specified in Federal Rule of Civil

1 Procedure 26(a)(1)(E), Fed. R. Civ. P., or to the extent otherwise stipulated or directed by order, a
2 party must comply with the disclosure obligations imposed under Federal Rule of Civil Procedure
3 26(a)(1), Fed. R. Civ. P., in the form prescribed by Federal Rule of Civil Procedure 26(a)(4), Fed.
4 R. Civ. P.

5
6 **B. Service and Filing of Discovery Material.** In accordance with Federal Rule of Civil
7 Procedure 5(d), Fed. R. Civ. P., disclosures under Federal Rule of Civil Procedure 26(a)(1) or (2);
8 Fed. R. Civ. P., and the following discovery requests and responses must not be filed with the Court
9 or the Clerk of the Court, nor proof of service thereof, until they are used in the proceeding or the
10 court orders filing: (i) depositions; transcripts, (ii) interrogatories (including responses and
11 objections), (iii) requests for documents, electronically stored information or things or to permit
12 entry upon land (including responses and objections), and (iv) requests for admission (including
13 responses and objections).

14
15 **C. Discovery Material to Be Filed ~~W~~with Motions.** If relief is sought under any of the Federal
16 Rules of Civil Procedure, copies of the discovery matters in dispute shall be filed with the Court
17 contemporaneously with any motion filed under these ~~rules~~ Local Rules by the party seeking to
18 invoke the Court's relief.

19
20 **D. Discovery Material to Be Filed at Outset of Trial or at Filing of Pre-trial or Post-trial**
21 **Motions.** If depositions, interrogatories, requests for documents production, requests for admission,
22 answers or responses are to be used at trial or are necessary to a pre-trial or post-trial motion, the
23 portions to be used shall be filed with the Clerk of the Court at the outset of the trial or at the filing
24 of the motion insofar as their use can be reasonably anticipated by the parties having custody
25 thereof.

26
27 **E. Discovery Material to Be Filed on Appeal.** When documentation of discovery not previously
28 in the record is needed for appeal purposes, upon an application and order of the Court, or by
29 stipulation of counsel, the necessary discovery papers shall be filed with the Clerk of the Court.

30
31 **F. Timing of Discovery.**

32
33 1. *When Discovery May Be Taken.* In accordance with Federal Rule of Civil Procedure
34 26(d), Fed. R. Civ. P., except in categories of proceedings exempted from initial disclosures
35 under Federal Rule of Civil Procedure 26(a)(1)(E), Fed. R. Civ. P., or when authorized under
36 the Federal Rules of Civil Procedure or by order or agreement of the parties, a party may not
37 seek discovery from any source before the parties have conferred as required by Federal Rule
38 of Civil Procedure ~~Rule 26(f), Fed. R. Civ. P.~~

39
40 a. Leave of Court is not required under Federal Rule of Civil Procedure 30(a)(2)(C);
41 Fed. R. Civ. P., if a party seeks to take a deposition before the time specified in Federal
42 Rule of Civil Procedure 26(d), Fed. R. Civ. P., if the notice contains a certification, with
43 supporting facts, that the person to be examined is expected to leave the United States and
44 be unavailable for examination in this country unless deposed before that time.

1 b. A party may depose any person who has been identified as an expert whose opinions
2 may be presented at trial. The deposition shall not be conducted until after the expert
3 summary or report required by Local Rule 16.1.K. is provided.
4

5 **G. Interrogatories and Document Production Requests.**
6

7 1. The presumptive limitation on the number of interrogatories (~~25~~twenty-five questions
8 including all discrete subparts) which may be served without leave of ~~c~~Court or written
9 stipulation, as prescribed by Federal Rule of Civil Procedure 33(a), Fed. R. Civ. P., shall apply
10 to actions in this Court. Interrogatories propounded in the form set forth in Appendix B to
11 these ~~rules~~Local Rules shall be deemed to comply with the numerical limitations of Federal
12 Rule of Civil Procedure 33(a), Fed. R. Civ. P.
13

14 2. No part of an interrogatory shall be left unanswered merely because an objection is
15 interposed to another part of the interrogatory.
16

17 3. (a) Where an objection is made to any interrogatory or sub-part thereof or to any
18 document production request under ~~Fed. R. Civ. P.~~ Federal Rule of Civil Procedure 34,
19 the objection shall state with specificity all grounds. Any ground not stated in an
20 objection within the time provided by the Federal Rules of Civil Procedure, or any
21 extensions thereof, shall be waived.
22

23 (b) Where a claim of privilege is asserted in objecting to any interrogatory or document
24 production demand, or sub-part thereof, and an answer is not provided on the basis of
25 such assertion:
26

27 (i) The attorney asserting the privilege shall in the objection to the interrogatory or
28 document demand, or sub-part thereof, identify the nature of the privilege (including
29 work product) which is being claimed and if the privilege is being asserted in
30 connection with a claim or defense governed by state law, indicate the state's
31 privilege rule being invoked; and
32

33 (ii) The following information shall be provided in the objection, unless divulgence
34 of such information would cause disclosure of the allegedly privileged information:
35

36 (A) For documents or electronically stored information, to the extent the
37 information is readily obtainable from the witness being deposed or otherwise:

38 (1) the type of document (e.g., letter or memorandum) and, if electronically
39 stored information, the software application used to create it (e.g., MS Word, MS
40 Excel Spreadsheet); (2) general subject matter of the document or electronically
41 stored information; (3) the date of the document or electronically stored
42 information; and (4) such other information as is sufficient to identify the
43 document or electronically stored information for a subpoena duces tecum,
44 including, where appropriate, the author ~~of the document, the addressee, and any~~

1 other recipient of the document or electronically stored information, and, where
2 not apparent, the relationship of the author, and addressee, and any other
3 recipient to each other;

4
5 (B) For oral communications: (1) the name of the person making the
6 communication and the names of persons present while the communication was
7 made and, where not apparent, the relationship of the persons present to the
8 person making the communication; (2) the date and the place of communication;
9 and (3) the general subject matter of the communication.

10
11 (c) This rule requires preparation of a privilege log with respect to all documents,
12 electronically stored information, things and oral communications withheld on the basis
13 of a claim of privilege or work product protection except the following: written and oral
14 communications between a party and its counsel after commencement of the action and
15 work product material created after commencement of the action.

16
17 (d) If information (written documents, electronically stored information or otherwise)
18 is produced in discovery that is subject to a claim of privilege or of protection as trial-
19 preparation material, the party making the claim may notify any party that received the
20 information of the claim, and the basis for it, and seek to retrieve the information and
21 protect it from disclosure using the procedures set forth in Federal Rule of Civil
22 Procedure 26(b)(5).

23
24 4. Interrogatories shall be so arranged that following each question there shall be provided
25 sufficient blank space for inserting a typed response. If the space allotted is insufficient, the
26 responding party shall retype the pages repeating each question in full followed by the answer
27 or objection thereto.

28
29 5. Whenever a party answers any interrogatory by reference to records from which the
30 answer may be derived or ascertained, as permitted in ~~Fed. R. Civ. P.~~ Federal Rule of Civil
31 Procedure 33(ed):

32
33 (a) The specification of ~~documents~~ business records and materials to be produced shall
34 be in sufficient detail to permit the interrogating party to locate and identify the records
35 and to ascertain the answer as readily as could the party from whom discovery is sought.

36
37 (b) The producing party shall make available any ~~computerized~~ electronically stored
38 information or summaries thereof that it either has or can adduce by a relatively simple
39 procedure, unless these materials are privileged or otherwise immune from discovery.

40
41 (c) The producing party shall provide any relevant compilations, abstracts or summaries
42 in its custody or readily obtainable by it, unless these materials are privileged or otherwise
43 immune from discovery.

1 (d) The ~~documents~~business records and materials shall be made available for inspection
2 and copying within ten days after service of the answers to interrogatories or at a date
3 agreed upon by the parties.
4

5 6. A party need not provide discovery of electronically stored information from sources that
6 the party identifies as not reasonably accessible because of undue burden or cost. On motion
7 to compel discovery or for a protective order, the party from whom discovery is sought must
8 show that the information is not reasonably accessible because of undue burden or cost. If that
9 showing is made, the Court may nonetheless order discovery from such sources if the
10 requesting party shows good cause, considering the limitations of Federal Rule of Civil
11 Procedure 26(b)(2)(C). The Court may specify conditions for the discovery. Absent
12 exceptional circumstances, the Court may not impose sanctions under these Local Rules on
13 a party for failing to provide electronically stored information lost as a result of the routine,
14 good-faith operation of an electronic information system.
15

16 H. Discovery Motions.

17
18 1. *Time for Filing.* All motions related to discovery, including but not limited to motions to
19 compel discovery and motions for protective order, shall be filed within thirty (~~30~~) days of the
20 occurrence of grounds for the motion. Failure to file discovery motion within thirty (~~30~~) days,
21 absent a showing of reasonable cause for a later filing, may constitute a waiver of the relief
22 sought.
23

24 2. *Motions to Compel.* Except for motions grounded upon complete failure to respond to the
25 discovery sought to be compelled or upon assertion of general or blanket objections to
26 discovery, motions to compel discovery in accordance with Federal Rules of Civil Procedure
27 33, 34, 36 and 37, Fed. R. Civ. P., or to compel compliance with subpoenas for production or
28 inspection pursuant to Federal Rule of Civil Procedure 45(c)(2)(B), Fed. R. Civ. P., shall, for
29 each separate ~~quote verbatim~~ each interrogatory, question, request for production, request for
30 admission, subpoena request, or deposition question, state: (a) verbatim the specific item to
31 be compelled; (b) or request for production or specifically identify the books, documents, or
32 tangible things to be produced or the premises to be inspected and the response to which
33 objections are taken followed by (a) the specific objections; ~~(b)~~ the grounds assigned for the
34 objection (if not apparent from the objection); ~~(c)~~ and (d) the reasons assigned as supporting the
35 motion; as it relates to that specific item. The party shall write this information in immediate
36 succession (e.g., specific request for production, objection, grounds for the objection, reasons
37 to support motion; next request for production, objection, grounds for the objection, reasons
38 to support motion; and so on) to enable the Court to rule separately on each individual item
39 in the motion. all of which shall be written in immediate succession to one another. Such
40 objections and grounds shall be addressed to the specific interrogatory, request, or production
41 or inspection sought via subpoena, and may not be made generally.
42

43 3. *Motions for Protective Order.* Except for motions for an order to protect a party or other
44 person from whom discovery is sought from having to respond to an entire set of written

1 discovery, from having to appear at a deposition, or from having to comply with an entire
2 subpoena for production or inspection, motions for protective order under Federal Rule of
3 Civil Procedure 26(c) shall, for each separate interrogatory question, request for production,
4 request for admission, subpoena request, or deposition question, state: (a) verbatim the specific
5 item of discovery; (b) the type of protection the party requests; and (c) the reasons supporting
6 the protection. The party shall write this information in immediate succession (e.g., specific
7 request for protection, protection sought for that request for production, reasons to support
8 protection; next request for production, protection sought for that request for production,
9 reasons to support protection; and so on) to enable the Court to rule separately on each
10 individual item in the motion.

11
12 **I. Certificate of Counsel.** See Local Rule 7.1.A.3 and ~~Fed. R. Civ. P.~~ Federal Rule of Civil
13 Procedure 37(a)(2).

14
15 **J. Reasonable Notice of Taking Depositions.** Unless otherwise stipulated by all interested
16 parties, pursuant to Federal Rule of Civil Procedure Rule 29, Fed. R. Civ. P., and excepting the
17 circumstances governed by Federal Rule of Civil Procedure 30(a), Fed. R. Civ. P., a party desiring
18 to take the deposition within this State of any person upon oral examination shall give at least five
19 ~~(5)~~ working days' notice in writing to every other party to the action and to the deponent (if the
20 deposition is not of a party), and a party desiring to take the deposition in another State of any
21 person upon oral examination shall give at least ten ~~(10)~~ working days' notice in writing to every
22 other party to the action and the deponent (if the deposition is not of a party).

23
24 Failure by the party taking the oral deposition to comply with this rule obviates the need for
25 protective order.

26
27 Notwithstanding the foregoing, in accordance with Federal Rule of Civil Procedure 32(a)(3), Fed.
28 R. Civ. P., no deposition shall be used against a party who, having received less than eleven ~~(11)~~
29 calendar days' notice of a deposition as computed under Federal Rule of Civil Procedure 6(a), Fed.
30 R. Civ. P., has promptly upon receiving such notice filed a motion for protective order under Federal
31 Rule of Civil Procedure 26(c)(2) requesting that the deposition not be held or be held at a different
32 time or place and such motion is pending at the time the deposition is held.

33
34 **K. Length of Depositions.** Unless otherwise authorized by the Court or stipulated by the parties,
35 a deposition is limited, under Federal Rule of Civil Procedure 30(d), Fed. R. Civ. P., to one day of
36 seven hours.

37
38 Effective Dec. 1, 1994; amended effective April 15, 1996; April 15, 1998; April 15, 2001;
39 paragraph G.3 amended effective April 15, 2003; April 15, 2004; April 15, 2005.

40 **Authority**

41
42
43 (1993) Former Local Rule 10I. New portions of Section E [1994, now Subsections G.2–8] are based
44 on S.D.N.Y. local rule.

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Comments

(1993) Section G [1994, now Section I] was modified to include all discovery motions at the recommendation of the Civil Justice Advisory Group.

(1994) A., F., G.1., J. (third paragraph). The amendments are necessary in light of the December 1, 1993 amendment to ~~Fed.R.Civ.P.~~ Federal Rules of Civil Procedure 26, 32(a)(3), and 33(a).

(1996)[F.1.] Local Rule 26.1.F.1. was added to make the timing of expert witness depositions consistent with that prescribed by ~~Fed. R. Civ. P.,~~ Federal Rule of Civil Procedure 26(b)(4)(A).

(1996)[I.] The "attempt to confer" language is added to mirror the obligations imposed by ~~Fed. R. Civ. P.~~ Federal Rule of Civil Procedure 37(a)(2)(A) and (B) and in recognition of the circumstance in which counsel for the moving party has attempted to confer with counsel for the opposing party, who fails or refuses to communicate. Violations of the ~~rule~~Local Rule, whether by counsel for the moving or opposing party, may be cause to grant or deny the discovery motion on that basis alone, irrespective of the merits of the motion, and may justify the imposition of sanctions. The sanctions language is modeled after ~~Fed.R.Civ.P.~~ Federal Rules of Civil Procedure 26(g)(3) and 37(a)(4).

(1998) Local Rule 26.1.G.2 is amended to reflect the Court's approval of "form" interrogatories which comply with the subject limitations of the rule. Prior Local Rule 26.1.H, regarding motions to compel, is renumbered Local Rule 26.1.H.2. Local Rule 26.2.H.1 is added to ensure that discovery motions are filed when ripe and not held until shortly before the close of discovery or the eve of trial. Local Rule 26.1.K is added to limit depositions to six hours absent ~~c~~Court order or agreement of the parties and any affected non-party witness. The rule is adopted after an eighteen month pilot program was implemented pursuant to Administrative Order 96-26.

(2001) Local Rules 26.1.A, B, F, G and K are amended to conform with the December 2000 amendments to Federal Rules of Civil Procedure 5, 26 and 30; ~~Fed. R. Civ. P.~~ Local Rule 26.1.I is amended to make clear that the obligation to confer in advance of moving to compel production of documents, electronically stored information or things sought from a non-party by subpoena includes consultation with all parties who may be affected by the relief sought and with the non-party recipient of the subpoena.

(2003) The amendment to Local Rule 26.1.G.3 is based on N.D. Okla. Local Rule 26.4(b) and eliminates the requirement to include in a privilege log (1) communications between a party and its counsel after commencement of the action, and (2) work product material created after commencement of the action.

(2004) Local Rule 26.1.I is amended in conjunction with the amendment of Local Rule 7.1.A.3 to avoid confusion and clarify pre-filing conference obligations.

(2005) Local Rule 26.1.H.2 is expanded to apply to motions to compel compliance with subpoenas for production or inspection issued pursuant to Federal Rule of Civil Procedure 45(c)(2)(B); ~~Fed.~~

1 ~~R. Civ. P.~~

2
3 (2007) Section H.3 added to apply to protective orders as well as motions to compel. Section H.2
4 clarified.

5
6 **RULE 30.1 SANCTIONS FOR ABUSIVE DEPOSITION CONDUCT**

7
8 **A.** The following abusive deposition conduct is prohibited:

- 9
10 1. Objections or statements which have the effect of coaching the witness, instructing the
11 witness concerning the way in which he or she should frame a response, or suggesting an
12 answer to the witness.
13
14 2. Interrupting examination for an off-the-record conference between counsel and the
15 witness, except for the purpose of determining whether to assert a privilege.
16
17 3. Instructing a deponent not to answer a question except when to preserve a privilege, to
18 enforce a limitation on evidence directed by the eCourt, or to present a motion under ~~Fed. R.~~
19 ~~Civ.P.~~ Federal Rule of Civil Procedure 30(d)(4).
20
21 4. Filing a motion for protective order or to limit examination without a substantial basis in
22 law.
23
24 5. Questioning that unfairly embarrasses, humiliates, intimidates, or harasses the deponent,
25 or invades his or her privacy absent a clear statement on the record explaining how the answers
26 to such questions will constitute, or lead to, competent evidence admissible at trial.

27
28 **B.** Whenever it comes to the attention of the court that an attorney or party has engaged in abusive
29 deposition conduct, the eCourt may appoint a special master under ~~Fed. R. Civ. P.~~ Federal Rule of
30 Civil Procedure 53, at the expense of the attorney or person engaging in such conduct (or of both
31 sides), to attend future depositions, exercise such authority, and prepare such reports as the eCourt
32 shall direct.

33
34 **C.** The eCourt, if it anticipates deposition abuse, may order that any deposition be taken at the
35 courthouse or special master's office so that, at the request of any party, witness, or counsel, any
36 dispute may be heard and decided immediately by the eCourt or special master.

37
38 **D.** Whenever a District jJudge or mMagistrate jJudge shall determine that any party or counsel
39 unreasonably has interrupted, delayed, or prolonged any deposition, whether by excessive
40 questioning, objecting, or other conduct, the party or its counsel, or both, may be ordered to pay each
41 other party's expenses, including without limitation, reasonably necessary travel, lodging, reporter's
42 fees, attorneys' fees, and videotaping expenses, for that portion of the deposition determined to be
43 excessive. In addition, that party or its counsel, or both, may be required to pay all such costs and
44 expenses for any additional depositions or hearings made necessary by its misconduct.

1
2 Adopted effective April 15, 1996; amended effective April 15, 2001.
3

4 **Authority**

5
6 (1996) Local Rule 30.1.C, District of Colorado, with minor modification to §Section 2.
7

8 **Comments**

9
10 (1996) The purpose of this rule is to curb unprofessional conduct at depositions.
11

12 (2001) Local Rule 30.1.A.3 is amended to conform to the December 2000 amendment of Federal
13 Rule of Civil Procedure 30, Fed. R. Civ.P.
14

15 **RULE 34.1 MARKING DOCUMENTS**

16
17 A party producing documents in discovery shall sequentially number the pages produced and
18 precede the numbers with a unique prefix, unless so marking a document would materially interfere
19 with its intended use or materially damage it (e.g., an original promissory note or other original
20 document of intrinsic value). If documents were obtained from a non-party via subpoena duces
21 tecum or other means, the party producing the documents shall mark them with a distinctive
22 alphanumeric prefix indicating their source. In the event a party produces documents as kept in the
23 ordinary course of business, the producing party's obligation to sequentially number the pages
24 applies only to the documents selected for copying by the receiving party.
25

26 **Comment**

27
28 (2007) Added to conform to good practice.
29

30 **RULE 40.1 NOTICE THAT ACTION IS AT ISSUE**

31
32 **A.** An action is at issue after any motions directed to the last pleadings served have been resolved,
33 or if no such motions are served, ~~20~~twenty days after service of the last pleading. The party entitled
34 to serve notices directed to the last pleading may waive the right to do so by filing a notice for trial
35 at any time after the last pleading is served. The existence of cross-claims among the parties shall
36 not prevent the Court from setting the action for trial on the issues raised by the complaint, answer
37 and any counterclaim.
38

39 **B.** All counsel shall have a continuing duty to notify the Court promptly upon an action or
40 proceeding becoming at issue. The notice shall include a statement as to whether a jury trial has
41 been demanded.
42

43 **C.** This duty is in addition to the requirements set forth in Local Rule 16.1.
44

1 Effective Dec. 1, 1994.

2
3 **Authority**

4
5 (1993) Former Local Rule 10E; ~~Fla. R. Civ. P.~~ Florida Rule of Civil Procedure 1.440.

6
7 **RULE 41.1 DISMISSAL FOR WANT OF PROSECUTION**

8
9 Civil actions not at issue which have been pending without any proceedings having been taken
10 therein for more than three months may be dismissed for want of prosecution by the Court on its
11 own motion after notice to counsel of record. Such actions may also be dismissed for want of
12 prosecution at any time on motion by any party upon notice to the other parties.

13
14 Effective Dec. 1, 1994.

15
16 **Authority**

17
18 (1993) Former Local Rule 13. Renumbered per Model Rules.

19
20 **RULE 45.1 SUBPOENAS FOR DEPOSITION AND TRIAL**

21
22 Subpoenas for deposition and trial shall be prepared and issued as follows:

23
24 **A.** Counsel shall prepare all subpoenas for deposition and trial in civil cases. At the option of
25 counsel, counsel may present them to the Clerk of the Court for issuance. Alternatively, ~~€~~counsel
26 may issue subpoenas pursuant to Federal Rule of Civil Procedure ~~Rule 45, Fed. R. Civ. P.~~, as
27 amended effective December 1, 1991.

28
29 **B.** Subpoenas for deposition in criminal cases may be issued only by order of ~~€~~Court.

30
31 Effective Dec. 1, 1994.

32
33 **Authority**

34
35 (1993) ~~So. District Clerk's Office; Fed. R. Civ. P.17; Rule 45, Fed. R. Civ. P.~~ Federal Rules of Civil
36 Procedure 17 and 45.

37
38 **Comment**

39
40 (1993) Requirement of file-stamped copy added at Clerk of the Court's request; reflects current
41 practice.

42
43 **RULE 47.1 JURIES**

1 **A. Civil Cases.** A jury for the trial of civil cases shall consist of at least six persons.

2
3 **B. Taxation of Costs.** Whenever a civil case that has been set for jury trial is settled or otherwise
4 disposed of, counsel shall so inform the office of the Judge ~~in whose division~~ assigned to the case
5 ~~is pending~~ at least one full business day prior to the day the jury is scheduled to be selected or the
6 trial is scheduled to commence, in order that the jurors may be notified not to attend. If such notice
7 is not given to the ~~Clerk's~~ Clerk of the Court's Office, then except for good cause shown, juror costs,
8 including attendance fees, mileage, and subsistence, may be assessed equally against the parties and
9 their counsel, or otherwise assessed as directed by the Court.

10
11 Effective Dec. 1, 1994.

12
13 **Authority**

14
15 (1993) Former Local Rule 15.

16
17 **Comment**

18
19 (1993) Renumbered per Model Rules.

20
21 **RULE 62.1 APPEAL BONDS; AUTOMATIC STAY**

22
23 **A. Appeal Bond.** A supersedeas bond staying execution of a money judgment shall be in the
24 amount of 110% of the judgment, to provide security for interest, costs, and any award of damages
25 for delay. Upon its own motion or upon application of a party the ~~c~~Court may direct otherwise.

26
27 **B. Extension of Automatic Stay When Notice of Appeal Filed.** If within the ten ~~(10)~~-day
28 period established by ~~Fed. R. Civ. P.~~ Federal Rule of Civil Procedure 62(a), a party files any of the
29 motions contemplated in ~~Fed. R. Civ. P.~~ Federal Rule of Civil Procedure 62(b), or a notice of appeal,
30 then unless otherwise ordered by the Court, a further stay shall exist for a period not to exceed thirty
31 ~~(30)~~-days from the entry of the judgment or order. The purpose of this additional stay is to permit
32 the filing of a supersedeas bond, which shall be filed by the end of the thirty ~~(30)~~-day period
33 provided herein.

34
35 Effective April 15, 2000.

36
37 **Comment**

38
39 (2000) Added to eliminate the necessity for ~~c~~Court approval of supersedeas bonds in every case in
40 which a money judgment has been entered by fixing a standard amount, and to specify the time by
41 which the bond must be filed in order to stay execution. Extension of the automatic stay is modeled
42 after W.D.Okla. Local Rule 62.1, N.D.Okla. Local Rule 62.1 and E.D.N.C. Local Rule 97.00.

43
44 **RULE 67.1 AUTHORIZED DEPOSITORY BANKS**

1
2 **A.** Whenever ~~members of the Bar~~attorneys, litigants or any other persons or entities are directed
3 to deposit funds within the interest-bearing Court registry, such funds shall be placed by the Clerk
4 of the Court with the Court-designated depository bank.

5
6 **B.** The Court-designated depository banks shall comply with all applicable statutes, orders, rules
7 and requirements of the Court.

8
9 **C.** All funds placed by the Clerk of the Court in the Court-designated depository bank shall earn
10 interest at a competitive market rate negotiated by the Clerk of the Court for similar deposits.
11 However, the Chief Judge may determine from time to time a minimum amount below which funds
12 need not be deposited in an interest-bearing account. Deposits for attorney's fees, costs and
13 expenses required before the issuance of any writs of garnishment are exempt from this requirement
14 and will be placed in a non-interest bearing U.S. Treasury account. At the time of disbursement of
15 funds from the registry, the litigant shall advise the Court as to the proper recipient of any earned
16 interest and prior to the release of funds shall provide the Clerk of the Court's Financial
17 Administrator or other designated deputy clerk with the proper tax number or tax status of the
18 recipient for subsequent reporting to the Internal Revenue Service.

19
20 **D.** Upon the issuance of any Order of Disbursement on the Court registry, the concerned party
21 shall provide a copy of such Order to the Clerk of the Court's Financial Administrator or other
22 designated deputy.

23
24 **E.** The Clerk of the Court shall assess a user's fee as promulgated by the Judicial Conference of
25 the United States on deposits in the interest-bearing Court Registry. Such fees shall be deducted
26 at disbursement and be deposited into a special fund established to reimburse the Judiciary for
27 maintaining registry accounts.

28
29 **F.** Nothing in this rule shall prevent the Court from granting the motion of interested parties for
30 special arrangements for investment of funds. If such investments are in the name of or assigned
31 to the Clerk of the Court, the account will be subject to the collateral provisions of Treasury Circular
32 176 (31 C.F.R. § 202) and the requirements of Local Rule 67.1.B. as well as other applicable
33 statutes, orders, rules and requirements of the Court.

34
35 **G.** In any case where an Order of Court directs the Clerk of the Court to handle a specific
36 investment in a different manner than Section C of this Local Rule, the interested party shall serve
37 a copy of the Order upon the Clerk of the Court personally or a deputy clerk specifically designated
38 in accordance with the wording of Federal Rule of Civil Procedure ~~Rule~~ 67, to-wit:

39
40 "The party making the deposit shall serve the Order permitting deposit on the Clerk of this
41 Court."

42
43 **H.** A party applying for the issuance of a writ of garnishment shall deposit the amount prescribed
44 by applicable Florida law in the non-interest bearing registry of the Court. The deposit is for the

1 attorneys' fees of the garnishee. Once deposited, those monies shall be disbursed as follows:
2

3 1. The Clerk of the Court shall pay such deposit to the garnishee (or garnishee's counsel, if
4 so requested) for the payment or partial payment of attorney's fees which the garnishee
5 expends or agrees to expend in obtaining representation in response to the writ. Such payment
6 shall be made upon the garnishee's demand, in writing, at any time after the service of the writ,
7 unless otherwise directed by the Court.
8

9 2. In cases of a pre-judgment writ of garnishment, if the garnishee fails to make written
10 demand within sixty (~~60~~) days of the conclusion of the case, including all appeals, the Clerk
11 of the Court shall return such deposit to the depositing party (or their counsel) without further
12 order or request, unless otherwise directed by the Court.
13

14 3. In cases of a post-judgment writ of attachment, if the garnishee fails to make written
15 demand within sixty (~~60~~) days after post-judgment proceedings on the writ have concluded,
16 including all appeals concerning the writ, the Clerk of the Court shall return such deposit to
17 the depositing party (or their counsel) without further order or request, unless otherwise
18 directed by the Court.
19

20 4. If garnishment cost deposit monies remain on deposit with the Clerk of the Court more
21 than five (~~5~~) years after the conclusion of a case or post-judgment proceedings, including all
22 appeals, and if the Clerk of the Court has made reasonable attempts to provide notice to the
23 depositing party or to distribute those monies without success, those unclaimed monies shall
24 be moved into the appropriate U.S. Treasury Unclaimed Funds account pursuant to U.S.C. §
25 Title 28, United States Code, Section 2042, without further order of Court. Any monies
26 deposited with the U.S. Treasury under these provisions as unclaimed are available for
27 immediate disbursement to any party by the Clerk of the Court upon application and further
28 Court order.
29

30 Effective Dec. 1, 1994. ~~A;~~ amended effective April 15, 2002.
31

32 Authority

33 (1993) Former Local Rule 24. Renumbered per Model Rules project.
34

35 (2002) ~~Fed.R.Civ.P.~~ Federal Rule of Civil Procedure 69, ~~Fla.Stat. §~~ Florida Statute Section 77.28,
36 and Administrative Orders 90–104, 98–51 and 2001–69.
37

38 Comments

39 (1993) Allows Chief Judge to establish minimum amount to be interest bearing. Revised per ~~Clerk's~~
40 Clerk of the Court's Office.
41

42 (2002) Subparagraph H. added at the request of the Clerk of the Court to clarify responsibilities and
43
44

1 procedures for obtaining distribution of garnishment deposits.

2
3 **RULE 77.1 PHOTOGRAPHING, BROADCASTING, TELEVISIONING**

4
5 Other than required by authorized personnel in the discharge of official duties, all forms of
6 equipment or means of photographing, tape-recording, broadcasting or televising within the environs
7 of any place of holding court in the District, including courtrooms, chambers, adjacent rooms,
8 hallways, doorways, stairways, elevators or offices of supporting personnel, whether the Court is
9 in session or at recess, is prohibited; provided that photographing in connection with naturalization
10 hearings or other special proceedings, as approved by a Judge of this Court, will be permitted.

11
12 Effective Dec. 1, 1994.

13
14 **Authority**

15
16 (1993) Former Local Rule 20. Renumbered per Model Rules. Model Rules Project has
17 recommended that a rule be included in ~~Fed.R.Civ.P.~~ the Federal Rules of Civil Procedure.

18
19 **RULE 77.2 RELEASE OF INFORMATION IN CRIMINAL AND CIVIL PROCEEDINGS**

20
21 **A. By Attorneys.**

22
23 1. It is the duty of the lawyer or law firm not to release or authorize the release of
24 information or opinion which a reasonable person would expect to be disseminated by means
25 of public communication, in connection with pending or imminent criminal litigation with
26 which the lawyer or the firm is associated, if there is a reasonable likelihood that such
27 dissemination will interfere with a fair trial or otherwise prejudice the due administration of
28 justice.

29
30 2. With respect to a grand jury or other pending investigation of any criminal matter, a
31 lawyer participating in or associated with the investigation shall refrain from making any
32 extrajudicial statement which a reasonable person would expect to be disseminated by means
33 of public communication, that goes beyond the public record or that is not necessary to inform
34 the public that the investigation is underway, to describe the general scope of the investigation,
35 to obtain assistance in the apprehension of a suspect, to warn the public of any dangers, or
36 otherwise to aid in the investigation.

37
38 3. From the time of arrest, issuance of an arrest warrant, or the filing of a complaint,
39 information, or indictment in any criminal matter until the commencement of trial or
40 disposition without trial, a lawyer or law firm associated with the prosecution or defense shall
41 not release or authorize the release of any extrajudicial statement which a reasonable person
42 would expect to be disseminated by means of public communication, relating to that matter
43 and concerning:
44

1 (a) The prior criminal record (including arrests, indictments, or other charges of crime),
2 or the character or reputation of the accused, except that the lawyer or law firm may make
3 a factual statement of the accused's name, age, residence, occupation, and family status,
4 and if the accused has not been apprehended, a lawyer associated with the prosecution
5 may release any information necessary to aid apprehension or to warn the public of any
6 dangers the accused may present.

7
8 (b) The existence or contents of any confession, admission, or statement given by the
9 accused, or the refusal or failure of the accused to make any statement.

10
11 (c) The performance of any examinations or tests or the accused's refusal or failure to
12 submit to an examination or test.

13
14 (d) The identity, testimony, or credibility of prospective witnesses, except that the
15 lawyer or law firm may announce the identity of the victim if the announcement is not
16 otherwise prohibited by law.

17
18 (e) The possibility of a plea of guilty to the offense charged or a lesser offense.

19
20 (f) Any opinion as to the accused's guilt or innocence or as to the merits of the case or
21 the evidence in the case.

22
23 The foregoing shall not be construed to preclude the lawyer or law firm during this period, in
24 the proper discharge of the lawyer's or its official or professional obligations, from announcing
25 the fact and circumstances of arrest (including time and place of arrest, resistance, pursuit, and
26 use of weapons), the identity of the investigating and arresting officer or agency, and the
27 length of the investigation; from making an announcement, at the time of seizure of any
28 physical evidence other than a confession, admission, or statement, which is limited to a
29 description of the evidence seized; from disclosing the nature, substance, or text of the charge,
30 including a brief description of the offense charged; from quoting or referring without
31 comment to public records of the Court in the case; from announcing the scheduling or result
32 of any stage in the judicial process; from requesting assistance in obtaining evidence; or from
33 announcing without further comment that the accused denies the charges made against the
34 accused.

35
36 4. During the trial of any criminal matter, including the period of selection of the jury, no
37 lawyer or law firm associated with the prosecution or defense shall give or authorize any
38 extrajudicial statement or interview, relating to the trial or the parties or issues in the trial
39 which a reasonable person would expect to be disseminated by means of public
40 communication, except that the lawyer or law firm may quote from or refer without comment
41 to public records of the Court in the case.

42
43 5. After the completion of a trial or disposition without trial of any criminal matter, and prior
44 to the imposition of sentence, a lawyer or law firm associated with the prosecution or defense

1 shall refrain from making or authorizing any extrajudicial statement which a reasonable person
2 would expect to be disseminated by means of public communication if there is a reasonable
3 likelihood that such dissemination will affect the imposition of sentence.
4

5 6. Nothing in this ~~rule~~Local Rule is intended to preclude the formulation or application of
6 more restrictive rules relating to the release of information about juvenile or other offenders,
7 to preclude the holding of hearings or the lawful issuance of reports by legislative,
8 administrative, or investigative bodies, or to preclude any lawyers from replying to charges
9 of misconduct that are publicly made against the lawyer or law firm.

10
11 7. A lawyer or law firm associated with a civil action shall not during its investigation or
12 litigation make or participate in making an extrajudicial statement, other than a quotation from
13 or reference to public records, which a reasonable person would expect to be disseminated by
14 means of public communication if there is a reasonable likelihood that such dissemination will
15 interfere with a fair trial and which relates to:

- 16
17 (a) Evidence regarding the occurrence or transaction involved.
18
19 (b) The character, credibility, or criminal record of a party, witness, or prospective
20 witness.
21
22 (c) The performance or results of any examinations or tests or the refusal or failure of
23 a party to submit to such.
24
25 (d) The lawyer's opinion as to the merits of the claims or defenses of a party, except as
26 required by law or administrative rule.
27
28 (e) Any other matter reasonably likely to interfere with a fair trial of the action.
29

30 **B. By Courthouse Personnel.** All courthouse personnel, including the marshal, deputy marshals,
31 the ~~court~~Clerk of the Court, deputy court clerks, probation officers, ~~and~~ court reporters, law clerks,
32 and secretaries, among others, are prohibited from disclosing to any person, without authorization
33 by the Court, information relating to a pending criminal proceeding that is not part of the public
34 records of the Court.
35

36 Effective Dec. 1, 1994.
37

38 Authority

39
40 (1993) Former Local Rule 21. Rule 4–3.6 of the Rules Regulating The Florida Bar.
41

42 Comment

43
44 (1993) Renumbered per Model Rules. Model Rules Project recommends statement at 87 F.R.D.
45 519, 525–27 (1980). Changed gender specific language.

