# LOCAL RULES

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# United States District Court

# for the

# Southern District of Florida

**Revised December 2, 2013**

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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

These Local Rules shall apply in all proceedings in civil and criminal actions except where otherwise indicated.

When used in these Local Rules, the word "counsel" shall be construed to apply to a party if that party is proceeding pro se.

Effective December 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; April 15, 2007; April 15, 2008; April 15, 2009; April 15, 2010; December 1, 2011.

**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.)

**Comments**

(1994) The following Local Rules were amended or adopted by Administrative Order 94–51, In Re Amendments to the Local Rules: Local 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.

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

(2011) Amended to eliminate unnecessary language.

### RULE 3.1 DOCKETING AND TRIAL

Actions and proceedings shall be tried in their county of origin, except that Highlands, Indian River, Martin, Okeechobee and St. Lucie County actions and proceedings shall be tried at Fort Pierce, Florida.

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

Effective December 1, 1994. Amended effective April 15, 2007; April 15, 2010; December 1, 2011.

**Authority**

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

**Comments**

(1993) Renumbered per Model Rules.

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

(2011) Amended to eliminate unnecessary language.

**RULE 3.2 SEPARATE DOCKETS [Repealed]**

Effective December 1, 1994. Amended effective April 15, 2010. Repealed December1, 2011.

**Comment**

(2011) Repealed.

**RULE 3.3 CIVIL COVER SHEET**

Every Complaint or other document initiating a civil action shall be accompanied by a completed civil cover sheet. *See* form available on the Court's website (www.flsd.uscourts.gov). This requirement is solely for administrative purposes, and matters appearing only on the civil cover sheet have no legal effect in the action. In the event counsel becomes aware of an error in the civil cover sheet, a written notice shall be filed identifying the error and serving same upon all counsel of record.

Effective December 1, 1994. Amended effective April 15, 2007; December 3, 2012.

**Authority**

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

**Comment**

(2012) Amended to eliminate reference to the civil cover sheet being available at the Clerk's Office and to direct readers to the Court's website instead.

**RULE 3.4 ASSIGNMENT OF ACTIONS AND PROCEEDINGS [Repealed]**

Effective December 1, 1994. Amended effective April 15, 2000; April 15, 2007; April 15, 2010. Repealed December 1, 2011.

**Comment**

(2011) Repealed and relocated to the Court's Internal Operating Procedures.

**RULE 3.5 RESPONSIBILITY FOR ACTIONS AND PROCEEDINGS [Repealed]**

Effective December 1, 1994. Repealed December 1, 2011.

**Comment**

(2011) Repealed and relocated to the Court's Internal Operating Procedures.

**RULE 3.6 RECUSALS [Repealed]**

Effective December 1, 1994. Amended effective April 15, 2007. Repealed December 1, 2011.

**Comment**

(2011) Repealed and relocated to the Court's Internal Operating Procedures.

**RULE 3.7 REASSIGNMENT OF CASES DUE TO RECUSAL, TEMPORARY ASSIGNMENT OR EMERGENCY [Repealed]**

Effective December 1, 1994. Amended effective April 15, 2007; April 15, 2010. Repealed December 1, 2011.

**Comment**

(2011) Repealed and relocated to the Court's Internal Operating Procedures.

**RULE 3.8 NOTICE OF TRANSFER OF REFILED AND SIMILAR ACTIONS AND PROCEDURES**

It shall be the continuing duty of the attorneys of record in every action or proceeding to bring promptly to the attention of the Court and opposing counsel the existence of other actions or proceedings as described in Section 2.15.00 of the Court's Internal Operating Procedures, as well as the existence of any similar actions or proceedings then pending before another court or administrative agency. Such notice shall be given by filing with the Court and serving on counsel

a "Notice of Pending, Refiled, Related or Similar Actions," containing a list and description thereof sufficient for identification.

Effective December 1, 1994. Amended effective April 15, 2006; April 15, 2007.

**Authority**

(1993) Former Local Rule 6.

**Comments**

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

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

## RULE 5.1 FILING AND COPIES

**(a) Form of Conventionally Filed Documents.** All civil and criminal pleadings, motions, and other papers exempted from the requirement that they be filed via CM/ECF and instead tendered for conventional (non-CM/ECF) filing shall:

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

(2) When filing a civil complaint for which issuance of initial process is requested, one (1) copy of the complaint must be submitted for each summons.

(3) Be on standard size 8-1/2" x 11" white, opaque paper.

(4) Be plainly typed or written on one (1) side with 1" margins on top, bottom, and each side. All typewritten documents, except for quoted material of fifty words or more and footnotes, both of which may be single-spaced, shall have not less than one and one-half (1 1/2) spaces between lines. Fonts for typewritten documents, including footnotes and quotations, must be no smaller than twelve (12) point. All typewritten documents must be paginated properly and consecutively at the bottom center of each page. Only one (1) side of the paper may be used.

(5) Include a caption with:

(A) The name of the Court centered across the page;

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

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

(D) The title of the document, including the name and designation of the party (as plaintiff or defendant or the like) on whose behalf the document is submitted, centered across the page.

Exception:

The requirements of (a)(3)–(a)(5) do not apply to: (i) exhibits submitted for filing; (ii) papers filed in removed actions prior to removal from the state courts; and (iii) forms provided by the Court.

(6) Include (A) a signature block with the name, street address, telephone number, facsimile telephone number, e-mail address, and Florida Bar identification number of all counsel for the party and (B) a certificate of service that contains the name, street address, telephone number, facsimile telephone number, and e-mail address of all counsel for all parties, including the attorney filing the pleading, motion, or other paper. *See* form available on the Court's website ( www.flsd.uscourts.gov ).

(7) Not be transmitted to the Clerk of the Court or any Judge by facsimile telecopier.

(8) Be submitted with sufficient copies to be filed and docketed in each matter if styled in consolidated cases.

**(b) Form of CM/ECF Filed Documents.** Except those documents exempted under Section 5 of the CM/ECF Administrative Procedures, all documents required to be served shall be filed in compliance with the CM/ECF Administrative Procedures; however, pro se parties are exempted from this requirement pursuant to Section 2C of the CM/ECF Administrative Procedures. The requirements of paragraphs (a)(2)–(a)(5) above shall apply to documents filed via CM/ECF. *See* Section 3A of the CM/ECF Administrative Procedures.