1
2 **RULE 87.1 AUTHORITY OF BANKRUPTCY JUDGES TO MAKE LOCAL RULES**
3

4 The ~~b~~Bankruptcy ~~j~~Judges of the United States Bankruptcy Court in this ~~d~~District may, by action of
5 a majority of the ~~b~~Bankruptcy ~~j~~Judges, make local rules of practice and procedure to govern all
6 cases, proceedings and other matters in the ~~b~~Bankruptcy ~~c~~Court.
7

8 Effective Dec. 1, 1994.
9

10 **Comments**
11

12 (1993; minor stylistic revisions 1996) ~~Rule 9029 of the~~ Federal Rules of Bankruptcy Procedure
13 (~~"Fed. R. Bankr. P."~~) ~~9029~~ provides that the District Court may promulgate ~~local rules~~ Local Rules
14 governing bankruptcy practice, or may authorize the ~~b~~Bankruptcy ~~j~~Judges to promulgate such rules.
15 Federal Rule of Bankruptcy Procedure 9029 does not suggest that such a delegation of authority to
16 the ~~b~~Bankruptcy ~~j~~Judges requires a ~~local~~ District Court ~~rule~~Local Rule, but might assist readers of
17 the District Court ~~local rules~~ Local Rules if this ~~rule~~ Local Rule were included. At the least, a
18 general order signed by a majority of the District Court ~~j~~Judges is necessary.
19

20 The recognized limitations on the scope of ~~local bankruptcy court rules~~ Local Bankruptcy Court
21 Rules, and the procedural mechanism for promulgating those rules, need not be repeated in this ~~rule~~
22 Local Rule or order. They are provided in ~~Rule 9029, Fed. R. Bankr. P., adopting Rule 83, Fed. R.~~
23 ~~Civ. P.~~ Federal Rule of Bankruptcy Procedure 9029, adopting Federal Rule of Civil Procedure 83.
24

25 The one area of bankruptcy practice which is governed throughout the country by local rule is
26 bankruptcy appellate procedure, as to which ~~district court local rules~~District Court Local Rules are
27 authorized by ~~Federal Rule 8018, Fed. R. Bankr. P.~~ Federal Rule of Bankruptcy Procedure 8018, P.
28

29 **RULE 87.2 REFERENCE OF BANKRUPTCY MATTERS**
30

31 Pursuant to ~~Section 28 U.S.C. § Title 28, United States Code, Section 157(a)~~ and the General Order
32 of Reference entered July 11, 1984, all cases arising under Title 11 of the United States Code, and
33 proceedings arising in or related to cases under Title 11, United States Code, have been referred to
34 the ~~b~~Bankruptcy ~~j~~Judges for this ~~d~~District and shall be commenced in the ~~b~~Bankruptcy ~~c~~Court
35 pursuant to the ~~local bankruptcy rules~~ Local Bankruptcy Rules. The General Order of Reference
36 also applies to notices of removal pursuant to ~~Section 28 U.S.C. § Title 28, United States Code,~~
37 Section 1452(a) which shall be filed with the ~~c~~Clerk of the ~~b~~Bankruptcy ~~c~~Court for the ~~d~~Division
38 of the ~~d~~District where such civil action is pending. The removed claim or cause of action shall be
39 assigned as an adversary proceeding in the ~~b~~Bankruptcy ~~c~~Court.
40

41 Former Local Rule 87.2 amended and renumbered as Local Rule 87.4, and new Local Rule 87.2
42 adopted effective April 15, 1996.
43

44 **Comment**
45

1 (1996) This new ~~rule~~ Local Rule codifies the General Order of Reference, and explains the filing
2 procedure for referred cases.

3
4 **RULE 87.3 MOTIONS FOR WITHDRAWAL OF REFERENCE OF CASE OR**
5 **PROCEEDING FROM THE BANKRUPTCY COURT**

6
7 A motion to withdraw the reference pursuant to ~~Section 28 U.S.C. § 157~~ Title 28, United States
8 Code, Section 157(d) shall be filed with the ~~e~~Clerk of the ~~b~~Bankruptcy ~~e~~Court in accordance with
9 the requirements of ~~local bankruptcy rule~~ Local Bankruptcy Rule 5011-1. Subsequently filed
10 motions for withdrawal of reference in the same case or proceeding shall be regarded as similar
11 actions and proceedings under Local Rule 3.98 and the attorneys of record shall notify the District
12 Court of all such pending actions and proceedings in compliance with Local Rule 3.98. and, if
13 applicable, provide the notice required by Local Rule 7.1.F.

14
15 Upon disposition of a motion for withdrawal of reference the ~~Clerk of the~~ Clerk of the District Court ~~Clerk~~ shall
16 transmit a copy of the order to the ~~e~~Clerk of the ~~b~~Bankruptcy ~~e~~Court.

17
18 Adopted effective April 15, 1996; amended effective April 15, 1999.

19
20 **Comments**

21
22 (1996) This new ~~rule~~ Local Rule specifies the proper ~~e~~Court for filing motions for withdrawal of
23 reference. By stating all motions to withdraw reference in the same case or proceeding are "similar"
24 and, therefore, require the parties to comply with Local Rule 3.98, the District Court can
25 consolidate these related motions to eliminate the possibility of conflicting orders from different
26 ~~j~~Judges addressing the same issue. The second paragraph has been added because it is critical that
27 the ~~b~~Bankruptcy ~~e~~Court be promptly advised of whether the reference has been withdrawn in whole
28 or in part, since adversary proceedings and cases are not stayed by the filing of a motion to withdraw
29 the reference.

30
31 (1999) Amended to reflect renumbered ~~local bankruptcy rules~~ Local Bankruptcy Rules effective
32 December 1, 1998.

33
34 **RULE 87.4 BANKRUPTCY APPEALS**

35
36 Bankruptcy appeals to the District Court are governed by the Federal Rules of Bankruptcy
37 Procedure, particularly Rules 8001 through 8020, and the ~~local rules~~ Local Rules of the ~~b~~Bankruptcy
38 ~~e~~Court. As is authorized by Federal Rule of Bankruptcy Procedure 8018, Fed. R. Bankr. P., those
39 rules are supplemented as follows:

40
41 **A. Assignment.** Appeals from orders or judgments entered by the ~~b~~Bankruptcy ~~e~~Court shall
42 generally be assigned in accordance with Local Rule 3.4. Appeals from orders in a bankruptcy case
43 or proceeding in which appeals have been taken from prior orders in the same case or proceeding
44 shall be regarded as similar actions and proceedings under Local Rule 3.98 and it will be the

1 continuing obligation of the Clerk of the District Court Clerk and the attorneys of record to comply
2 with Local Rule 3.9-D8.
3

4 **B. Limited Authority of Bankruptcy Court to Dismiss Appeals Prior to Transmittal of**
5 **Record to District Court.** The bBankruptcy eCourt is authorized and directed to dismiss an appeal
6 for (1) appellant's failure to pay the prescribed filing fees; (2) failure to comply with the time
7 limitations specified in Federal Rule of Bankruptcy Procedure 8002, Fed. R. Bankr. P.; and (3)
8 appellant's failure to file a designation of the items for the record or copies thereof or a statement
9 of the issues as required by Federal Rule of Bankruptcy Procedure 8006, Fed. R. Bankr. P. and ~~local~~
10 ~~bankruptcy rule~~ Local Bankruptcy Rule 8006-1. The bBankruptcy eCourt is further authorized and
11 directed to hear, under Federal Rule of Bankruptcy Procedure 9006(b), Fed. R. Bankr. P., motions
12 to extend the foregoing deadlines and to consolidate appeals which present similar issues from a
13 common record. Bankruptcy eCourt orders entered under this subsection may be reviewed by the
14 District Court on motion filed in the District Court within ~~ten~~ ten days after entry of the order sought
15 to be reviewed pursuant to subsection C of this ~~rule~~ Local Rule.
16

17 **C. Motions for Stay and Other Intermediate Requests for Relief.** Motions for stay pending
18 appeal pursuant to Federal Rule 8005, Fed. R. Bankr. P. of Bankruptcy Procedure 8005, motions to
19 review bBankruptcy eCourt orders entered under Federal Rule of Bankruptcy Procedure 9006(b);
20 Fed. R. Bankr. P., and other motions requesting intermediate relief as set forth in FRBP Federal Rule
21 of Bankruptcy Procedure 8007(c), shall be accepted for filing in the District Court and shall be
22 assigned a miscellaneous memo case number which will apply only to the motion. No filing fee
23 shall be charged in the District Court. The Clerk of the District Court Clerk shall immediately notify
24 the eClerk of the bBankruptcy eCourt of the assigned case number and jJudge. When the record on
25 appeal is transmitted it will be assigned a new case number but will be assigned to the same jJudge
26 who considered the motion. The movant shall provide copies of any relevant portions of the
27 bBankruptcy eCourt record necessary for the District Court to rule on the motion. It shall be the
28 duty of the Clerk of the District Court Clerk to immediately transmit a copy of the order ruling on
29 said motion to the eClerk of the bBankruptcy eCourt.
30

31 Local Rule 7.1 shall apply to motions for stay and other motions seeking intermediate appellate
32 relief from ~~the~~ the District Court.
33

34 **D. Motions for Leave to Appeal.** A motion for leave to appeal shall be filed in the bBankruptcy
35 eCourt pursuant to ~~local bankruptcy rule~~ Local Bankruptcy Rule 8003-1. Upon transmittal of the
36 motion and related documents to the District Court the matter shall be assigned in the same manner
37 as other miscellaneous motions described in subsection C above.
38

39 Upon disposition of the motion, the Clerk of the District Court Clerk shall immediately transmit a
40 copy of the District Court order to the eClerk of the bBankruptcy eCourt. If the motion is granted
41 the eClerk of the bBankruptcy eCourt will proceed to prepare and transmit the record on appeal. A
42 new District Court case number will be assigned to the appeal but it will be assigned to the same
43 jJudge who granted the motion for leave to appeal.
44

1 **E. Briefs.**

2
3 1. *Briefing Schedule.* The briefing schedule specified by Federal Rule of Bankruptcy
4 Procedure 8009, Fed. R. Bankr. P. may be altered only by order of the District Court. If the
5 Clerk of the District Court does not receive appellant's brief within the time specified by
6 Federal Rule of Bankruptcy Procedure 8009, Fed. R. Bankr. P., and there is no motion for
7 extension of time pending, the Clerk of the District Court shall furnish to the Judge to
8 whom the appeal is assigned a proposed order for dismissal of the appeal.

9
10 2. *Length of Briefs.* Absent prior permission from ~~this~~the District Court, the ~~A~~Appellant's
11 initial or principal briefs and the ~~A~~Appellee's response or principal brief shall not exceed ~~25~~
12 twenty-five pages in length, and ~~A~~Appellant's reply briefs, if any, shall not exceed ~~15~~fifteen
13 pages.

14
15 **F. Oral Argument.** Any party requesting oral argument shall make the request within the body
16 of the principal or reply brief, not by separate motion. The setting of oral argument is within the
17 discretion of the District Court.

18
19 **G. Judgment.** Upon receipt of the District Court's opinion, the Clerk of the District Court~~Clerk~~
20 shall enter judgment in accordance with Federal Rule of Bankruptcy Procedure 8016(a), Fed. R.
21 Bankr. P. and in accordance with Federal Rule of Bankruptcy Procedure 8016(b), Fed. R. Bankr. P.,
22 shall immediately transmit to each party and to the ~~c~~Clerk of the bBankruptcy cCourt a notice of
23 entry together with a copy of the District Court's opinion.

24
25 **H. Appeal.** If an appeal remains pending three months after its entry on the District Court docket,
26 the District Court Clerk of the District Court shall advise the Judge of the status of the appeal.

27
28 **I. Notice.** The Clerk of the bBankruptcy cCourt~~clerk~~ is directed to enclose a copy of this
29 ~~rule~~Local Rule with the notice of appeal provided to each party in accordance with Federal Rule of
30 Bankruptcy Procedure 8004, Fed. R. Bankr. P. Failure to receive such a copy will not excuse
31 compliance with all provisions of this ~~rule~~Local Rule.

32
33 **J. Court Discretion.** This ~~rule~~Local Rule is not intended to exhaust or restrict the District
34 Court's discretion as to any aspect of any appeal.

35
36 Former Local Rule 87.2 amended and renumbered as new Local Rule 87.4, effective April 15, 1996;
37 amended effective April 15, 1999.

38
39 **Authority**

40
41 Former Local Rule 27; (1996) renumbered from Local Rule 87.2 (1993).

42
43 **Comments**

1 (1996)A. This revision clarifies the procedure for assignment of appeals from subsequent orders in
2 a bankruptcy case or proceeding in which there have been appeals of prior orders. The appeals of
3 subsequent orders will be randomly assigned but treated as "similar actions" under Local Rule
4 3.89.C and 3.9.D.

5
6 B. This ~~rule~~Local Rule has been amended to expand the ~~b~~Bankruptcy eCourt's authority to dismiss
7 an appeal for the appellant's failure to pay the filing fee required for a notice of appeal and failure
8 to provide copies of every item designated as required by Federal Rule of Bankruptcy Procedure
9 8006, Fed. R. Bankr. It also clarifies the means for review of orders entered under Federal Rule of
10 Bankruptcy Procedure 9006(b), Fed. R. Bankr. P., by referencing new subsection C below.

11
12 C. This procedure provides a means for litigants to request intermediate relief from the District
13 Court after the notice of appeal has been filed but before the record on appeal is transmitted to the
14 District Court. It also clarifies that no fee will be charged in the District Court for these intermediate
15 requests for relief.

16
17 This rule further provides for the subsequent assignment of the appeal to the same District jJudge.
18 This should conserve judicial resources since, for example, the disposition of a motion for stay
19 pending appeal will usually require the District jJudge to become familiar with the issues on appeal.

20
21 D. Adds reference to the local bankruptcy rule for filing motions for leave to appeal, provides for
22 assignment in the District Court and clarifies that a new case number will be assigned for the appeal.

23
24 This rule further provides for the subsequent assignment of the appeal to the same District jJudge.
25 This should conserve judicial resources since the disposition of a motion for leave to appeal will
26 usually require the District jJudge to become familiar with the issues on appeal.

27
28 E. Replaces old Local Rule 87.2.C. Federal Rule of Bankruptcy Procedure 8010(c), ~~Fed. R. Bankr.~~
29 ~~P.~~, provides authority to the District Court to specify different page limits for briefs. This rule
30 supersedes the page limit specified in Federal Rule of Bankruptcy Procedure 8010, ~~Fed. R. Bankr.~~
31 ~~P.~~ This ~~rule~~Local Rule also distinguishes the page limitations for bankruptcy appellate briefs from
32 memoranda of law as provided in Local Rule 7.1.C.2.

33
34 Also, minor stylistic revisions to entire ~~rule~~Local Rule.

35
36 (1999) Amended to reflect renumbered ~~local bankruptcy rules~~ Local Bankruptcy Rules effective
37 December 1, 1998.

38
39 **RULE 87.5 DESIGNATION OF BANKRUPTCY JUDGES TO CONDUCT JURY TRIALS**

40
41 The Bankruptcy Judges of this District are specially designated to conduct jury trials, with the
42 express consent of all parties, in all proceedings under 28 U.S.C. § Title 28, United States Code,
43 Section 157 in which the right to a jury trial applies. Pleading and responding to a jury trial demand
44 in bankruptcy cases is governed by ~~local bankruptcy rule~~ Local Bankruptcy Rule 9015-1. Local

1 Rule 47.1 shall apply to jury trials conducted by Bankruptcy Judges under this rule.

2
3 Effective April 15, 1999.

4
5 **Comment**

6
7 (1999) Incorporates the provisions of Administrative Order 96-03 "In re: Designation of
8 Bankruptcy Judges to Conduct Jury Trials."

9
10 **RULE 88.1 APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS IN**
11 **CRIMINAL PROCEEDINGS**

12
13 The appointment of counsel and counsel's obligations in the representation of indigent defendants
14 in criminal proceedings pursuant to ~~Fed. R. Crim. P.~~, Federal Rule of Criminal Procedure 44, shall
15 be in accordance with the "Plan of the United States District Court for the Southern District of
16 Florida Pursuant to the Criminal Justice Act of 1964, as Amended." Copies of the current plan are
17 available in the ~~Clerk's Office of the Clerk of the Court~~.

18
19 Effective Dec. 1, 1994.

20
21 **Authority**

22
23 (1993) Former Local Rule 17, updated.

24
25 **Comment**

26
27 (1993) Changes person charged with maintaining copies to Clerk of the Court.

28
29 **RULE 88.2 PETITIONS FOR WRITS OF HABEAS CORPUS, ~~MOTIONS PURSUANT TO~~**
30 **28 U.S.C. § TITLE 28, UNITED STATES CODE, SECTION 2241 AND TITLE 28, UNITED**
31 **STATES CODE, SECTION 2254, MOTIONS PURSUANT TO 28 U.S.C. §TITLE 28,**
32 **UNITED STATES CODE, SECTION 2255 AND PRISONER CIVIL RIGHTS COMPLAINTS**
33 **PURSUANT TO 42 U.S.C. §TITLE 42, UNITED STATES CODE, SECTION 1983 AND**
34 **BIVENS**

35
36 1. The following ~~kinds of~~ petitions, motions, and complaints ~~shall be on~~ must substantially follow
37 the forms, if any, prescribed by the Court and obtained from the Clerk of the Court upon
38 request:

- 39
40 A. Petitions for writs of habeas corpus pursuant to 28 U.S.C. §Title 28, United States Code,
41 Section 2241 (common law habeas corpus),
42
43 B. Petitions for writs of habeas corpus pursuant to 28 U.S.C. §Title 28, United States Code,
44 Section 2254 (state prisoner attacking conviction),

- 1 C. Motions to Vacate pursuant to ~~28 U.S.C. §~~Title 28, United States Code, Section 2255
2 (federal prisoner attacking conviction),₂
- 3
- 4 D. Civil rights complaints pursuant to ~~42 U.S.C. §~~Title 42, United States Code, Section 1983
5 (Constitutional deprivation under color of state law),₂
- 6
- 7 E. Civil rights complaints pursuant to *Bivens v. Six Unknown Federal Narcotics Agents*, 403
8 U.S. 388 (1971) (Constitutional deprivation under color of federal law),₂
- 9

10 ~~For A.-C. above, An original and one copy of the petition, motion, or complaint, fully completed,~~
11 ~~signed and, with respect to those petitions and motions set forth in 1-3 above, verified or motion,~~
12 ~~signed under penalty of perjury by petitioner/movant or by a person authorized to sign it for~~
13 ~~petitioner/movant, together with filing fee, if any, shall be filed in the Clerk's Office. For D.-E.~~
14 ~~above, an original and one copy of a civil rights complaint, plus one copy for each defendant, signed~~
15 ~~under penalty of perjury by plaintiff or by a person authorized to sign it for plaintiff, together with~~
16 ~~the filing fee, if any, shall be addressed to the appropriate division of filed in the Clerk's Office.~~

- 17
- 18 2. When a petition, motion to vacate, or complaint is submitted in *forma pauperis*,₂ the
19 ~~petitioner/plaintiff~~petitioner/movant/plaintiff shall ~~complete the forma pauperis affidavit~~
20 ~~attached to the forms~~ submit the form "Application to Proceed Without Prepayment of Fees
21 and Affidavit," which may be obtained from the Clerk of the Court, or an affidavit which
22 substantially follows the form, and shall, under oath, set forth information which establishes
23 that he or she is unable to pay the fees and costs of the proceedings referenced above.
- 24

25 Effective Dec. 1, 1994.

26 Authority

27 (1993) Former Local Rule 18.

28 Comment

29 (1994) Revised to add *Bivens* actions, delete implication that federal prisoners can attack prison
30 conditions in a petition pursuant to Title 28, United States Code, § Section 2241 ~~petition~~, and
31 requiring verification of certain petitions.

32 RULE 88.3 PETTY OFFENSES—PUBLIC BUILDINGS

33 A. Collateral and Mandatory Appearance.

- 34 1. Petty offenses, as defined in ~~18 U.S.C. §~~Title 18, United States Code, Section 19, which
35 are committed on or within the perimeter of Federally-owned or controlled buildings, for
36 which collateral may be posted and forfeited in lieu of appearance by the person charged,
37 together with the amount of collateral to be posted and offenses for which a mandatory
38

1 appearance is required shall be in accordance with schedules which may from time to time be
2 approved by the Court and filed with the Clerk of the Court.

3
4 2. Collateral may not be posted for any designated offense if the alleged violator has
5 previously been convicted of any such offense.
6

7 **B. Forfeiture of Collateral.**
8

9 1. Any person issued a violation notice for a petty offense for which collateral can be posted
10 may, upon request of the issuing officer, post the required amount by placing cash, personal
11 check or money order in the official violation notice envelope and, after sealing same,
12 delivering it to authorized personnel at a designated office where a receipt will be given. All
13 such envelopes received will be forwarded via mail each day, except for those containing cash
14 which shall be personally delivered to the Clerk of ~~this~~the Court.
15

16 2. The posting of collateral shall signify that the offender does not wish to contest the charge
17 nor request a hearing before the Judge. Collateral so posted shall be forfeited to the United
18 States ~~of America~~ and such forfeiture will be tantamount to a finding of guilt.
19

20 **C. Failure to Post Collateral.**
21

22 1. If a person charged with an offense for which collateral is required fails to post and forfeit
23 collateral, any punishment, including fine, imprisonment or probation may be imposed within
24 the limits established by law upon conviction by plea or after trial.
25

26 2. No person shall be detained for failure to post collateral for a petty offense for which
27 collateral may be posted unless he or she is placed under arrest.
28

29 **D. Arrest.** Nothing contained in these Local Rules shall prohibit a law enforcement officer from
30 arresting an alleged violator for the commission of any offense, including those for which collateral
31 may be posted or mandatory appearance required, and forthwith notifying a Magistrate Judge for
32 the purpose of appearance or setting bail.
33

34 (Schedule of fines and mandatory appearance, on file with ~~office of~~ Clerk's Office and agencies
35 charged with enforcement thereof.)
36

37 Effective Dec. 1, 1994. ~~A;~~ amended effective April 15, 2006.
38

39 **Authority**

40 (1993) Former Local Rule 22. Effective date of schedule updated.
41

42 **Comment**
43
44

1 (1993) Cash to be delivered to Clerk of the Court rather than Magistrate Judge.

2
3 **RULE 88.4 CERTAIN OFFENSES PERTAINING TO—NATIONAL PARKS, PRESERVES,**
4 **GOVERNMENT RESERVATIONS, HISTORIC SITES, TREATIES AND WILDLIFE ACTS**

5
6 **A. Covered Offenses.** This Local Rule shall apply to petty offenses, as defined in ~~18 U.S.C.~~
7 §Title 18, United States Code, Section 19, and to certain misdemeanors as shall be identified from
8 time to time by the Court in collateral schedules. Collectively, these petty offenses and identified
9 misdemeanors shall be referred to for purposes of ~~the~~ this Local Rule as "covered offenses".

10
11 **B. Collateral and Mandatory Appearance.**

12
13 1. Covered offenses which are committed within the boundaries of National Parks,
14 Preserves, Historic Sites, or Government Reservations, including but not limited to military
15 installations, and violations under the various Treaties and Wildlife Acts, for which collateral
16 may be posted and forfeited in lieu of appearance by the person charged, together with
17 amounts of collateral to be posted and offenses for which a mandatory appearance is required,
18 shall be in accordance with schedules which may from time to time be approved by the Court
19 and filed with the Clerk of the Court.

20
21 2. Collateral may not be posted for any covered offense if the alleged violator has previously
22 been convicted of any such offense.

23
24 **C. Forfeiture of Collateral.**

25
26 1. Any person issued a violation notice for a covered offense for which collateral can be
27 posted may, upon request of the issuing officer, post the required amount by placing cash,
28 personal check or money order in the official violation notice envelope and, after sealing same,
29 delivering it to authorized personnel at a designated office where a receipt will be given. All
30 such envelopes received will be forwarded via mail each day, except for those containing cash
31 which shall be personally delivered to the Clerk of ~~this~~the Court.

32
33 2. The posting of collateral shall signify that the offender does not wish to appear nor request
34 a hearing before the Judge. Collateral so posted shall be forfeited to the United States of
35 ~~America~~ and the proceedings shall be terminated.

36
37 **D. Failure to Post Collateral.**

38
39 1. If a person charged with a covered offense for which collateral is required fails to post and
40 forfeit collateral any punishment, including fine, imprisonment or probation may be imposed
41 within the limits established by law upon conviction by plea or after trial.

42
43 2. No person shall be detained for failure to post collateral for a covered offense for which
44 collateral may be posted unless the person is placed under arrest.

1
2 **E. Arrest.** Nothing contained in these Local Rules shall prohibit a law enforcement officer from
3 arresting an alleged violator for the commission of any offense, including those for which collateral
4 may be posted or mandatory appearance required, and forthwith notifying a Magistrate Judge for
5 the purpose of appearance or setting bail.

6
7 (Schedule of fines and mandatory appearance on file with ~~office of~~ Clerk's Office and agencies
8 charged with enforcement thereof.)

9
10 Effective Dec. 1, 1994. ~~A;~~ amended effective April 15, 2000; April 15, 2006.

11
12 **Authority**

13
14 (1993) Former Local Rule 23.

15
16 **Comments**

17
18 (1993) Cash to be delivered to Clerk of the Court rather than Magistrate Judge.

19
20 (2000) Encompasses certain misdemeanors as well as petty offenses.

21
22 **RULE 88.5 SPEEDY TRIAL**

23
24 **A. Waiver of Sanctions.** A court may accept a defendant's waiver of the provisions of the
25 Speedy Trial Act if made either in writing or orally, in open court, on the record. A form written
26 rights waiver is set forth in Appendix C to these ~~rules~~ Local Rules.

27
28 **B. Speedy Trial Reports.** Counsel for the Government and counsel for each defendant shall,
29 within twenty (~~20~~) days after arraignment and every twenty (~~20~~) days thereafter until trial or plea
30 of guilty or nolo contendere, file with the Court a status report as to each defendant which shall
31 include a concise statement of:

32
33 1. All excludable time as recorded on the docket on which there is agreement, including the
34 applicable statutes. Such agreement shall be conclusive as between the parties, unless it has
35 no basis in fact or law.

36
37 2. All excludable time as recorded on the docket on which there is conflict, including the
38 applicable statutes or law.

39
40 3. Computation of the gross time, excludable time, net time remaining, and the final date
41 upon which the defendant can be tried in compliance with the Speedy Trial Plan of this Court.

42
43 4. Any agreement by the parties as to excludable time which exceeds the amount recorded
44 on the docket shall have no effect unless approved by the Court.

1 Effective Dec. 1, 1994; amended effective April 15, 1998; April 15, 1999.

2
3 **Authority**

4
5 (1993) Former Local Rule 25. ~~18 U.S.C. §~~ Title 18, United States Code, Section 3161.

6
7 **Comments**

8
9 (1993) Renumbered per Model Rules.

10
11 (1998) Local Rule 88.5.A is amended to correct a scrivener's error. The Advisory Committee on
12 Rules and Procedure recommends, but the rule does not require, that an oral waiver of right be
13 accompanied by the execution of a form rights waiver. Such form rights waivers may be made
14 available in courtrooms in this ~~d~~District by the ~~e~~Clerk of the ~~e~~Court.

15
16 (1999) A form rights waiver is included. Use of the form may require individualization, or time
17 limits, on a case-by-case basis.

18
19 **RULE 88.6 DANGEROUS SPECIAL OFFENDER NOTICE**

20
21 In any case within the District wherein a notice is to be filed under ~~18 U.S.C. §~~ Title 18, United
22 States Code, Section 3575 or ~~21 U.S.C. §~~ Title 21, United States Code, Section 849 which alleges
23 the existence of a defendant who is a dangerous special offender, such notice shall be filed with the
24 Clerk of the Court in a sealed envelope, the outside of which states the regularly assigned case
25 number and Assistant United States Attorney. In addition to the statutory notice, the envelope shall
26 contain an affidavit from the Assistant United States Attorney stating the information contained in
27 the notice has been disclosed to the defendant and defendant's counsel, date of disclosure, and any
28 other facts relevant to the disclosure. The Clerk of the Court shall retain the sealed envelope in a
29 file which is separate from the regular criminal files and docket sheets. This file shall not be subject
30 to subpoena or public inspection during the pendency of the criminal matter. Applications for
31 modification of this procedure should be directed to the Chief Judge of the District or designated
32 substitute. This rule shall not affect the statutory right of the interested parties to consent to early
33 disclosure of the notice.

34
35 Effective Dec. 1, 1994.

36
37 **Authority**

38
39 (1993) Former Local Rule 26.

40
41 **Comment**

42
43 (1993) Renumbered per Model Rules. ~~21 U.S.C. §~~ Title 21, United States Code, Section 849 was
44 repealed by Pub.L. 98-473, effective October 1, 1987. The Sentencing Reform Act requires the

1 Sentencing Commission to specify sentences at or near the maximum term for offenders with prior
2 convictions.

3
4 **RULE 88.7 RETAINED CRIMINAL DEFENSE ATTORNEYS**

5
6 Retained criminal defense attorneys are expected to make financial arrangements satisfactory to
7 themselves and sufficient to provide for representation of each defendant until the conclusion of the
8 defendant's case at the trial level. Failure of a defendant to pay sums owed for attorney's fees, or
9 failure of counsel to collect a sum sufficient to compensate him for all the services usually required
10 of defense counsel, will not constitute good cause for withdrawal after arraignment. Every
11 defendant, of course, has a right to appeal from any conviction.

12
13 *All* notices of permanent appearance in the District Court, and motions for substitution of counsel,
14 shall state whether the appearance of counsel is for trial only or for trial and appeal.

15
16 At arraignment, the Magistrate Judge will inquire of each defendant and counsel whether counsel
17 has been retained for trial only or for trial and appeal. Where counsel indicates that he or she has
18 been retained only for trial, the defendant will be notified that it is the defendant's responsibility to
19 arrange for counsel for any necessary appeals.

20
21 In cases where the defendant moves the cCourt to proceed in forma pauperis on appeal, or for
22 appointment of Criminal Justice Act appellate counsel, the Court will consider, in passing upon such
23 applications, factors such as (1) the defendant's qualified Sixth Amendment right to counsel of
24 choice, recognizing the distinction between choosing a trial lawyer and choosing an appellate
25 lawyer; (2) the contract between the defendant and trial counsel; (3) the defendant's present
26 financial condition and ability to have retained only trial counsel; (4) retained counsel's appellate
27 experience; (5) the financial burden that prosecuting the appeal would impose upon trial counsel,
28 in view of the fee received and the professional services rendered; and (6) all other relevant factors,
29 including any constitutional guarantees of the defendant.

30
31 In assessing whether the legal fees previously paid to defense counsel should reasonably encompass
32 appellate representation, the Court is to apply the provisions of Rule 4-1.5 of the Rules Regulating
33 The Florida Bar. The Court is to consider the following factors as guides in determining the
34 reasonableness of the fee: (1) the time and labor required, the novelty, complexity, and difficulty
35 of the questions involved, and the skill requisite to perform the legal service proffered; (2) the
36 likelihood that the acceptance of the particular employment precluded other employment by the
37 lawyer; (3) the fee, or rate of fee, customarily charged in the locality for legal services of a
38 comparable or similar nature; (4) the significance of, or amount involved in, the subject matter of
39 the representation, the responsibility involved in the representation, and the results obtained; (5) the
40 time limitations imposed by the client or by the circumstances and, as between attorney and client,
41 any additional or special time demands or requests of the attorney by the client; (6) the nature and
42 length of the professional relationship of the client; and (7) the experience, reputation, diligence and
43 ability of the lawyer or lawyers performing the service and the skill, expertise or efficiency of efforts
44 reflected in the actual providing of such services.

1 In determining a reasonable fee, the time devoted to the representation and the customary rate of fee
2 are not the sole or controlling factors; nor should the determination be governed by fees or rates of
3 fee provided under the Criminal Justice Act. All factors set out in this Local Rule and in the Rules
4 Regulating The Florida Bar should be considered, and may be applied, in justification of a fee higher
5 or lower than that which would result from application of only the time and rate factors.
6

7 All proceedings undertaken, and determinations made, pursuant to this Local Rule, shall be in
8 camera, ex-parte and under seal. All such proceedings and determinations shall be strictly
9 confidential, and not subject to disclosure by subpoena or otherwise.

10
11 Effective Dec. 1, 1994.

12
13 **Authority**

14
15 (1993) This rule is new in its entirety. Added at the request of the Eleventh Circuit.

16
17 **RULE 88.8 PRESENTENCE INVESTIGATIONS**

18
19 **1.** The sentencing proceedings shall be scheduled by each District Judge no earlier than seventy
20 ~~(70)~~ days following entry of a guilty plea or a verdict of guilty.

21
22 **2.** The PSI, including guideline computations, shall be completed and made available for
23 disclosure to the attorneys for the parties at least thirty-five ~~(35)~~ days prior to the scheduled
24 sentencing proceedings, unless the defendant waives this minimum period.

25
26 **3.** Within five ~~(5)~~ days following entry of a guilty plea or a verdict of guilty, counsel for the
27 defendant and the probation officer will have made arrangements for the initial interview of the
28 defendant for the PSI.

29
30 **4.** Within fourteen ~~(14)~~ days of receipt of the report, counsel for the defendant and the
31 government must communicate any objections, in writing, to each other and to the probation officer.
32 The probation officer may meet with counsel and the defendant to discuss the objections and may
33 conduct a further investigation and revise the report as appropriate.

34
35 **5.** Seven ~~(7)~~ days prior to the sentencing proceeding, the probation officer must submit to the
36 cCourt the final report and an addendum containing unresolved issues. The PSI, if revised, and the
37 addendum will also be made available to all counsel.

38
39 **6.** Counsel for the parties shall confer no later than seven ~~(7)~~ days prior to the scheduled
40 sentencing hearing proceeding with respect to the anticipated length of the sentencing and the
41 number of witnesses to be called. If either party reasonably anticipates that the sentencing
42 proceeding will exceed one ~~(1)~~ hour, the party shall file a notice with the Clerk of the Court and
43 shall hand deliver a courtesy copy to the United States Probation Office no later than five ~~(5)~~ days
44 prior to the sentencing proceeding. The notice shall advise the Court of the number of witnesses to

1 be called and the estimated time required for the sentencing proceeding. Additionally, counsel for
2 the parties shall file within the same time period any notice for enhancement of sentence or requests
3 for departure.

4
5 **7.** The recommendation as to sentencing made to the Court by the United States Probation Office
6 shall remain confidential.

7
8 **8.** Counsel for the parties may retain the PSI in their custody, and counsel for the defendant shall
9 provide a copy to the defendant. However, the PSI is a confidential document and neither the parties
10 nor their counsel are authorized to duplicate or disseminate it to third parties without prior
11 permission of the Court.

12
13 Effective Dec. 1, 1994.

14
15 **Authority**

16
17 Administrative Order 95-02.

18
19 **RULE 88.9 MOTIONS IN CRIMINAL CASES**

20
21 **A.** Motions in criminal cases are subject to the requirements of, and shall comply with, Local Rule
22 7.1. with the following exceptions:

23
24 Section 7.1A(3) ~~;~~ which is superseded by this Local Rule.

25
26 Section 7.1B ~~;~~ which pertains to hearings. Hearings on criminal motions may be set by the
27 Court upon appropriate request or as required by the Federal Rules of Criminal Procedure
28 and/or Constitutional Law.

29
30 In addition, at the time of filing motions in criminal cases, counsel for the moving party shall file
31 with the Clerk of the Court a statement certifying either: (a) that counsel have conferred in a good
32 faith effort to resolve the issues raised in the motion and have been unable to do so; or (b) that
33 counsel for the moving party has made reasonable effort (which shall be identified with specificity
34 in the statement) to confer with the opposing party but has been unable to do so.

35
36 **B.** Motions in criminal cases which require evidentiary support shall be accompanied by a concise
37 statement of the material facts upon which the motion is based.

38
39 **C.** Motions in criminal cases shall be filed within ~~28~~ twenty-eight days from the arraignment of
40 the defendant to whom the motion applies, except that motions arising from a post-arraignment
41 event shall be filed within a reasonable time after the event.

42
43 Effective Dec. 1, 1994; amended effective April 15, 1996; April 15, 1997; April 15, 1998; April
44 15, 2003.

1 **Authority**

2
3 (1994) Formerly Local Rule 10G; inadvertently omitted in 1993 revision.

4
5
6 (1996) B. From Local Rule 7.5 and former Local Rule 10.H.

7 **Comments**

8
9
10 (1996) A. Removes any explicit requirement for consultation directly between government attorney
11 and self-represented defendant. B. Reinstates requirement of a statement of facts for certain criminal
12 motions.