**(c) Restriction on Courtesy Copies.** Counsel shall not deliver extra courtesy copies to a Judge's Chambers except when requested by a Judge's office.

**(d) Notices of Filing; Form and Content.** The title of a notice of filing shall include (1) the name and designation of the party (as plaintiff or defendant or the like) on whose behalf the filing is submitted, and (2) a description of the document being filed. A notice of filing shall identify by title the pleading, motion or other paper to which the document filed pertains and the purpose of the filing, such as in support of or in opposition to a pending motion or the like.

Effective December 1, 1994. Amended effective April 15, 1996; April 15, 1998; April 15, 1999; April 15, 2000; April 15, 2001; paragraph E added effective April 15, 2003; April 15, 2007; April 15, 2009; April 15, 2010; April 15, 2011; December 1, 2011.

## Authority

(1993) Former Local Rule 7; Model Rule 5.1; Administrative Order 90–64 (A.6, B).

## Comments

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

(1994) The addition of counsel's facsimile telephone number in A.6 is consistent with the Local Rule amendment to permit counsel to serve each other via facsimile transmission. The other changes are grammatical or designed to make the Local Rule gender neutral.

(1996) In recognition of the logistical problems posed by the requirement that papers must be filed with the Clerk of the Court where the assigned Judge is chambered, the Local Rule is amended to make clear that filing within three business days after service is reasonable under Federal Rule of Civil Procedure 5(d). The pre–1993 version of Local Rule 7.B. required filing of papers either before service or within five days thereafter.

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

(2000) Amendments to subpart 5(a) dispenses with the need for reference to the Division of the Court to avoid confusion resulting from the requirement to file papers, in accordance with Local Rule 5.1.B, in the Division where the assigned Judge is chambered, which is different from the Division in which the case is venued. A corresponding change is made to the sample form following the Local Rule.

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

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

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

(2009) Amended to eliminate the requirement to file multiple copies of initial process, which CM/ECF renders unnecessary, and to supply additional formatting requirements for pleadings, motions, and other papers filed with the Court.

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

(2011) Amended to conform to Section 8 of the CM/ECF Administrative Procedures requiring electronic filing of original complaints and to eliminate suggested requirement that the Service List be on a separate page.

(2011) Amended to eliminate form, which was relocated to the Court's website.

## RULE 5.2 PROOF OF SERVICE AND SERVICE BY PUBLICATION

**(a) Certification of Service.** Each pleading or paper required by Federal Rule of Civil Procedure 5 to be served on the other parties shall include a certificate of service 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) Multiple Copies Unnecessary.** Any document permitted to be filed via CM/ECF, including the corporate disclosure statement required by Federal Rule of Civil Procedure 7.1, shall be deemed to have been delivered in multiple if multiple copies are required to be filed.

**(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.

Effective December 1, 1994. Amended effective December 1, 2001; April 15, 2007; April 15, 2010; April 15, 2011.

### Authority

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

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

### Comments

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

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

(2011) Amended to conform to Section 8 of the CM/ECF Administrative Procedures requiring electronic filing of original complaints.

**RULE 5.3 FILES AND EXHIBITS**

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

**(b) Exhibits.** Except as provided by Section 5I of the CM/ECF Administrative Procedures, all exhibits received or offered in evidence at any hearing shall be delivered to the Clerk of the Court, who shall keep them in the Clerk of the Court's custody, except that any narcotics, cash, counterfeit notes, weapons, precious stones received, including but not limited to other exhibits which, because of size or nature, require special handling, shall remain in possession of the party introducing same during pendency of the proceeding and any appeal. Nothing contained in this Local Rule shall prevent the Court from entering an order with respect to the handling, custody or storage of any exhibit. The Clerk of the Court shall permit United States Magistrate Judges and official court reporters to have custody of exhibits as may be necessary.

**(c) Removal of Exhibits.** All models, diagrams, books, or other exhibits received in evidence or marked for identification in any action or proceeding shall be removed by the filing party within three (3) months after final adjudication of the action or proceeding and disposition of any appeal. Otherwise, such exhibits may be destroyed or otherwise disposed of as the Clerk of the Court may deem proper.

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

Effective December 1, 1994. Amended effective April 15, 2007; April 15, 2010.

**Authority**

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

**Comments**

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

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

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

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

**(a) General Policy.** Unless otherwise provided by law, Court rule, or Court order, proceedings in the United States District Court are public and Court filings are matters of public record. Where not so provided, a party seeking to file matters under seal shall follow the procedures prescribed by this Local Rule and pursuant to Section 5A of the CM/ECF Administrative Procedures, which prohibits the electronic filing of sealed documents.

**(b) Procedure for Filing Under Seal in Civil Cases.** A party seeking to make a filing under seal in a civil case shall:

(1) Conventionally file a motion to seal that sets forth the factual and legal basis for departing from the policy that Court filings be public and that describes the proposed sealed filing with as much particularity as possible without revealing the confidential information. The motion shall specify the proposed duration of the requested sealing. The motion to seal (but not the proposed sealed filing) and the docket text shall be publicly available on the docket.

(2) Conventionally file the proposed sealed filing in a plain envelope clearly marked "sealed document" with the case number and style of the case noted on the outside.

**(c) Procedure for Filing Under Seal in Criminal Cases.** A party seeking to make a filing under seal in a criminal case shall:

(1) Conventionally file a motion to seal that sets forth the factual and legal basis for departing from the policy that Court filings be public and that describes the proposed sealed filing with as much particularity as possible without revealing the confidential information. The motion shall specify the proposed duration of the requested sealing. Unless the Court expressly orders otherwise, the motion to seal will itself be sealed from public view and the docket text appearing on the public docket shall reflect only that a sealed filing has been made.

(2) Conventionally file the proposed sealed filing in a plain envelope clearly marked "sealed document" with the case number and style of the case noted on the outside.

**(d) Court Ruling**. An order granting a motion to seal shall state the period of time that the sealed filing shall be sealed. If the Court denies the motion to seal, the proposed sealed filing shall not be public and shall be deleted from the docket by the Clerk's Office.

Effective April 15, 2000. Amended effective April 15, 2001; April 15, 2005; April 15, 2007; April 15, 2010; December 2, 2013.

## Comments

(2000) This Local Rule codifies existing procedure. By its terms, this 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 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 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 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 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 this Local Rule has been deleted. 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.

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

(2013) Amended to require that motions to seal in civil cases be publicly available on the docket and to clarify the circumstances of when a sealed document becomes unsealed.

## RULE 5.5 ELECTRONIC FILING THROUGH CM/ECF [Repealed]

Effective April 15, 2003. Amended effective April 15, 2007. Repealed December 1, 2011.

## Comment

(2011) Repealed as redundant of Local Rule 5.1.

## RULE 7.1 MOTIONS, GENERAL

### (a) Filing.

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

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

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

(C) motion for order of publication for process;

(D) application for default;

(E) motion for judgment upon default;

(F) motion to withdraw or substitute counsel;

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

(H) motion for confirmation of sale;

(I) motion to withdraw or substitute exhibits;

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

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

(L) application for leave to proceed in forma pauperis.

(2) Those motions listed in (a)(1) above shall be accompanied by a proposed order.

(3) *Pre-filing Conferences Required of Counsel.* Prior to filing any motion in a civil case, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, or to involuntarily dismiss an action, counsel for the movant shall confer (orally or in writing), or make reasonable effort to confer (orally or in writing), with all parties or non-parties who may be affected by the relief sought in the motion in a good faith effort to resolve by agreement the issues to be raised in the motion. Counsel conferring with movant's counsel shall cooperate and act in good faith in attempting to resolve the dispute. At the end of the motion, and above the signature block, counsel for the moving party shall certify either: (A) that counsel for the movant has conferred with all parties or non-parties who may be affected by the relief sought in the motion in a good faith effort to resolve the issues raised in the motion and has been unable to do so; or (B) that counsel for the movant has made reasonable efforts to confer with all parties or non-parties who may be affected by the relief sought in the motion, which efforts shall be identified with specificity in the statement, but has been unable to do so. If certain of the issues have been resolved by agreement, the certification shall specify the issues so resolved and the issues remaining unresolved. Failure to comply

with the requirements of this Local Rule may be cause for the Court to grant or deny the motion and impose on counsel an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee. *See* forms available on the Court's website ( www.flsd.uscourts.gov ).

**(b) Hearings.**

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

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

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

(4) With respect to:

(A) any motion or other matter which has been pending and fully briefed with no hearing set thereon for a period of ninety (90) days, and

(B) any motion or other matter as to which the Court has conducted a hearing but has not entered an order or otherwise determined the motion or matter within ninety (90) days of the hearing, the movant or applicant, whether party or non-party, shall serve on all parties and any affected non-parties within fourteen (14) days thereafter a "Notification of Ninety Days Expiring" which shall contain the following information:

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

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

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

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

**(c) Memorandum of Law.** Each party opposing a motion shall serve an opposing memorandum of law no later than fourteen (14) days after service of the motion. Failure to do so may be deemed

sufficient cause for granting the motion by default. The movant may, within seven (7) days after service of an opposing memorandum of law, serve a reply memorandum in support of the motion, which reply memorandum shall be strictly limited to rebuttal of matters raised in the memorandum in opposition without reargument of matters covered in the movant's initial memorandum of law. No further or additional memoranda of law shall be filed without prior leave of Court. All materials in support of any motion, response, or reply, including affidavits and declarations, shall be served with the filing.

(1) *Time.* Time shall be computed under this Local Rule as follows:

(A) If the motion or memorandum was served by mail or filed via CM/ECF, count fourteen (14) days (seven (7) days for a reply) beginning the day after the motion, response, or memorandum was certified as having been mailed or filed via CM/ECF. If the last day falls on a Saturday, Sunday, or legal holiday, the period continues to run until the next business day. Beginning on the next calendar day, including Saturday, Sunday, or a legal holiday, count three (3) days. The third day is the due date for the opposing memorandum or reply. If the third day falls on a Saturday, Sunday, or legal holiday, the due date is the next business day.

(B) If, in addition to being filed via CM/ECF, the motion or memorandum was served by hand delivery, count fourteen (14) days (seven (7) days for a reply) beginning the day after the motion, response, or memorandum was hand-delivered. The fourteenth or seventh day is the due date for the opposing memorandum or reply, respectively. If the due date falls on a Saturday, Sunday, or legal holiday, the due date is the next business day.

(2) *Length.* Absent prior permission of the Court, neither a motion and its incorporated memorandum of law nor the opposing memorandum of law shall exceed twenty (20) pages; a reply memorandum shall not exceed ten (10) pages. Title pages preceding the first page of text, signature pages, certificates of good faith conferences, and certificates of service shall not be counted as pages for purposes of this rule. Filing multiple motions for partial summary judgment is prohibited, absent prior permission of the Court.

**(d) Orders Made Orally in Court.** Unless the Court directs otherwise, all orders orally announced in Court shall be prepared in writing by the attorney for the prevailing party and taken to the Judge within two (2) days.

**(e) Emergency Motions.** The Court may, upon written motion and good cause shown, waive the time requirements of this Local Rule and grant an immediate hearing on any matter requiring such expedited procedure. The motion shall set forth in detail the necessity for such expedited procedure and be accompanied by the form available on the Court's website ( www.flsd.uscourts.gov ).

**(f) Applications Previously Refused.** Whenever any motion or application has been made to any Judge or Magistrate Judge and has been refused in whole or in part, or has been granted conditionally, and a subsequent motion or application is made to a different District Judge or

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

Effective December 1, 1994. Amended effective April 15, 1996; April 15, 1997; April 15, 2000; April 1, 2004; April 15, 2005; April 15, 2006; April 15, 2007; April 15, 2009; April 15, 2010; April 15, 2011; December 1, 2011.

**Comments**

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

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

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

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

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

(2006) Local Rule 7.1.B.3 is amended to assist the Court's expeditious determination of motions or other matters. Local Rule 7.1.C.1 is amended to correspond to Federal Rule of Civil Procedure 6(e).

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

(2009) Amended to add a requirement for the completion of a separate Certificate of Good Faith Conference.

(2010) Amended to conform tabulation to the style used in the federal rules of procedure and change the calculation of time periods to correspond to the amendments to the various federal rules.

(2011) Amended to make clear that the motion and memorandum must be part of the same document and to apply the Rule to summary judgment motions.