13
14 (1997) [A.] Explicitly incorporates into Local Rule 88.9 applicable portions of Local Rule 7.1.

15
16 (1998) Local Rule 88.9 C is added to reflect the filing time previously prescribed by the Standing
17 Order on Criminal Discovery of the Southern District, with additional flexibility for motions arising
18 from later events.

19
20 (2003) Subsection A amended for clarification and to harmonize with Local Rule 7.1.A.3.

21 **RULE 88.10 CRIMINAL DISCOVERY**

22
23
24 **A.** The government shall permit the defendant to inspect and copy the following items or copies
25 thereof, or supply copies thereof, which are within the possession, custody or control of the
26 government, the existence of which is known or by the exercise of due diligence may become known
27 to the government:

- 28
29 1. Written or recorded statements made by the defendant;̣
- 30
31 2. The substance of any oral statement made by the defendant before or after his arrest in
32 response to interrogation by a then known-to-be government agent which the government
33 intends to offer in evidence at trial;̣
- 34
35 3. Recorded grand jury testimony of the defendant relating to the offenses charged;̣
- 36
37 4. The defendant's arrest and conviction record;̣
- 38
39 5. Books, papers, documents, photographs, tangible objects, buildings or places, or copies
40 or portions thereof, which are material to the preparation of the defendant's defense, or which
41 the government intends to use as evidence at trial to prove its case;̣in=chief, or which were
42 obtained from or belonging to the defendant;̣and
- 43
44 6. Results or reports of physical or mental examinations, and of scientific tests or

1 experiments, made in connection with this case.

2
3 **B.** The defendant shall permit the government to inspect and copy the following items, or copies
4 thereof, or supply copies thereof, which are within the possession, custody or control of the
5 defendant, the existence of which is known or by the exercise of due diligence may become known
6 to the defendant:

7
8 1. Books, papers, documents, photographs or tangible objects which the defendant intends
9 to introduce as evidence in chief at trial;

10
11 2. Any results or reports of physical or mental examinations and of scientific tests or
12 experiments made in connection with this case which the defendant intends to introduce as
13 evidence in chief at trial, or which were prepared by a defense witness who will testify
14 concerning the contents thereof; and

15
16 3. If a defendant intends to rely upon the defense of insanity at the time of the alleged crime,
17 or intends to introduce expert testimony relating to a mental disease or defect or other mental
18 condition bearing on guilt or, in a capital case, punishment, he or she shall give written notice
19 thereof to the government.

20
21 **C.** The government shall reveal to the defendant and permit inspection and copying of all
22 information and material known to the government which may be favorable to the defendant on the
23 issues of guilt or punishment within the scope of *Brady v. Maryland*, 373 U.S. 83 (1963), and *United*
24 *States v. Agurs*, 427 U.S. 97 (1976).

25
26 **D.** The government shall disclose to the defendant the existence and substance of any payments,
27 promises of immunity, leniency, preferential treatment, or other inducements made to prospective
28 government witnesses, within the scope of *Giglio v. United States*, 405 U.S. 150 (1972), and *Napue*
29 *v. Illinois*, 360 U.S. 264 (1959).

30
31 **E.** The government shall supply the defendant with a record of prior convictions of any alleged
32 informant who will testify for the government at trial.

33
34 **F.** The government shall state whether defendant was identified in any lineup, showup,
35 photospread or similar identification proceeding, and produce any pictures utilized or resulting
36 therefrom.

37
38 **G.** The government shall advise its agents and officers involved in this case to preserve all rough
39 notes.

40
41
42 **H.** The government shall advise the defendant(s) of its intention to introduce extrinsic act
43 evidence pursuant to Federal Rule of Evidence Rule 404(b), ~~Federal Rules of Evidence~~. The
44 government shall provide notice regardless of how it intends to use the extrinsic act evidence at trial,

1 i.e. during its case-in-chief, for impeachment, or for possible rebuttal. Furthermore, the government
2 shall apprise the defense of the general nature of the evidence of the extrinsic acts.
3

4 **I.** The government shall state whether the defendant was an aggrieved person, as defined in Title
5 18, United States Code, Section 2510(11), of any electronic surveillance, and if so, shall set forth
6 in detail the circumstances thereof.
7

8 **J.** The government shall have transcribed the grand jury testimony of all witnesses who will
9 testify for the government at the trial of this cause, preparatory to a timely motion for discovery.
10

11 **K.** The government shall, upon request, deliver to any chemist selected by the defense, who is
12 presently registered with the Attorney General in compliance with Title 21, United States Code,
13 Sections 822 and 823, and 21 C.F.R. Section 101.22(8), a sufficient representative sample of any
14 alleged contraband which is the subject of this indictment, to allow independent chemical analysis
15 of such sample.
16

17 **L.** The government shall permit the defendant, his counsel and any experts selected by the
18 defense to inspect any automobile, vessel, or aircraft allegedly utilized in the commission of any
19 offenses charged. Government counsel shall, if necessary, assist defense counsel in arranging such
20 inspection at a reasonable time and place, by advising the government authority having custody of
21 the thing to be inspected that such inspection has been ordered by the court.
22

23 **M.** The government shall provide the defense, for independent expert examination, copies of all
24 latent fingerprints or palm prints which have been identified by a government expert as those of the
25 defendant.
26

27 **N.** The government shall, upon request of the defendant, disclose to the defendant a written
28 summary of testimony the government reasonably expects to offer at trial under Federal Rules of
29 Evidence Rules 702, 703, or 705 of the Federal Rules of Evidence. This summary must describe
30 the witnesses' opinions, the bases and the reasons therefor, and the witnesses' qualifications. If the
31 defendant seeks and obtains discovery under this paragraph, or if the defendant has given notice
32 under Federal Rule of Criminal Procedure 12.2(b) of the Federal Rules of Criminal Procedure of an
33 intent to present expert testimony on the defendant's mental condition, the defendant shall, upon
34 request by the government, disclose to the government a written summary of testimony the
35 defendant reasonably expects to offer at trial under Federal Rules of Evidence 702, 703, 705 or
36 Federal Rule of Criminal Procedure 12.2(b), describing the witnesses' opinions, the bases and the
37 reasons for these opinions, and the witnesses' qualifications.
38

39 **O.** The parties shall make every possible effort in good faith to stipulate to all facts or points of
40 law the truth and existence of which is not contested and the early resolution of which will expedite
41 the trial.
42

43 **P.** The parties shall collaborate in preparation of a written statement to be signed by counsel for
44 each side, generally describing all discovery material exchanged, and setting forth all stipulations

1 entered into at the conference. No stipulations made by defense counsel at the conference shall be
2 used against the defendant unless the stipulations are reduced to writing and signed by the defendant
3 and his counsel. This statement, including any stipulations signed by the defendant and his counsel,
4 shall be filed with the Court within five ~~(5)~~ days following the conference.
5

6 **Q. Schedule of Discovery.**
7

8 1. Discovery which is to be made in connection with a pre-trial hearing other than a bail or
9 pre-trial detention hearing shall be made not later than ~~48~~ forty-eight hours prior to the
10 hearing. Discovery which is to be made in connection with a bail or pre-trial detention hearing
11 shall be made not later than the commencement of the hearing.
12

13 2. Discovery which is to be made in connection with trial shall be made not later than
14 fourteen ~~(14)~~ days after the arraignment, or such other time as ordered by the court.
15

16 3. Discovery which is to be made in connection with post-trial hearings (including, by way
17 of example only, sentencing hearings) shall be made not later than seven ~~(7)~~ days prior to the
18 hearing. This discovery rule shall not affect the provisions of S.D.Fla.L.R. Local Rule 88.8
19 regarding pre-sentence investigation reports.
20

21 It shall be the continuing duty of counsel for both sides to immediately reveal to opposing counsel
22 all newly discovered information or other material within the scope of this Local Rule.
23

24 Effective Dec. 1, 1994; amended effective April 15, 1996; April 15, 1998; April 15, 2000; April
25 15, 2003; April 15, 2005.
26

27 **Authority**
28

29 (1994) Former Standing Order on Criminal Discovery of the Southern District, as amended after
30 public hearing in 1994.
31

32 (1996) A.5. revised to include provisions of Federal Rule of Criminal Procedure 16(a)(1)(C); ;
33

34 (1998) Section N is revised to conform to amendments to Federal Rules of Criminal Procedure
35 16(a)(1)(E) and (b)(1)(C)(ii); ; Section Q.2 is amended to effectuate discovery within ~~14~~ fourteen
36 days or arraignment, without the entry of a Court order, or within such other time period as the Court
37 may order.
38

39 **Comments**
40

41 (2000) With regard to discovery practices related to search warrants in criminal cases *see* September
42 7, 1999 ; letter from the then United States Attorney for the Southern District of Florida which has
43 been posted at the U.S. Attorney's web site at
44 http://www.usdoj.gov/usao/fls/Discovery_Practices.html.

1 (2003) B.3 amended to conform to 2002 amendment of ~~Fed. R. Crim. P.~~ Federal Rule of Criminal
2 Procedure 12.2.

3
4 (2005) H amended to conform to 2004 amendment to Standing Discovery Order. *See United States*
5 *v. Carrasco*, 381 F.3d 1237, 1240 n. 3 (11th Cir. 2004).

6
7 **RULE 88.11 AFTER HOURS CRIMINAL DUTY PROCEDURES**

8
9 When a defendant is arrested after hours (in the evening, on the weekend, on a holiday, or in the
10 daytime during the business week at a time that does not permit an appearance at the prescribed
11 session of Magistrate Court), the Duty ~~AUSA~~ Assistant United States Attorney shall contact the
12 Duty Magistrate Judge for the purpose of having a bond set.

13
14 Once the Duty Magistrate Judge sets a bond, the Duty ~~AUSA~~ Assistant United States Attorney shall
15 transmit the bond information to the Duty Marshal and/or to the arresting agents who shall transmit
16 the bond information to the booking officials at the receiving institution. A "permanent" bond shall
17 be set for the defendant at the next available prescribed Duty Magistrate Judge Court session when
18 the defendant appears for initial appearance.

19
20 For arrests that occur during the business week, prior to the end of the business day but subsequent
21 to a time when an initial appearance at the prescribed session of Magistrate Judge Court can be
22 made, the Duty ~~AUSA~~ Assistant United States Attorney shall contact the Duty Magistrate Judge in
23 chambers for the purpose of having a temporary bond set. As with after hours arrests, the Duty
24 ~~AUSA~~ Assistant United States Attorney shall transmit the bond information to the Duty Marshal
25 and/or the arresting agents. If the Duty Magistrate Judge is on the bench when a Duty
26 ~~AUSA~~ Assistant United States Attorney calls for the purpose of having a temporary bond set, the
27 Duty Magistrate Judge will return the Duty ~~AUSA's~~ Assistant United States Attorneys call as soon
28 as the Duty Magistrate Judge gets off the bench.

29
30 For after hours arrests, the Duty ~~AUSA~~ Assistant United States Attorney shall leave a message on
31 the Duty mMagistrate jJudge's beeper or cell phone. If by beeper, the call will be returned by the
32 Duty mMagistrate jJudge. Once the Duty mMagistrate jJudge sets a bond, the Duty ~~AUSA~~ Assistant
33 United States Attorney shall transmit the bond information to the Duty Marshal and/or the arresting
34 agents for transmittal to the receiving institution. Routine arrests occurring after 10:00 p.m. need
35 not be communicated to the Duty Magistrate Judge that night, but shall be reported by the Duty
36 ~~AUSA~~ Assistant United States Attorney to the Duty Magistrate Judge the following morning. In
37 emergency situations, the Duty Magistrate Judge may be contacted directly at any hour.

38
39 Since a probable causes determination must be made within forty-eight hours of all arrests, a
40 criminal complaint must be presented directly to a ~~mMagistrate jJudge~~ Magistrate Judge for review and approval in
41 all cases where the initial appearance will not take place within forty-eight hours of an arrest.

42
43 All after-hours Duty arrests (including but not limited to arrests on warrants where bonds have
44 already been endorsed/set) shall be reported to the Duty Magistrate Judge by the Duty

1 ~~AUSA~~Assistant United States Attorney.

2
3 Effective April 15, 2006.

4
5 **Comments**

6
7 (2006) The Duty ~~AUSA~~Assistant United States Attorney shall transmit the bond information to
8 assure that any interested party can readily ascertain the temporary bond which has been set for a
9 particular defendant. The Duty ~~AUSA~~Assistant United States Attorney(evening or weekend) should
10 contact the Duty Magistrate Judge the Friday before the Duty ~~AUSA's~~Assistant United States
11 Attorney's tour of duty, to discuss the Duty Magistrate Judge's preference regarding taking duty
12 calls. Some ~~m~~Magistrate judges may prefer to have the Duty ~~AUSA~~Assistant United States
13 Attorney contact them directly, rather than by beeper. All after-hours Duty matters should be
14 coordinated through the Duty ~~AUSA~~Assistant United States Attorney. For example, when an arrest
15 is authorized by a non-Duty ~~AUSA~~Assistant United States Attorney, that arrest should be
16 coordinated through and/or with the Duty ~~AUSA~~Assistant United States Attorney. At a minimum,
17 the Duty ~~AUSA~~Assistant United States Attorney should be made aware of all after-hours Duty
18 activities by other ~~AUSA's~~Assistant United States Attorney's. There are at least two reasons for the
19 procedure that all after-hours Duty arrests must be reported to the Duty Magistrate Judge. First,
20 there may be confusion as to whether an "endorsed" bond is a judge-set bond or an ~~AUSA~~Assistant
21 United States Attorney-recommended bond. Second, the Duty Magistrate Judge must be made
22 aware of all arrests occurring after hours, to enable the Duty Magistrate Judge to respond to related
23 inquiries.

24
25 **APPENDICES**

26
27 **APPENDIX A. DISCOVERY PRACTICES HANDBOOK**

28
29 **ADMINISTRATIVE ORDER 96-36. ADOPTION OF DISCOVERY PRACTICES**
30 **HANDBOOK AS APPENDIX TO LOCAL RULES**

31
32 The attached Discovery Practices Handbook was prepared by the Federal Courts Committee
33 of the Dade County Bar Association for the guidance of the members of the Bar. The Court's
34 Advisory Committee on Rules and Procedures has recommended that the Discovery Practices
35 Handbook be adopted as a published appendix to the Local ~~General~~ Rules. Upon consideration of
36 this recommendation, it is hereby

37
38 ORDERED as follows:

- 39
40 1. This Order and the Discovery Practices Handbook, in the form attached to this Order, shall be
41 published as an appendix to the Local ~~General~~ Rules.
42
43 2. The practices set forth in the Discovery Practices Handbook shall not have the force of law,
44 but may be looked to by practitioners for guidance in conducting discovery in this District.

1 3. In the event of any conflict between the provisions of the Discovery Practices Handbook and
2 applicable case, rule, or statutory law, counsel should look first to the applicable authority to
3 determine proper discovery practice.
4

5 4. No provision of the Discovery Practices Handbook shall limit the discretion of a District or
6 Magistrate Judge to provide for different practices in cases before that Judge.
7

8 DONE AND ORDERED in Chambers at the United States Federal Building and Courthouse,
9 299 East Broward Boulevard, Fort Lauderdale, Florida this 27th day of June, 1996.
10

11 I. DISCOVERY IN GENERAL 12

13 A. Courtesy and Cooperation Among Counsel. 14

15 (1) *Courtesy.* Discovery in this District is normally practiced with a spirit of cooperation and
16 civility. Local lawyers and the Court are proud of the courteous practice that has been traditional
17 in the Southern District. Courtesy suggests that a telephone call is appropriate before taking action
18 that might be avoided by agreement of counsel.
19

20 (2) *Scheduling.* A lawyer shall normally attempt to accommodate the calendars of opposing
21 lawyers in scheduling discovery.
22

23 (3) *Stipulations.* The parties may stipulate in writing to modify any practice or procedure
24 governing discovery, except that the parties may not make stipulations extending the time to answer
25 interrogatories, extending the time to produce documents, electronically stored information and
26 things and extending the time by a request for admissions must be answered where the stipulation
27 would interfere with any time set for completion of discovery, for hearing a motion, or for trial.
28 Stipulations that would so interfere may be made only with eCourt approval. See Fed. R. Civ. P.
29 Federal Rule of Civil Procedure 29.
30

31 (4) *Withdrawal of Motions.* If counsel are able to resolve their differences after a discovery
32 motion or response is filed, the moving party should file a notice of withdrawal of the motion to
33 avoid unnecessary judicial labor.
34

35 (5) *Mandatory Disclosure.* The disclosure requirements imposed by ~~Fed. R. Civ. P.~~ Federal Rule
36 of Civil Procedure 26(a)(1)-(4), and the early discovery moratorium imposed by ~~Fed. R. Civ. P.~~
37 Federal Rule of Civil Procedure 26(d), are applicable to civil proceedings in the Southern District
38 of Florida.
39

40 B. Filing of Discovery Materials. 41

42 (1) *General Rule.* In accordance with ~~Federal Rule of Civil Procedure~~ Rule 5(d), ~~Fed. R. Civ. P.~~,
43 and Local ~~General~~ Rule 26.1.B, Southern District of Florida, disclosures under ~~Fed. R. Civ. P. Rule~~
44 Federal Rules of Civil Procedure 26(a)(1) or (2), ~~Fed. R. Civ. P.~~, and discovery materials shall not be

1 filed with the Court as a matter of course. Disclosures and discovery ~~documents~~materials may later
2 be filed if necessary in presentation and consideration of a motion to compel, a motion for protective
3 order, a motion for summary judgment, a motion for injunctive relief, or other similar proceedings.
4

5 (2) *Court-Ordered Filing of Discovery Materials.* In circumstances involving trade secret
6 information or other categories of information, the Court may order that discovery be filed with the
7 Court in order to preserve the integrity of the information. However, such practice is only permitted
8 after the Court has determined, upon timely motion, that filing with the Court is necessary to
9 safeguard the interests jeopardized by the normal discovery process. When such situations arise,
10 counsel are encouraged to formulate agreements governing discovery that minimize the judicial role
11 in administering routine discovery matters.
12

13 (3) *Filings Under Seal.* Documents, electronically stored information and things may be filed
14 under seal in accordance with the procedures set forth in Local ~~General~~ Rule 5.4.
15

16 **C. Supplementing Answers.** The Federal Rules of Civil Procedure expressly provide that in
17 many instances a party is under a duty to supplement or correct a prior disclosure or response to
18 include information thereafter acquired. See Fed. R. Civ. P. Rule Federal Rule of Civil Procedure
19 26(e). A party may not, by placing supplementation language at the beginning of its discovery
20 request, expand the obligations of another under the Federal Rules of Civil Procedure.
21

22 **D. Timeliness and Sanctions.**

23
24 (1) *Timeliness of Discovery Responses.* The Federal Rules of Civil Procedure set forth explicit
25 time limits for responses to discovery requests. Those are the dates by which a lawyer should
26 respond; counsel should not await a Court order. If a lawyer cannot answer on time, an extension
27 of time should first be sought from opposing counsel. If unable to resolve the matter informally,
28 counsel should move for an extension of time in which to respond, and inform opposing counsel so
29 that, in the meantime, no unnecessary motion to compel a response will be filed. See Local General
30 Rule 26.1.I, Southern District of Florida, requiring a certificate that counsel have conferred before
31 seeking judicial relief.
32

33 (2) *Extensions of Time.* Motions for extension of time within which to respond to discovery
34 should be filed sparingly and only when counsel are unable informally to resolve the matter with
35 opposing counsel. Counsel should be aware that the mere filing of a motion for an extension of time
36 in which to respond does not, absent an order of the Court, extend the deadline for responding to
37 discovery requests. See Local General Rule 7.1.A.3, ~~Southern District of Florida~~.
38

39 (3) *Objections.* When objections are made to discovery requests, all grounds for the objections
40 must be specifically stated. When objections are untimely made, they are waived. See Local
41 General Rule 26.1.G.3.a.
42

43 (4) *Sanctions.* Because lawyers are expected to respond when the Federal Rules of Civil
44 Procedure require, Federal Rule of Civil Procedure Rule 37 provides that if an opposing lawyer must

1 go to eCourt to make the recalcitrant party answer, the moving party may be awarded counsel fees
2 incurred in compelling the discovery. Federal Rule of Civil Procedure Rule 37 is enforced in this
3 District. Further, if a Court order is obtained compelling discovery, unexcused failure to provide
4 a timely response is treated by the Court with the gravity it deserves; willful violation of a Court
5 order is always serious and may be treated as contempt.

6
7 (5) *Stays or Limitation of Discovery.* Normally, the pendency of a motion to dismiss or motion
8 for summary judgment will not justify a unilateral motion to stay discovery pending a ruling on the
9 dispositive motion. Such motions for stay are generally denied except where a specific showing of
10 prejudice or burdensomeness is made, or where a statute dictates that a stay is appropriate or
11 mandatory. See, e.g. 15 U.S.C. § Title 15, United States Code, Section 77z-1(b)(1), the Private
12 Securities Litigation Reform Act of 1995. This policy also applies when a case is referred to eCourt
13 annexed mediation under Local ~~General~~ Rule 16.2. Where a motion to dismiss for lack of personal
14 jurisdiction has been filed pursuant to Federal Rule of Civil Procedure Rule 12(b)(2), discovery may
15 be limited to jurisdictional facts by eCourt order.

16
17 **E. Completion of Discovery.**

18
19 (1) *Discovery Completion.* Local ~~General~~ Rule 16.1.A sets discovery completion dates for
20 differentiated case management tracks. The jJudges may have individual methods extending the
21 deadline, however, each jJudge follows the rule that the completion date means that all discovery
22 must be completed by that date. For example, interrogatories must be served more than thirty days
23 prior to the completion date to permit the opposing party to respond. Untimely discovery requests
24 are subject to objection on that basis. Counsel may, by agreement, conduct discovery after the
25 formal completion date but should not rely upon the Court to resolve discovery disputes arising after
26 the discovery completion date. Likewise, counsel should not rely upon the Court to permit use of
27 untimely discovery materials at trial.

28
29 (2) *Extension of Time for Discovery Completion.* Occasionally, the Court will allow additional
30 discovery upon motion, but counsel should not rely on obtaining an extension. When allowed, an
31 extension is normally made only upon written motion showing good cause for the extension of
32 discovery (including due diligence in the pursuit of discovery prior to completion date) and
33 specifying the additional discovery needed and its purposes. Motions for extension of discovery
34 time are treated with special disfavor if filed after the discovery completion date and will normally
35 be granted only if it clearly appears that any scheduled trial will not have to be continued as a result
36 of the extension.

37
38 **II. DEPOSITIONS**

39
40 **A. General Policy and Practice.**

41
42 (1) *Scheduling.* A courteous lawyer is normally expected to accommodate the schedules of
43 opposing lawyers. In doing so, the attorney can either pre-arrange a deposition, or notice the
44 deposition while at the same time indicating a willingness to be reasonable about any necessary

1 rescheduling. Local ~~General~~ Rule 26.1.J requires at least five ~~(5)~~ working days' notice in writing
2 to every other party and to the deponent (if a non-party) for a deposition in this State, and ten ~~(10)~~
3 working days' notice for an out-of-state deposition. Noncompliance obviates the need for protective
4 order.

5
6 Notwithstanding the foregoing, in accordance with Federal Rule of Civil Procedure ~~Rule~~ 32(a)(3),
7 ~~Fed.R.Civ.P.~~, no deposition shall be used against a party who, having received less than eleven ~~(11)~~
8 calendar days' notice of a deposition as computed under Federal Rule of Civil Procedure ~~Rule~~ 6(a),
9 has promptly upon receiving such notice filed a motion for protective order under Federal Rule of
10 Civil Procedure ~~Rule~~ 26(c)(2) requesting that the deposition not be held or be held at a different time
11 or place and such motion is pending at the time the deposition is held.

12
13 (2) *Persons Who May Attend Depositions.* As a general proposition, pretrial discovery in civil
14 matters must take place in public unless compelling reasons exist for denying the public access to
15 the proceedings. Each lawyer may ordinarily be accompanied at the deposition by one
16 representative of each client and one or more experts. If witness sequestration is desired, a cCourt
17 order entered prior to the deposition is required. Lawyers may also be accompanied by records
18 custodians, paralegals, secretaries, and the like, even though they may be called as technical
19 witnesses on such questions as chain of custody or the foundation for the business record rule, or
20 other technical matters. While more than one lawyer for each party may attend, only one should
21 question the witness or make objections, absent contrary agreement.

22
23 (3) *Persons Designated and Produced in Response to Rule 30(b)(6) Notice.* In responding to a
24 properly drawn notice for the taking of a deposition pursuant to ~~Fed. R. Civ. P.~~ Federal Rule of
25 Civil Procedure 30(b)(6), it is the duty and responsibility of the organization to whom such notice
26 is given, and its counsel, to designate and produce at the deposition those witnesses who shall
27 testify, concerning subjects or matters known or reasonably available to the organization as
28 described in the notice. It is inappropriate and improper in such circumstances to produce a single
29 witness who only has knowledge concerning one or more of the topics specified in the notice but
30 not all of them.

31
32 (4) *Length and Number of Depositions.* Federal Rule of Civil Procedure ~~Rule~~ 30(d)(2);
33 ~~Fed.R.Civ.P.~~, unless otherwise authorized by the Court or stipulated by the parties, a deposition is
34 limited to one day of seven hours. Under ~~Fed. R. Civ. P.~~ Federal Rule of Civil Procedure
35 30(a)(2)(A), absent written stipulation of the parties or leave of Court, the number of depositions
36 being taken by each party is limited to ten.

37
38 **B. Objections.**

39
40 (1) *Objections to the Form of Questions.* ~~Fed. R. Civ. P.~~ Federal Rule of Civil Procedure
41 32(d)(3)(B) provides that an objection to the form of a question is waived unless made during the
42 deposition. Many lawyers make such objections simply by stating "I object to the form of the
43 question." This normally suffices because it is usually apparent that the objection is directed to
44 "leading" or to an insufficient or inaccurate foundation. The interrogating lawyer has a right to ask
45 the objecting party to be more specific in his objection, however, so that the problem with the

1 question, if any, can be understood and, if possible, cured, as the rule contemplates.

2
3 (2) *Instruction That a Witness Not Answer.* Instructing a witness not to answer is greatly
4 disfavored by the Court, and is a practice which one should use only in an appropriate extraordinary
5 situation, usually involving privilege (see the section of this Handbook concerning the invocation
6 of privilege below). Federal Rule of Civil Procedure Rule 30(d)(1) of the Federal Rules of Civil
7 Procedure sets forth the permissible circumstances for such an instruction. In most circumstances,
8 if a question is objectionable, a lawyer should simply object in the proper manner and allow the
9 answer to be given subject to the objection. A lawyer who improperly instructs a witness not to
10 answer runs a serious risk that the lawyer and/or the client may be subject to substantial monetary
11 sanctions, including the cost of reconvening the deposition (travel expenses, attorneys' fees, court
12 reporter fees, witness fees, and the like) in order to obtain the answers to such questions. See also
13 Local General Rule 30.1.

14
15 (3) *Other Restrictions on Deposition Conduct.* ~~Fed. R. Civ. P.~~ Federal Rule of Civil Procedure
16 30(d)(1) and Local General Rule 30.1, particularly the local rule, focus on proper and improper
17 conduct by counsel at depositions. Counsel should not attempt to prompt answers by the use of
18 "suggestive", "argumentative," or "speaking" objections; off the record conferences between
19 counsel and witness are inappropriate; instructions not to answer are limited; and witnesses should
20 be treated with courtesy. Those conducting depositions under the ~~rules~~ Local Rules of this ~~the~~ District
21 should take careful note of the provisions of ~~Local General Rule 30.1~~, entitled "Sanctions for
22 Abusive Deposition Conduct."

23 24 **C. Production of Documents, Electronically Stored Information and Things at Depositions.**

25
26 (1) *Scheduling.* Consistent with the requirements of Federal Rules of Civil Procedure 30 and 34,
27 a party seeking production of documents, electronically stored information or things of another party
28 in connection with a deposition should schedule the deposition to allow for ~~the production of the~~
29 ~~documents~~ in advance of the deposition.

30
31 (2) *Option to Adjourn or Proceed.* If requested ~~documents which are discoverable~~ materials are
32 not produced prior to the deposition, the party noticing the deposition may either adjourn the
33 deposition until after such ~~documents~~ materials are produced or may proceed without waiving the
34 right to have access to the ~~documents~~ materials before finally concluding the deposition.

35
36 (3) *Subpoena for Deposition Duces Tecum.* A non-party can be compelled to make discovery in
37 an action only by means of a Federal Rule of Civil Procedure Rule 45 subpoena. Parties to litigation
38 open themselves to broad discovery practices encompassed in ~~Fed. R. Civ. P.~~ Federal Rules of Civil
39 Procedure 30(b)(5) and 34.

40
41
42 ~~Fed. R. Civ. P.~~ Federal Rule of Civil Procedure 45(a) states in relevant part that:

- 43
44 (1) Every subpoena shall (A) state the name of the court from which it is issued; and (B) state

1 the title of the action, the name of the court in which it is pending, and its civil action number;
2 and ... (2) ... A subpoena for attendance at a deposition shall issue from the court for the
3 district designated by the notice of deposition as the district in which the deposition is to be
4 taken.

5
6 Consequently, a subpoena for the deposition of a non-party, in a lawsuit pending in the Southern
7 District of Florida, that is scheduled to take place in the Northern District of Florida, should be
8 headed with a Northern District of Florida caption.

9
10 Additionally, if the non-party recipient of a Federal Rule of Civil Procedure ~~Rule~~ 45(a)(2) subpoena
11 for deposition or production of documents, electronically stored information or things seeks relief
12 from the eCourt pertaining to the subpoena, the motion seeking such relief must be filed in the
13 district in which the deposition is to take place. Leaving no doubt about the drafter's intentions when
14 revising the rule, the Commentary to Federal Rule of Civil Procedure ~~Rule~~ 45(a)(2), states as
15 follows:

16
17 Pursuant to Paragraph (a)(2), a subpoena for a deposition must still issue from the court in which
18 the deposition or production would be compelled. Accordingly, a motion to quash such a subpoena
19 if it overbears the limits of the subpoena power must, as under the previous rule, be presented to the
20 court for the district in which the deposition would occur.

21
22 Commentary to 1991 Amendment to ~~Fed. R. Civ. P.~~ See Federal Rule of Civil Procedure 45.

23 24 **D. Non-stenographic Recording of Depositions.**

25
26 (1) *Videotape Depositions.* Videotape depositions and recordation by other non-stenographic
27 means may be taken by parties without first having to obtain permission from the Court or
28 agreement from counsel. ~~Fed. R. Civ. P.~~ Federal Rule of Civil Procedure 30(b)(2). With prior
29 notice to the deponent and other parties, any party may designate another method to record the
30 deponent's testimony in addition to the method specified by the person taking the deposition and the
31 notice or cross-notice of deposition shall state the method by which the testimony shall be recorded.
32 ~~Fed. R. Civ. P.~~ See Federal Rule of Civil Procedure 30(b)(3).

33
34 The following procedures are commonly followed when the deposition is recorded by a
35 non-stenographic means:

36
37 a. If the deposition of the witness is recorded on videotape or other non-stenographic means,
38 the testimony of the witness does not have to be recorded by a certified stenographic reporter
39 and transcribed in the usual manner, unless such transcripts are to be offered to the Court.
40 ~~Fed.R.Civ.P.~~ See Federal Rules of Civil Procedure 30(b) and 32(c).

41
42 b. Prior to the taking of any deposition, the witness shall be first duly sworn by an officer
43 authorized to administer oaths, before whom the deposition is being taken. If the deposition
44 is recorded other than stenographically, the officer designated by ~~Fed. R. Civ. P.~~ Federal Rule

1 of Civil Procedure 28, shall state on the record (a) the officer's name and business address, (b)
2 the date, time and place of the deposition, (c) the deponent's name, (d) administer the oath, and
3 (e) identify all parties present. Items (a) through (c) must be repeated at the beginning of each
4 unit of recorded tape or other recording medium. ~~Fed. R. Civ. P.~~ See Federal Rule of Civil
5 Procedure 30(b)(4).
6

7 c. If any objections are made, the objections shall be ruled upon by the Court on the basis
8 of the stenographic transcript, and if any questions or answers are stricken by the Court, the
9 videotape and sound recording must be edited to reflect the deletions so that it will conform
10 in all respects to the Court's rulings.
11

12 d. The videographer shall certify the correctness and completeness of the recording, orally
13 and visually at the conclusion of the deposition, just as would the stenographic reporter
14 certifying a typed record of a deposition.
15

16 e. Copies of the videotape recording shall be made at the expense of any parties requesting
17 them.
18

19 f. The original of the videotape recording shall be kept by the party requesting the videotape
20 deposition and shall be preserved intact. Therefore, any editing to conform with Court rulings
21 shall be effected through use of a copy of the original videotape recording, which shall be
22 retained by the videographer/court reporter.
23

24 g. The party presenting the videotape deposition at trial is responsible for the expeditious
25 and efficient presentation of the testimony and is expected to see that it conforms in every
26 respect possible to the usual procedure for the presentation of witnesses. ~~Fed. R. Civ. P.~~ See
27 Federal Rule of Civil Procedure 32(a)(3).
28

29 h. A transcript of the deposition (if any) as filed or modified (as the case may be) shall
30 constitute the official record of the deposition for purposes of trial and appeal.
31

32 i. Any other party may, if it so desires, arrange for its own private stenographic transcription
33 or electronic recording at its own expense, which expense will not be taxed as court costs
34 except upon showing of some extraordinary reason.
35

36 j. Some of the procedures described herein are in addition to, not in lieu of, the portions of
37 the Federal Rules of Civil Procedure pertaining to the recordation, transcription, signing,
38 certification, and filing of written depositions.
39

40 (2) *Telephone Depositions.* Telephone depositions or depositions by other remote electronic
41 means may be taken either by stipulation or on motion and order. A deposition is deemed taken in
42 the ~~d~~District and at the place where the deponent is to answer. ~~Fed. R. Civ. P.~~ See Federal Rule of
43 Civil Procedure 30(b)(7).
44

- 1 a. The deponent must swear or affirm an oath before a person authorized to administer oaths
2 in that ~~d~~District and at the place where the deposition is taken, i.e. the witness may not be
3 sworn telephonically.
4
5 b. Speakers must identify themselves whenever necessary for clarity of the record.
6
7 c. The court reporter should be at the deponent's location.
8

9 **E. Depositions of Experts.** A party may depose any person who has been identified as an expert
10 whose opinions may be presented at trial. ~~Fed. R. Civ. P.~~ See Federal Rule of Civil Procedure
11 26(b)(4)(A). However, Local ~~General~~ Rule 26.1.F.1.b provides that an expert's deposition may not
12 be conducted until after the expert summary or report required by Local ~~General~~ Rule 16.1.K is
13 provided.
14

15 **F. Sanctions.** Local ~~General~~ Rule 30.1 prohibits abusive conduct during deposition and provides
16 both monetary and procedural sanctions for such conduct. Prohibited conduct includes "coaching"
17 of witness, improper instructions not to answer, and off-the-record conferences except for the
18 purpose of determining whether to assert a privilege.
19

20 **III. PRODUCTION OF DOCUMENTS, ELECTRONICALLY STORED INFORMATION** 21 **AND THINGS**

22 **A. Preparation and Interpretation of Requests for ~~Documents~~Production.**

23
24
25 (1) *Formulating Requests for Documents, Electronically Stored Information and Things.* A
26 request for documents, electronically stored information or things, whether a request for
27 production or a subpoena duces tecum, should be clear, concise and reasonably particularized.
28 For example, a request for "each and every document supporting your claim" is objectionably
29 broad in most cases.
30

31 (2) *Use of Form Requests.* Attorneys requesting documents, electronically stored information
32 or things shall review any form request or subpoena to ascertain that it is applicable to the facts
33 and contentions of the particular case. A "boilerplate" request or subpoena not directed to the
34 facts of the particular case should not be used.
35

36 (3) *Reading and Interpreting Requests for Documents, Electronically Stored Information and*
37 *Things.* A request for documents, electronically stored information or things, or a subpoena
38 duces tecum shall be read or interpreted reasonably in the recognition that the attorney serving
39 it generally does not have knowledge of the ~~documents~~materials being sought and the attorney
40 receiving the request or subpoena generally does have such knowledge or can obtain it from
41 the client. Counsel should be mindful in producing documents that such things as notes, clips,
42 and other attachments to documents as kept in the normal course of business should also be
43 produced.
44

1 (4) *Oral Requests for Production of Documents, Electronically Stored Information and*
2 *Things*. As a practical matter, many lawyers produce or exchange ~~documents~~discovery
3 materials upon informal request, often confirmed by letter. Naturally, a lawyer's word once
4 given, that an documentitem will be produced, is the lawyer's bond and should be timely kept.
5 Requests for production of ~~documents~~ may be made on the record at depositions. Depending
6 upon the form in which they are made, however, informal requests may not support a motion
7 to compel.