(2011) Amended to eliminate unnecessary or redundant language and to relocate the forms to the Court's website ( www.flsd.uscourts.gov ).

## RULE 7.2 MOTIONS PENDING ON REMOVAL OR TRANSFER TO THIS COURT

When a court transfers or a party removes an action or proceeding to this Court and there is a pending motion for which the moving party has not submitted a memorandum, the moving party shall file a memorandum in support of its motion within fourteen (14) days after the filing of the notice of removal or the entry of the order of transfer. If the moving party has filed a memorandum in support of the motion prior to removal, the party opposing the motion shall file a memorandum in opposition within fourteen (14) days after the filing of the notice of removal or the entry of the order of transfer. Each party shall then comply with the briefing schedule provided in Local Rule 7.1(c) above.

Effective December 1, 1994. Amended effective April 15, 2003; April 15, 2007; April 15, 2010.

### Authority

(1993) Former Local Rule 10D.

### Comments

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

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

(2010) Amended to provide procedure when a memorandum of law was filed with a motion pending in state court before the time of removal and to conform to changes to the calculation of time periods under the Federal Rules of Civil Procedure.

## RULE 7.3 ATTORNEYS FEES AND COSTS

**(a) Motions for Attorneys Fees and/or Non-Taxable Expenses and Costs.** This rule provides a mechanism to assist parties in resolving attorneys fee and costs disputes by agreement. A motion for an award of attorneys fees and/or non-taxable expenses and costs arising from the entry of a final judgment or order shall not be filed until a good faith effort to resolve the motion, as described in paragraph (b) below, has been completed. The motion shall:

(1) be filed within sixty (60) days of the entry of the final judgment or order giving rise to the claim, regardless of the prospect or pendency of supplemental review or appellate proceedings;

(2) identify the judgment or other order which gives rise to the motion, as well as the statute, rule, or other grounds entitling the moving party to the award;

(3) state the amount sought;

(4) disclose the terms of any applicable fee agreement;

(5) provide:

(A) the identity, experience, and qualifications for each timekeeper for whom fees are sought;

(B) the number of hours reasonably expended by each such timekeeper;

(C) a description of the tasks done during those hours; and

(D) the hourly rate(s)claimed for each timekeeper;

(6) describe and document with invoices all incurred and claimed fees and expenses not taxable under 28 U.S.C. § 1920;

(7) be verified; and

(8) certify that a good faith effort to resolve issues by agreement occurred pursuant to Local Rule 7.3(b), describing what was and was not resolved by agreement and addressing separately the issues of entitlement to fees and amount.

Within fourteen (14) days after filing and service of the motion, the respondent shall describe with reasonable particularity each time entry or nontaxable expense to which it objects, both as to issues of entitlement and as to amount, and shall provide supporting legal authority. If a party objects to an hourly rate, its counsel must submit an affidavit giving its firm's hourly rates for the matter and include any contingency, partial contingency, or other arrangements that could change the effective hourly rate. Pursuant to Federal Rule of Civil Procedure 54(d)(2)(C), either party may move the Court to determine entitlement prior to submission on the issue of amount. This Local Rule's

requirements of disclosure are not intended to require the disclosure of privileged, immune, or protected material.

A party shall seek costs that are taxable under 28 U.S.C. § 1920 by filing a bill of costs and supporting memorandum in accordance with paragraph 7.3(c) below. The costs and expenses sought in a motion under this paragraph shall not include any cost sought in a bill of costs.

**(b) Good Faith Effort to Resolve Issues by Agreement.** Except as to any aspect of a fee claim upon which the parties agree, a draft motion compliant with Local Rule 7.3(a)(1)–(8) must be served but not filed at least thirty (30) days prior to the deadline for filing any motion for attorneys fees and/or costs that is governed by this Local Rule. Within twenty-one (21) days of service of the draft motion, the parties shall confer and attempt in good faith to agree on entitlement to and the amount of fees and expenses not taxable under 28 U.S.C. § 1920. The respondent shall describe in writing and with reasonable particularity each time entry or nontaxable expense to which it objects, both as to issues of entitlement and as to amount, and shall provide supporting legal authority. If a federal statute provides a deadline of fewer than sixty (60) days for a motion governed by Local Rule 7.3(a), the parties need not comply with this paragraph's requirements.

**(c) Bill of Costs.** A bill of costs pursuant to 28 U.S.C. § 1920 shall be filed and served within thirty (30) days of entry of final judgment or other appealable order that gives rise to a right to tax costs under the circumstances listed in 28 U.S.C. § 1920. Prior to filing the bill of costs, the moving party shall confer with affected parties under the procedure outlined in S.D.Fla.L.R.7.1(a)(3) in a good faith effort to resolve the items of costs being sought.

An application for a bill of costs must be submitted on form (or in form substantially similar to) AO 133 of the Administrative Office of the United States Courts and shall be limited to the costs permitted by 28 U.S.C. § 1920. Expenses and costs that the party believes are recoverable although not identified in § 1920 shall be moved for as provided in paragraph 7.3(a) above. The bill of costs shall attach copies of any documentation showing the amount of costs and shall be supported by a memorandum not exceeding ten (10) pages. The prospects or pendency of supplemental review or appellate proceedings shall not toll or otherwise extend the time for filing a bill of costs with the Court.

Effective December 1, 1994. Amended effective April 15, 1999; April 15, 2001; April 15, 2005; April 15, 2006; April 15, 2007; April 15, 2010; April 15, 2011; December 1, 2011; December 3, 2012.

## Authority

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

## Comments

(1993) There are considerable modifications to the existing Local Rule, including an attorney's certification, plus a requirement to confer in three days.

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

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

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

(2001) Applicability to interim fee applications clarified.

(2005) The amendments are designed to provide attorneys with more particularized information as to what must be included and filed contemporaneously with a motion for attorneys fees and/or costs. *See Norman v. Housing Auth.*, 836 F.2d 1292 (11th Cir. 1988), and progeny. The amendment to this Local Rule separates a bill to tax costs from that of a motion for attorneys fees and/or costs. The changes also require attorneys to confer in good faith prior to the filing of a motion for attorneys fees and/or costs, which is a change from the 1993 amendment.

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

(2010) Amended to conform tabulation to the style used in the federal rules of procedure and provide a new procedure for the resolution of an attorneys fees and/or costs motion, including elimination of the requirement of an expert witness.

(2011) Amended to make clear the difference between a bill of costs under 28 U.S.C. § 1920 and a motion to tax other costs, to clarify the duty to confer in good faith before submitting a bill of costs and to require a bill of costs to be supported by a memorandum of law.

(2011) Amended to make clear that the time periods required in paragraph (b) are not intended to apply where a federal statute applies shorter deadlines.

(2012) Amended to make clear that a draft fee motion need not be prepared on issues where the parties agree.

## RULE 7.5 MOTIONS FOR SUMMARY JUDGMENT [Renumbered Local Rule 56.1]

Effective December 1, 1994. Amended effective April 15, 1999; April 15, 2002; April 15, 2005; April 15, 2007; April 15, 2008; April 15, 2010; April 15, 2011. Renumbered December 1, 2011.

### Comment

(2011) Renumbered Local Rule 56.1.

## RULE 7.6 CONTINUANCES OF TRIALS AND HEARINGS

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

Effective December 1, 1994.

### Authority

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

## RULE 7.7 CORRESPONDENCE TO THE COURT

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

Effective December 1, 1994. Amended effective April 15, 2003; April 15, 2007.

### Authority

(1993) Former Local Rule 10M.

### Comments

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

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

## RULE 9.1 REQUEST FOR THREE-JUDGE DISTRICT COURT

In any action or proceeding that a party believes is required to be heard by a three-judge district court, the words "Three-Judge District Court Requested" shall be included immediately following the title of the first pleading in which the cause of action requiring a three-judge district court is pleaded. Unless the basis for the request is apparent from the pleading, it shall be set forth in the pleading or in a brief statement attached thereto. The words "Three-Judge District Court Requested" on a pleading is a sufficient request under Title 28, United States Code, Section 2284.

Effective December 1, 1994. Amended effective April 15, 2007.

### Authority

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

### Comment

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

(2011) Amended to eliminate "or the equivalent" language.

## RULE 11.1 ATTORNEYS

**(a) Roll of Attorneys.** The Bar of this Court shall consist of those persons heretofore admitted and those who may hereafter be admitted in accordance with the Special Rules Governing the Admission and Practice of Attorneys in this District.

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

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

**(d) Appearance by Attorney.**

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

(2) An attorney representing a witness in any civil action or criminal proceeding, including a grand jury proceeding, or representing a defendant in a grand jury proceeding, shall file a notice of appearance, with consent of the client endorsed thereon, with the Clerk of the Court on a form to be prescribed and furnished by the Court, except that the notice need not

be filed when such appearance has previously been evidenced by the filing of pleadings in the action or proceeding. The notice shall be filed by the attorney promptly upon undertaking the representation and prior to the attorney's appearance on behalf of the attorney's client at any hearing or grand jury session. When the appearance is in connection with a grand jury session, the notice of appearance shall be filed with the Clerk of the Court in such manner as to maintain the secrecy requirements of grand jury proceedings.

(3) No attorney shall withdraw the attorney's appearance in any action or proceeding except by leave of Court after notice served on the attorney's client and opposing counsel. A motion to withdraw shall include a current mailing address for the attorney's client or the client's counsel.

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

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

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

(7) Only one (1) attorney on each side shall examine or cross-examine a witness, and not more than two (2) attorneys on each side shall argue the merits of the action or proceeding unless the Court shall otherwise permit.

**(e) Relations With Jury.** Before, during, and after the trial, a lawyer should avoid conversing or otherwise communicating with a juror on any subject, whether pertaining to the case or not. Provided, however, after the jury has been discharged, upon application in writing and for good cause shown, the Court may allow counsel to interview jurors to determine whether their verdict is subject to legal challenge. In this event, the Court shall enter an order limiting the time, place, and circumstances under which the interviews shall be conducted. The scope of the interviews should be restricted and caution should be used to avoid embarrassment to any juror and to avoid influencing the juror's action in any subsequent jury services.

**(f) Relation to Other Rules.** This Local Rule governing attorneys is supplemented by the Special Rules Governing the Admission and Practice of Attorneys and the Rules Governing Attorney Discipline of this District.

**(g) Responsibility to Maintain Current Contact Information**. Each member of the Bar of the Southern District, any attorney appearance *pro hac vice*, and any party appearing *pro se* shall maintain current contact information with the Clerk of Court. Each attorney shall update contact information including e-mail address within seven (7) days of a change. Counsel appearing *pro hac vice* and a party appearing *pro se* shall conventionally file a Notice of Current Address with updated contact information within seven (7) days of a change. The failure to comply shall not constitute grounds for relief from deadlines imposed by Rule or by the Court. All Court Orders and Notices will be deemed to be appropriately served if directed either electronically or by conventional mail consistent with information on file with the Clerk of Court.

Effective December 1, 1994. Amended effective April 15, 2002; April 15, 2007; April 15, 2010; April 15, 2011; December 1, 2011.

**Authority**

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

**Comments**

(1994) Changed to make the Local Rule gender neutral.

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

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

(2011) Amended to conform and ensure attorney compliance with AO 2005-38 and CM/ECF Procedural Updates.

(2011) Amended to eliminate unnecessary language.

## RULE 12.1 CIVIL RICO CASE STATEMENT [Repealed]

Effective April 15, 1998. Amended effective April 15, 2006; April 15, 2007; April 15, 2010. Repealed December 1, 2011.

**Comment**

(2011) Repealed to eliminate unnecessary rule, but not to signal that RICO Case Statements may not be required on a case-by-case basis or do not have continued utility.

## RULE 15.1 FORM OF A MOTION TO AMEND AND ITS SUPPORTING DOCUMENTATION

A party who moves to amend a pleading shall attach the original of the amendment to the motion in the manner prescribed by Section 3I(1) of the CM/ECF Administrative Procedures. Any amendment to a pleading, whether filed as a matter of course or upon a successful motion to amend, must, except by leave of Court, reproduce the entire pleading as amended, and may not incorporate any prior pleading by reference. When a motion to amend is granted, the amended pleading shall be separately filed and served forthwith.

Effective December 1, 1994. Amended effective April 15, 2007.

**Authority**

(1993) Model Local Rule 15.1.