8
9 (5) *Objections*. Absent compelling circumstances, failure to assert objections to a request for
10 production within the time period for a response constitutes a waiver of grounds for objection,
11 and will preclude a party from asserting the objection in a response to a motion to compel.
12 Objections should be specific, not generalized. See Local ~~General~~ Rule 26.1.G.3.a.

13 14 **B. Procedures Governing Manner of Production.**

15
16 (1) *Production of Documents, Electronically Stored Information and Things*. When
17 ~~documents~~ discovery materials are being produced (unless the case is a massive one) the
18 following general guidelines, which may be varied to suit the needs of each case, are normally
19 followed:

20
21 a. Place. The request may as a matter of convenience suggest production at the office
22 of either counsel. The Court expects the lawyers to reasonably accommodate one another
23 with respect to the place of production of ~~documents~~.

24
25 b. Manner of Production. ~~All of the documents~~ The entire production should be made
26 available simultaneously, and the inspecting attorney or paralegal can determine the order
27 in which to ~~look at~~ review the ~~documents~~materials. While the inspection is in progress,
28 the inspecting person shall also have the right to review again any ~~documents~~materials
29 which have already been examined during the inspection.

30
31 The producing party has an obligation to explain the general scheme of record-keeping
32 to the inspecting party. The objective is to acquaint the inspecting party generally with
33 how and where the documents, electronically stored information or things are maintained.
34 The documents, electronically stored information or things should be identified with
35 specific paragraphs of a request for production where practicable, unless the producing
36 party exercises its option under Fed. R. Civ. P. Federal Rule of Civil Procedure 34(b) to
37 produce documents as they are kept in the usual course of business. Generally, when
38 ~~documents~~materials are produced individually, each specific ~~document~~item should be
39 identified with a paragraph of the request. When ~~documents~~materials are produced in
40 categories or in bulk, some reasonable effort should be made to identify certain groups
41 of the ~~produced documents~~production with particular paragraphs of the request or to
42 provide some meaningful description of the ~~documents~~materials produced. The
43 producing party is not obligated to rearrange or reorganize the ~~documents~~materials.

1 Obviously, whatever comfort and normal trappings of civilization that are reasonably
2 available should be offered to the inspecting party.
3

4 c. Listing or Marking. Federal Rule of Civil Procedure Rule 26(a)(1)(B), Fed.R.Civ.P.,
5 requires a party, without awaiting a discovery request, to provide the other parties with
6 a copy of, or a description by category and location, of all documents, ~~data~~
7 compilations~~electronically stored information~~; and tangible things that are in possession,
8 custody, or control of the party and that the disclosing party may use to support its claims
9 or defenses, unless solely for impeachment. ~~The parties also may want to use some means~~
10 ~~of listing or marking all documents produced in the litigation so that produced documents~~
11 ~~can later be differentiated from those which have not been produced. For a relatively few~~
12 ~~documents, a listing prepared by the inspecting attorney (which should be exchanged with~~
13 ~~opposing counsel) may be appropriate; when more documents are involved, the inspecting~~
14 ~~attorney may want to stamp or mark each document with a sequential number. The~~
15 ~~producing party should allow such stamping to be done so long as marking the document~~
16 ~~does not materially interfere with the intended use of the document. Such documents~~
17 ~~which would be materially altered by stamping (e.g., promissory notes) should be listed~~
18 ~~rather than marked. A party producing documents in discovery shall sequentially number~~
19 ~~the pages produced and precede the numbers with a unique prefix, unless so marking a~~
20 ~~document would materially interfere with its intended use or materially damage it (e.g.,~~
21 ~~an original promissory note or other document of intrinsic value). In the event the party~~
22 ~~produces documents as kept in the ordinary course of business, the producing party's~~
23 ~~obligation to sequentially number the pages applies to the documents selected for~~
24 ~~production by the receiving party. When documents produced in response to a request for~~
25 ~~production exceed fifty pages, counsel for the party producing the documents shall affix~~
26 ~~**Bates-stamped** numbers to each page so that the documents produced can be readily~~
27 ~~identified and located.~~

28
29 d. Copying. "Copies" includes photocopies and electronic imaging. While copies are
30 often prepared by the producing party for the inspecting party as a matter of convenience
31 or accommodation, the inspecting party has the right to insist on seeing originals and the
32 right to make direct photocopies or images from the originals.
33

34 Subject to Federal Rule of Civil Procedure 26(b)(2)(B), ~~T~~the copying of documents and
35 electronically stored information will generally be the responsibility of the inspecting
36 party, but the producing party must render reasonable assistance and cooperation. In the
37 routine case with a manageable number of documents the producing party should allow
38 its personnel and its copying or imaging equipment to be used with the understanding that
39 the inspecting party will pay reasonable charges. The best procedure is for documents to
40 be delivered to an independent copying service, which can number/mark and, if desired
41 by a party, image the documents at the time photocopies are made. The cost of this
42 procedure shall be borne by the party seeking the discovery, but if an extra copy is made
43 for the party producing the documents, that party shall bear that portion of the cost.
44

1 e. Later Inspection. Whether the inspecting party may inspect the documents production
2 again at a later date (after having completed the entire initial inspection) must be
3 determined on a case-by-case basis.

4
5 f. Privilege. Objections to the production of documents, electronically stored
6 information or things based on generalized claims of privilege will be rejected. A claim
7 of privilege must be supported by a statement of particulars sufficient to enable the Court
8 to assess its validity. For a more detailed discussion of the invocation of privilege see the
9 section of this handbook dealing with privilege.

10
11 g. General. In most situations the lawyers should be able to reach agreement based
12 upon considerations of reasonableness, convenience and common sense. Since the
13 Discovery Rules contemplate that the lawyers and parties will act reasonably in carrying
14 out the objectives of the Rules, the Court can be expected to deal sternly with a lawyer
15 or party who acts unreasonably to thwart these objectives.

16 17 **IV. INTERROGATORIES**

18 19 **A. Preparing and Answering Interrogatories.**

20
21 (1) *Informal Requests.* Whenever possible, counsel should try to exchange information
22 informally. The results of such exchanges, to the extent relevant, may then be made of record
23 by requests for admissions.

24
25 (2) *Scope of Interrogatories.* The Court will be guided in each case by the limitations stated
26 in ~~Fed. R. Civ. P.~~ Federal Rules of Civil Procedure 26(b) and 33(a). Counsel's signature on
27 interrogatories constitutes a certification of compliance with those limitations. See Fed. R. Civ.
28 P.— Federal Rule of Civil Procedure 26(g)(2). Interrogatories should be brief, simple,
29 particularized and capable of being understood by jurors when read in conjunction with the
30 answer. Interrogatories propounded in the form set forth in Appendix B to the Local Rules
31 comply with the limitations of ~~Fed. R. Civ. P.~~ Federal Rules of Civil Procedure 26(b) and
32 33(a).

33
34 (3) *Responses.* ~~Fed. R. Civ. P.~~ Federal Rule of Civil Procedure 33(a) requires the respondent
35 to furnish whatever information is available, even if other requested information is lacking.
36 When in doubt about the meaning of an interrogatory, the responding party should give it a
37 reasonable interpretation (which may be specified in the response) and answer it so as to
38 disclose rather than deny information. If an answer is made by reference to a document or
39 electronically stored information, it should be attached or identified and made available for
40 inspection. See Fed. R. Civ. P.—Federal Rule of Civil Procedure 33(d).

41
42 (4) *Objections.* Absent compelling circumstances, failure to assert objections to an
43 interrogatory within the time period for answers constitutes a waiver and will preclude a party
44 from asserting the objection in a response to a motion to compel. Objections should be

1 specific, not generalized.
2

3 (5) *Objections Based on Privilege.* Objections based on generalized claims of privilege will
4 be rejected. A claim of privilege must be supported by a statement of particulars sufficient to
5 enable the Court to assess its validity. For a more detailed discussion of the invocation of
6 privilege, see the section of this handbook dealing with privilege.
7

8 (6) *Number of Interrogatories.* Under ~~Rule~~ Federal Rule of Civil Procedure 33(a),
9 ~~Fed.R.Civ.P.~~, without leave of Court or written stipulation of the parties, interrogatories are
10 limited to ~~25~~ twenty-five in number including all discrete subparts.
11

12 (7) *Form Interrogatories.* There are certain kinds of cases which lend themselves to
13 interrogatories which may be markedly similar from case to case, such as employment
14 discrimination and maritime cargo damage suits, for example, or diversity actions in which
15 form interrogatories have been approved by state law. Except for the standard form
16 interrogatories set forth in Appendix B to the Local Rules, interrogatories which parties seek
17 to propound under Local Rules 26.1.G.3 and 26.1.G.4 should be carefully reviewed to make
18 certain that they are tailored to the individual case.
19

20 (8) *Reference to Deposition, ~~or~~ Document or Portion of Electronically Stored Information.*
21 Since a party is entitled to discovery both by deposition and interrogatories, it is ordinarily
22 insufficient to answer an interrogatory by saying something such as "see deposition of Jane
23 Smith," or "see insurance claim." There are a number of reasons for this. For example, a
24 corporation may be required to give its official corporate response even though one of its
25 high-ranking officers has been deposed, since the testimony of an officer may not necessarily
26 represent the full corporate answer. Similarly, a reference to a single document (or portion of
27 electronically stored information) is not necessarily a full answer, and the information in ~~the~~
28 ~~documents~~ such material—unlike the interrogatory answer—is not ordinarily set forth under
29 oath.
30

31 In some circumstances, it may be appropriate for a party to answer a complex interrogatory
32 by saying something such as "Acme Roofing Company adopts as its answer to this
33 interrogatory the deposition testimony of Jane Smith, its President, shown on pages 127–135
34 of the deposition transcript." When a party has already fully answered an interrogatory
35 question in the course of a previous deposition, the deposition may be used carefully and in
36 good faith. However, counsel are reminded that for purposes of discovery sanctions, "an
37 evasive or incomplete answer is to be treated as a failure to answer." See Fed. R. Civ. P.
38 Federal Rule of Civil Procedure 37(a)(3).
39

40 (9) *"List All Documents."* Interrogatories should be reasonably particularized. For example,
41 an interrogatory such as "Identify each and every document upon which you rely in support
42 of your claim in Count Two" may well be objectionably broad in an antitrust case, though it
43 may be appropriate in a suit upon a note or under the Truth-in-Lending Act. While there is no
44 bright-line test, common sense and good faith usually suggest whether such a question is

1 proper.

2
3 (10) *Federal Rule of Civil Procedure 33(d)*. ~~Fed. R. Civ. P.~~ Federal Rule of Civil
4 Procedure 33(d) allows a party in very limited circumstances to produce business records,
5 including documents in lieu of answering interrogatories. To avoid abuses of Federal Rule of
6 Civil Procedure Rule 33(d), the party wishing to respond to interrogatories in the manner
7 contemplated by Federal Rule of Civil Procedure Rule 33(d) should observe the following
8 practice:

9
10 1. Specify the ~~documents~~business records and materials to be produced in sufficient
11 detail to permit the interrogating party to locate and identify the records and to ascertain
12 the answer as readily as could the party from whom discovery is sought.

13
14 2. Make its records available in a reasonable manner (i.e., with tables, chairs, lighting,
15 air conditioning or heat if possible, and the like) during normal business hours, or, in lieu
16 of agreement on that, from 9:00 a.m. to 5:00 p.m., Monday through Friday.

17
18 3. Make available any ~~computerized~~electronically stored information or summaries
19 thereof which it has.

20
21 4. Provide any relevant compilations, abstracts or summaries either in its custody or
22 reasonably obtainable by it, not prepared in anticipation of litigation. If it has any
23 documents or electronically stored information even arguably subject to this clause but
24 which it declines to produce for some reason, it shall call the circumstances to the
25 attention of the parties who may move to compel.

26
27 5. All of the actual clerical data extraction work should be done by the interrogating
28 party unless agreed to the contrary, or unless, after actually beginning the effort, it
29 appears that the task could be performed more efficiently by the producing party. In that
30 event, the interrogating party may ask the Court to review the propriety of ~~Rule~~ Federal
31 Rule of Civil Procedure 33(d) election. In other words, it behooves the producing party
32 to make the ~~document~~-search as simple as possible, or the producing party may be
33 required to answer the interrogatory in full.

34
35 (11) *Answers to Expert Interrogatories*. The Southern District of Florida has adopted a
36 formal procedure by which expert witness reports and summaries are exchanged ~~90~~ ninety
37 days before the pretrial conference (or the calendar call, if no pretrial conference is to be held.)
38 See Local ~~General~~ Rule 16.1.K. No deposition of an expert may be taken until the expert
39 summary or report has been provided. See Local ~~General~~ Rule 26.1.F.1.b. However, initial
40 interrogatories seeking the names of expert witnesses and the substance of their opinions may
41 still be served.

42
43
44 See Local ~~General~~ Rule 26.1.G.1.

1 **V. PRIVILEGE**

2
3 **A. Invocation of Privilege During Deposition.**

4
5 (1) *Procedure for Invocation of Privilege.* Where a claim of privilege is asserted during a
6 deposition and information is not provided on the basis of such assertion:

7
8 (a) The attorney asserting the privilege shall identify during the deposition the nature of
9 the privilege (including work product) which is being claimed and if the privilege is being
10 asserted in connection with a claim or defense governed by state law, indicate the state
11 privilege rule being invoked; and

12
13 (b) The following information shall be provided during the deposition at the time the
14 privilege is asserted, if sought, unless divulgence of such information would cause
15 disclosure of privileged information:

16
17 (i) For documents or electronically stored information, to the extent the information
18 is readily obtainable from the witness being deposed or otherwise:

19
20 (1) the type of document; (e.g., letter or memorandum) and, if electronically
21 stored information, the software application used to create it (e.g., MS Word or
22 MS Excel Spreadsheet;

23
24 (2) general subject matter of the document or electronically stored information;

25
26 (3) the date of the document or electronically stored information;

27
28 (4) such other information as is sufficient to identify the document or
29 electronically stored information for a subpoena duces tecum, including, where
30 appropriate, the author, addressee, and any other recipient of the document or
31 electronically stored information, and, where not apparent, the relationship of the
32 author, addressee, and any other recipient to each other;

33
34 (ii) For oral communications:

35
36 (1) the name of the person making the communication and the names of persons
37 present while the communication was made and, where not apparent, the
38 relationship of the persons present making the communication;

39
40 (2) the date and place of communication;

41
42 (3) the general subject matter of the communication.

43
44 (iii) Objection on the ground of privilege asserted during a deposition may be

1 amplified by the objecting party subsequent to the objection.
2

3 (c) After a claim of privilege has been asserted, the attorney seeking disclosure shall
4 have reasonable latitude during the deposition to question the witness to establish other
5 relevant information concerning the assertion of the privilege, unless divulgence of such
6 information would cause disclosure of privileged information, including
7

8 (i) the applicability of the particular privilege being asserted,
9

10 (ii) circumstances which may constitute an exception to the assertion of the privilege,
11

12 (iii) circumstances which may result in the privilege having been waived, and
13

14 (iv) circumstances which may overcome a claim of qualified privilege.
15

16 **B. Invocation of Privilege in Other Discovery.** Where a claim of privilege is asserted in
17 responding or objecting to other discovery devices, including interrogatories, requests for ~~documents~~
18 production and requests for admissions, and information is not provided on the basis of such
19 assertion, the ground rules set forth above shall also apply. See Local ~~General~~ Rule 26.1.G.3;
20 ~~Southern District of Florida~~. The attorney seeking disclosure of the information withheld may, for
21 the purpose of determining whether to move to compel disclosure, serve interrogatories or notice
22 the depositions of appropriate witnesses to establish other relevant information concerning the
23 assertion of the privilege, including (a) the applicability of the privilege being asserted, (b)
24 circumstances which may constitute an exception to the assertion of the privilege, (c) circumstances
25 which may result in the privilege having been waived, and (d) circumstances which may overcome
26 a claim of qualified privilege.
27

28 **C. Exception for Fifth Amendment Privileges.** Nothing in this section is intended to urge or
29 suggest that a party or witness should provide information that might waive the constitutional
30 privilege against self-incrimination. Failure to follow the procedures set forth in this section shall
31 not be deemed to effect a waiver of any such privilege.
32

33 VI. MOTIONS TO COMPEL OR FOR A PROTECTIVE ORDER 34

35 **A. Reference to Local ~~General~~ Rules 26.1.H and 26.1.I.** The procedures and guidelines
36 governing the filing of motions to compel or for protective order are set forth in Local ~~General~~ Rule
37 26.1, ~~Southern District of Florida~~. Prior to filing such a motion, counsel is required to confer with
38 opposing counsel and both must make a good faith effort to resolve the dispute by agreement. If no
39 conference occurs, counsel for movant must specify in the required certificate what reasonable
40 efforts were made to contact opposing counsel.
41

42 **B. Effect of Filing a Motion for a Protective Order.** In addition to the procedures and
43 guidelines governing the procedures and guidelines governing the filing of motions for a protective
44 order, counsel should be aware that the mere filing of a motion for a protective order does not,

1 absent an order of the Court granting the motion, excuse the moving party from complying with the
2 discovery requested or scheduled. For example, a motion for protective order will not prevent a
3 deposition from occurring; only a Court order granting the motion will accomplish this.
4

5 **C. Time for Filing.** Local ~~General~~ Rule 26.1.H.1 requires that all motions related to discovery,
6 including but not limited to motions to compel discovery and motions for protective order, be filed
7 within thirty ~~(30)~~ days of the occurrence of grounds for the motion. Failure to file a discovery
8 motion within thirty ~~(30)~~ days, absent a showing of reasonable cause for a later filing, may constitute
9 a waiver of the relief sought.

10 Amended effective April 15, 1999; April 15, 2001; April 15, 2006.

11
12
13 **APPENDIX B. STANDARD FORM INTERROGATORIES**
14

15
16 UNITED STATES DISTRICT COURT
17 SOUTHERN DISTRICT OF FLORIDA

18 ~~_____ DIVISION~~ Case No. _____ - Civ or Cr - (USDJ's last name/USMJ's last name)
19

20
21 PLAINTIFF X

Case No. _____

22
23 Plaintiff,

Magistrate Judge _____

24
25
26 vs.

27
28
29 DEFENDANT Y

30
31 Defendant.
32
33 _____/

34
35 **FIRST SET OF RULE 26.1.G INTERROGATORIES**
36

37 [Plaintiff X or Defendant Y] propounds the following interrogatories upon [Plaintiff X or
38 Defendant Y] and requests that they be answered separately, fully and under oath within thirty ~~(30)~~
39 days of service pursuant to ~~Fed. R. Civ. P.~~ Federal Rule of Civil Procedure 33 and ~~S.D. Fla. L.R.~~ Local
40 Rule 26.1.G.
41

42 **DEFINITIONS**
43

44 (a) The words "you," "yours" and/or "yourselves" means [Plaintiff X or Defendant Y] and

1 any directors, officers, employees, agents, representatives or other persons acting, or
2 purporting to act, on behalf of [Plaintiff X or Defendant Y].
3

4 (b) The singular shall include the plural and vice versa; the terms "and" or "or" shall be both
5 conjunctive and disjunctive; and the term "including" mean "including without limitation".
6

7 (c) "Date" shall mean the exact date, month and year, if ascertainable or, if not, the best
8 approximation of the date (based upon relationship with other events).
9

10 (d) The word "document" shall mean any writing, recording, electronically stored
11 information or photograph in your actual or constructive possession, custody, care or control,
12 which pertain directly or indirectly, in whole or in part, either to any of the subjects listed
13 below or to any other matter relevant to the issues in this action, or which are themselves listed
14 below as specific documents, including, but not limited to: correspondence, memoranda,
15 notes, messages, diaries, minutes, books, reports, charts, ledgers, invoices, computer printouts,
16 microfilms, video tapes or tape recordings.
17

18 (e) "Agent" shall mean: any agent, employee, officer, director, attorney, independent
19 contractor or any other person acting at the direction of or on behalf of another.
20

21 (f) "Person" shall mean any individual, corporation, proprietorship, partnership, trust,
22 association or any other entity.
23

24 (g) The words "pertain to" or "pertaining to" mean: relates to, refers to, contains, concerns,
25 describes, embodies, mentions, constitutes, constituting, supports, corroborates, demonstrates,
26 proves, evidences, shows, refutes, disputes, rebuts, controverts or contradicts.
27

28 (h) The term "third party" or "third parties" refers to individuals or entities that are not a
29 party to this action.
30

31 (i) The term "action" shall mean the case entitled Plaintiff X v. Defendant Y, Case No.
32 _____, pending in the United States District Court for the Southern District of Florida.
33

34 (j) The word "identify", when used in reference to a document (including electronically
35 stored information), means and includes the name and address of the custodian of the
36 document, the location of the document, and a general description of the document, including
37 (1) the type of document (i.e., correspondence, e.g., letter or memorandum, facsimile etc.) and,
38 if electronically stored information, the software application used to create it (e.g., MS Word
39 or MS Excel Spreadsheet); (2) the general subject matter of the document or electronically
40 stored information; (3) the date of the document or electronically stored information; (4) the
41 author of the document or electronically stored information; (5) the addressee of the document
42 or electronically stored information; and (6) the relationship of the author and addressee to
43 each other.
44

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INSTRUCTIONS

If you object to fully identifying a document, electronically stored information or oral communication because of a privilege, you must nevertheless provide the following information pursuant to ~~S.D. Fla. L.R. Local Rule~~ 26.1.G.6.(b), unless divulging the information would disclose the privileged information:

- (1) the nature of the privilege claimed (including work product);
- (2) if the privilege is being asserted in connection with a claim or defense governed by state law, the state privilege rule being invoked;
- (3) the date of the document, electronically stored information or oral communication;
- (4) if a document: its type (~~i.e., correspondence, e.g., letter or memorandum, facsimile etc.~~) and, if electronically stored information, the software application used to create it (e.g., MS Word or MS Excel Spreadsheet), and the custodian, location, and such other information sufficient to identify the document material for a subpoena duces tecum or a document production request, including where appropriate the author, the addressee, and, if not apparent, the relationship between the author and addressee;
- (5) if an oral communication: the place where it was made, the names of the persons present while it was made, and, if not apparent, the relationship of the persons present to the declarant; and
- (6) the general subject matter of the document, electronically stored information or oral communication.

29 You are under a continuous obligation to supplement your answers to these interrogatories
30 under the circumstances specified in ~~Fed. R. Civ. P.~~ Federal Rule of Civil Procedure 26(e).

31
32
33

INTERROGATORIES

- 34 1. Please provide the name, address, telephone number, place of employment and job title
35 of any person who has, claims to have or whom you believe may have knowledge or
36 information pertaining to any fact alleged in the pleadings (as defined in ~~Fed. R. Civ. P.~~
37 Federal Rule of Civil Procedure 7(a)) filed in this action, or any fact underlying the subject
38 matter of this action.
- 39 2. Please state the specific nature and substance of the knowledge that you believe the
40 person(s) identified in your response to interrogatory no. 1 may have.
- 41 3. Please provide the name of each person whom you may use as an expert witness at trial.
42
43
44

1 4. Please state in detail the substance of the opinions to be provided by each person whom
2 you may use as an expert witness at trial.

3
4 5. Please state each item of damage that you claim, whether as an affirmative claim or as
5 a setoff, and include in your answer: the count or defense to which the item of damages
6 relates; the category into which each item of damages falls, i.e. general damages, special or
7 consequential damages (such as lost profits), interest, and any other relevant categories; the
8 factual basis for each item of damages; and an explanation of how you computed each item
9 of damages, including any mathematical formula used.

10
11 6. Please identify each document (including electronically stored information) pertaining
12 to each item of damages stated in your response to interrogatory no. 5 above.

13
14 7. Please identify each document (including electronically stored information or pertinent
15 insurance agreements) pertaining to any fact alleged in any pleading (as defined in Fed. R. Civ.
16 P. Federal Rule of Civil Procedure 7(a) filed in this action.)

17
18 Effective April 15, 1998.

19
20 **APPENDIX C. FORM OF DEFENDANT'S WAIVER OF STATUTORY RIGHT TO**
21 **SPEEDY TRIAL**

22
23 UNITED STATES DISTRICT COURT
24 SOUTHERN DISTRICT OF FLORIDA
25 _____ DIVISION

26
27 Case No. ____-Cr-(USDJ's last name/USMJ's last name)

28
29 UNITED STATES OF AMERICA,

30
31 Plaintiff,

32
33
34 vs.

35
36
37 John Doe and Jane Doe,

38
39 Defendants.

40
41 _____/

42
43
44 **DEFENDANT'S WAIVER OF STATUTORY RIGHT TO SPEEDY TRIAL**

1
2 I am the defendant named above. I have been advised of my statutory right to a speedy trial
3 under Title 18 United States Code, ~~s~~Sections 3161–3174. I understand my right to a speedy trial
4 under the federal statutes, yet I waive that right as permitted by the statute and Southern District of
5 Florida Local Rule 8.5. I waive this right freely and voluntarily.

6
7
8 _____
Defendant

9
10 EXECUTED in Open Court in the Southern District of Florida, this ____ day of _____,
11 199__/20__.

12
13 Respectfully submitted,

14
15 _____
16 Counsel for the Defendant

17
18 Effective April 15, 1999.

19
20
21 **ADMIRALTY AND MARITIME RULES**

22
23 **RULE A. GENERAL PROVISIONS**

24
25 **(1) Scope of the Local Admiralty and Maritime Rules.** The ~~h~~Local ~~a~~Admiralty and ~~m~~Maritime
26 ~~r~~Rules apply to the procedures in admiralty and maritime claims within the meaning of ~~Fed. R. Civ.~~
27 ~~P. Federal Rule of Civil Procedure~~ 9(h), which in turn are governed by the Supplemental Rules for
28 Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure.

29
30 **(2) Citation Format.**

31
32 (a) The Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules
33 of Civil Procedure shall be cited as "Supplemental Rule (____)".

34
35 (b) The Local Admiralty and Maritime Rules shall be cited as "Local Admiralty Rule
36 (____)".

37
38 **(3) Application of Local Admiralty and Maritime Rules.** The Local Admiralty Rules shall
39 apply to all actions governed by Local Admiralty Rule A(1), and to the extent possible should be
40 construed to be consistent with the other ~~local rules~~ Local Rules of this Court. To the extent that
41 a Local Admiralty Rule conflicts with another ~~local rule~~ Local Rule of this Court, the Local
42 Admiralty Rule shall control.

43
44 **(4) Designation of "In Admiralty" Proceedings.** Every complaint filed as a ~~Fed. R. Civ. P.~~

1 Federal Rule of Civil Procedure 9(h) action shall boldly set forth the words "IN ADMIRALTY"
2 following the designation of the Court. This requirement is in addition to any statements which may
3 be contained in the body of the complaint.
4

5 **(5) Verification of Pleadings, Claims and Answers to Interrogatories.** Every complaint and
6 claim filed pursuant to Supplemental Rules (B), (C) and/or (D) shall be verified on oath or solemn
7 affirmation by a party, or an officer of a corporate party.
8

9 If a party or corporate officer is not within the ~~d~~District, verification of a complaint, claim and/or
10 answers to interrogatories may be made by an agent, an attorney-in-fact, or the attorney of record.
11 Such person shall state briefly the source of his or her knowledge, or information and belief, and
12 shall declare that the document affirmed is true to the best of his or her knowledge, and/or
13 information and belief. Additionally, such person shall state that he or she is authorized to make this
14 representation on behalf of the party or corporate officer, and shall indicate why verification is not
15 made by a party or a corporate officer. Such verification will be deemed to have been made by the
16 party to whom the document might apply as if verified personally.
17

18 Any interested party may move the Court, with or without a request for stay, for the personal oath
19 or affirmation of a party or all parties, or that of a corporate officer. If required by the Court, such
20 verification may be obtained by commission, or as otherwise provided by Court order.
21

22 **(6) Issuance of Process.** Except as limited by the provisions of Supplemental Rule (B)(1) and
23 Local Admiralty Rule B(3) or Supplemental Rule (C)(3) and Local Admiralty Rule C(2); or in suits
24 prosecuted in forma pauperis and sought to be filed without prepayment of fees or costs, or without
25 security; all process shall be issued by the Court without further notice of Court.
26

27 **(7) Publication of Notices.** Unless otherwise required by the Court, or applicable Local
28 Admiralty or Supplemental Rule, whenever a notice is required to be published by any statute of the
29 United States, or by any Supplemental Rule or Local Admiralty Rule, such notice shall be published
30 at least once, without further order of Court, in an approved newspaper in the county or counties
31 where the vessel or property was located at the time of arrest, attachment, or seizure, and if different,
32 in the county within the Southern District of Florida where the lawsuit is pending.
33

34 For purposes of this subsection, an approved newspaper shall be a newspaper of general circulation,
35 designated from time to time by the Court. A listing of these approved newspapers will be made
36 available in the Clerk's Office during normal business hours.
37

38 **(8) Form and Return of Process in In Personam Actions.** Unless otherwise ordered by the
39 Court, ~~Fed. R. Civ. P.~~ Federal Rule of Civil Procedure 9(h) process shall be by civil summons, and
40 shall be returnable twenty-~~(20)~~ days after service of process; except that process issued in
41 accordance with Supplemental Rule (B) shall conform to the requirements of that rule.
42

43 **(9) Judicial Officer Defined.** As used in these Local Admiralty Rules, the term "judicial officer"
44 or "Court" shall mean either a United States District Judge or a United States Magistrate Judge.

1
2 **(10) Appendix of Forms.** The forms presented in the Appendix provide an illustration of the
3 format and content of papers filed in admiralty and maritime actions within the Southern District of
4 Florida. While the forms are sufficient, they are neither mandatory nor exhaustive.

5
6 Effective Dec. 1, 1994.

7
8 **Advisory Notes**

9
10 (1994) These Local Admiralty Rules were amended in 1994 to make them gender neutral.

11
12 (1993) **(a) General Comments.** These Local Admiralty Rules were prepared and submitted to the
13 Court through the Rules Committee of the Southern District of Florida, at the request of a
14 Subcommittee of the Admiralty Law Committee of The Florida Bar.

15
16 The Local Admiralty and Maritime Rules are promulgated pursuant to this Court's rule making
17 authority under Fed. R. Civ. P. Federal Rule of Civil Procedure 83, and have been drafted to
18 complement the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal
19 Rules of Civil Procedure.

20
21 The Committee has arranged these Local Admiralty Rules to correspond generally with the ordering
22 of the Supplemental Rules, e.g., Local Admiralty Rule A corresponds generally with Supplemental
23 Rule A, and each sequentially lettered Local Admiralty Rule addresses the subject matter of the
24 corresponding next-in-order Supplemental Rule.

25
26 Reference to the former Local Admiralty Rules refers to the former Local Rules of the Southern
27 District of Florida.

28
29 **(b) Comments on Specific Sections.** These Local Admiralty Rules are substantially similar to the
30 Local Rules for the Middle District and therefore provide for consistency and uniformity in
31 admiralty and maritime claims in the state.

32
33 A(1) and A(3) continue in substance former Local Admiralty Rule 1(a).

34
35 A(4) continues the "IN ADMIRALTY" designation requirements of former Local Admiralty Rule
36 7(a). Under the revised rule, the "IN ADMIRALTY" designation is required to be posted to all
37 complaints even if the complaint is filed as a Fed. R. Civ. P. Federal Rule of Civil Procedure 9(h)
38 action and jurisdiction would exist on another basis, e.g., federal question or diversity jurisdiction.

39
40 A(5) continues the requirements of former Local Admiralty Rule 8.

41
42 A(6) continues the requirements of former Local Admiralty Rule 2(a).

1 A(7) enlarges upon former Local Admiralty Rule 3(a) which addressed notice by publication only
2 in cases filed pursuant to Supplemental Rule (C)(4). The revised rule extends the publication
3 provisions to all ~~Fed. R. Civ. P.~~ Federal Rule of Civil Procedure 9(h) actions for which notice by
4 publication is required.

5
6 In addition, the existing provisions have been altered to require that the publication shall be made
7 both in the county where the vessel, or other property, was located at the time of arrest, attachment
8 or seizure; and if different, in the county within the ~~d~~Division of this Court in which the suit is
9 pending.

10
11 A(8) continues the requirements of former Local Admiralty Rule 2(c).

12
13 A(9) adopts the definition of "Court" provided in the Advisory Notes to the August 1, 1985,
14 amendments to the Supplemental Rules.

15
16 As defined in these Local Admiralty Rules, the terms "Court" or "judicial officer" shall extend to
17 United States Magistrates Judges assigned to the Southern District of Florida. The committee notes
18 that the delegation of the duties contemplated by this definition are consistent with the jurisdictional
19 grant to the United States Magistrate Judges as set forth in Title 28 U.S.C. § United States Code,
20 Section 636(a).

21
22 Where the terms "Court" and "judicial officer" are not used, these Local Admiralty rRules
23 contemplate that without further order of Court, the responsibility of taking the specific action shall
24 be vested with a ~~d~~District judge.

25
26 A(10) provides for an Appendix of Forms to the Local Admiralty Rules. The former Local
27 Admiralty rRules incorporated the text of some forms within the specific ~~local rules~~ Local Admiralty
28 Rules and included some forms in an Appendix. The Appendix of Forms provides an alternate
29 method of presenting the format and content of necessary admiralty forms.

30
31 As noted in the revised Local Admiralty rRules, these forms are provided as examples, and are not
32 intended to be mandatory. In addition to the specific forms referred to in the Local Admiralty Rules,
33 the Appendix also includes other commonly used admiralty forms for the use and convenience of
34 counsel.

35
36 (1998) These Local Admiralty rRules are amended in 1998 to correct scrivener's errors and to
37 require the custodian or substitute custodian to comply with orders of the Captain of the Port, United
38 States Coast Guard.

39
40 **RULE B. ATTACHMENT AND GARNISHMENT: SPECIAL PROVISIONS**

41
42 **(1) Definition of "Not Found Within the District."** In an action in personam filed pursuant to
43 Supplemental Rule (B), a defendant shall be considered "not found within the ~~d~~District" if the
44 defendant cannot be served within the Southern District of Florida with the summons and complaint

1 as provided by ~~Fed. R. Civ. P.~~ Federal Rule of Civil Procedure 4(d)(1), (2), (3), or (6).

2
3 **(2) Verification of Complaint Required.** In addition to the specific requirements of Local
4 Admiralty Rule A(5), whenever verification is made by the plaintiff's attorney or agent, and that
5 person does not have personal knowledge, or knowledge acquired in the ordinary course of business
6 of the facts alleged in the complaint, the attorney or agent shall also state the circumstances which
7 make it necessary for that person to make the verification, and shall indicate the source of the
8 attorney's or agent's information.

9
10 **(3) Pre-seizure Requirements.** In accordance with Supplemental Rule (B)(1), the process of
11 attachment and garnishment shall issue only after one of the following conditions has been met:

12
13 (a) *Judicial Review Prior to Issuance.* Except as provided in Local Admiralty Rule B(3)(b),
14 a judicial officer shall first review the verified complaint, and any other relevant case papers,
15 prior to the Clerk of the Court issuing the requested process of attachment and garnishment.
16 No notice of this pre-arrest judicial review is required to be given to any person or prospective
17 party.

18
19 If the eCourt finds that probable cause exists to issue the process of attachment and
20 garnishment, plaintiff shall prepare an order for the Court's signature directing the Clerk of the
21 Court to issue the process. This order shall substantially conform in format and content to the
22 form identified as SDF 1 in the Appendix of these Local Admiralty Rules.

23
24 Upon receipt of the signed order, the Clerk of the Court shall file the order and, in accordance
25 with Local Admiralty Rule B(3)(c), issue the summons and process of attachment and
26 garnishment. Thereafter the Clerk of the Court may issue supplemental process without
27 further order of Court.

28
29 (b) *Certification of Exigent Circumstances.* If the plaintiff files a written certification that
30 exigent circumstances make review by the Court impracticable, the Clerk of the Court shall,
31 in accordance with Local Admiralty Rule B(3)(c), issue a summons and the process of
32 attachment and garnishment.

33
34 Thereafter at any post-attachment proceedings under Supplemental Rule (E)(4)(f) and Local
35 Admiralty Rule B(5), plaintiff shall have the burden of showing that probable cause existed
36 for the issuance of process, and that exigent circumstances existed which precluded judicial
37 review in accordance with Local Admiralty Rule B(3)(a).