**Comments**

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

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

## RULE 16.1 PRETRIAL PROCEDURE IN CIVIL ACTIONS

### (a) Differentiated Case Management in Civil Actions.

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

(2) *Case Management Tracks.* There shall be three (3) case management tracks, as follows:

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

(B) Standard Track-a case requiring three (3) to ten (10) days of trial may be assigned to a standard track in which discovery shall be completed within 180 to 269 days from the date of the Scheduling Order.

(C) Complex Track-an unusually complex case requiring over ten (10) days of trial may be assigned to the complex track in which discovery shall be completed within 270 to 365 days from the date of the Scheduling Order.

(3) *Evaluation and Assignment of Cases.* The following factors shall be considered in evaluating and assigning cases to a particular track: the complexity of the case, number of parties, number of expert witnesses, volume of evidence, problems locating or preserving evidence, time estimated by the parties for discovery and time reasonably required for trial, among other factors. The majority of civil cases will be assigned to a standard track.

(4) The parties shall recommend to the Court in their proposed Scheduling Order filed pursuant to Local Rule 16.1(b), to which particular track the case should be assigned.

**(b) Scheduling Conference and Order.**

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

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

(A) the likelihood of settlement;

(B) the likelihood of appearance in the action of additional parties;

(C) proposed limits on the time:

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

(ii) to file and hear motions; and

(iii) to complete discovery.

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

(E) the necessity or desirability of amendments to the pleadings;

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

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

(H) suggestions on the advisability of referring matters to a Magistrate Judge or master;

(I) a preliminary estimate of the time required for trial;

(J) requested date or dates for conferences before trial, a final pretrial conference, and trial; and

(K) any other information that might be helpful to the Court in setting the case for status or pretrial conference.

(3) *Joint Proposed Scheduling Order*. The Report shall be accompanied by a Joint Proposed Scheduling Order which shall contain the following information:

(A) Assignment of the case to a particular track pursuant to Local Rule 16.1(a) above;

(B) The detailed discovery schedule agreed to by the parties;

(C) Any agreements or issues to be decided by the Court regarding the preservation, disclosure, and discovery of documents, electronically stored information, or things;

(D) Any agreements the parties reach for asserting claims of privilege or protection of trial preparation material after production;

(E) A limitation of the time to join additional parties and to amend the pleadings;

(F) A space for insertion of a date certain for filing all pretrial motions;

(G) A space for insertion of a date certain for resolution of all pretrial motions by the Court;

(H) Any proposed use of the Manual on Complex Litigation and any other need for rule variations, such as on deposition length or number of depositions;

(I) A space for insertion of a date certain for the date of pretrial conference (if one is to be held); and

(J) A space for insertion of the date certain for trial.

In all civil cases (except those expressly exempted below) the Court shall enter a Scheduling Order as soon as practicable but in any event within ninety (90) days after the appearance of a defendant and within 120 days after the complaint has been served on a

defendant. It is within the discretion of each Judge to decide whether to hold a scheduling conference with the parties prior to entering the Scheduling Order.

(4) *Notice of Requirement.* Counsel for plaintiff, or plaintiff if proceeding pro se, shall be responsible for giving notice of the requirements of this subsection to each defendant or counsel for each defendant as soon as possible after such defendant's first appearance.

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

(6) *Compliance With Pretrial Orders.* Regardless of whether the action is exempt pursuant to Federal Rule of Civil Procedure 26(a)(1)(B), the parties are required to comply with any pretrial orders by the Court and the requirements of this Local Rule including, but not limited to, orders setting pretrial conferences and establishing deadlines by which the parties' counsel must meet, prepare and submit pretrial stipulations, complete discovery, exchange reports of expert witnesses, and submit memoranda of law and proposed jury instructions.

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

**(d) Pretrial Disclosures and Meeting of Counsel.** Unless otherwise directed by the Court, at least thirty (30) days before trial each party must provide to the other party and promptly file with the Court the information prescribed by Federal Rule of Civil Procedure 26(a)(3). No later than fourteen (14) days prior to the date of the pretrial conference, or if no pretrial conference is held, fourteen (14) days prior to the call of the calendar, counsel shall meet at a mutually convenient time and place and:

(1) Discuss settlement.

(2) Prepare a pretrial stipulation in accordance with paragraph (e) of this Local Rule.

(3) Simplify the issues and stipulate to as many facts and issues as possible.

(4) Examine all trial exhibits, except that impeachment exhibits need not be revealed.

(5) Exchange any additional information as may expedite the trial.

**(e) Pretrial Stipulation Must Be Filed.** It shall be the duty of counsel to see that the pretrial stipulation is drawn, executed by counsel for all parties, and filed with the Court no later than

seven (7) days prior to the pretrial conference, or if no pretrial conference is held, seven (7) days prior to the call of the calendar. The pretrial stipulation shall contain the following statements in separate numbered paragraphs as indicated:

(1) A short concise statement of the case by each party in the action.

(2) The basis of federal jurisdiction.

(3) The pleadings raising the issues.

(4) A list of all undisposed of motions or other matters requiring action by the Court.

(5) A concise statement of uncontested facts which will require no proof at trial, with reservations, if any.

(6) A statement in reasonable detail of issues of fact which remain to be litigated at trial. By way of example, reasonable details of issues of fact would include: (A) As to negligence or contributory negligence, the specific acts or omissions relied upon; (B) As to damages, the precise nature and extent of damages claimed; (C) As to unseaworthiness or unsafe condition of a vessel or its equipment, the material facts and circumstances relied upon; (D) As to breach of contract, the specific acts or omissions relied upon.

(7) A concise statement of issues of law on which there is agreement.

(8) A concise statement of issues of law which remain for determination by the Court.

(9) Each party's numbered list of trial exhibits, other than impeachment exhibits, with objections, if any, to each exhibit, including the basis of all objections to each document, electronically stored information and thing. The list of exhibits shall be on separate schedules attached to the stipulation, should identify those which the party expects to offer and those which the party may offer if the need arises, and should identify concisely the basis for objection. In noting the basis for objections, the following codes should be used:

A–Authenticity

I–Contains inadmissible matter (mentions insurance, prior conviction, etc.)

R–Relevancy

H–Hearsay

UP–Unduly prejudicial-probative value outweighed by undue prejudice

P–Privileged

Counsel may agree on any other abbreviations for objections, and shall identify such codes in the exhibit listing them.

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

(11) Estimated trial time.

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

**(f) Unilateral Filing of Pretrial Stipulation Where Counsel Do Not Agree.** If for any reason the pretrial stipulation is not executed by all counsel, each counsel shall file and serve separate proposed pretrial stipulations not later than seven (7) days prior to the pretrial conference, or if no pretrial conference is held, seven (7) days prior to the call of the calendar, with a statement of reasons no agreement was reached thereon.

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

**(h) Discovery Proceedings.** All discovery proceedings must be completed no later than fourteen (14) days prior to the date of the pretrial conference, or if no pretrial conference is held, fourteen (14) days prior to the call of the calendar, unless further time is allowed by order of the Court for good cause shown.

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

**(j) Memoranda of Law.** Counsel shall serve and file memoranda treating any unusual questions of law, including motions in limine, no later than seven (7) days prior to the pretrial conference, or if no pretrial conference is held, seven (7) days prior to the call of the calendar.

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

**(l) Penalty for Failure to Comply.** Failure to comply with the requirements of this Local Rule will subject the party or counsel to appropriate penalties, including but not limited to dismissal of the cause, or the striking of defenses and entry of judgment.

Effective December 1, 1994. Amended effective April 15, 1996; April 15, 1997; April 15, 1998; April 15, 2001; April 15, 2004; April 15, 2007; April 15, 2010; April 15, 2011; December 1, 2011; December 3, 2012.

## Authority

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

## Comments

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

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

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

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

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

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

(2001) Local Rules 16.1.B, D and E amended to conform with the December 2000 amendments to Federal Rule of Civil Procedure 26.

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

(2010) Amended to conform tabulation to the style used in the federal rules of procedure and change the calculation of time periods to correspond to the amendments to the various federal rules.

(2011) Amended to correct a mis-citation to Federal Rule of Procedure 26.

(2011) Amended to eliminate language regarding experts redundant of the governing Federal Rule of Civil Procedure.

(2012) Amended to add subparagraph (b)(3)(C).

## RULE 16.2 COURT ANNEXED MEDIATION

### (a) General Provisions.

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

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

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

(2) *Purpose.* It is the purpose of the Court, through adoption and implementation of this Local Rule, to provide an alternative mechanism for the resolution of civil disputes leading to disposition before trial of many civil cases with resultant savings in time and costs to litigants and to the Court, but without sacrificing the quality of justice to be rendered or the right of the litigants to a full trial in the event of an impasse following mediation.

Mediation also enables litigants to take control of their dispute and encourages amicable resolution of disputes.

**(b) Certification; Qualification of Certified Mediators; Compensation of Mediators.**

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

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

(3) *Qualifications of Certified Mediators.* An individual may be certified to serve as a mediator in this District provided that the individual shall:

(A) be an attorney who has been admitted for at least ten (10) consecutive years to one or more State Bars or the Bar of the District of Columbia; and

(B) currently be a member in good standing of The Florida Bar and the Bar of this Court; and

(C) have substantial experience either as a lawyer or mediator in matters brought in any United States District Court or Bankruptcy Court; and

(D) have been certified and remain in good standing as a circuit court mediator under the rules adopted by the Supreme Court of Florida; and

(E) have substantial experience as a mediator.

The advisory committee may recommend for certification an attorney to serve as a mediator in this District if it determines that, for exceptional circumstances, the applicant should be certified who is not otherwise eligible for certification under this section.

Any individual who seeks certification as a mediator shall agree to accept at least two (2) mediation assignments per year in cases where at least one (1) party lacks the ability to compensate the mediator, in which case the mediator's fees shall be reduced accordingly or the mediator shall serve pro bono (if no litigant is able to contribute compensation).

The Chief Judge shall constitute an advisory committee from lawyers who represent those categories of civil litigants who may utilize the mediation program and lay persons to assist in formulating policy and additional standards relating to the qualification of mediators and the operation of the mediation program and to

review applications of prospective mediators and to recommend certification to the Chief Judge as appropriate.

(4) *Standards of Professional Conduct for Mediators.* All individuals who mediate cases pending in this District shall be governed by the Standards of Professional Conduct in the Florida Rules for Certified and Court–Appointed Mediators adopted by the Florida Supreme Court (the "Florida Rules") and shall be subject to discipline and the procedures therefor set forth in the Florida Rules. Every mediator who mediates a case in this District consents to the jurisdiction of the Florida Dispute Resolution Center and the committees and panels authorized thereby for determining the merits of any complaint made against any mediator in this District.

(5) *Oath Required.* Every certified mediator shall take the oath or affirmation prescribed by 28 U.S.C. § 453 upon qualifying as a mediator.

(6) *Disqualification of a Mediator.* Any person selected as a mediator may be disqualified for bias or prejudice as provided in 28 U.S. C. § 144, and shall be disqualified in any case in which such action would be required of a justice, judge, or Magistrate Judge governed by 28 U.S.C. § 455.

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

**(c) Types of Cases Subject to Mediation.** Unless expressly ordered by the Court, the following types of cases shall not be subject to mediation pursuant to this rule:

(1) Habeas corpus cases;

(2) Motion to vacate sentence under 28 U.S.C. § 2255;

(3) Social Security cases;

(4) Civil forfeiture matters;

(5) IRS summons enforcement actions;

(6) Land condemnation cases;

(7) Default proceedings;

(8) Student loan cases;

(9) Naturalization proceedings filed as civil actions;

(10) Statutory interpleader actions;

(11) Truth-in-Lending Act cases not brought as class actions;

(12) Letters rogatory; and

(13) Registration of foreign judgments.

**(d) Procedures to Refer a Case or Claim to Mediation.**

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

(A) Direct mediation be conducted not later than sixty (60) days before the scheduled trial date which shall be established no later than the date of the issuance of the order of referral.

(B) Direct the parties, within fourteen (14) days of the date of the order of referral, to agree upon a mediator. The parties are encouraged to utilize the list of certified mediators established in connection with Local Rule 16.2(b) but may by mutual agreement select any individual as mediator. The parties shall file a "Notice of Selection of Mediator" within that period of time. If the parties are unable to agree upon a mediator, plaintiff's counsel, or plaintiff if self-represented, shall file a "Request For Clerk To Appoint Mediator," and the Clerk will designate a mediator from the list of certified mediators on a blind, random basis.