38
39 (c) *Preparation and Issuance of the Process of Attachment and Garnishment.* Plaintiff shall
40 prepare the summons and the process of attachment and garnishment, and deliver the
41 documents to the Clerk of the Court for filing and issuance.

42
43 The process of attachment and garnishment shall substantially conform in format and content
44 to the form identified as SDF 2 in the Appendix to these Local Admiralty Rules, and shall in

1 all cases give adequate notice of the postseizure provisions of Local Admiralty Rule B(5).

2
3 (d) *Marshal's Return of Service.* The Marshal shall file a return of service indicating the date
4 and manner in which service was perfected and, if service was perfected upon a garnishee, the
5 Marshal shall indicate in the return the name, address, and telephone number of the garnishee.
6

7 **(4) Notification of Seizure to Defendant.** In an in personam action under Supplemental Rule (B),
8 it is expected that plaintiff and/or garnishee will initially attempt to perfect service of the notice in
9 accordance with Supplemental Rule (B)(2)(a) or (b).
10

11 However, when service of the notice cannot be perfected in accordance with Supplemental Rule
12 (B)(2)(a) or (b), plaintiff and/or garnishee should then attempt to perfect service in accordance with
13 Supplemental Rule (B)(2)(c). In this regard, service of process shall be sufficiently served by
14 leaving a copy of the process of attachment and garnishment with the defendant or garnishee at his
15 or her usual place of business.
16

17 **(5) Post-attachment Review Proceedings.**
18

19 (a) *Filing a Required Answer.* In accordance with Supplemental Rule (E)(4)(f), any person
20 who claims an interest in property seized pursuant to Supplemental Rule (B) must file an
21 answer and claim against the property. The answer and claim shall describe the nature of the
22 claimant's interest in the property, and shall articulate reasons why the seizure should be
23 vacated. The claimant shall serve a copy of the answer and claim upon plaintiff's counsel, the
24 Marshal, and any other party to the litigation. The claimant shall also file a Certificate of
25 Service indicating the date and manner in which service was perfected.
26

27 (b) *Hearing on the Answer and Claim.* The claimant may be heard before a judicial officer
28 not less than three(3) days after the answer and claim has been filed and service has been
29 perfected upon the plaintiff.
30

31 If the Court orders that the seizure be vacated, the judicial officer shall also award attorney's
32 fees, costs and other expenses incurred by any party as a result of the seizure.
33

34 If the seizure was predicated upon a showing of "exigent circumstances" under Local
35 Admiralty Rule B(3)(b), and the Court finds that such exigent circumstances did not exist, the
36 judicial officer shall award attorney's fees, costs, and other expenses incurred by any party as
37 a result of the seizure.
38

39 **(6) Procedural Requirement for the Entry of Default.** In accordance with Federal Rule of Civil
40 Procedure Rule 55, Fed.R.Civ.P., a party seeking the entry of default in a Supplemental Rule (B)
41 action shall file a motion and supporting legal memorandum and shall offer other proof sufficient
42 to demonstrate that due notice of the action and seizure have been given in accordance with Local
43 Admiralty Rule B(4).
44

1 Upon review of the motion, memorandum, and other proof, the Clerk of the Court shall, where
2 appropriate, enter default in accordance with Federal Rule of Civil Procedure Rule 55(a);
3 Fed.R.Civ.P. Thereafter, the Clerk of the Court shall serve notice of the entry of default upon all
4 parties represented in the action.
5

6 **(7) Procedural Requirements for the Entry of Default Judgment.** Not later than thirty ~~(30)~~
7 days following notice of the entry of default, the party seeking the entry of default judgment shall
8 file a motion and supporting legal memorandum, along with other appropriate exhibits to the motion
9 sufficient to support the entry of default judgment. The moving party shall serve these papers upon
10 every other party to the action and file a Certificate of Service indicating the date and manner in
11 which service was perfected.
12

13 A party opposing the entry of default judgment shall have five ~~(5)~~ days from the receipt of the
14 motion to file written opposition with the Court. Thereafter, unless otherwise ordered by the Court,
15 the motion for the entry of default judgment will be heard without oral argument.
16

17 If the Court grants the motion and enters the default judgment, such judgment shall establish a right
18 on the part of the party or parties in which favor it is entered. The judgment shall be considered
19 prior to any claims of the owner of the defendant property against which it is entered, and to the
20 remnants and surpluses thereof; providing, however, that such a judgment shall not establish any
21 entitlement to the defendant property having priority over non-possessory lien claimants. Obtaining
22 a judgment by default shall not preclude the party in whose favor it is entered from contending and
23 proving that all, or any portion, of the claim or claims encompassed within the judgment are prior
24 to any such non-possessory lien claims.
25

26 Effective Dec. 1, 1994; amended effective April 15, 1998; April 15, 2000.
27

28 **Advisory Notes**

29
30 (1993) **(a) General Comments.** Local Admiralty Rule B is intended to enhance and codify the local
31 procedural requirements uniquely applicable to actions of maritime attachment and garnishment
32 under Supplemental Rule (B). Other local procedural requirements involving actions in rem and
33 quasi in rem proceedings can be found in Local Admiralty Rule E.
34

35 When read in conjunction with Supplemental Rule (B) and (E), Local Admiralty Rules B and E are
36 intended to provide a uniform and comprehensive method for constitutionally implementing the
37 long-standing and peculiar maritime rights of attachment and garnishment. The eCommittee
38 believes that Local Admiralty Rules B and E correct the deficiencies perceived by some courts to
39 exist in the implementation of this unique maritime provision. *Schiffahrtsgesellschaft Leonhardt*
40 *& Co. v. A. Bottacchi S.A. de Navegacion*, 552 F. Supp. 771 (S.D. Ga.1982); *Cooper Shipping*
41 *Company v. Century 21*, 1983 A.M.C. 244 (M.D.Fla.1982); *Crysen Shipping Co. v. Bona Shipping*
42 *Co., Ltd.*, 553 F. Supp. 139 (N.D. Fla.1982); and *Grand Bahama Petroleum Co. v. Canadian*
43 *Transportation Agencies, Ltd.*, 450 F.Supp. 447 (W.D. Wa.1978); (discussing Supplemental Rule
44 (B) proceedings in light of *Fuentes v. Shevin*, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972))

1 and *Sniadach v. Family Finance Corp.*, 395 U.S. 337, 389 S.Ct. 1820, 23 L.Ed.2d 349 (1969)).

2
3 Although the Committee is aware of the Eleventh Circuit's decision in *Schiffahrtsgesellschaft*
4 *Leonhardt & Co. v. A. Bottacchi S.A. de Navegacion*, 732 F.2d 1543 (1984), the Committee believes
5 that from both a commercial and legal viewpoint, the better practice is to incorporate the pre-seizure
6 scrutiny and post-attachment review provisions provided by this Local Admiralty Rule. These
7 provisions protect the rights of any person claiming an interest in the seized property by permitting
8 such persons to file a claim against the property, and thereafter permitting a judicial determination
9 of the propriety of the seizure.

10
11 **(b) Comments on Specific Sections.** Local Admiralty Rule B(1) codifies the governing law of this
12 Circuit as set forth in *LaBanca v. Ostermunchner*, 664 F.2d 65 (5th Cir., Unit B, 1981).

13
14 Local Admiralty Rule B(2) codifies the verification requirements of Supplemental Rule (B)(1) and
15 former Local Admiralty Rule S.

16
17 B(3) incorporates the "pre-seizure" and "exigent circumstances" provisions of the August 1, 1985,
18 revision to Local Supplemental Rule (B)(1). In the routine case, the rule contemplates that issuance
19 of the process of attachment and garnishment be preconditioned upon the exercise of judicial review.
20 This ensures that plaintiff can make an appropriate maritime claim, and present proof that the
21 defendant cannot be found within the ~~d~~District. The rule also contemplates that upon a finding of
22 probable cause, a simple order directing the Clerk of the Court to issue the process shall be entered
23 by the Court.

24
25 This rule also incorporates the "exigent circumstances" provision of Supplemental Rule (B)(1).
26 Read in conjunction with Local Admiralty Rule B(5)(b), this rule requires that the plaintiff carry the
27 burden of proof at any post-attachment proceedings to establish not only the prima facie conditions
28 of a maritime attachment and garnishment action under Supplemental Rule (B), but also that
29 "exigent circumstances" precluded judicial review under Local Admiralty Rule B(3)(a). The
30 Committee believes that this additional requirement will place upon plaintiff's counsel a burden of
31 extra caution before invoking the "exigent circumstance" provision of the rule.

32
33 Local Admiralty Rule B(5) establishes the post-attachment review provisions potentially applicable
34 to maritime attachment and garnishment proceedings. These proceedings may be invoked by any
35 person claiming an interest in the seized property.

36
37 (2000) Local Admiralty Rule B(7) is amended to give the party seeking entry of a default judgment
38 up to ~~30~~ thirty days, rather than ~~5~~ five days, to file a motion and supporting legal memorandum.

40 **RULE D. POSSESSORY, PETITORY AND PARTITION ACTIONS**

41
42 **(1) Establishing Dates for the Return of Process.** In possessory actions filed pursuant to
43 Supplemental Rule (D), the Court may order that process be returnable at a time shorter than that
44 prescribed by ~~Fed. R. Civ. P.~~ Federal Rule of Civil Procedure Rule 12(a).

1
2 If the Court shortens the time, the Court shall specify the date upon which the answer must be filed,
3 and may also set a hearing date to expedite the disposition of the possessory action. When possible,
4 possessory actions shall be given preference on a judicial officer's calendar.

5
6 Effective Dec. 1, 1994.

7
8 **Advisory Notes**
9

10 (1993) This rule continues in substance the provisions of former Local Admiralty Rule 15.

11
12 The rule recognizes the equity in allowing for a prompt resolution in possessory actions. Since a
13 possessory action is brought to reinstate an owner of a vessel alleging wrongful deprivation of
14 property, rather than to allow original possession, the rule permits the Court to expedite these
15 actions, thereby providing a quick remedy for the one wrongfully deprived of his rightful property;
16 See Silver v. Sloop Silver Cloud, 259 F. Supp. 187 (S.D.N.Y. 1966).

17
18 Since a petitory and possessory action can be joined to obtain original possession, *The Friendship*,
19 Fed. Cas. No. 5,123 (CCD Maine, 1855), this rule contemplates that an expedited hearing will only
20 occur in purely possessory actions.

21
22 **RULE E. ACTIONS IN REM AND QUASI IN REM: GENERAL PROVISIONS**
23

24 **(1) Statement of Itemized Damages and Expenses Required.** Every complaint in a
25 Supplemental Rule (B) and (C) action shall state the amount of the debt, damages, or salvage for
26 which the action is brought. In addition, the statement shall also specify the amount of any
27 unliquidated claims, including attorneys' fees.

28
29 **(2) Requirements and Procedures for Effecting Intervention.** Whenever a vessel or other
30 property is arrested or attached in accordance with any Supplemental Rule, and the vessel or
31 property is in the custody of the U.S. United States Marshal, or duly authorized substitute custodian,
32 any other person having a claim against the vessel or property shall be required to present their claim
33 as indicated below:

34
35 (a) *Intervention of Right When No Sale of the Vessel or Property Is Pending.* Except as
36 limited by Local Admiralty Rule E(2)(b), any person having a claim against a vessel or
37 property previously arrested or attached by the Marshal may, as a matter of right, file an
38 intervening complaint at any time before an order is entered by the Court scheduling the vessel
39 or property for sale.

40
41 Coincident with the filing of an intervening complaint, the offering party shall prepare and file
42 a supplemental warrant of arrest and/or a supplemental process of attachment and garnishment.

43
44 Upon receipt of the intervening complaint and supplemental process, the Clerk of the Court

1 shall conform a copy of the intervening complaint and shall issue the supplemental process.
2 Thereafter, the offering party shall deliver the conformed copy of the intervening complaint
3 and supplemental process to the Marshal for execution. Upon receipt of the intervening
4 complaint and supplemental process, the Marshal shall re-arrest or re-attach the vessel or
5 property in the name of the intervening plaintiff.
6

7 Counsel for the intervening party shall serve a copy of the intervening complaint, and copies
8 of all process and exhibits upon all other counsel of record, and shall thereafter file a
9 certificate of service with the Clerk of the Court indicating the manner and date of service.
10

11 (b) *Permissive Intervention When the Vessel or Property Has Been Scheduled for Sale by the*
12 *Court.* Except as indicated below, and subject to any other rule or order of this Court, no
13 person shall have an automatic right to intervene in an action where the Court has ordered the
14 sale of the vessel or property, and the date of the sale is set within fifteen (~~15~~) days from the
15 date the party moves for permission to intervene in accordance with this subsection. In such
16 cases, the person seeking permission to intervene must:
17

- 18 (1) File a motion to intervene and indicate in the caption of the motion a request
19 for expedited hearing when appropriate.
- 20
- 21 (2) Include a copy of the anticipated intervening complaint as an exhibit to the
22 motion to intervene.
- 23
- 24 (3) Prepare and offer for filing a supplemental warrant of arrest and/or a
25 supplemental process of attachment and garnishment.
- 26
- 27 (4) Serve copies of the motion to intervene, with exhibits and proposed
28 supplemental process upon every other party to the litigation.
- 29
- 30 (5) File a certificate of service indicating the date and manner of service.
31

32 Thereafter, the Court may permit intervention under such conditions and terms as are equitable
33 to the interests of all parties; and if intervention is permitted, shall also direct the Clerk of the
34 Court to issue the supplemental process.
35

36 Upon receipt of the order permitting intervention, the Clerk of the Court shall file the
37 originally signed intervening complaint, conform a copy of the intervening complaint and issue
38 the supplemental process.
39

40 Thereafter, the offering party shall deliver the conformed copy of the intervening complaint
41 and supplemental process to the Marshal for execution. Upon receipt of the intervening
42 complaint and supplemental process, the Marshal shall re-arrest or re-attach the vessel or
43 property in the name of the intervening plaintiff.
44

1 Counsel for the intervening party shall also serve a copy of the intervening complaint, exhibits,
2 and supplemental process upon every other party of record and shall thereafter file a
3 Certificate of Service with the Clerk of the Court indicating the manner and date of service.
4

5 **(3) Special Requirements for Salvage Actions.** In cases of salvage, the complaint shall also state
6 to the extent known, the value of the hull, cargo, freight, and other property salvaged, the amount
7 claimed, the names of the principal salvors, and that the suit is instituted in their behalf and in behalf
8 of all other persons associated with them.
9

10 In addition to these special pleading requirements, plaintiff shall attach as an exhibit to the complaint
11 a list of all known salvors, and all persons believed entitled to share in the salvage. Plaintiff shall
12 also attach a copy of any agreement of consortium available and known to exist among them
13 collegially or individually.
14

15 **(4) Form of Stipulation or Bonds.** Except in cases instituted by the United States through
16 information, or complaint of information upon seizures for any breach of the revenues, navigation,
17 or other laws of the United States, stipulations or bonds in admiralty and maritime actions need not
18 be under seal and may be executed by the agent or attorney of the stipulator or obligor.
19

20 **(5) Deposit of Marshal's Fees and Expenses Required Prior to Effecting Arrest, Attachment
21 and/or Garnishment.**
22

23 *(a) Deposit Required Before Seizure.* Any party seeking the arrest or attachment of property
24 in accordance with Supplemental Rule ~~(E)~~ shall deposit a sum with the Marshal sufficient to
25 cover the Marshal's estimated fees and expenses of arresting and keeping the property for at
26 least ten ~~(10)~~ days. The Marshal is not required to execute process until the deposit is made.
27

28 *(b) Proration of Marshal's Fees and Expenses Upon Intervention.* When one or more parties
29 intervene pursuant to Local Admiralty Rule E(2)(a) or (b), the burden of advancing sums to
30 the Marshal sufficient to cover the Marshal's fees and expenses shall be allocated equitably
31 between the original plaintiff, and the intervening party or parties as indicated below:
32

33 (1) Stipulation for the Allocation and Payment of the Marshal's Fees and
34 Expenses. Immediately upon the filing of the intervening complaint, counsel for the
35 intervening plaintiff shall arrange for a conference between all other parties to the action,
36 at which time a good faith effort shall be made to allocate fees and expenses among the
37 parties. Any resulting stipulation between the parties shall be codified and filed with the
38 Court and a copy served upon the Marshal.
39

40 (2) Allocation of Costs and Expenses in the Event That Counsel Cannot
41 Stipulate. The Court expects that counsel will resolve the allocation of costs and expenses
42 in accordance with the preceding paragraph. In the event that such an arrangement cannot
43 be made, the parties shall share in the fees and expenses of the Marshal in proportion to
44 their claims as stated in the original and intervening complaints.

1 In order to determine the proportionate shares of each party, counsel for the last intervening
2 plaintiff shall determine the total amounts claimed by each party. The individual claims shall
3 be determined from the original and amended complaint, and all other intervening complaints
4 subsequently accepted and processed by the Marshal in accordance with Local Admiralty Rule
5 E(2)(a) or (b).
6

7 Thereafter, counsel for the last intervening plaintiff shall deliver to the Marshal a list which
8 summarizes each party's claim, and the proportion which each party's claim bears to the
9 aggregate claims asserted in the litigation, determined to the nearest one-tenth of one
10 percentage point.
11

12 Upon receipt of this listing, the Marshal shall determine the total expenses incurred to date and
13 shall estimate the expenses to be incurred during the next ten (~~10~~) days. For the purpose of
14 making this calculation, the total fees and expenses shall be calculated from the date when
15 continuous and uninterrupted arrest or attachment of the property began, and not prorated from
16 the date a particular party's intervening complaint was filed.
17

18 The Marshal shall then apply the percentages determined in the listing, and shall compute the
19 amount of the intervening party's initial deposit requirements. The Marshal shall also utilize
20 this listing to compute any additional deposit requirements which may be necessary pursuant
21 to Local Admiralty Rule E(5)(c).
22

23 The Marshal need not re-arrest or re-attach the vessel and/or property until the deposit is
24 received from the intervening plaintiff.
25

26 (c) *Additional Deposit Requirements.* Until the property arrested or attached and garnished
27 has been released or otherwise disposed of in accordance with Supplemental Rule (~~E~~), the
28 Marshal may require from any original and intervening party who has caused the arrest or
29 attachment and garnishment of a vessel or property, to post such additional deposits as the
30 Marshal determines necessary to cover any additional estimated fees or expenses.
31

32 (d) *Judicial Relief From Deposit Requirements.* Any party aggrieved by the deposit
33 requirements of Local Admiralty Rule E(5)(b) may apply to the Court for relief. Such
34 application shall be predicated upon a showing that owing to the relative priorities of the
35 claims asserted against the vessel or other property, the deposit requirements operate to impose
36 a burden disproportionate to the aggrieved party's recovery potential.
37

38 The judicial officer may adjust the deposit requirements, but in no event shall the proportion
39 required of an aggrieved party be reduced to a percentage less than that imposed upon the
40 claimant whose claim is the smallest among that of claims which the aggrieved party stipulates
41 as having priority over its claim; or, in the absence of such stipulation, the greatest percentage
42 imposed upon any claimant participating in the deposit requirements.
43

44 (e) *Consequence of Failing to Comply With Additional Deposit Requirements.* Any party who

1 fails to make the additional deposit as requested by the Marshal may not participate further in
2 the proceeding, except for the purpose of seeking relief from this rule. Additionally, the
3 Marshal shall notify the Court in writing whenever any party fails to make additional deposits
4 as required by Local Admiralty Rule E(5)(c).
5

6 In the event that a party questions its obligations to advance monies required by this rule, the
7 Marshal may apply to the Court for instructions concerning that party's obligation under the
8 rule.
9

10 **(6) Property in Possession of a United States Officer.** Whenever the property to be arrested or
11 attached is in custody of a U.S. United States officer, the Marshal shall serve the appropriate process
12 upon the officer or employee; or, if the officer or employee is not found within the dDistrict, then
13 to the custodian of the property within the dDistrict.
14

15 The Marshal shall direct the officer, employee or custodian not to relinquish custody of the property
16 until ordered to do so by the Court.
17

18 **(7) Process Held in Abeyance.**
19

20 (a) *When Permitted.* In accordance with Supplemental Rule ~~(E)~~(3)(b), a plaintiff may ask the
21 Clerk of the Court not to issue process, but rather to hold the process in abeyance. The Clerk
22 of the Court shall docket this request, and thereafter shall not be responsible for ensuring that
23 process is issued at a later date.
24

25 (b) *When Intervention Is Subsequently Required.* It is the intention of these rules that a vessel
26 or other property should be arrested or attached pursuant to process issued and effected in only
27 one civil action. Therefore, if while process is held in abeyance on one action, the vessel or
28 property is arrested or attached in another action, it shall be the responsibility of the plaintiff
29 who originally requested process be held in abeyance in the first action to voluntarily dismiss
30 without prejudice the first action, insofar as that action seeks to proceed against the property
31 arrested or attached in the second action, and promptly intervene in the second action pursuant
32 to Local Admiralty Rule E(2)(a) or (b).
33

34 In order to prevent undue hardship or manifest injustice, motions to consolidate in rem actions
35 against the same vessel or property will be granted only in exceptional circumstances.
36

37 **(8) Release of Property in Accordance With Supplemental Rule ~~(E)~~(5).**
38

39 (a) *Release by Consent or Stipulation.* Subject to the limitations imposed by Supplemental
40 Rule ~~(E)~~(5)(c), the Marshal may release any vessel, cargo or property in the Marshal's
41 possession to the party on whose behalf the property is detained. However, as a precondition
42 to release, the Marshal shall require a stipulation, bond, or other security, expressly authorizing
43 the release. The authorizing instrument shall be signed by the party, or the party's attorney,
44 on whose behalf the property is detained.

1 The stipulation, bond, or other security shall be posted in an amount equal to, or greater than,
2 the amount required for the following types of action:
3

4 (1) Actions Entirely for a Sum Certain. The amount alleged to be due in the
5 complaint, with interest at six percent (~~6%~~) per annum from the date claimed to be due to
6 a date twenty-four (~~24~~) months after the date the claim was filed, or by filing an approved
7 stipulation, or bond for the amount alleged plus interest as computed in this subsection.
8

9 The stipulation or bond shall be conditioned to abide by all orders of the Court, and to pay
10 the amount of any final judgment entered by this Court or any appellate Court, with
11 interest.
12

13 (2) Actions Other Than Possessory, Petitory or Partition. Unless otherwise
14 ordered by the Court, the amount of the appraised or agreed value of the property seized,
15 with interest. If an appraised value cannot be agreed upon by the parties, the Court shall
16 order an appraisal in accordance with Local Admiralty Rule F(3).
17

18 The stipulation or bond shall be conditioned to abide by all orders of the Court, and to pay
19 the amount of any final judgment entered by this Court or any appellate Court, with
20 interest.
21

22 The person consenting or stipulating to the release shall also file a claim in accordance
23 with Local Admiralty Rule E(2)(a) or (b).
24

25 (3) Possessory, Petitory or Partition Actions. The Marshal may release property
26 in these actions only upon order of Court, and upon the subsequent deposit of security and
27 compliance with such terms and/or conditions as the Court deems appropriate.
28

29 (b) *Release Pursuant to Court Order.* In accordance with Supplemental Rule (~~E~~)(5)(c), a party
30 may petition to release the vessel pursuant to Court order. A party making such application
31 shall file a Request for Release which shall substantially conform in format and content to the
32 form identified as SDF 8 in the Appendix to these Local Admiralty Rules. Additionally, the
33 party shall prepare, and offer for filing, a proposed order directing the release. This order shall
34 substantially conform in format and content to the form identified as SDF 9 in the Appendix
35 to these Local Admiralty Rules.
36

37 However, as a precondition to the release, the Marshal shall require a stipulation, bond, or
38 other security, as specified in Local Admiralty Rule E(8)(a)(1), (2) or (3), as appropriate.
39

40 (c) *Upon the Dismissal or Discontinuance of an Action.* By coordinating with the Marshal to
41 ensure that all costs and charges of the Court and its officers have first been paid.
42

43 (d) *Release Subsequent to the Posting of a General Bond.*
44

1 (1) Requirements of a General Bond. General bonds filed pursuant to
2 Supplemental Rule (E)(5)(b) shall identify the vessel by name, nationality, dimensions,
3 official number or registration number, hailing port and port of documentation.
4

5 (2) Responsibility for Maintaining a Current Listing of General Bonds. The
6 Clerk of the Court shall maintain a current listing of all general bonds. This listing should
7 be maintained in alphabetical order by name of the vessel. The listing will be available for
8 inspection during normal business hours.
9

10 (3) Execution of Process. The arrest of a vessel covered by a general bond shall
11 be stayed in accordance with Supplemental Rule (E)(5)(b), however, the Marshal shall
12 serve a copy of the complaint upon the master or other person in whose charge or custody
13 the vessel is found. If neither the master nor another person in charge of custody is found
14 aboard the vessel, the Marshal shall make the return accordingly.
15

16 Thereafter, it shall be plaintiff's responsibility to advise the owner or designated agent, at
17 the address furnished in the general bond, of (1) the case number; (2) nature of the action
18 and the amount claimed; (3) the plaintiff and name and address of plaintiff's attorney; and
19 (4) the return date for filing a claim.
20

21 **(9) Application to Modify Security for Value and Interest.** At any time, any party having an
22 interest in the subject matter of the action may move the Court, on due notice and for cause, for
23 greater, better or lesser security, and any such order may be enforced by attachment or as otherwise
24 provided by law.
25

26 **(10) Custody and Safekeeping.**
27

28 (a) *Initial Responsibility.* The Marshal shall initially take custody of any vessel, cargo and/or
29 other property arrested, or attached in accordance with these rules. Thereafter, and until such
30 time as substitute custodians may be authorized in accordance with Local Admiralty Rule
31 E(10)(c), the Marshal shall be responsible for providing adequate and necessary security for
32 the safekeeping of the vessel or property.
33

34 In the discretion of the Marshal, adequate and necessary security may include the placing of
35 keepers on or near the vessel and/or the appointment of a facility or person to serve as a
36 custodian of the vessel or property.
37

38 (b) *Limitations on the Handling, Repairing and Subsequent Movement of Vessels or Property.*
39 Subsequent to the arrest or attachment of a vessel or property, and except as provided in Local
40 Admiralty Rule E(10)(a), no person may handle cargo, conduct repairs, or move a vessel
41 without prior order of Court. Notwithstanding the foregoing, the custodian or substitute
42 custodian is obligated to comply with any orders issued by the Captain of the Port, United
43 States Coast Guard, including an order to move the vessel; and to comply with any applicable
44 federal, state, or local laws or regulations pertaining to vessel and port safety. Any movement

1 of a vessel pursuant to such requirements must not remove the vessel from the ~~Southern~~
2 District of Florida and shall be reported to the Court within twenty-four (24) hours of the
3 vessel's movement.

4
5 (c) *Procedures for Changing Custody Arrangements.* Any party may petition the Court to
6 dispense with keepers, remove or place the vessel, cargo and/or other property at a specified
7 facility, designate a substitute custodian for the vessel or cargo, or for other similar relief. The
8 motion shall substantially conform in format and content to the form identified as SDF 5 in the
9 Appendix of these Local Admiralty Rules.

10
11 (1) Notification of the Marshal Required. When an application for change in
12 custody arrangements is filed, either before or after the Marshal has taken custody of the
13 vessel or property, the filing party shall serve notice of the application on the Marshal in
14 sufficient time to permit the Marshal to review the indemnification and insurance
15 arrangements of the filing party and substitute custodian. The application shall also be
16 served upon all other parties to the litigation.

17
18 (2) Indemnification Requirements. Any motion for the appointment of a
19 substitute custodian or facility shall include as an exhibit to the motion, a consent and
20 indemnification agreement signed by both the filing party, or the filing party's attorney,
21 and the proposed substitute custodian.

22
23 The consent and indemnification agreement shall expressly release the Marshal from any
24 and all liability and responsibility for the care and custody of the property while in the
25 hands of the substitute custodian; and shall expressly hold the Marshal harmless from any
26 and all claims whatsoever arising from the substitute custodianship. The agreement shall
27 substantially conform in format and content to the form identified as SDF 6 in the
28 Appendix to these Local Admiralty Rules.

29
30 (3) Court Approval Required. The motion to change custody arrangements, and
31 indemnification and consent agreement shall be referred to a judicial officer who shall
32 determine whether the facility or substitute custodian is capable of safely keeping the
33 vessel, cargo and/or property.

34
35 (d) *Insurance Requirements.*

36
37 (1) Responsibility for Initially Obtaining Insurance. Concurrent with the arrest
38 or attachment of a vessel or property, the Marshal shall obtain insurance to protect the
39 Marshal, the Marshal's deputies, keepers, and custodians from liability arising from the
40 arrest or attachment.

41
42 The insurance shall also protect the Marshal and the Marshal's deputies or agents from any
43 liability arising from performing services undertaken to protect the vessel, cargo and/or
44 property while that property is in the custody of the Court.

1 (2) Payment of Insurance Premiums. It shall be the responsibility of the party
2 applying for the arrest or attachment of a vessel, cargo and/or property to promptly
3 reimburse the Marshal for premiums paid to effect the necessary insurance.
4

5 The party applying for change in custody arrangements shall be responsible for paying the
6 Marshal for any additional premium associated with the change.
7

8 (3) Taxation of Insurance Premiums. The premiums charged for the liability
9 insurance will be taxed as an expense of custody while the vessel, cargo and/or property
10 is in custodia legis.
11

12 **(11) Preservation, Humanitarian and Repatriation Expenses.**
13

14 (a) *Limitations on Reimbursement for Services and/or Supplies Provided to a Vessel or*
15 *Property in Custody.* Except in cases of emergency or undue hardship, no person will be
16 entitled to claim as an expense of administration the costs of services or supplies furnished to
17 a vessel, cargo and/or property unless such services or supplies have been furnished to the
18 Marshal upon the Marshal's order, or pursuant to an order of this Court.
19

20 Any order issued pursuant to this subsection shall require the person furnishing the services
21 or supplies to file a weekly invoice. This invoice shall be set forth in the format prescribed in
22 Local Admiralty Rule E(11)(e).
23

24 (b) *Preservation Expenses for the Vessel and Cargo.* The Marshal, or substitute custodian,
25 is authorized to incur expenses reasonably deemed necessary in maintaining the vessel, cargo
26 and/or property in custody for the purpose of preventing the vessel, cargo and/or property from
27 suffering loss or undue deterioration.
28

29 (c) *Expenses for Care and Maintenance of a Crew.* Except in an emergency, or upon the
30 authorization of a judicial officer, neither the Marshal nor substitute custodian shall incur
31 expenses for feeding or otherwise maintaining the crew.
32

33 Applications for providing food, water and necessary medical services for the maintenance of
34 the crew may be submitted, and decided ex parte by a judicial officer, providing such an
35 application is made by some person other than the owner, manager or general agent of the
36 vessel.
37

38 Such applications must be filed within thirty ~~(30)~~ days from the date of the vessel's initial
39 seizure. Otherwise, except in the case of an emergency, such applications shall be filed and
40 served upon all parties, who in turn shall have ten ~~(10)~~ days from receipt of the application to
41 file a written response.
42

43 Expenses for feeding or otherwise maintaining the crew, when incurred in accordance with this
44 subsection, shall be taxed as an expense of administration and not as an expense of custody.

1
2 (d) *Repatriation Expenses.* Absent an order of Court expressly ordering the repatriation of the
3 crew and/or passengers, and directing that the expenses be taxed as a cost of administration,
4 no person shall be entitled to claim these expenses as expenses of administration.
5

6 (e) *Claim by a Supplier for Payment of Charges.* Any person who claims payment for
7 furnishing services or supplies in compliance with Local Admiralty Rule E(11), shall submit
8 an invoice to the Marshal's Office for review and approval.
9

10 The claim shall be presented in the form of a verified claim, and shall be submitted within a
11 reasonable time after furnishing the services or supplies, but in no event shall a claim be
12 accepted after the vessel, or property has been released. The claimant shall file a copy of the
13 verified claim with the Marshal, and also serve the substitute custodian and all other parties
14 to the litigation.
15

16 The Marshal shall review the claim, make adjustments or recommendations to the claim as are
17 appropriate, and shall thereafter forward the claim to the Court for approval. The Court may
18 postpone the hearing on an individual claim until a hearing can be set to consolidate other
19 claims against the property.
20

21 **(12) Property in Incidental Custody and Otherwise Not Subject to the Arrest or Attachment.**
22

23 (a) *Authority to Preserve Cargo in Incidental Custody.* The Marshal, or an authorized
24 substitute custodian, shall be responsible for securing, maintaining and preserving all property
25 incidentally taken into custody as a result of the arrest or attachment of a vessel or property.
26 Incidental property may include, but shall not be limited to, laden cargo not itself the subject
27 of the arrest or attachment.
28

29 The Marshal or other custodian shall maintain a separate account of all costs and expenses
30 associated with the care and maintenance of property incidentally taken into custody.
31

32 Any person claiming entitlement to possession of property incidentally taken into custody shall
33 be required, as a precondition of receiving possession, to reimburse the Marshal for such
34 separately accounted expenses. Monies received by the Marshal will be credited against both
35 the expense of custody and administration.
36

37 (b) *Separation, Storage and Preservation of Property in Incidental Custody.* Any party, or
38 the Marshal, may petition the Court to permit the separation and storage of property in
39 incidental custody from the property actually arrested or attached.
40

41 When separation of the property is ordered to protect the incidentally seized property from
42 undue deterioration; provide for safer storage; meet an emergency; reduce the expenses of
43 custody; or to facilitate a sale of the vessel or other property pursuant to Local Admiralty Rule
44 E(16); the costs of such separation shall be treated as an expense of preservation and taxed

1 as a cost of custody.
2

3 (c) *Disposal of Unclaimed Property.* Property incidentally in custody and not subsequently
4 claimed by any person entitled to possession, shall be disposed of in accordance with the laws
5 governing the disposition of property abandoned to the United States of America.
6

7 Except when prohibited by prevailing federal statute, the resulting net proceeds associated
8 with the disposition of abandoned property shall be applied to offset the expense of
9 administration, with the remainder escheating to the United States of America as provided by
10 law.
11

12 **(13) Dismissal.**

13
14 (1) *By Consent.* No action may be dismissed pursuant to ~~Fed.R.Civ.P.~~ Federal Rule of Civil
15 Procedure 41(a) unless all costs and expenses of the Court and its officials have first been paid.
16

17 Additionally, if there is more than one plaintiff or intervening plaintiff, no dismissal may be
18 taken by a plaintiff unless that party's proportionate share of costs and expenses has been paid
19 in accordance with Local Admiralty Rule E(6).
20

21 (2) *Involuntary Dismissal.* If the Court enters a dismissal pursuant to ~~Fed.R.Civ.P.~~ Federal
22 Rule of Civil Procedure 41(b), the Court shall also designate the costs and expenses to be paid
23 by the party or parties so dismissed.
24

25 **(14) Judgments.**

26
27 (1) *Expenses of Sureties as Costs.* If costs are awarded to any party, then all reasonable
28 premiums or expenses paid by the prevailing party on bonds, stipulations and/or other security
29 shall be taxed as costs in the case.
30

31 (2) *Costs of Arrest or Attachment.* If costs are awarded to any party, then all reasonable
32 expenses paid by the prevailing party incidental to, or arising from the arrest or attachment of
33 any vessel, property and/or cargo shall be taxed as costs in the case.
34

35 **(15) Stay of Final Order.**

36
37 (a) *Automatic Stay for Ten (10) Days.* In accordance with ~~Fed.R.Civ.P.~~ Federal Rule of Civil
38 Procedure 62(a), no execution shall issue upon a judgment, nor shall seized property be
39 released pursuant to a judgment or dismissal, until ten (10) days after the entry of the judgment
40 or order of dismissal.
41

42 (b) *Stays Beyond the Ten (10) Day Period.* If within the ten (10) day period established by
43 ~~Fed.R.Civ.P.~~ Federal Rule of Civil Procedure 62(a), a party files any of the motions
44 contemplated in ~~Fed.R.Civ.P.~~ Federal Rule of Civil Procedure 62(b), or a notice of appeal,

1 then unless otherwise ordered by the Court, a further stay shall exist for a period not to exceed
2 thirty (~~30~~) days from the entry of the judgment or order. The purpose of this additional stay
3 is to permit the Court to consider an application for the establishment of a supersedeas bond;
4 and to order the date upon which the bond shall be filed with the Court.
5

6 **(16) Notice of Sale.**
7

8 (1) *Publication of Notice.* In an action in rem or quasi in rem, and except in suits on behalf
9 of the United States of America where other notice is prescribed by statute, the Marshal shall
10 publish notice in any of the newspapers approved pursuant to Local Admiralty Rule A(7).
11

12 (2) *Duration of Publication.* Unless otherwise ordered by the Court, applicable Supplemental
13 Rule, or Local Admiralty Rule, publication of the notice of sale shall be made at least twice;
14 the first publication shall be at least one (~~1~~) calendar week prior to the date of the sale, and the
15 second at least three (~~3~~) calendar days prior to the date of the sale.
16

17 **(17) Sale of a Vessel or Property.**
18

19 (a) *Payment of the Purchase Price.* Unless otherwise provided in the order of sale, the person
20 whose bid is accepted shall pay the Marshal the purchase price in the manner provided below;
21

22 (1) If the Bid Is Not More Than \$500.00. The successful bidder shall
23 immediately pay the full purchase price.
24

25 (2) If the Bid Is More Than \$500.00. The bidder shall immediately deposit with
26 the Marshal \$500.00, or (~~10%~~) ten percent of the bid, whichever sum is greater. Thereafter
27 the bidder shall pay the remaining purchase price within three (~~3~~) working days.
28

29 If an objection to the sale is filed within the time permitted by Local Admiralty Rule E(17)(g),
30 the successful bidder is excused from paying the remaining purchase price until three (~~3~~)
31 working days after the Court confirms the sale.
32

33 (b) *Method of Payment.* Unless otherwise ordered by the Court, payments to the Marshal shall
34 be made in cash, certified check or cashier's check.
35

36 (c) *Custodial Costs Pending Payment.* When a successful bidder fails to pay the balance of
37 the bid within the time allowed by Local Admiralty Rule E (17)(a)(2), or within the time
38 permitted by order of the Court, the Marshal shall charge the successful bidder for the cost of
39 keeping the property from the date payment of the balance was due, to the date the bidder
40 takes delivery of the property.
41

42 The Marshal may refuse to release the property until these additional charges have been paid.
43

44 (d) *Default for Failure to Pay the Balance.* The person who fails to pay the balance of the bid

1 within the time allowed shall be deemed to be in default. Thereafter a judicial officer may
2 order that the sale be awarded to the second highest bidder, or may order a new sale as
3 appropriate.
4

5 Any sum deposited by the bidder in default shall be forfeited, and the amount shall be applied
6 by the Marshal to any additional costs incurred because of the forfeiture and default, including
7 costs incident to resale. The balance of the deposit, if any, shall be retained in the registry and
8 subject to further order of the Court.
9

10 (e) *Marshal's Report of Sale.* At the conclusion of the sale, the Marshal shall file a written
11 report of the sale to include the date of the sale, the price obtained, and the name and address
12 of the buyer.
13

14 (f) *Confirmation of Sale.* Unless an objection is timely filed in accordance with this rule, or
15 the purchaser is in default for failing to pay the balance of the purchase price, plaintiff shall
16 proceed to have the sale confirmed on the day following the last day for filing objections.
17

18 In order to confirm the sale, plaintiff's counsel shall file a "Request for Confirmation of Sale"
19 on the day following the last day for filing an objection. The "Request for Confirmation of
20 Sale" shall substantially conform in format and content to the form identified as SDF 10 in the
21 Appendix to these Local Admiralty Rules. Plaintiff's counsel shall also prepare and offer for
22 filing a "Confirmation of the Sale." The "Confirmation of Sale" shall substantially conform
23 in format and content to the form identified as SDF 11 in the Appendix to these Local
24 Admiralty Rules. Thereafter the Clerk of the Court shall file and docket the confirmation and
25 shall promptly transmit a certified copy of the "Confirmation of Sale" to the Marshal's Office.
26

27 Unless otherwise ordered by the Court, if the plaintiff fails to timely file the "Request for
28 Confirmation of Sale" and proposed "Confirmation of Sale," the Marshal shall assess any
29 continuing costs or expenses for custody of the vessel or property against the plaintiff.
30

31 (g) *Objections to Confirmation.*
32

33 (1) Time for Filing Objections. Unless otherwise permitted by the Court, an
34 objection must be filed within three (3) working days following the sale. The party or
35 person filing an objection shall serve a copy of the objection upon the Marshal and all
36 other parties to the action, and shall also file a Certificate of Service indicating the date and
37 manner of service. Opposition to the objection must be filed within five (5) days after
38 receipt of the objection of the sale.
39

40 The Court shall consider the objection, and any opposition to the objection, and shall
41 confirm the sale, order a new sale, or grant other relief as appropriate.
42

43 (2) Deposit of Preservation or Maintenance Costs. In addition to filing written
44

1 objections, any person objecting to the sale shall also deposit with the Marshal the cost of
2 keeping the property for at least seven (7) days. Proof of the deposit with the Marshal's
3 ~~o~~Office shall be delivered to the ~~Clerk's office~~ Clerk of the Court's Office by the moving
4 party. The Court will not consider the objection without proof of this deposit.
5

6 If the objection is sustained, the objector will be reimbursed for the expense of keeping the
7 property from the proceeds of any subsequent sale, and any remaining deposit will be
8 returned to the objector upon Court order.
9

10 If the objection is denied, the sum deposited by the objector will be applied to pay the fees
11 and expenses incurred by the Marshal in keeping the property from the date the objection
12 was filed until the sale is confirmed. Any remaining deposit will be returned to the
13 objector upon order of Court.
14

15 (h) *Confirmation of Title.* Failure of a party to give the required notice of an action and arrest
16 of a vessel, property and/or cargo, or failure to give required notice of a sale, may afford
17 grounds for objecting to the sale, but such failure does not affect the title of a good faith
18 purchaser of the property.
19

20 **(18) Post-sale Claim.** Claims against the proceeds of a sale authorized by these rules, except for
21 seamen's wages, will not be admitted on behalf of lienors who file their claims after the sale.
22

23 Unless otherwise ordered by the Court, any claims filed after the date of the sale shall be limited to
24 the remnants and surplus arising from the sale.
25

26 Effective Dec. 1, 1994; amended effective April 15, 1998.
27

28 **Advisory Notes**

29

30 (1993) Local Admiralty Rule E(1). This section continues the provisions of former Local Rule 7(c).
31

32 Local Admiralty Rule E(2). This section is new. The rules do not require an intervening plaintiff
33 to undertake the formal steps required to issue the original process of arrest or attachment pursuant
34 to Local Admiralty Rule B(3) or C(2); rather the Committee believes that intervening parties need
35 only apply for supplemental process, which in accordance with the August 1, 1985, amendments to
36 Supplemental Rule (B) and (C), may be issued by the ~~e~~Clerk of the Court without further order of
37 the Court. The Committee recommends the re-arrest or re-attachment provisions of this rule in order
38 to accommodate the administrative and records keeping requirements of the ~~m~~Marshal's oOffice.
39

40 The revision also reflects the elimination of the initial security deposit formerly required by Local
41 Admiralty Rule 5(e). The Marshal shall, however, assess custodial costs against the intervening
42 plaintiff in accordance with Local Admiralty Rule E(5)(b).
43

44 Local Admiralty Rule E(3). This section continues the provisions of former Local Rule 7(e).

1
2 Local Admiralty Rule E(4). This section continues the provisions of former Local Rule 6.
3

4 Local Admiralty Rule E(5). The Marshal, as an officer of the Court whose fiscal affairs are regulated
5 by statute and order, is precluded by law from expending funds of the United States to maintain
6 custody of vessels or other property pursuant to claims being asserted by the several states, any
7 foreign sovereigns, or any private parties. This prohibition extends to incurring obligations which,
8 if not satisfied, otherwise might be asserted as a claim against the United States. Consequently,
9 before undertaking to arrest or attach property, the Marshal must receive funds in advance of
10 incurring such obligations sufficient to satisfy them.
11

12 Past experience indicates that not infrequently vessels or other properties arrested for nonpayment
13 of incurred obligations will be ultimately sold for satisfaction, to the extent possible, of pending
14 claims. In such cases, substitute security is never given, and the property must be retained in
15 custody for a sufficient period of time to permit the Court to determine the status of the situation and
16 to order appropriate procedures. In such instances, custodial costs tend to be substantial and, by the
17 very nature of the circumstances, the claimants and potential claimants can be both large in number
18 and will vary markedly in the amounts of their respective individual claims. Apportioning the
19 obligation to make advances against custodial costs over this range of claims and claimants has
20 resulted in frequent calls for judicial intervention.
21

22 It was the Committee's view that a system initially self-executing and ministerial would minimize
23 situations calling for judicial intervention while affording the Marshal the protection of assured and
24 certain procedures. At the same time, the Committee was strongly of the opinion that the rules
25 should do substantial equity as between claims showing wide variation in amounts and potential
26 priorities and, at the same time, should be so structured as to require all potential claimants to come
27 forward and share in the cost of custody, discouraging the sometime practice of claimants' waiting
28 to intervene until the last moment in order to allow other parties to bear the burdens of making such
29 advances.
30

31 A concern was expressed about the position of parties having large, but clearly inferior claims, who,
32 in equity should not be required to share on a prorated value-of-the-claim-asserted basis with
33 claimants who have obvious priority. A typical example of such a situation would involve a
34 mortgagee of a foreign-flag vessel appearing as a claimant in an action along with lien claimants
35 alleging to have supplied necessities to a vessel in ports of the United States, the mortgagee's
36 position being subordinated by virtue of Title 46 U.S.C. § United States Code, Section 951. After
37 considering all possible alternatives, it was obvious that this limited range of situations could not
38 be addressed through a mechanism for automatic administration and, consequently, the provision
39 providing for judicial relief in the event of hardship or inequity was included.
40

41 Local Admiralty Rule E(6). Section (6) is new. It reflects the approach embodied in the local rules
42 of those districts which have addressed the question of properties subject to arrest but already in the
43 possession of an officer of the United States.
44

1 Local Admiralty Rule E(7). The provisions of sSection (7) are new. Paragraph (a), following rules
2 promulgated in other districts, states what is understood by the aAdvisory cCommittee to have been
3 the practice in this dDistrict. Paragraph (b) is designed to mesh the concept of process held in
4 abeyance with the requirements of Local Admiralty Rule E(2) regarding intervening claims, and is
5 designed to foreclose the possibility of a vessel or other property being arrested or attached in the
6 dDistrict as a result of more than one civil action. Since under Local Rule 5(b), the automatic,
7 permissive intervention is not triggered until the vessel or other property has been arrested, attached
8 or seized, a suit in rem in which process is held in abeyance will not form the basis for such an
9 intervention. On the other hand, once the property is arrested, attached or seized, the issuance of
10 process in the earlier suit would be destructive of the "only one civil action" concept, and,
11 consequently paragraph (b) requires a party whose process was held in abeyance to refile as an
12 intervenor pursuant to Local Admiralty Rule E(2), making provision for the proper disposition of
13 the earlier action.

14
15 Local Admiralty Rule E(8). Section (8) continues the provisions of Local Rule 11.

16
17 Local Admiralty Rule E(9). Section (9) is new. The provisions of Section (j) are expressly
18 authorized by Supplemental Rule (E)(6) and offer some potential relief from the automatic
19 operations and other provisions of Supplemental Rule (E) regarding security for value and interest.
20 The decision in *Industria Nacional del Papel, C.A. M V Albert F.*, 730 F.2d 622 (11th Cir. 1984),
21 indicates that such an application must be made prior to the entry of judgment.

22
23 Local Admiralty Rule E(10). Section (10) is new. It is designed to reflect the actual practice in the
24 dDistrict, and follows the rules promulgated in several other districts. In formulating this Local
25 Admiralty rRule, the Committee studied Section 6.3 of the "Marshal's Manual," the internal
26 operating guide for the United States Marshal's Service. Section 10(b) was amended in 1998 to
27 permit substitute custodians to move arrested vessels, pursuant to an order of the United States Coast
28 Guard Captain of the Port ("COTP"), without first obtaining permission from the Court. The change
29 was prompted by instances where substitute custodians declined to obey a COTP order to move an
30 arrested vessel, citing Local Admiralty Rule E(10)(b) and its requirement that Court permission be
31 first obtained. Any movement of a vessel pursuant to a COTP order must not take the vessel out of
32 the ~~Southern~~ District of Florida. A corresponding change was made in Form 5, paragraph (5).

33
34 Local Admiralty Rule E(11). Section (11) is new. It addresses areas which in recent litigation in the
35 dDistrict have called excessively for interim judicial administration. While the subject matter is
36 covered in the rules promulgated in other districts, sSection (11) differs from the approach of other
37 districts in providing for a more positive control of expenses being incurred in connection with
38 vessels or other property in the custody of the Court, and is designed to avoid accumulated costs
39 being advanced for the first time well after having been incurred.

40
41 Local Admiralty Rule E(12). Section (12) is new. It addresses a situation which has arisen in the
42 dDistrict in the past and which can be foreseen as possibly arising in the future. While the subject
43 is not addressed in other local rules studied by any oft-cited leading cases, it was the opinion of the
44 Advisory Committee that the area should be addressed by ~~local rule~~ Local Admiralty Rule and that

1 the provisions of Section (12) are both consistent with the general maritime laws of the United States
2 and designed to permit efficient administration without the necessity for undue judicial intervention.
3 As with the claims of intervenors and the allocation of deposits against custodial costs, the
4 provisions of Section (12), in keeping with the design of these ~~local rules~~ Local Admiralty Rules,
5 are intended to be essentially self-executing, with the emphasis on the ministerial role of Court
6 officers and services.

7
8 Local Admiralty Rule E(13). Section (13) continues the provisions of former Local Rule 17(a). It
9 follows Federal Rule of Civil Procedure Rule 41, Fed.R.Civ.P., and addresses the necessarily greater
10 concern for costs and expenses inherent in the in rem admiralty procedure.

11
12 Local Admiralty Rule E(14). Section (14) continues the provisions of former Local Rule 13.

13
14 Local Admiralty Rule E(15). Section (15) incorporates the provisions of former Local Rule 14.

15
16 Local Admiralty Rule E(16) and (17). The provisions of former Local Rule 4 have been expanded
17 to provide a standardized procedure governing sales of property, which procedure the Court, at its
18 option, may utilize, in whole or in part, thus shortening and simplifying orders related to sales and
19 accompanying procedures.

20
21 Local Admiralty Rule E(18). Consistent with the provision of Local Admiralty Rule E(2), this
22 section gives express notice of the distinct positions of claims pre-sale and post-sale.

23
24 **RULE F. ACTIONS TO LIMIT LIABILITY**

25
26 **(1) Publication of the Notice.** Immediately upon the commencement of an action to limit liability
27 pursuant to Supplemental Rule (F), plaintiff shall, without further order of Court, effect publication
28 of the notice in accordance with the provisions set forth in Supplemental Rule (F)(4) and Local
29 Admiralty Rule A(7).

30
31 **(2) Proof of Publication.** Plaintiff shall file proof of publication not later than the return date.
32 It shall be sufficient proof for plaintiff to file the sworn statement by, or on behalf of, the publisher
33 or editor, indicating the dates of publication, along with a copy or reproduction of the actual
34 publication.

35
36 **(3) Appraisals Pursuant to Supplemental Rule (F)(7).** Upon the filing of a claimant's motion
37 pursuant to Supplemental Rule (F)(7), demanding an increase in the funds deposited in Court or the
38 security given by plaintiff, the Court shall order an appraisal of the value of the plaintiff's
39 interest in the vessel and pending cargo.

40
41 Upon receipt of the order directing the appraisal, the parties shall have three (3) working days to file
42 a written stipulation to an appraiser. In the event that the parties do not file a stipulation, the Court
43 shall appoint the appraiser.

1 The appraiser shall promptly conduct an appraisal and thereafter file the appraisal with the Clerk of
2 the Court and serve a copy of the appraisal upon the moving party and the plaintiff. The appraiser
3 shall also file a Certificate of Service indicating the date and manner in which service was perfected.
4

5 **(4) Objections to the Appraisal.** Any party may move to set aside the appraisal within ten ~~(10)~~
6 days following the filing of the appraisal with the Clerk of the Court.
7

8 **(5) Fees of the Appraiser.** The Court shall establish the fee to be paid the appraiser. Unless
9 otherwise ordered by the Court, the fee shall be taxed against the party seeking relief under
10 Supplemental Rule ~~(F)~~(7).
11

12 Effective Dec. 1, 1994.
13

14 **Advisory Notes**

15
16 (1993) Local Admiralty Rule F(1). This section incorporates the publication provisions of Local
17 Admiralty Rule A(7); and applies them to limitation of liability actions. The rule provides for the
18 publication of the notice required by Supplemental Rule ~~(F)~~(4) without further order of the Court.
19 The Advisory Committee believes that this self-executing aspect of the rule will save judicial time
20 and at the same time will not impair the rights of any party or claimant.
21

22 Local Admiralty Rule F(2). The Advisory Committee determined that filing proof of publication
23 with the eClerk of the Court was essential in order to establish an adequate record of the publication.
24

25 Local Admiralty Rule F(3). This section continues in substance the provisions of former Local
26 Admiralty Rule 10.
27
28
29
30
31
32
33
34
35

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1 **FORM 2. PROCESS OF ATTACHMENT AND GARNISHMENT**

2
3 UNITED STATES DISTRICT COURT
4 SOUTHERN DISTRICT OF FLORIDA

5
6 Case No. ____-Civ or Cr-(USDJ's last name/USMJ's last name)

7
8 "IN ADMIRALTY"

9
10
11
12 Plaintiff,

13
14
15
16 v.

17
18
19
20 Defendant.
21 _____

22
23 **PROCESS OF ATTACHMENT AND GARNISHMENT**

24
25 The complaint in the above-styled case was filed in the _____ Division of this Court on
26 _____, _____.

27
28 In accordance with Supplemental Rule (B) of Certain Admiralty and Maritime Claims of the
29 Federal Rules of Civil Procedure and Local Admiralty Rule B, you are directed to attach and garnish
30 the property indicated below:

31
32 **DESCRIPTION**

33
34 (Describe the property to be attached and garnished in sufficient detail, including location
35 of the property, to permit the United States Marshal to effect the seizure.)

36
37
38 You shall also give notice of the attachment and garnishment to every person required by
39 appropriate Supplemental Rule, Local Admiralty Rule, and the practices of your office.

40
41 DATED at _____, Florida, this _____ day of _____, _____.

42
43 CLERK

44
45 By: _____

Deputy Clerk

~~(Name of Plaintiff's Attorney)~~ Attorney Name (Bar Number)
~~(Florida Bar Number, if admitted in Fla.)~~ Attorney E-mail Address
~~(Firm Name, if applicable)~~ Firm Name
~~(Mailing Address)~~ Street Address
~~(City, State & Zip Code)~~ City, State, Zip Code
~~(Telephone Number)~~ Telephone: (xxx)xxx-xxxx
~~(Facsimile Number)~~ Facsimile: (xxx)xxx-xxxx
~~(E-Mail Address)~~ Attorneys for Plaintiff [Party Name(s)]

SPECIAL NOTICE

Any person claiming an interest in property seized pursuant to this process of attachment and garnishment must file a claim in accordance with the post-seizure review provisions of Local Admiralty Rule B(5).

Effective Dec. 1, 1994; amended effective April 15, 2001.

FORM 3. ORDER DIRECTING THE ISSUANCE OF THE WARRANT OF ARREST

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. ____-Civ or Cr-(USDJ's last name/USMJ's last name)

"IN ADMIRALTY"

Plaintiff,

v.

Defendant.

_____ /

**ORDER DIRECTING THE ISSUANCE OF THE WARRANT OF ARREST
AND/OR SUMMONS**

Pursuant to Supplemental Rule ~~(C)~~(1) and Local Admiralty Rule C(2)(a), the Clerk of the Court is directed to issue a warrant of arrest and/or summons in the above-styled action.

1 DONE AND ORDERED at _____, Florida, this _____ day of _____, _____.

2
3
4
5 U.S. United States District Judge

6
7 Effective Dec. 1, 1994; amended effective April 15, 2001.

8
9 **FORM 4. WARRANT FOR ARREST IN REM**

10
11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF FLORIDA

13
14 Case No. ____-Civ or Cr-(USDJ's last name/USMJ's last name)

15
16 "IN ADMIRALTY"

17
18
19 Plaintiff,

20
21
22 v.

23
24
25 Defendant.

26 _____/

27
28 WARRANT FOR ARREST IN REM

29
30 TO THE UNITED STATES MARSHAL FOR THE UNITED STATES DISTRICT COURT FOR
31 THE SOUTHERN DISTRICT OF FLORIDA

32
33 The complaint in the above-styled in rem proceeding was filed in the _____ Division of this
34 Court on _____, _____.

35
36 In accordance with Supplemental Rule (C) for Certain Admiralty and Maritime Claims of the
37 Federal Rules of Civil Procedure and Local Admiralty Rule C, you are directed to arrest the
38 Defendant vessel, her boats, tackle, apparel and furniture, engines and appurtenances, and to detain
39 the same in your custody pending further order of the Court.

40
41 You shall also give notice of the arrest to all persons required by appropriate Supplemental
42 Rule, Local Admiralty Rule, and the practices of your office.

43
44 ORDERED at _____, Florida, this _____ day of _____, _____.

1
2 CLERK

3
4 By: _____
5 Deputy Clerk
6

7 ~~(Name of Plaintiff's Attorney)~~Attorney Name (Bar Number)
8 ~~(Florida Bar Number, if admitted in Fla.)~~Attorney E-mail Address
9 ~~(Firm Name, if applicable)~~Firm Name
10 ~~(Mailing Address)~~Street Address
11 ~~(City, State & Zip Code)~~City, State, Zip Code
12 ~~(Telephone Number)~~Telephone: (xxx)xxx-xxxx
13 ~~(Facsimile Number)~~Facsimile: (xxx)xxx-xxxx
14 ~~(E-Mail Address)~~Attorneys for Plaintiff [Party Name(s)]
15

16 cc: Counsel of Record
17

18 SPECIAL NOTICE
19

20 In accordance with Local Admiralty Rule C(6), any person claiming an interest in the vessel
21 and/or property shall be required to file a claim within ten ~~(10)~~ days after process has been executed,
22 and shall also be required to file an answer within twenty ~~(20)~~ days after the filing of this claim.
23

24 Any persons claiming an interest in the vessel and/or property may also pursue the post-arrest
25 remedies set forth in Local Admiralty Rule C(7).
26

27 Effective Dec. 1, 1994; amended effective April 15, 2001.
28

29 **FORM 5. MOTION FOR APPOINTMENT OF SUBSTITUTE CUSTODIAN**
30

31 UNITED STATES DISTRICT COURT
32 SOUTHERN DISTRICT OF FLORIDA
33

34 Case No. ____-Civ or Cr-(USDJ's last name/USMJ's last name)
35

36 "IN ADMIRALTY"
37

38
39 Plaintiff,
40

41
42 v.
43
44

1 Defendant.
2 _____/

3
4 MOTION FOR APPOINTMENT OF SUBSTITUTE CUSTODIAN

5
6 Pursuant to Local Admiralty Rule E(10)(c), Plaintiff _____, by and through the
7 undersigned attorney, represents the following:

8
9 (1) On _____, _____, Plaintiff initiated the above-styled action against the vessel
10 _____, her boats, tackle, apparel, furniture and furnishings, equipment, engines and
11 appurtenances.

12
13 (2) On _____, _____, the Clerk of the ~~District~~ Court issued a Warrant of Arrest against
14 the vessel _____, directing the United States Marshal to take custody of the vessel, and to retain
15 custody of the vessel pending further order of this Court.

16
17 (3)(a) Subsequent to the issuance of the Warrant of Arrest, the Marshal will take steps to
18 immediately seize the vessel. Thereafter, continual custody by the Marshal will require the services
19 of at least one custodian at a cost of at least \$_____ per day. (This paragraph would be applicable
20 only when the motion for appointment is filed concurrent with the complaint and application for the
21 warrant of arrest.)

22
23 —or—

24
25 (3)(b) Pursuant to the previously issued Warrant of Arrest, the Marshal has already arrested
26 the vessel. Continued custody by the Marshal requires the services of _____ custodians at a cost
27 of at least \$_____ per day. (This paragraph would be applicable in all cases where the Marshal
28 has previously arrested the vessel.)

29
30 (4) The vessel is currently berthed at _____, and subject to the approval of the Court, the
31 substitute custodian is prepared to provide security, wharfage, and routine services for the
32 safekeeping of the vessel at a cost substantially less than that presently required by the Marshal. The
33 substitute custodian has also agreed to continue to provide these services pending further order of
34 this Court.

35
36 (5) The substitute custodian has adequate facilities for the care, maintenance and security of
37 the vessel. In discharging its obligation to care for, maintain and secure the vessel, the Substitute
38 Custodian shall comply with all orders of the Captain of the Port, United States Coast Guard,
39 including but not limited to, an order to move the vessel; and any applicable federal, state, and local
40 laws, regulations and requirements pertaining to vessel and port safety. The Substitute Custodian
41 shall advise the Court, the parties to the action, and the United States Marshal, of any movement of
42 the vessel pursuant to an order of the Captain of the Port, United States Coast Guard, within
43 twenty-four hours of such vessel movement.
44

1 (6) Concurrent with the Court's approval of the Motion for Appointment of the Substitute
2 Custodian, Plaintiff and the ~~S~~ubstitute ~~C~~ustodian will file a Consent and Indemnification
3 Agreement in accordance with Local Admiralty Rule E(10)(c)(2).
4

5 THEREFORE, in accordance with the representations set forth in this instrument, and subject
6 to the filing of the indemnification agreement noted in paragraph (6) above, Plaintiff requests this
7 Court to enter an order appointing _____ as the Substitute Custodian for the vessel _____.
8

9 DATED at _____, Florida, this _____ day of _____, _____.
10

11 _____
12 SIGNATURE OF COUNSEL OF RECORD
13 ~~Typed Name of Counsel~~ Attorney Name (Bar Number)
14 ~~Fla. Bar ID No. (if admitted in Fla.)~~ Attorney E-mail Address
15 ~~Firm or Business Name~~ Firm Name
16 ~~Mailing Address~~ Street Address
17 ~~City, State, Zip Code~~ City, State, Zip Code
18 ~~Telephone Number~~ Telephone: (xxx)xxx-xxxx
19 ~~Facsimile Number~~ Facsimile: (xxx)xxx-xxxx
20 ~~E-Mail Address~~ Attorneys for Plaintiff [Party Name(s)]
21

22 cc: Counsel of Record
23 Substitute Custodian
24

25 SPECIAL NOTE

26
27 Plaintiff's attorney shall also prepare for the Court's signature and subsequent filing, a
28 proposed order for the Appointment of Substitute Custodian.
29

30 Effective Dec. 1, 1994; amended effective April 15, 1998; April 15, 2001.
31

32 **FORM 6. CONSENT AND INDEMNIFICATION AGREEMENT FOR THE**
33 **APPOINTMENT OF A SUBSTITUTE CUSTODIAN**
34

35 UNITED STATES DISTRICT COURT
36 SOUTHERN DISTRICT OF FLORIDA
37

38 Case No. ____-Civ or Cr-(USDJ's last name/USMJ's last name)
39

40 "IN ADMIRALTY"
41

42
43 Plaintiff,
44

1 v.

2
3
4 Defendant.

5 _____/

6
7
8 **CONSENT AND INDEMNIFICATION AGREEMENT**
9 **FOR THE APPOINTMENT OF A SUBSTITUTE CUSTODIAN**

10
11 Plaintiff _____, (by the undersigned attorney) and _____, the proposed Substitute
12 Custodian, hereby expressly release the United States Marshal for this dDistrict, and the United
13 States Marshal's Service, from any and all liability and responsibility for the care and custody of
14 _____ (describe the property) while in the hands of _____ (substitute custodian).

15
16 Plaintiff and _____ (substitute custodian) also expressly agree to hold the United States
17 Marshal for this dDistrict, and the United States Marshal's Service, harmless from any and all claims
18 whatsoever arising during the period of the substitute custodianship.

19
20 As counsel of record in this action, the undersigned attorney represents that he has been
21 expressly authorized by the Plaintiff to sign this Consent and Indemnification Agreement for, and
22 on behalf of the Plaintiff.

23
24 SIGNED this _____ day of _____, _____, at _____, Florida.

25
26
27 _____
28 PLAINTIFF'S ATTORNEY

29 Typed Name Attorney Name (Bar Number)

Typed Name

30 Fla. Bar ID No. (if admitted in Fla.) Attorney E-mail Address Fla. Bar ID No. (if admitted in Fla.)

31 Firm or Business Name Firm Name

Firm or Business Name

32 Mailing Address Street Address

Mailing Address

33 City, State, Zip Code City, State, Zip Code

City, State, Zip Code

34 Telephone Number Telephone: (xxx)xxx-xxxx

Telephone Number

35 Facsimile Number Facsimile: (xxx)xxx-xxxx

Facsimile Number

36 E-Mail Address Attorneys for Plaintiff [Party Name(s)] E-Mail Address

37
38 cc: Counsel of Record

39
40 Effective Dec. 1, 1994; amended effective April 15, 2001.

41
42 **FORM 7. NOTICE OF ACTION IN REM AND ARREST OF VESSEL**

43
44 UNITED STATES DISTRICT COURT
45 SOUTHERN DISTRICT OF FLORIDA

1
2 Case No. ____-Civ or Cr-(USDJ's last name/USMJ's last name)

3
4 "IN ADMIRALTY"

5
6
7 Plaintiff,

8
9
10 v.

11
12
13 Defendant.
14 _____/

15
16 NOTICE OF ACTION IN REM AND ARREST OF VESSEL

17
18 In accordance with Supplemental Rule (C)(4) for Certain Admiralty and Maritime Action
19 of the Federal Rules of Civil Procedure, and Local Admiralty Rule C(4), notice is hereby given of
20 the arrest of _____, in accordance with a Warrant of Arrest issued on _____, _____.

21
22 Pursuant to Supplemental Rule (C)(6), and Local Admiralty Rule C(6), any person having
23 a claim against the vessel and/or property shall file a claim with the Court not later than ten (10)
24 days after process has been effected, and shall file an answer within twenty (20) days from the date
25 of filing their claim.

26
27 DATED at _____, Florida, this _____ day of _____, _____.

28
29
30 _____
31 SIGNED NAME OF PLAINTIFF'S ATTORNEY
32 ~~Typed Name of Counsel~~ Attorney Name (Bar Number)
33 ~~Fla. Bar ID No. (if admitted in Fla.)~~ Attorney E-mail Address
34 ~~Firm or Business Name~~ Firm Name
35 ~~Mailing Address~~ Street Address
36 ~~City, State, Zip Code~~ City, State, Zip Code
37 ~~Telephone Number~~ Telephone: (xxx)xxx-xxxx
38 ~~Facsimile Number~~ Facsimile: (xxx)xxx-xxxx
39 ~~E-Mail Address~~ Attorneys for Plaintiff [Party Name(s)]

40 cc: Counsel of Record

41
42 Effective Dec. 1, 1994; amended effective April 15, 2001.

43
44 **FORM 8. MOTION FOR RELEASE OF A VESSEL OR PROPERTY IN ACCORDANCE**

1 **WITH SUPPLEMENTAL RULE (E)(5)**

2
3 UNITED STATES DISTRICT COURT
4 SOUTHERN DISTRICT OF FLORIDA

5
6 Case No. ____-Civ or Cr-(USDJ's last name/USMJ's last name)

7
8 "IN ADMIRALTY"

9
10
11 Plaintiff,

12
13
14 v.

15
16
17 Defendant.

18 _____/

19
20 MOTION FOR RELEASE OF A VESSEL OR PROPERTY IN ACCORDANCE WITH
21 SUPPLEMENTAL RULE (E)(5)

22
23 In accordance with Supplemental Rule (E)(5) and Local Admiralty Rule E(8)(b), plaintiff,
24 on whose behalf property has been seized, requests the Court to enter an Order directing the United
25 States Marshal for the Southern District of Florida to release the property. This request is made for
26 the following reasons:

27
28 (Describe the reasons in sufficient detail to permit the Court to enter an appropriate order.)

29
30 DATED at _____, Florida, this _____ day of _____, _____.

31
32
33 _____
34 SIGNED NAME OF PLAINTIFF'S ATTORNEY
35 ~~Typed Name of Counsel~~ Attorney Name (Bar Number)
36 ~~Fla. Bar ID No. (if admitted in Fla.)~~ Attorney E-mail Address
37 ~~Firm or Business Name~~ Firm Name
38 ~~Mailing Address~~ Street Address
39 ~~City, State, Zip Code~~ City, State, Zip Code
40 ~~Telephone Number~~ Telephone: (xxx)xxx-xxxx
41 ~~Facsimile Number~~ Facsimile: (xxx)xxx-xxxx
42 ~~E-Mail Address~~ Attorneys for Plaintiff [Party Name(s)]

43
44 cc: Counsel of Record

1 Effective Dec. 1, 1994; amended effective April 15, 2001.

2
3 **FORM 10. REQUEST FOR CONFIRMATION OF SALE**

4
5 UNITED STATES DISTRICT COURT
6 SOUTHERN DISTRICT OF FLORIDA

7
8 Case No. ____-Civ or Cr-(USDJ's last name/USMJ's last name)

9
10 "IN ADMIRALTY"

11
12
13 Plaintiff,

14
15
16 v.

17
18
19 Defendant.

20 _____/

21
22 **REQUEST FOR CONFIRMATION OF SALE**

23
24 Plaintiff, by and through its undersigned attorney certifies the following:

25
26 (1) *Date of Sale:* In accordance with the Court's previous Order of Sale, plaintiff represents
27 that the sale of _____ (describe the property) was conducted by the United States Marshal on
28 _____, _____.

29
30 (2) *Last Day for Filing Objections:* Pursuant to Local Admiralty Rule E(17)(g)(1), the last day
31 for filing objections to the sale was _____, _____.

32
33 (3) *Survey of Court Records:* Plaintiff has surveyed the docket and records of this case, and
34 has confirmed that as of _____, _____, there were no objections to the sale on file with the
35 Clerk of the Court.

36
37 THEREFORE, in light of the facts presented above, plaintiff requests the Clerk of the Court
38 to enter a Confirmation of Sale and to transmit the confirmation to the Marshal for processing.

39
40 DATED at _____, Florida, this _____ day of _____, _____.

41
42 _____
43 SIGNED NAME OF PLAINTIFF'S ATTORNEY
44 ~~Typed Name of Counsel~~ Attorney Name (Bar Number)

~~Fla. Bar ID No. (if admitted in Fla.)~~ Attorney E-mail Address
~~Firm or Business Name~~ Firm Name
~~Mailing Address~~ Street Address
~~City, State, Zip Code~~ City, State, Zip Code
~~Telephone Number~~ Telephone: (xxx)xxx-xxxx
~~Facsimile Number~~ Facsimile: (xxx)xxx-xxxx
~~E-Mail Address~~ Attorneys for Plaintiff [Party Name(s)]

cc: Counsel of Record

Effective Dec. 1, 1994; amended effective April 15, 2001.

FORM 11. CONFIRMATION OF SALE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. ____-Civ or Cr-(USDJ's last name/USMJ's last name)

"IN ADMIRALTY"

Plaintiff,

v.

Defendant.

_____ /

CONFIRMATION OF SALE

The records in this action indicate that no objection has been filed to the sale of property conducted by the United States Marshal on _____, _____.

THEREFORE, in accordance with Local Admiralty Rule E(17)(f), the sale shall stand confirmed as of _____, _____.

DONE at _____, Florida, this _____ day of _____, _____.

CLERK

By: _____
Deputy Clerk

cc: United States Marshal
Counsel of Record

Effective Dec. 1, 1994; amended effective April 15, 2001.

FORM 12. SUMMONS AND PROCESS OF MARITIME ATTACHMENT AND GARNISHMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. ____-Civ or Cr-(USDJ's last name/USMJ's last name)

Plaintiff,

v.

Defendant.

_____ /

SUMMONS AND PROCESS OF MARITIME ATTACHMENT AND GARNISHMENT

THE PRESIDENT OF THE UNITED STATES OF AMERICA

TO: THE UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF FLORIDA.

GREETING:

WHEREAS, on the _____ day of _____, _____, _____ filed a complaint against _____ for reasons in said complaint mentioned for the sum of _____ and praying for process of marine attachment and garnishment against the said defendant and _____,

WHEREAS, this process is issued pursuant to such prayer and requires that a garnishee shall serve his answer within twenty (20)-days after service of process upon him and requires that a defendant shall serve his answer within thirty (30)-days after process has been executed, whether

1 by attachment of property or service on the garnishee,
2

3 NOW, THEREFORE, you are hereby commanded that if the said defendant cannot be found
4 within the District you attach goods, chattels, credits and effects located and to be found at _____
5 and described as follows: _____, or in the hands of _____, the garnishee, up to the amount sued
6 for, to-wit: _____ and how you shall have executed this process, make known to this Court
7 with your certificate of execution thereof written.
8

9
10 WITNESS THE HONORABLE

11 _____
12 Judge of said Court at _____, Florida, in said District, this
13 _____ day of _____, _____.

14 _____, CLERK

15
16
17
18 BY: _____
19 Deputy Clerk
20

21 NOTE: This process is issued pursuant to Rule B(1) of the Supplemental Rules for Certain
22 Admiralty and Maritime Claims of the Federal Rules of Civil Procedure.

23
24 Effective Dec. 1, 1994; amended effective April 15, 2001.
25

26 **FORM 13. MARITIME SUMMONS TO SHOW CAUSE RESPECTING INTANGIBLE**
27 **PROPERTY**

28
29 UNITED STATES DISTRICT COURT
30 SOUTHERN DISTRICT OF FLORIDA
31

32 Case No. ____-Civ or Cr-(USDJ's last name/USMJ's last name)
33

34
35 ~~MARITIME SUMMONS TO SHOW CAUSE RESPECTING INTANGIBLE PROPERTY~~
36

37
38 Plaintiff,
39

40
41 v.
42

43
44 Defendant.

1 _____/

2

3 MARITIME SUMMONS TO SHOW CAUSE RESPECTING INTANGIBLE PROPERTY

4

5 TO ALL PERSONS having control of the freight of the vessel _____ or control of the
6 proceeds of the sale of said vessel or control of the proceeds of the sale of any property appurtenant
7 thereto or control of any other intangible property appurtenant thereto.

8

9 You are hereby summoned to interpose in writing a claim, by attorney or in proper person,
10 at the Clerk's of the Court's Office in said District within ten (~~10~~) days after the service, and
11 therewith or thereafter within twenty (~~20~~) days following such claim or thirty (~~30~~) days after the
12 service, whichever is less, a responsive pleading to the complaint herewith served upon you and to
13 show cause why said property under your control should not be paid into eCourt to abide the
14 judgment; and you are required so also to serve copy thereof upon _____, plaintiff's attorney(s)
15 whose address is _____; or if you do not claim said property then to so serve and show cause why
16 said property under your control should not be paid into eCourt to abide the judgment.

17

18 The service of this summons upon you brings said property within the control of the Court.

19

20 Service of this summons is ineffective unless made in time to give notice of the required
21 appearance or such shorter period as the Court may fix by making and signing the form of order
22 provided below:

23

24 WITNESS THE HONORABLE

25 _____
26 Judge of said Court at _____, Florida, in said District, this _____ day of
27 _____, _____.

28 _____, CLERK

29
30
31
32 BY: _____
33 Deputy Clerk

34
35 Date:

36
37 Good cause for shortening the periods required by the foregoing summons having been
38 shown by affidavit of _____, verified the _____ day of _____, _____, the period of notice
39 of the appearance in all respects required by the foregoing summons is hereby fixed as _____
40 days.

41
42 Dated at _____, Florida, the _____ day of _____, _____.

43
44

1
2 UNITED STATES DISTRICT JUDGE
3

4 NOTE: This summons is issued pursuant to Rule C(3) of the Supplemental Rules for Certain
5 Admiralty Maritime Claims of the Federal Rules of Civil Procedure.

6
7 Effective Dec. 1, 1994; amended effective April 15, 2001.

8
9 **FORM 14. AFFIDAVIT—FOREIGN ATTACHMENT**

10
11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF FLORIDA

13
14 Case No. ____-Civ or Cr-(USDJ's last name/USMJ's last name)

15
16
17
18
19 Plaintiff,

20
21
22 v.

23
24
25 Defendant.
26 _____/

27
28 AFFIDAVIT

29
30 (Foreign Attachment)

31
32 This affidavit is executed by the undersigned in order to secure the issuance and execution of
33 a Writ of Foreign Attachment in the above-styled in personam cause in admiralty.

34
35 As attorney for the above-styled plaintiff, the undersigned does hereby certify to the Court, the
36 Clerk of the Court and the United States Marshal that the undersigned has made a diligent search
37 and inquiry to ascertain the name and address of a person or party upon whom can be served process
38 in personam which will bind the above-styled defendant.

39
40 That based upon such diligent search and inquiry the undersigned has been unable to ascertain
41 the name and address of any person or party within the ~~Southern District of Florida~~ upon whom
42 service of process would bind said defendant.

43
44 The Clerk of this Court is hereby requested to issue a Writ of Foreign Attachment and deliver

1 the same to the United States Marshal.

2
3 The United States Marshal is hereby directed to promptly serve said Writ of Foreign
4 Attachment upon _____ (name of vessel) which vessel is presently located at _____.

5
6
7 Attorney for Plaintiff Attorney Name (Bar Number)
8 Attorney E-mail Address
9 Firm Name
10 Street Address
11 City, State, Zip Code
12 Telephone: (xxx)xxx-xxxx
13 Facsimile: (xxx)xxx-xxxx
14 Attorneys for Plaintiff [Party Name(s)]

15
16 Sworn and subscribed to this _____ day of _____, _____.

17
18 Clerk, U.S. District Court
19 Southern District of Florida

20
21
22 By: _____
23 Deputy Clerk

24
25 Effective Dec. 1, 1994; amended effective April 15, 2001.

26
27
28
29
30
31
32
33 [Remainder of page intentionally left blank]

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18

MAGISTRATE JUDGE RULES

19
20
21

RULE 1. AUTHORITY OF UNITED STATES MAGISTRATE JUDGES

22
23
24
25

(a) Duties Under Title 28 U.S.C. § United States Code, Section 636(a). Each United States Magistrate Judge of this Court is authorized to perform the duties prescribed by Title 28 U.S.C. § United States Code, Section 636(a), and may—

26
27
28

(1) Exercise all the powers and duties conferred or imposed upon United States Commissioners by law and the Federal Rules of Criminal Procedure;

29
30
31

(2) Administer oaths and affirmations, impose conditions of release under Title 18 U.S.C. § United States Code, Section 3146, and take acknowledgements, affidavits, and depositions; and

32
33
34

(3) Conduct extraditions proceedings, in accordance with Title 18 U.S.C. § United States Code, Section 3184.

35
36
37
38

(b) Disposition of Misdemeanor Cases—Title 18 U.S.C. § United States Code, Section 3401; Fed.R.Crim.P. Federal Rule of Criminal Procedure 58. A Magistrate Judge may—

39
40
41
42

(1) Arraign and try persons accused of, and sentence persons convicted of, misdemeanors committed within this District in accordance with Title 18 U.S.C. § United States Code, Section 3401 and Fed.R.Crim.P. Federal Rule of Criminal Procedure 58;

43
44

(2) Direct the Probation Office of the Court to conduct a presentence investigation in any misdemeanor case; and

(3) Conduct a jury trial in any misdemeanor case where the defendant so requests and is entitled to trial by jury under the Constitution and laws of the United States.

45
46
47
48

(c) Determination of Non-dispositive Pretrial Matters—Title 28 U.S.C. § United States Code, Section 636(b)(1)(A). A Magistrate Judge may hear and determine any procedural or discovery motion or other pretrial matter in a civil or criminal case, other than the motions which are specified in subsection 1(d), infra, of these rules.

49
50
51

(d) Recommendations Regarding Case-Dispositive Motions—Title 28 U.S.C. § United States Code, Section 636(b)(1)(B).

52
53
54

(1) A Magistrate Judge may submit to a District Judge of the Court a report containing proposed findings of fact and recommendations for disposition by the District Judge of the following pretrial motions in civil and criminal cases:

55
56

A. Motions for injunctive relief, including temporary restraining orders and preliminary

1 and permanent injunctions;

2
3 B. Motions for judgment on the pleadings;

4
5 C. Motions for summary judgment;

6
7 D. Motions to dismiss or permit the maintenance of a class action;

8
9 E. Motions to dismiss for failure to state a claim upon which relief may be granted;

10
11 F. Motions to involuntarily dismiss an action;

12
13 G. Motions for review of default judgments;

14
15 H. Motions to dismiss or quash an indictment or information made by a defendant; and

16
17 I. Motions to suppress evidence in a criminal case.

18
19 (2) A Magistrate Judge may determine any preliminary matters and conduct any necessary
20 evidentiary hearing or other proceeding arising in the exercise of the authority conferred by
21 this subsection.
22

23 (e) **Prisoner Cases Under Title 28 U.S.C. §§ United States Code, Sections 2254 and 2255**. A
24 Magistrate Judge may perform any or all of the duties imposed upon a District Judge by the rules
25 governing proceedings in ~~the United States District Courts under §§ 2254 and 2255 of Title 28,~~
26 United States Code, Sections 2254 and 2255. In so doing, a Magistrate Judge may issue any
27 preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding
28 and shall submit to a District Judge a report containing proposed findings of fact and
29 recommendations for disposition of the petition by the District Judge. Any order disposing of the
30 petition may only be made by a District Judge.
31

32 (f) **Prisoner Cases Under Title 42 U.S.C. § United States Code, Section 1983**. A Magistrate
33 Judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other
34 appropriate proceeding and shall submit to a District Judge a report containing proposed findings
35 of fact and recommendation for the disposition of petitions filed by prisoners challenging the
36 conditions of their confinement.
37

38 (g) **Special Master References**. A Magistrate Judge may be designated by a District Judge to
39 serve as a special master in appropriate civil cases in accordance with Title 28 U.S.C. § United
40 States Code 636(b)(2) and ~~Rule 53 of the~~ Federal Rules of Civil Procedure 53. Upon the consent of
41 the parties, a Magistrate Judge may be designated by a District Judge to serve as a special master
42 in any civil case, notwithstanding the limitations of ~~Rule 53(b) of the~~ Federal Rule of Civil
43 Procedure 53(b).
44

1 **(h) Conduct of Trials and Disposition of Civil Cases Upon Consent of the Parties—Title 28**
2 **U.S.C. § United States Code 636(c).** Upon the consent of the parties, a full-time Magistrate Judge
3 may conduct any or all proceedings in any civil case which is filed in this Court, including the
4 conduct of a jury or nonjury trial, and may order the entry of a final judgment, in accordance with
5 Title 28 U.S.C. § United States Code 636(c). In the course of conducting such proceedings upon
6 consent of the parties, a Magistrate Judge may hear and determine any and all pre-trial and post-trial
7 motions which are filed by the parties, including case-dispositive motions.

8
9 **(i) Other Duties.** A Magistrate Judge is also authorized to—

- 10
11 (1) Exercise general supervision of civil and criminal calendars, conduct calendar and status
12 calls, and determine motions to expedite or postpone the trial of cases for the District Judges;
13
14 (2) Conduct pretrial conferences, settlement conferences, omnibus hearings, and related
15 pretrial proceedings in civil and criminal cases;
16
17 (3) Conduct arraignments in criminal cases not triable by the Magistrate Judge and take not
18 guilty pleas in such cases;
19
20 (4) Receive grand jury returns in accordance with ~~Rule 6(f)~~ Federal Rules of Criminal
21 Procedure 6(f);
22
23 (5) Accept waivers of indictment, pursuant to ~~Rule 7(b)~~ Federal Rules of Criminal Procedure
24 7(b);
25
26 (6) Conduct voir dire and select petit juries for the Court;
27
28 (7) Accept petit jury verdicts in civil cases in the absence of a District Judge;
29
30 (8) Conduct necessary proceedings leading to the potential revocation of probation;
31
32 (9) Issue subpoenas, writs of habeas corpus ad testificandum or habeas corpus ad
33 prosequendum, or other orders necessary to obtain the presence of parties, witnesses or
34 evidence needed for ~~c~~Court proceedings;
35
36 (10) Order the exoneration or forfeiture of bonds;
37
38 (11) Conduct proceedings for the collection of civil penalties of not more than \$200 assessed
39 under the Federal Boat Safety Act of 1971, in accordance with Title 46 U.S.C. § United States
40 Code, Section 1484(d);
41
42 (12) Conduct examinations of judgment debtors in accordance with ~~Rule 69 of the~~ Federal
43 Rules of Civil Procedure 69;
44

1 (13) Conduct proceedings for initial commitment of narcotics addicts under ~~†~~Title III of the
2 Narcotic Addict Rehabilitation Act;

3
4 (14) Perform the functions specified in Title 18 U.S.C. §§ United States Code, Sections 4107,
5 4108 and 4109, regarding proceedings for verification of consent by offenders to transfer to
6 or from the United States and the appointment of counsel therein;

7
8 (15) Preside at naturalization hearings and ceremonies; and

9
10 (16) Perform any additional duty as is not inconsistent with the Constitution and laws of the
11 United States.

12
13 Effective Dec. 1, 1994; amended effective April 15, 1998.

14
15 **Comment**

16
17 (1998) Conforms Rule 1(b)(1) to 1997 amendments to ~~Fed.R.Crim.P.~~ Federal Rule of Criminal
18 Procedure 58.

19
20 **RULE 2. ASSIGNMENT OF MATTERS TO MAGISTRATE JUDGES**

21
22 All civil and criminal cases in this District shall be filed with the Clerk of the Court and
23 assigned to a ~~United States~~ District Judge in accordance with Local Rules 1 through 7 ~~of the General~~
24 ~~Rules of these Local Rules~~. Responsibility for the case remains with the District Judge throughout
25 its duration, except that the District Judge may refer to a ~~United States~~ Magistrate Judge any matter
26 within the scope of these Magistrate Judge Rules.

27
28 No specific order of reference shall be required except as otherwise provided in these
29 Magistrate Judge Rules.

30
31 Nothing in these Magistrate Judge rRules shall preclude a District Judge from reserving any
32 proceeding for conduct by a District Judge rather than a Magistrate Judge.

33
34 Effective Dec. 1, 1994.

35
36 **RULE 3. PROCEDURES BEFORE THE MAGISTRATE JUDGE**

37
38 (a) **In General.** In performing duties for the Court, a Magistrate Judge shall conform to all
39 applicable provisions of federal statutes and rules, to the general procedural rules of this Court, and
40 to the requirements specified in any order of reference from a District Judge.

41
42 (b) **Special Provisions for the Disposition of Civil Cases by a Magistrate Judge on Consent**
43 **of the Parties—Title 28 U.S.C. § United States Code, Section 636(c).**

1 (1) *Notice.* The Clerk of the Court shall notify the parties in all civil cases that they may
2 consent to have a Magistrate Judge conduct any or all proceedings in the case and order the
3 entry of a final judgment. Such notices shall be handed or mailed to the plaintiff or his
4 representative at the time an action is filed and to other parties as attachments to copies of the
5 complaint and summons, when served. Additional notices may be furnished to the parties at
6 later stages of the proceedings, and may be included with pretrial notices and instructions.

7
8 (2) *Execution of Consent.* The Clerk of the Court shall not accept a consent form unless it
9 has been signed by all the parties in a case. The plaintiff shall be responsible for securing the
10 execution of a consent form by the parties and for filing such form with the Clerk of the Court.
11 No consent form will be made available, nor will its contents be made known, to any District
12 Judge or Magistrate Judge, unless all parties have consented to the reference to a Magistrate
13 Judge. No Magistrate Judge, District Judge, or other Court official may attempt to persuade
14 or induce any party to consent to the reference of any matter to a Magistrate Judge. This rule,
15 however, shall not preclude a District Judge or Magistrate Judge from informing the parties
16 that they may have the option of referring a case to a Magistrate Judge.

17
18 (3) *References.* After the consent form has been executed and filed, the Clerk of the Court
19 shall transmit it to the District Judge to whom the case has been assigned for consideration of
20 approval and possible referral of the case to a Magistrate Judge, by specific order of reference.
21 Once the case has been assigned to a Magistrate Judge, the Magistrate Judge shall have the
22 authority to conduct any and all proceedings to which the parties have consented and to direct
23 the Clerk of the Court to enter a final judgment in the same manner as if a District Judge had
24 presided.

25
26 Effective Dec. 1, 1994.

27
28 **RULE 4. REVIEW AND APPEAL**

29
30 **(a) Appeal of Non-dispositive Matters—Government Appeal of Release Order.**

31
32 (1) *Appeal of Non-dispositive Matters—Title 28 U.S.C.—§—United States Code, Section*
33 *636(b)(1)(A).* Any party may appeal from a Magistrate Judge's order determining a motion or
34 matter under subsection 1(c) of these rules, supra, within ten (~~10~~) days after being served with
35 the Magistrate Judge's order, unless a different time is prescribed by the Magistrate Judge or
36 District Judge. Such party shall file with the Clerk of the Court, and serve on all parties,
37 written objections which shall specifically set forth the order, or part thereof, appealed from
38 a concise statement of the alleged error in the Magistrate Judge's ruling, and statutory, rule,
39 or case authority, in support of the moving party's position. Any party may respond to another
40 party's objections within ~~10~~ ten days after being served with a copy thereof, or within such
41 other time as may be allowed by the Magistrate Judge or District Judge. Absent prior
42 permission from the Court, no party shall file any objections or responses to another party's
43 objections exceeding twenty (~~20~~) pages in length. The District Judge shall consider the appeal
44 and shall set aside any portion of the Magistrate Judge's order found to be clearly erroneous

1 or contrary to law. The District Judge may also reconsider sua sponte any matter determined
2 by a Magistrate Judge under this rule.

3
4 (2) *Government Appeal of Release Order.* At the conclusion of a hearing pursuant to Title
5 18 U.S.C. § United States Code, Section 3142 in which a Magistrate Judge has entered an
6 order granting pretrial release, the government may make an ore tenus motion that the
7 Magistrate Judge exercise discretion to stay the release order for a reasonable time, to allow
8 the government to pursue review or appeal of the release order, in accordance with Title 18
9 U.S.C. § United States Code, Section 3145.

10
11 If a stay is ordered pursuant to this rule, the Clerk/ of the Court ~~Administrator~~ is directed to
12 obtain the tape recording or cassette immediately after the hearing and deliver the cassettes or
13 tapes promptly to the appropriate court reporter so that an expedited transcript can be delivered
14 to the District Judge within forty-eight (~~48~~) hours of the hearing at which the release order is
15 entered. The United States Attorney's Office is to pay the court reporter's charges.

16
17 **(b) Review of Case-Dispositive Motions and Prisoner Litigation—Title 28 U.S.C. § United**
18 **States Code, Section 636(b)(1)(B)**. Any party may object to a Magistrate Judge's proposed findings,
19 recommendations or report under subsections 1(d), (e), and (f) of these rules, supra, within ~~10~~ ten
20 days after being served with a copy thereof, or within such other time as may be allowed by the
21 Magistrate Judge or District Judge. Such party shall file with the Clerk of the Court, and serve on
22 all parties, written objections which shall specifically identify the portions of the proposed findings,
23 recommendations or report to which objection is made, the specific basis for such objections, and
24 supporting legal authority. Any party may respond to another party's objections within ~~10~~ ten days
25 after being served with a copy thereof, or within such other time as may be allowed by the
26 Magistrate Judge or District Judge. Absent prior permission from the Court, no party shall file any
27 objections or responses to another party's objections exceeding twenty (~~20~~) pages in length. A
28 District Judge shall make a de novo determination of those portions of the report or specified
29 proposed findings or recommendations to which objection is made and may accept, reject, or
30 modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. The
31 District Judge, however, need conduct a new hearing only in his discretion or where required by law,
32 and may consider the record developed before the Magistrate Judge, making his own determination
33 on the basis of that record. The District Judge may also receive further evidence, recall witnesses,
34 or recommit the matter to the Magistrate Judge with instructions.

35
36 **(c) Special Master Reports—Title 28 U.S.C. § United States Code, Section 636(b)(2)**. Any
37 party may seek review of, or action on, a special master report filed by a Magistrate Judge in
38 accordance with the provisions of ~~Rule 53(e)~~ of the Federal Rules of Civil Procedure 53(e).

39
40 **(d) Appeal From Judgments in Misdemeanor Cases—Title 18 U.S.C. § United States Code,**
41 **Section 3402 [Deleted]**. Replaced by Fed.R.Crim.P. Federal Rule of Criminal Procedure 58.

42
43 **(e) Appeal From Judgments in Civil Cases Disposed of on Consent of the Parties—Title 28**
44 **U.S.C. § United States Code, Section 636(c)**.

1 (1) *Appeal to the Court of Appeals.* Upon the entry of judgment in any civil case disposed
2 of by a Magistrate Judge on consent of the parties under authority of Title 28 U.S.C. § United
3 States Code, Section 636(c) and subsection 1(h) of these rules, supra, an aggrieved party shall
4 appeal directly to the United States Court of Appeals for this Circuit in the same manner as an
5 appeal from any other judgment of this Court.
6

7 (2) *Appeal to a District Judge [Deleted].* See Pub.L. No. 104–317 § 207, 110 Stat. 3847
8 (Oct. 19, 1996) (repealing Title 28 U.S.C. § United States Code, Sections 636(c)(4) and (5).
9

10 Effective Dec. 1, 1994; amended effective April 15, 1996; April 15, 1997; April 15, 1998; April
11 15, 1999.
12

13 **Comments**

14
15 (1994) Magistrate Judge Rule 4(a) now conforms to language of Title 28 U.S.C. § United States
16 Code, Section 636(b)(1)(A) and Federal Rule of Civil Procedure 72.
17

18 (1996) Section f(a)(1) prescribes a time within which a party may respond to another party's
19 objections to a Magistrate Judge's order on a non-dispositive motion determined under Title 28
20 U.S.C. § United States Code, Section 636(b)(1)(A).
21

22 (1997) Section f(a)(2) repeals automatic stay provision of government appeal of bond order and
23 recognizes Magistrate Judge's authority to exercise discretion to stay release order.
24

25 (1998) Magistrate Judge Rule 4(d) is deleted in favor of Fed.R.Crim.P. Federal Rule of Criminal
26 Procedure 58, but retains a modified title and a cross-reference to Rule 58 to avoid confusion about
27 the proper procedure for misdemeanor appeals. Magistrate Judge Rule 4(e)(2) is deleted to conform
28 to the 1997 amendments to Fed.R.Crim.P. Federal Rules of Criminal Procedure 73(d), 74, 75 and
29 76, which abrogated the optional appeal route from a Magistrate Judge to a District Judge.
30

31 (1999) Magistrate Judge Rules 4(a)(1) and (b) are amended to impose page limitations on objections,
32 and responses to objections, to Magistrate Judges' non-dispositive orders under Title 28 U.S.C. §
33 United States Code, Section 636(b)(1)(A) and reports and recommendations under Title 28 U.S.C.
34 § United States Code, Section 636(b)(1)(B).
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MAGISTRATE FORMS

NOTICE OF RIGHT TO CONSENT TO DISPOSITION OF A CIVIL CASE BY A
UNITED STATES MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA

In ~~A~~ accordance with the provisions of Title 28 U.S.C. § United States Code, Section 636(c), you are hereby notified that the full-time ~~United States~~ Magistrate Judges of this ~~District Court~~, in addition to their other duties, may, upon the consent of all the parties in a civil case, conduct any or all proceedings in a civil case, including a jury or non-jury trial, and order the entry of a final judgment. Copies of appropriate consent forms for this purpose are available from the Clerk of the Court.

You should be aware that your decision to consent, or not to consent, to the referral of your case to a ~~United States~~ Magistrate Judge for disposition is entirely voluntary and should be communicated solely to the Clerk of the ~~District Court~~. Only if all the parties to the case consent to the reference to a Magistrate Judge will either a District Judge or Magistrate Judge be informed of your decision.

Your opportunity to have your case disposed of by a Magistrate Judge is subject to the discretion of the Court. Accordingly, the District Judge to whom your case is assigned must approve the reference of the case to a Magistrate Judge for disposition, by Order of Reference.

Effective Dec. 1, 1994.

CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. _____

_____))
Plaintiff,))
))
))
vs.))
))
_____))
))
Defendant.))
_____))

1 CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE JUDGE

2
3 In accordance with the provisions of Title 28 U.S.C. § United States Code, Section 636(c),
4 the parties to the above-captioned civil matter hereby waive their right to proceed before a District
5 Judge of this Court and consent to have a ~~United States~~ Magistrate Judge conduct any and all further
6 proceedings in the case (including the trial) and order the entry of judgment.
7

8
9 Attorney Name (Bar Number) Attorney Name (Bar Number)
10 Attorney E-mail Address Attorney E-mail Address
11 Firm Name Firm Name
12 Street Address Street Address
13 City, State, Zip Code City, State, Zip Code
14 Telephone: (xxx)xxx-xxxx Telephone: (xxx)xxx-xxxx
15 Facsimile: (xxx)xxx-xxxx Facsimile: (xxx)xxx-xxxx
16 Attorneys for Plaintiff [Party Name(s)] Attorneys for Defendant [Party Name(s)]
17

18 NOTE: Return this form to the Clerk of the Court only if it has been executed by all parties
19 to the case.
20

21 _____
22
23 ORDER OF REFERENCE
24

25 IT IS HEREBY ORDERED that the above-captioned matter be referred to ~~United States~~
26 Magistrate Judge _____ for the conduct of all further proceedings and the entry of judgment in
27 accordance with Title 28 U.S.C. § United States Code, Section 636(c) and the foregoing consent of
28 the parties.
29

30 _____
31 Date United States Magistrate Judge
32

33 Effective Dec. 1, 1994; ~~A~~ amended effective April 15, 2006.
34

35 **Comments**

36
37 (2006) The form for Consent to Proceed Before a United States Magistrate Judge is amended to
38 reflect the amendments to Title 28 U.S.C. § United States Code, Section 636(c), which eliminated
39 appeals by consent of the parties to ~~d~~ District ~~j~~ Judges.
40
41
42
43
44

1 **SPECIAL RULES GOVERNING THE ADMISSION AND PRACTICE OF ATTORNEYS**

2
3 **RULE 1. QUALIFICATIONS FOR ADMISSION**

4
5 An attorney is qualified for admission to the bar of this ~~the~~ District if the attorney is (1) currently a
6 member in good standing of The Florida Bar; and (2) has received a passing score on the
7 examination approved and adopted by the Ad Hoc Committee on Attorney Admissions, Peer Review
8 and Attorney Grievance of the Southern District of Florida, and by the Court, testing knowledge of
9 the Federal Rules of Criminal and Civil Procedure, the Federal Rules of Evidence, and the law of
10 federal jurisdiction and venue. The examination shall also contain sections testing knowledge of
11 the local rules of this District. Admission to this District requires successful completion of the
12 examination. An applicant may take the examination three times in any calendar year. However,
13 if the applicant fails to pass the examination after three attempts, he or she must wait a full calendar
14 year before reapplying.

15
16 Effective Dec. 1, 1994; amended effective Jan. 1, 1996; April 15, 2002; April 15, 2006.

17
18 **Comments**

19
20 (2007) Amended to eliminate references to a common test with the Northern District of Florida,
21 which has been eliminated.

22
23 **RULE 2. PROCEDURE FOR APPLYING FOR ADMISSION AND PROOF OF**
24 **QUALIFICATIONS**

25
26 Each applicant for admission shall submit a verified petition setting forth the information specified
27 on the form provided by the Clerk of ~~this~~ Court, together with an application fee in the amount set
28 by the ~~the~~ Court and payable to "U.S. Courts". A showing of good standing shall be made by The
29 Florida Bar. The Clerk of the Court shall examine such petition to determine that the applicant is
30 qualified for admission and upon successful completion of the ~~Uniform Examination together with~~
31 ~~the local rule section for the Southern District~~, the Clerk of the Court shall require the applicant to
32 sign the oath of admission, receive the admission fee ~~for the Southern District~~ and shall place such
33 applicant on the roll of attorneys of the bar of this District. ~~If such applicant has successfully~~
34 ~~completed the local rules sections for the Northern District~~, the Clerk shall provide a sealed copy
35 of the petition for admission as completed by the applicant with the signed oath, which the applicant
36 may then forward to the Clerk of the Northern District, together with the appropriate admission fee
37 for admission to the Northern District.

38
39 Effective Dec. 1, 1994; amended effective Jan. 1, 1996.

40
41 **Comments**

42
43 (2007) Amended to eliminate references to a common test with the Northern District of Florida,
44 which has been eliminated, and to eliminate procedures for obtaining admission to the Northern

1 District.

2
3 **RULE 3. RETENTION OF MEMBERSHIP IN THE BAR OF THIS COURT**

4
5 To remain an attorney in good standing of the bar of this Court, each member must remain an active
6 attorney in good standing of the Florida Bar, specifically including compliance with all
7 requirements of the Rules Regulating the Florida Bar, as promulgated by the Supreme Court of
8 Florida.

9
10 Effective Dec. 1, 1994; amended effective Jan. 1, 1996.

11
12 **RULE 4. APPEARANCES**

13
14 **A. Who May Appear Generally.** Except when ~~pro hac vice~~ a limited appearance is permitted
15 by the Court, only members of the ~~B~~ar of this ~~D~~istrict Court may appear as attorneys in the Courts
16 of this District. Attorneys residing and practicing within this District are expected to be members
17 of the bar of this Court.

18
19 **B. ~~Special or Limited Appearance.~~**

20
21 1. Any attorney who is a member in good standing of the bar of any United States Court,
22 or of the highest Court of any State or Territory or Insular Possession of the United States, but
23 is not admitted to practice in the Southern District of Florida may, upon written application;
24 filed by counsel admitted to practice in this District, be permitted to appear and participate in
25 a particular case. A certification that the applicant has studied the local rules shall accompany
26 application together with such appearance fee as may be required by administrative order. If
27 granted, such limited appearance shall not constitute formal admission; or authorize the
28 attorney to file documents via CM/ECF.

29
30 2. Lawyers who are not members of the bar of this Court shall not be permitted to engage
31 in general practice in this District. For purposes of this rule, more than three appearances
32 within a 365-day period in separate representations before the Courts of this District shall be
33 presumed to be a "general practice." Upon written motion and for good cause shown the Court
34 may waive or modify this prohibition.

35
36 3. The application shall designate a member of the bar of this Court, who maintains an
37 office in this ~~D~~istrict State for the practice of law and who is authorized to file through the
38 Court's electronic filing system, with whom the Court and opposing counsel may readily
39 communicate regarding the conduct of the case, and upon whom papers filings shall be served,
40 and who shall be required to electronically file all documents and things that may be filed
41 electronically, and who shall be responsible for filing documents in compliance with the
42 CM/ECF Administrative Procedures. See Section 2B of the CM/ECF Administrative
43 Procedures. The application must be accompanied by a written statement consenting to the
44 designation, and the address and telephone number of the named designee. ~~Provided,~~

1 remedial program to raise his or her level of competence, or fails to achieve an adequate level of
2 competence within a reasonable time.

3
4 **B. Duties and Responsibilities of the Committee.**

5
6 1. *Referral.* Any District Judge, Magistrate Judge, or Bankruptcy Judge shall refer in
7 writing to the Committee the name of any attorney he or she has observed practicing law in
8 a manner which raises a significant question as to the adequacy of such attorney's ability to
9 represent clients in a competent manner. The referral shall be accompanied by a statement of
10 the reasons why such question is raised.

11
12 2. *Initial Screening.* Promptly after receipt of such a reference the Chairman of the
13 Committee shall advise the attorney that it has been made. Thereafter an Initial Screening
14 Committee shall be selected consisting of three members of the Committee. The Initial
15 Screening Committee may request that the attorney meet with it informally to explain the
16 circumstances which gave rise to the reference and may conduct such preliminary inquiries
17 as it deems advisable. If after such preliminary inquiry the Initial Screening Committee
18 determines that further attention is not needed it shall mark the matter "closed" with notation
19 explaining its determination. Upon closing a matter the Chairman shall notify the referring
20 judge and the attorney.

21
22 3. *Remedial Action.* If the Initial Screening Committee deems that the matter warrants
23 further action, it shall so advise the Chairman who shall then cause a Review Committee to
24 be selected consisting of three members (other than those who served on the Initial Screening
25 Committee). The Review Committee may pursue such inquiries as it deems appropriate and
26 may recommend to the attorney that the attorney take steps to improve the quality of the
27 attorney's professional performance and if so the nature of the recommended action designed
28 to effect such improvement. The attorney shall be advised of any such recommendation in
29 writing and be given the opportunity to respond thereto, to seek revision or revocation of the
30 recommendation or to suggest alternatives thereto. The Review Committee after receiving
31 such response may modify, amend, revoke or adhere to its original recommendation and shall
32 notify the attorney of its final recommendation. Any attorney who takes exception to the
33 proposed Review Committee's final recommendation shall have the right to have it considered
34 by the full Committee. Any recommendation finally promulgated shall be entered in the
35 records of the Committee. The Committee may develop an appropriate remedial program,
36 including, but not limited to, mandatory participation in continuing legal education programs
37 and participation in group and individual study programs. The Committee may monitor the
38 attorney's progress in following the remedial program developed for him or her. If the
39 attorney's lack of competency relates to drug or alcohol abuse, the Committee may require the
40 attorney to seek treatment for that condition and require the attorney to submit periodic reports
41 from the individuals responsible for such treatment.

42
43 **C. Referral to the Court.** If the Committee finds that there is a substantial likelihood that the
44 attorney's continued practice of law may result in serious harm to the attorney's clients pending

1 completion of a remedial program, it may recommend that the Court consider limiting or otherwise
2 imposing appropriate restrictions on the attorney's continued practice in the ~~the~~ District ~~the~~ Court.
3

4 **D. Obligation to Cooperate With Committee.** It shall be the obligation of all members of the
5 bar of this ~~the~~ District to cooperate with the Committee so that it may effectively assist members of
6 the bar to improve the quality of their professional performance. Any member of the bar of this
7 Court, who is the subject of a reference under Administrative and Practice Rule 5 or who is asked
8 by the Committee to furnish it with relevant information concerning such a reference shall regard
9 it to be an obligation as an officer of this Court to cooperate fully with the Committee which
10 constitutes an official arm of the Court.
11

12 **E. Failure to Respond to Committee.** If an attorney shall refuse to meet with the Committee,
13 furnish it with an explanation of the circumstances which gave rise to the referral, or otherwise
14 cooperate with the Committee, the Court shall be so advised and the attorney's failure to cooperate
15 shall be recorded in the records of the Committee. The Committee shall refer to the Court for
16 appropriate action any attorney who refuses to cooperate in participating in a remedial program, or
17 who fails to achieve an adequate level of competence within a reasonable time.
18

19 **F. Confidentiality.** All matters referred to the Committee, all information in the possession of
20 the Committee and all recommendations or other actions taken by the Committee are matters relating
21 to the administration of the Court and shall be confidential, and shall be disclosed only by order of
22 the Court. Correspondence, records and all written material coming to the Committee shall be
23 retained in an office designated by the Court and are documents of the Court and shall be kept
24 confidential unless the Court directs otherwise. No statement made by the attorney to the
25 Committee shall be admissible in any action for malpractice against the attorney, nor shall any part
26 of the Committee's investigative files be admissible in such proceedings. No statement made by the
27 attorney to the Committee shall be admissible in any action under Title 28 U.S.C. § United States
28 Code, Section 2255 collateral attack for incompetency of counsel in a criminal case, nor shall any
29 part of the Committee's investigative files be admissible in proceedings under Title 28 U.S.C. §
30 United States Code, Section 2255. Likewise, any information given by a client of the attorney to
31 the Committee shall be privileged to the same extent as if the statements were made by the client
32 to the attorney.
33

34 **G. Separation From Disciplinary Proceedings.** Nothing contained herein and no action
35 hereunder shall be construed to interfere with or substitute for any procedure relating to the
36 discipline of any attorney. Any disciplinary actions relating to the inadequacy of an attorney's
37 performance shall occur apart from the proceedings of the Committee in accordance with law and
38 as directed by the Court.
39

40 **H. Committee Immunity.** Any Committee determination that a referred attorney is adequately
41 competent does not render the Committee potentially liable as a guarantor of the validity of that
42 determination. The Committee is not liable for the misconduct or nonconduct of any referred
43 attorney. Committee members are immune from prosecution for actions taken within the scope of
44 the duties and responsibilities of the Committee as prescribed by the Court. Unauthorized disclosure

1 of confidential information is outside the scope of the Committee's responsibilities.
2

3 **I. Report to the Court.** Upon completion of the Committee's activities in respect to each
4 attorney referred by the Court, the Committee shall make a report to the Court. The Committee shall
5 make such interim reports or periodic reports relative to its activities as may be requested by the
6 Court.
7

8 Effective Dec. 1, 1994. Amended effective April 15, 2000; April 15, 2002.
9

10 **Comment**

11
12 (2000) Clarification of the authority and responsibilities of District Judges, Magistrate Judges and
13 Bankruptcy Judges.
14

15 **RULE 6. STUDENT PRACTICE**

16
17 **A. Purpose.** The following Rule for Student Practice is designed to encourage law schools to
18 provide clinical instructions in litigation of varying kinds, and thereby enhance the competence of
19 lawyers in practice before the United States courts.
20

21 **B. Student Requirements.** An eligible student must:

- 22 1. be duly enrolled in a law school;
- 23 2. have completed at least four semesters of legal studies or the equivalent;
- 24 3. have knowledge of the Federal Rules of Civil and Criminal Procedure and of Evidence,
25 and the Code of Professional Responsibility;
- 26 4. be enrolled for credit in a law school clinical program which has been certified by the
27 eCourt;
- 28 5. be certified by the dean of the law school, or the dean's designee, as being of good
29 character and sufficient legal ability, and as being adequately trained, in accordance with
30 paragraphs 1–4 above, to fulfill his or her other responsibilities as a legal intern to both his or
31 her client and the eCourt;
- 32 6. be certified by the Court to practice pursuant to this Rule;
- 33 7. neither ask for nor receive any compensation or remuneration of any kind for his or her
34 services from the person on whose behalf he or she renders services, but this shall not prevent
35 a lawyer, legal aid bureau, law school, public defender agency, or the state from paying
36 compensation to the eligible law student (nor shall it prevent any agency from making such
37 charges for its services as it may otherwise properly require).
38
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1
2 **C. Program Requirements.** The program:

- 3
4 1. must be a law school clinical practice program for credit, in which a law student obtains
5 academic and practice advocacy training, under supervision of qualified attorneys including
6 federal or state government attorneys or private petitioners;
7
8 2. must be certified by the Court;
9
10 3. must be conducted in such a manner as not to conflict with normal eCourt schedules;
11
12 4. must be under the direction of a member or members of the regular or adjunct faculty of
13 the law school;
14
15 5. must arrange for the designation and maintenance of an office in this District to which
16 may be sent all notices which the Court may from time to time have occasion or need to send
17 in connection with this Rule or any legal representation provided pursuant to this Rule.
18

19 **D. Supervisor Requirements.** A supervising attorney must:

- 20
21 1. be a lawyer whose service as a supervising attorney for this program is approved by the
22 dean of the law school in which the law student is enrolled and who is a member of The
23 Florida Bar in good standing;
24
25 2. be a member of the Bar of this Court;
26
27 3. be certified by the Court as a student supervisor;
28
29 4. be present with the student when required by the Court;
30
31 5. co-sign all pleadings or other documents filed with this Court;
32
33 6. assume full personal professional responsibility for a student's guidance in any work
34 undertaken and for the quality of a student's work, and be available for consultation with
35 represented clients;
36
37 7. assist the student in his preparation to the extent the supervising attorney considers it
38 necessary.
39

40 **E. Certification of Student, Program and Supervising Attorneys.**

- 41
42 1. *Students.*
43
44 (a) Certification by the law school dean or his designee, if said certification is approved

1 by the Court, shall be filed with the Clerk of the Court, and unless it is sooner withdrawn,
2 shall remain in effect until the expiration of ~~18~~ eighteen months;

3
4 (b) Certification to appear in a particular case may be withdrawn by the Court at any
5 time, in the discretion of the Court, and without any showing of cause. Notice of
6 termination may be filed with the Clerk of the Court.

7
8 2. *Program.*

9
10 (a) Certification of a program by the Court shall be filed with the Clerk of the Court and
11 shall remain in effect indefinitely unless withdrawn by the Court;

12
13 (b) Certification of a program may be withdrawn by the Court at the end of any
14 academic year without cause, or at any time, provided notice stating the cause for such
15 withdrawal is furnished to the law school dean.

16
17 3. *Supervising Attorney.*

18
19 (a) Certification of a supervising attorney by the law school dean, if said certification
20 is approved by the Court, shall be filed with the Clerk of the Court, and shall remain in
21 effect indefinitely unless withdrawn by the dean or by the Court;

22
23 (b) Certification of a supervising attorney may be withdrawn by the Court at the end of
24 any academic year without cause, or at any time upon notice and a showing of cause;

25
26 (c) Certification of a supervising attorney may be withdrawn by the dean at any time
27 by mailing of notice to that effect to the Clerk of the Court;

28
29 (d) Any jJudge of this Court retains the authority to withdraw or limit a supervising
30 attorney's participation in any individual case before the jJudge.

31
32 **F. Activities.**

33
34 1. An eligible law student may appear in this Court on behalf of any indigent person if the
35 person on whose behalf he or she is appearing has indicated in writing his or her consent to
36 that appearance and the supervising attorney has also indicated in writing approval of that
37 appearance.

38
39 2. An eligible law student may also appear in any criminal matter on behalf of the
40 government with the written approval of the prosecuting attorney or his or her authorized
41 representative and of the supervising attorney.

42
43 3. An eligible law student may also appear in this eCourt in any civil matter on behalf of the
44 government, with the written approval of the attorney representing that entity.

1
2 4. In each case, the written consent and approval referred to above shall be filed in the record
3 of the case and shall be brought to the attention of the judge.

4
5 5. The Board of Governors of ~~t~~The Florida Bar shall fix the standards by which indigency
6 is determined under this ~~r~~Rule upon the recommendation of the largest voluntary bar
7 association located in the state judicial circuit in which this program is implemented.

8
9 6. In addition, an eligible law student may engage in other activities, under the general
10 supervision of a member of the Bar of this Court, but outside the personal presence of that
11 lawyer, including:

12
13 (a) preparation of pleadings and other documents to be filed in any matter in which the
14 student is eligible to appear, but such pleadings or documents must be signed by the
15 supervising attorney;

16
17 (b) preparation of briefs, abstracts and other documents to be filed in appellate courts,
18 but such documents must be signed by the supervising attorney;

19
20 (c) except when the assignment of counsel in the matter is required by any
21 constitutional provision, statute or rule of this ~~c~~Court, assistance to indigent inmates of
22 correctional institutions or other persons who request such assistance in preparing
23 applications for and supporting documents for post-conviction relief. If there is an
24 attorney of record in the matter, all such assistance must be supervised by the attorney of
25 record, and all documents submitted to the ~~c~~Court on behalf of such a client must be
26 signed by the attorney of record;

27
28 (d) each document or pleading must contain the name of the eligible law student who
29 has participated in drafting it. If he or she participated in drafting only a portion of it, that
30 fact may be mentioned.

31
32 **G. Court Administration.** The Chief Judge, or one or more members of the Court appointed by
33 the Chief Judge, shall act on behalf of the Court in connection with any function of this Court under
34 this Rule. The Ad Hoc Committee on Attorney Admissions, Peer Review and Attorney Grievance
35 shall assist the Court to administer this Rule including the review of applications and continuing
36 eligibility for certification of programs, supervising attorneys, and students.

37
38 Effective Dec. 1, 1994; amended effective April 15, 1996; April 15, 2002.

39
40 **Comment**

41
42 (1996)[D.2.] Deletion of reference to Trial Bar to conform to new Local Rules 1 through 4 of the
43 Special Rules Governing the Admission and Practice of Attorneys, effective January 1, 1996.

44
45 **RULE 7. AD HOC COMMITTEE ON ATTORNEY ADMISSIONS, PEER REVIEW AND**

1 **ATTORNEY GRIEVANCE**

2
3 **A. Establishment and Function.** There shall be an Ad Hoc Committee on Attorney Admissions,
4 Peer Review and Attorney Grievance (the "Committee"). Subject to the direction of the Court, the
5 Committee shall have the authority and perform the functions assigned by these Rules and shall
6 otherwise assist the Court in the implementation and evaluation of these Rules.
7

8 **B. Memberships.** The Committee shall consist of a group of law school professors and attorneys
9 practicing within this dDistrict. The Chief Judge, or one or more members of the Court appointed
10 by the Chief Judge, shall appoint the members of the Committee. The Chief Judge shall select the
11 Committee Chair. Selections shall be made by Administrative Order entered by the Chief Judge.
12 All persons appointed to the Committee shall serve at the pleasure of the Court.
13

14 Effective Dec. 1, 1994; amended effective April 15, 1996; April 15, 2002.

15
16 **Comment**

17
18 (1996) Section A. and B.2 Deletion of references to District Trial Experience Committee to
19 conform to new Local Rules 1 through 4 of the Special Rules Governing the Admission and Practice
20 of Attorneys, effective January 1, 1996.
21

22 **RULE 8. EFFECTIVE DATES**

23
24 These Rules shall become effective and shall apply to all members of and applicants for admission
25 to the bar as of January 1, 1996.
26

27 Effective Dec. 1, 1994; amended effective April 15, 1996.
28

29 **Comment**

30
31 (1996) Deletion of reference to Trial Bar to conform to new Local Rules 1 through 4 of the Special
32 Rules Governing the Admission and Practice of Attorneys, effective January 1, 1996, and to
33 prescribe uniform effective date for amendments to Special Rules Governing the Admission and
34 Practice of Attorneys other than Rules 1 through 4, as approved effective April 15, 1996.
35

36 **RULES GOVERNING ATTORNEY DISCIPLINE**

37
38 **PREFATORY STATEMENT**

39
40 Nothing contained in these rRules shall be construed to deny the Court its inherent power to
41 maintain control over the proceedings conducted before it nor to deny the Court those powers
42 derived from statute, rule or procedure, or other rules of court. When alleged attorney misconduct
43 is brought to the attention of the Court, whether by a Judge of the Court, any lawyer admitted to
44 practice before the Court, any officer or employee of the Court, or otherwise, the Court may, in its

1 discretion, dispose of the matter through the use of its inherent, statutory, or other powers; refer the
2 matter to an appropriate state bar agency for investigation and disposition; refer the matter to the
3 Ad Hoc Committee on Attorney Admissions, Peer Review and Attorney Grievance as hereinafter
4 defined; or take any other action the Court deems appropriate. These procedures are not mutually
5 exclusive.

6
7 Effective Dec. 1, 1994. Amended effective April 15, 2002.

8
9 Source

10
11 (1993) Ad Hoc Committee on Attorney Discipline.

12 13 **Comments**

14
15 (1993) The new rRules are intended to substitute for the existing Rules of Disciplinary Enforcement
16 and Rules of Grievance Committee in their entirety.

17
18 (1996) These rRules have been amended to delete references to the Code of Professional
19 Responsibility, and to correctly identify the Rules of Professional Conduct, Chapter 4 of the Rules
20 Regulating The Florida Bar.

21 22 **RULE I. STANDARDS FOR PROFESSIONAL CONDUCT**

23
24 **A.** Acts and omissions by an attorney admitted to practice before this Court, individually or in
25 concert with any other person or persons, which violate the Rules of Professional Conduct, Chapter
26 4 of the Rules Regulating The Florida Bar shall constitute misconduct and shall be grounds for
27 discipline, whether or not the act or omission occurred in the course of an attorney/client
28 relationship. Attorneys practicing before this Court shall be governed by this Court's Local Rules,
29 by the Rules of Professional Conduct, as amended from time to time, and, to the extent not
30 inconsistent with the preceding, the American Bar Association Model Rules of Professional
31 Conduct, except as otherwise provided by specific Rule of this Court. [Attorneys practicing before
32 the Court of Appeals shall be governed by that Court's Local Rules and the American Bar
33 Association Model Rules of Professional Conduct, except as otherwise provided by Rule of the
34 Court].

35
36 **B.** Discipline for misconduct defined in these rRules may consist of (a) disbarment, (b)
37 suspension, (c) reprimand, (d) monetary sanctions, (e) removal from this Court's roster of attorneys
38 eligible for practice before this Court, or (f) any other sanction the Court may deem appropriate.

39
40 Effective Dec. 1, 1994; amended effective April 15, 1996.

41 42 **RULE II. AD HOC COMMITTEE ON ATTORNEY ADMISSIONS, PEER REVIEW AND** 43 **ATTORNEY GRIEVANCE**

1 **A. Establishment and Membership.** There shall be an Ad Hoc Committee on Attorney
2 Admissions, Peer Review and Attorney Grievance (the "Committee"), as established under Rule 7
3 of the Special Rules Governing the Admission and Practice of Attorneys.
4

5 **B. Purpose and Function.** The purpose and function of the Committee is to conduct, upon
6 referral by the Court, a District Judge, Magistrate Judge or Bankruptcy Judge of the Court,
7 investigations of alleged misconduct of any member of the BBar of this Court, or any attorney
8 appearing and participating in any proceeding before the Court; to conduct, upon referral by the
9 Court, a District Judge, Magistrate Judge or Bankruptcy Judge of the Court, inquiries and
10 investigations into allegations of inadequate performance by an attorney practicing before the Court,
11 as hereinafter provided; to conduct and preside over disciplinary hearings when appropriate and as
12 hereinafter provided; and to submit written findings and recommendations to the Court or referring
13 District Judge, Magistrate Judge or Bankruptcy Judge for appropriate action by the Court, except
14 as otherwise described herein. The members of the Committee, while serving in their official
15 capacities, shall be considered to be representatives of and acting under the powers and immunities
16 of the Court, and shall enjoy all such immunities while acting in good faith and in their official
17 capacities.
18

19 **C. Jurisdiction and Powers.**
20

21 (1) The Court may, in its discretion, refer to the Committee any accusation or evidence of
22 misconduct by way of violation of the disciplinary rules on the part of any member of the bar
23 with respect to any professional matter before this Court for such investigation, hearing, and
24 report as the Court deems advisable. [The Court of Appeals may, in addition to or instead of
25 referring a disciplinary matter to its own Grievance Committee, refer a complaint to the Chief
26 Judge of a District Court for referral to the District Court's Committee.] The Committee may,
27 in its discretion, refer such matters to an appropriate State Bar for preliminary investigation,
28 or may request the Court to appoint special counsel to assist in or exclusively conduct such
29 proceedings, as hereinafter provided in these rRules. (See Rule XI, *infra*.) The Court may
30 also, in its discretion, refer to the Committee any matter concerning an attorney's failure to
31 maintain an adequate level of competency in his or her practice before this Court, as
32 hereinafter provided. (See Rule VIII, *infra*.) The Committee may under no circumstances
33 initiate and investigate such matters without prior referral by the Court.
34

35 (2) The Committee shall be vested with such powers as are necessary to conduct the proper
36 and expeditious disposition of any matter referred by the Court, including the power to compel
37 the attendance of witnesses, to take or cause to be taken the deposition of any witnesses, and
38 to order the production of books, records, or other documentary evidence, and those powers
39 described elsewhere in these rRules. The Chairman, or in his or her absence each member of
40 the Committee, has the power to administer oaths and affirmations to witnesses.
41

42 Effective Dec. 1, 1994. Amended effective April 15, 2000; April 15, 2002.
43
44

Comment

1
2 (2000) Clarification of the authority and responsibilities of District Judges, Magistrate Judges and
3 Bankruptcy Judges.
4

5 **RULE III. DISCIPLINARY PROCEEDINGS**
6

7 **A.** When misconduct or allegations of misconduct which, if substantiated, would warrant
8 discipline on the part of an attorney admitted to practice before this Court shall come to the attention
9 of a District Judge, Magistrate Judge or Bankruptcy Judge of this Court, whether by complaint or
10 otherwise, the District Judge, Magistrate Judge or Bankruptcy Judge may, in his or her discretion,
11 refer the matter to the Committee for investigation and, if warranted, the prosecution of formal
12 disciplinary proceedings or the formulation of such other recommendation as may be appropriate.
13 [The Court of Appeals may, in addition to or instead of referring a disciplinary matter to its own
14 Grievance Committee, refer a complaint to the Chief Judge of a District Court for consideration.]
15

16 **B.** Should the Committee conclude, after investigation and review, that a formal disciplinary
17 proceeding should not be initiated against an attorney because sufficient evidence is not present or
18 for any other valid reason, the Committee shall file with the Court a recommendation for disposition
19 of the matter, whether by dismissal, admonition, deferral, or any other action. In cases of dismissal,
20 the attorney who is the subject of the investigation need not be notified that a complaint has been
21 submitted or of its ultimate disposition. All investigative reports, records, and recommendations
22 generated by or on behalf of the Committee under such circumstances shall remain strictly
23 confidential.
24

25 **C.** If the Committee concludes from preliminary investigation, or otherwise, that probable cause
26 exists, the Committee shall file with the Court a written report of its investigation, stating with
27 specificity the facts supporting its conclusion, and shall apply to the Court for the issuance of an
28 order requiring the attorney to show cause within ~~30~~ thirty days after service of that order why the
29 attorney should not be disciplined. The order to show cause shall set forth the particular act or acts
30 of conduct for which he or she is sought to be disciplined. A copy of the Committee's written report
31 should be provided to the attorney along with the show cause order. The accused attorney may file
32 with the Committee within ten days of service of the order a written response to the order to show
33 cause. After receipt of the attorney's response, if any, the Committee may request that the Court
34 rescind its previously issued order to show cause. If the show cause order is not rescinded, and upon
35 at least ten days notice, the cause shall be set for hearing before the Committee. A record of all
36 proceedings before the Committee shall be made, and shall be made available to the attorney. That
37 record, and all other materials generated by or on behalf of the Committee or in relation to any
38 disciplinary proceedings before the Committee, shall in all other respects remain strictly confidential
39 unless and until otherwise ordered by the Court. In the event the attorney does not appear, the
40 Committee may recommend summary action and shall report its recommendation forthwith to the
41 Court. In the event that the attorney does appear, he or she shall be entitled to be represented by
42 counsel, to present witnesses and other evidence on his or her behalf, and to confront and cross
43 examine witnesses against him. Except as otherwise ordered by the Court or provided in these
44 Rules, the disciplinary proceedings before the Committee shall be guided by the spirit of the Federal

1 Rules of Evidence. Unless he or she asserts a privilege or right properly available to him or her
2 under applicable federal or state law, the accused attorney may be called as a witness by the
3 Committee to make specific and complete disclosure of all matters material to the charge of
4 misconduct.

5
6 **D.** Upon completion of a disciplinary proceeding, the Committee shall make a full written report
7 to the Court. The Committee shall include its findings of fact as to the charges of misconduct,
8 recommendations as to whether or not the accused attorney should be found guilty of misconduct
9 justifying disciplinary actions by the Court, and recommendations as to the disciplinary measures
10 to be applied by the Court. The report shall be accompanied by a transcript of the proceedings
11 before the Committee, all pleadings, and all evidentiary exhibits. A copy of the report and
12 recommendation shall also be furnished the attorney. The Committee's written report, transcripts
13 of the proceedings, and all related materials shall remain confidential unless and until otherwise
14 ordered by the Court.

15
16 **E.** Upon receipt of the Committee's finding that misconduct occurred, the Court shall issue an
17 order requiring the attorney to show cause why the Committee's recommendation should not be
18 adopted by the Court. The Court may, after considering the attorney's response, by majority vote
19 of the active District Judges thereof, adopt, modify, or reject the Committee's findings that
20 misconduct occurred, and may either impose those sanctions recommended by the Committee or
21 fashion whatever penalties provided by the rules which it deems appropriate.

22
23 Effective Dec. 1, 1994. Amended effective April 15, 2000; April 15, 2002.

24
25 **Comment**

26
27 (2000) Clarification of the authority and responsibilities of District Judges, Magistrate Judges and
28 Bankruptcy Judges.

29
30 **RULE IV. ATTORNEYS CONVICTED OF CRIMES**

31
32 **A.** Upon the filing with this Court of a certified copy of a judgment of conviction demonstrating
33 that any attorney admitted to practice before the Court has been convicted in any court of the United
34 States, or the District of Columbia, or of any state, territory, commonwealth, or possession of the
35 United States of any serious crime as herein defined, the Court shall enter an order immediately
36 suspending that attorney, whether the conviction resulted from a plea of guilty, nolo contendere,
37 verdict after trial, or otherwise, and regardless of the pendency of any appeal. The suspension so
38 ordered shall remain in effect until final disposition of the disciplinary proceedings to be
39 commenced upon such conviction. A copy of such order shall be immediately served upon the
40 attorney. Upon good cause shown, the Court may set aside such order when it appears in the interest
41 of justice to do so.

42
43 **B.** The term "serious" crime shall include any felony and any lesser crime a necessary element
44 of which, as determined by the statutory or common law definition of such crime in the jurisdiction

1 in which it was entered, involves false swearing, misrepresentation, fraud, deceit, bribery, extortion,
2 misappropriation, theft, or the use of dishonesty, or an attempt, conspiracy, or solicitation of another
3 to commit a "serious crime."
4

5 **C.** A certified copy of a judgment of conviction of an attorney for any crime shall be conclusive
6 evidence of the commission of that crime in any disciplinary proceeding instituted against that
7 attorney based on the conviction.
8

9 **D.** Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious
10 crime, the Court may, in addition to suspending that attorney in accordance with the provisions of
11 this rRule, also refer the matter to the Committee for institution of disciplinary proceedings in which
12 the sole issue to be determined shall be the extent of the final discipline to be imposed as a result of
13 the conduct resulting in the conviction, provided that a disciplinary proceeding so instituted will not
14 be brought to final hearing until all appeals from the conviction are concluded.
15

16 **E.** An attorney suspended under the provisions of this rRule will be reinstated immediately upon
17 the filing of a certificate demonstrating that the underlying conviction of a serious crime has been
18 reversed, but the reinstatement will not terminate any disciplinary proceedings then pending against
19 the attorney, the disposition of which shall be determined by the Committee on the basis of all
20 available evidence pertaining to both guilt and the extent of the discipline to be imposed.
21

22 Effective Dec. 1, 1994. Amended effective April 15, 2002.
23

24 **RULE V. DISCIPLINE IMPOSED BY OTHER COURTS** 25

26 **A.** An attorney admitted to practice before this Court shall, upon being subjected to suspension
27 or disbarment by a court of any state, territory, commonwealth, or possession of the United States,
28 or upon being subject to any form of public discipline, including but not limited to suspension or
29 disbarment, by any other court of the United States or the District of Columbia, promptly inform the
30 Clerk of this Court of such action.
31

32 **B.** Upon the filing of a certified copy of a judgment or order demonstrating that an attorney
33 admitted to practice before this Court has been disciplined by another court as described above, this
34 Court may refer the matter to the Committee for a recommendation for appropriate action, or may
35 issue a notice directed to the attorney containing:
36

37 1. A copy of the judgment or order from the other court, and
38

39 2. An order to show cause directing that the attorney inform this Court, within thirty days
40 after service of that order upon the attorney, of any claim by the attorney predicated upon the
41 grounds set forth in subsection E, supra, that the imposition of identical discipline by the Court
42 would be unwarranted and the reasons therefor.
43

44 **C.** In the event that the discipline imposed in the other jurisdiction has been stayed there, any

1 reciprocal disciplinary proceedings instituted or discipline imposed in this Court shall be deferred
2 until such stay expires.

3
4 **D.** After consideration of the response called for by the order issued pursuant to subsection B,
5 supra, or after expiration of the time specified in that order, the Court may impose the identical
6 discipline or may impose any other sanction the Court may deem appropriate.

7
8 **E.** A final adjudication in another court that an attorney has been guilty of misconduct shall
9 establish conclusively the misconduct for purpose of a disciplinary proceeding in this Court, unless
10 the attorney demonstrates and the Court is satisfied that upon the face of the record upon which the
11 discipline in another jurisdiction is predicated it clearly appears that:

12
13 1. the procedure in that other jurisdiction was so lacking in notice or opportunity to be heard
14 as to constitute a deprivation of due process; or

15
16 2. there was such an infirmity of proof establishing misconduct as to give rise to the clear
17 conviction that this Court could not, consistent with its duty, accept as final the conclusion on
18 that subject; or

19
20 3. the imposition of the same discipline by this Court would result in grave injustice; or

21
22 4. the misconduct established is deemed by this Court to warrant substantially different
23 discipline.

24
25 **F.** This Court may at any stage ask the Committee to conduct disciplinary proceedings or to make
26 recommendations to the Court for appropriate action in light of the imposition of professional
27 discipline by another court.

28
29 Effective Dec. 1, 1994. Amended effective April 15, 2002.

30
31 **RULE VI. DISBARMENT ON CONSENT OR RESIGNATION IN OTHER COURTS**

32
33 **A.** Any attorney admitted to practice before this Court shall, upon being disbarred on consent or
34 resigning from any other bar while an investigation into allegations of misconduct is pending,
35 promptly inform the Clerk of this the Court of such disbarment on consent or resignation.

36
37 **B.** An attorney admitted to practice before this Court who shall be disbarred on consent or resign
38 from the bar of any other court of the United States or the District of Columbia, or from the bar of
39 any state, territory, commonwealth, or possession of the United States while an investigation into
40 allegations of misconduct is pending shall, upon the filing with this Court of a certified copy of the
41 judgment or order accepting such disbarment on consent or resignation, cease to be permitted to
42 practice before this Court and be stricken from the roll of attorneys admitted to practice before this
43 Court.

1 Effective Dec. 1, 1994.

2
3 **RULE VII. DISBARMENT ON CONSENT WHILE UNDER DISCIPLINARY**
4 **INVESTIGATION OR PROSECUTION**

5
6 **A.** Any attorney admitted to practice before this Court who is the subject of an investigation into,
7 or a pending proceeding involving, allegations of misconduct may consent to disbarment, but only
8 by delivering to this Court an affidavit stating that the attorney desires to consent to disbarment and
9 that:

10
11 1. the attorney's consent is freely and voluntarily rendered; the attorney is not being
12 subjected to coercion or duress; the attorney is fully aware of the implications of so
13 consenting;

14
15 2. the attorney is aware that there is a presently pending investigation or proceeding
16 involving allegations that there exist grounds for the attorney's discipline the nature of which
17 the attorney shall specifically set forth;

18
19 3. the attorney acknowledges that the material facts so alleged are true; and

20
21 4. the attorney so consents because the attorney knows that if charges were predicated upon
22 the matters under investigation, or if the proceeding were prosecuted, the attorney could not
23 successfully defend himself.

24
25 **B.** Upon receipt of the required affidavit, this Court shall enter an order disbarring the attorney.

26
27 **C.** The order disbarring the attorney on consent shall be a matter of public record. However, the
28 affidavit required pursuant to the provisions of this ~~r~~Rule shall not be publicly disclosed or made
29 available for use in any other proceeding except upon order of this Court.

30
31 Effective Dec. 1, 1994.

32
33 **RULE VIII. INCOMPETENCE AND INCAPACITY**

34
35 **A.** When it appears that an attorney for whatever reason is failing to perform to an adequate level
36 of competence necessary to protect his or her client's interests, the Court may take any remedial
37 action which it deems appropriate, including but not limited to referral of the affected attorney to
38 appropriate institutions and professional personnel for assistance in raising the affected attorney's
39 level of competency. The Court may also, in its discretion, refer the matter to the Committee for
40 further investigation and recommendation.

41
42 **B.** A referral to the Committee of any matter concerning an attorney's failure to maintain an
43 adequate level of competency in his or her practice before this Court is not a disciplinary matter and
44 does not implicate the formal procedures previously described in these Rules. Upon a referral of

1 this sort, the Committee may request that the attorney meet with it informally and explain the
2 circumstances which gave rise to the referral and may conduct such preliminary inquiries as it deems
3 advisable. If after meeting with the attorney and conducting its preliminary inquiries the Committee
4 determines that further attention is not needed, the Committee shall so notify the referring Judge and
5 consider all inquiries terminated.
6

7 **C.** If after meeting with the attorney and conducting its preliminary inquiries the Committee
8 deems the matter warrants further action, it may recommend to the attorney that the attorney take
9 steps to improve the quality of his or her professional performance and shall specify the nature of
10 the recommended action designed to effect such improvement. The attorney shall be advised of any
11 such recommendation in writing and be given the opportunity to respond thereto, to seek review or
12 revocation of the recommendation, or to suggest alternatives thereto. The Committee may, after
13 receiving such response, modify, amend, revoke, or adhere to its original recommendation. If the
14 attorney agrees to comply with the Committee's final recommendation, the Committee shall report
15 to the referring Judge that the matter has been resolved by the consent of the affected attorney. The
16 Committee may monitor the affected attorney's compliance with its recommendation and may
17 request the assistance of the Court in ensuring that the attorney is complying with the final
18 recommendation.
19

20 **D.** If the Committee finds that there is a substantial likelihood that the affected attorney's
21 continued practice of law may result in serious harm to the attorney's clients pending completion of
22 the remedial program, it may recommend that the Court consider limiting or otherwise imposing
23 appropriate restrictions on the attorney's continuing practice before the Court. The Court may take
24 any action which it deems appropriate to effectuate the Committee's recommendation.
25

26 **E.** Any attorney who takes exception with the Committee's final recommendation shall have the
27 right to have the Court, consisting of the active Judges thereof, consider the recommendation and
28 the response of the affected attorney. The Court may, after considering the attorney's response, by
29 majority vote of the active Judges thereof, adopt, modify, or reject the Committee's
30 recommendations as to the necessary remedial actions and may take whatever actions it deems
31 appropriate to ensure the attorney's compliance.
32

33 **F.** All information, reports, records, and recommendations gathered, possessed, or generated by
34 or on behalf of the Committee in relation to the referral of a matter concerning an attorney's failure
35 to maintain an adequate level of competency in his or her practice before this Court shall be
36 confidential unless and until otherwise ordered by the Court.
37

38 **G.** Nothing contained herein and no action taken hereunder shall be construed to interfere with
39 or substitute for any procedure relating to the discipline of any attorney as elsewhere provided in
40 these rRules. Any disciplinary actions relating to the inadequacy of an attorney's performance shall
41 occur apart from the proceedings of the Committee in accordance with law and as directed by the
42 Court.
43

44 Effective Dec. 1, 1994. Amended effective April 15, 2002.

1
2 **RULE IX. REINSTATEMENT**
3

4 **A. After Disbarment or Suspension.** An attorney suspended for three months or less shall be
5 automatically reinstated at the end of the period of suspension upon the filing with this Court of an
6 affidavit of compliance with the provisions of the order. An attorney suspended for more than three
7 months or disbarred may not resume the practice of law before this Court until reinstated by order
8 of the Court. An attorney seeking reinstatement after reciprocal disbarment or suspension must meet
9 the same criteria as an attorney seeking original admission under Rule 1 of the Special Rules
10 Governing the Admission and Practice of Attorneys, in that he or she must first seek and obtain
11 reinstatement by The Florida Bar.
12

13 **B. Time of Application Following Disbarment.** An attorney who has been disbarred after
14 hearing or consent may not apply for reinstatement until the expiration of at least five years from
15 the effective date of disbarment.
16

17 **C. Hearing on Application.** Petitions for reinstatement by a disbarred or suspended attorney
18 under this Rule shall be filed with the Chief Judge of this Court. The Chief Judge may submit the
19 petition to the Court or may, in his or her discretion, refer the petition to the Committee which shall
20 within thirty days of the referral schedule a hearing at which the petitioner shall have the burden of
21 establishing by clear and convincing evidence that he or she has the moral qualifications,
22 competency, and learning in the law required for admission to practice before this Court and that
23 his or her resumption of the practice of law will not be detrimental to the integrity and standing of
24 the bar or the administration of justice, or subversive of the public interest. Upon completion of the
25 hearing the Committee shall make a full report to the Court. The Committee shall include its
26 findings of fact as to the petitioner's fitness to resume the practice of law and its recommendations
27 as to whether or not the petitioner should be reinstated.
28

29 **D. Conditions of Reinstatement.** If after consideration of the Committee's report and
30 recommendation the Court finds that the petitioner is unfit to resume the practice of law, the petition
31 shall be dismissed. If after consideration of the Committee's report and recommendation the Court
32 finds that the petitioner is fit to resume the practice of law, the Court shall reinstate him or her,
33 provided that the judgment may make reinstatement conditional upon the payment of all or part of
34 the costs of the proceedings, and on the making of partial or complete restitution to all parties
35 harmed by the petitioner whose conduct led to the suspension or disbarment. Provided further, that
36 if the petitioner has been suspended or disbarred for five years or more, reinstatement may be
37 conditioned, in the discretion of the Court, upon the furnishing of proof of competency and learning
38 in the law, which proof may include certification by the bar examiners of a state or other jurisdiction
39 of the attorney's successful completion of an examination for admission to practice subsequent to
40 the date of suspension or disbarment. Provided further that any reinstatement may be subject to any
41 conditions which the Court in its discretion deems appropriate.
42

43 **E. Successive Petitions.** No petition for reinstatement under this Rule shall be filed within one
44 year following an adverse judgment upon a petition for reinstatement filed by or on behalf of the

1 same person.
2
3

4 **F. Deposit for Costs of Proceeding.** Petitions for reinstatement under this Rule shall be
5 accompanied by a deposit in an amount to be set from time to time by the Court in consultation with
6 the Committee to cover anticipated costs of the reinstatement proceeding.
7

8 Effective Dec. 1, 1994. Amended effective April 15, 2002; April 15, 2006.
9

10 **Comments**

11
12 (2006) Section A is amended to clarify that a petitioner seeking reinstatement after reciprocal
13 disbarment or suspension must first be reinstated in Florida.
14

15 **RULE X. ATTORNEYS SPECIALLY ADMITTED**

16
17 Whenever an attorney applies to be admitted or is admitted to this Court for purposes of a particular
18 proceeding (pro hac vice), the attorney shall be deemed thereby to have conferred disciplinary
19 jurisdiction upon this Court for any alleged misconduct arising in the course of or in the preparation
20 for such a proceeding which is a violation of this Court's Local Rules and/or the Rules of
21 Professional Conduct adopted by this Court as provided in these Rules.
22

23 Effective Dec. 1, 1994.
24

25 **RULE XI. APPOINTMENT OF COUNSEL**

26
27 Whenever, at the direction of the Court or upon request of the Committee, counsel is to be appointed
28 pursuant to these rules to investigate or assist in the investigation of misconduct, to prosecute or
29 assist in the prosecution of disciplinary proceedings, or to assist in the disposition of a reinstatement
30 petition filed by a disciplined attorney, this Court, by a majority vote of the active Judges thereof,
31 may appoint as counsel any active member of the bar of this Court, or may, in its discretion, appoint
32 the disciplinary agency of the highest court of the state wherein the Court sits, or other disciplinary
33 agency having jurisdiction.
34

35 Effective Dec. 1, 1994. Amended effective April 15, 2002.
36

37 **RULE XII. SERVICE OF PAPER AND OTHER NOTICES**

38
39 Service of an order to show cause instituting a formal disciplinary proceeding shall be made by
40 personal service or by registered or certified mail addressed to the affected attorney at the address
41 shown on the roll of attorneys admitted to practice before this Court. Service of any other papers
42 or notices required by these rRules shall be deemed to have been made if such paper or notice is
43 addressed to the attorney at the address shown on the roll of attorneys admitted to practice before
44 the Court; or to counsel or the respondent's attorney at the address indicated in the most recent

1 pleading or document filed by them in the course of any proceeding.

2
3 Effective Dec. 1, 1994.

4
5 **RULE XIII. DUTIES OF THE CLERK**

6
7 **A.** Upon being informed that an attorney admitted to practice before this Court has been convicted
8 of any crime, the Clerk of ~~this~~ the Court shall determine whether the court in which such conviction
9 occurred has forwarded a certificate of such conviction to this Court. If a certificate has not been
10 so forwarded, the Clerk of ~~this~~ the Court shall promptly obtain a certificate and file it with this
11 Court.

12
13 **B.** Upon being informed that an attorney admitted to practice before this Court has been subjected
14 to discipline by another court, the Clerk of ~~this~~ the Court shall determine whether a certified or
15 exemplified copy of the disciplinary judgment or order has been filed with this Court, and, if not,
16 the Clerk of the Court shall promptly obtain a certified or exemplified copy of the disciplinary
17 judgment or order and file it with this Court.

18
19 **C.** Whenever it appears that any person who has been convicted of any crime or disbarred or
20 suspended or censured or disbarred on consent by this Court is admitted to practice law in any other
21 jurisdiction or before any other court, this Court shall, within ten days of that conviction,
22 disbarment, suspension, censure, or disbarment on consent, transmit to the disciplinary authority in
23 such other jurisdiction, or for such other court, a certificate of the conviction or a certified or
24 exemplified copy of the judgment or order of disbarment, suspension, censure, or disbarment on
25 consent, as well as the last known office and residence addresses of the disciplined attorney.

26
27 **D.** The Clerk of ~~this~~ the Court shall, likewise, promptly notify the National Discipline Bank
28 operated by the American Bar Association of any order imposing public discipline on any attorney
29 admitted to practice before this Court.

30
31 Effective Dec. 1, 1994.