(C) Direct that, at least fourteen (14) days prior to the mediation date, each party give the mediator a confidential written summary of the case identifying issues to be resolved.

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

(3) *Stipulation of Counsel.* Any action or claim may be referred to mediation upon stipulation of the parties.

(4) *Withdrawal From Mediation.* Any civil action or claim referred to mediation pursuant to this rule may be exempt or withdrawn from mediation by the presiding Judge at any

time, before or after reference, upon application of a party and/or determination for any reason that the case is not suitable for mediation.

**(e) Party Attendance Required.** Unless otherwise excused by the presiding Judge in writing, all parties, corporate representative, and any other required claims professionals (insurance adjusters, etc.), shall be present at the mediation conference with full authority to negotiate a settlement. If a party to a mediation is a public entity required to conduct its business pursuant to Florida Statutes Chapter 286, and is a defendant or counterclaim defendant in the underlying litigation, that party shall be deemed to appear at a mediation conference by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision-making body of the entity. The mediator shall report non-attendance and may recommend that the Court enter sanctions for non-attendance. Failure to comply with the attendance or settlement authority requirements may subject a party to sanctions by the Court.

**(f) Mediation Report; Notice of Settlement; Judgment.**

(1) *Mediation Report.* Within seven (7) days following the mediation conference, the mediator, if an authorized user of the Court's electronic filing system (CM/ECF), shall electronically file a Mediation Report. If the mediator is not an authorized CM/ECF user, the mediator shall file the Mediation Report in the conventional manner. The report shall indicate whether all required parties were present and whether the case settled (in full or in part), whether the mediation was adjourned, or whether the case did not settle.

(2) *Notice of Settlement.* In the event that the parties reach an agreement to settle the case or claim, counsel shall promptly notify the Court of the settlement by filing a notice of settlement signed by counsel of record within fourteen (14) days of the mediation conference. Thereafter the parties shall forthwith submit an appropriate pleading concluding the case.

**(g) Trial upon Failure to Settle.**

(1) *Trial upon Failure to Settle.* If the mediation conference fails to result in a settlement, the case will be tried as originally scheduled.

(2) *Restrictions on the Use of Information Derived During the Mediation Conference.* All proceedings of the mediation shall be confidential and are privileged in all respects as provided under federal law and Florida Statutes § 44.405. The proceedings may not be reported, recorded, placed into evidence, made known to the Court or jury, or construed for any purpose as an admission against interest. A party is not bound by anything said or done at the conference, unless a written settlement is reached, in which case only the terms of the settlement are binding.

Effective December 1, 1994. Amended effective April 15, 1996; April 15, 1997; April 15, 1999; April 15, 2004; April 15, 2005; April 15, 2007; April 15, 2009; April 15, 2010; December 1, 2011; December 3, 2012.

## Comments

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

(1997)[C.] Letters rogatory and registrations of foreign judgment made exempt from mediation requirements as unnecessary.
(1997)[E.] Florida's "Government in the Sunshine" Law, Florida Statutes Section 286.011, as incorporated into the Florida Government Cooperation Act, Florida Statutes Section 164.016, does not permit public entities to settle litigation against them without a public hearing preceded by due public notice. Public entities have therefore at times found themselves unable to comply with Local Rule 16.2.E. and have had to seek an exception from the rule in order to permit mediation. This amendment relaxes the requirement that parties be present with full authority to consummate a settlement where a public entity is a defendant, and provides instead that a representative be present who can negotiate settlement on the entity's behalf and recommend settlement to the entity.

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

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

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

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

[F.1] Under the Florida Rules for Certified and Court–Appointed Mediators, now adopted by these Local Rules, a mediator, pursuant to Rule 10. 420(b) of the Florida Rules for Certified and Court–Appointed Mediators *shall* adjourn the mediation under any of five specified circumstances, four of which do not require the parties' consent.

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

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

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

(2009) Local Rule 16.2.B.3 is amended to prescribe new qualifications for certification as a mediator in this District. Local Rule 16.2.D.1(b) is amended to clarify procedure for mediator selection by agreement of the parties or for mediator designation by the Clerk of the Court when the parties are unable to agree on a mediator.

(2010) Amended to conform tabulation to the style used in the federal rules of procedure and change the calculation of time periods to correspond to the amendments to the various federal rules.

(2011) Local Rule 16.2(b)(4) amended to clarify the applicability of the Florida Rules for Certified and Court-Appointed Mediators adopted by the Florida Supreme Court and to provide a jurisdictional basis for imposing discipline. Local Rule 16.2(f)(1) amended to conform with Florida Mediator Ethics Advisory Committee Opinion 2010-007 ("The terms 'impasse' and 'termination' are terms of art used to signal particular outcomes of mediation. Those terms ... are not appropriate to be included in a mediation report to the court as they reveal information obtained in mediation communications.").

(2012) Local Rule 16.2(b)(3) amended to delete reference to attorney admissions examination eliminated under Administrative Order 2012-14 and to heighten qualifications for mediator certification. Local 16.2(h) eliminated, and its forms relocated to the Court's website.

## RULE 16.3 CALENDAR CONFLICTS

Calendar conflicts will be resolved and notice shall be given in accordance with the Resolution of the Florida State-Federal Council Regarding Calendar Conflicts Between State and Federal Courts (available on the Court's website: www.flsd.uscourts.gov ) or as otherwise agreed to between the Judges in a given case.

Effective April 15, 2000. Amended effective April 15, 2006; April 15, 2007; December 1, 2011.

### Authority

(2000) Resolution of the Florida State–Federal Council Regarding Calendar Conflicts Between State and Federal Courts. *See also* Fla.R.Jud.Admin. 2.052.

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

### Comments

(2000) The adoption of this Local Rule was prompted by the Resolution of the Florida State–Federal Judicial Council Regarding Calendar Conflicts Between State and Federal Courts.

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

(2011) Amended to defer to conflict Resolution of the Florida State-Federal Council Regarding Calendar Conflicts Between State and Federal Courts. *See* Fla.R.Jud.Admin.2.550 (2011).

**RULE 23.1 CLASS ACTIONS**

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

**(a)** The pleading shall bear next to its caption the legend "Class Action."

**(b)** The pleading shall contain under a separate heading, styled "Class Action Allegations:"

(1) A reference to the portion or portions of Federal Rule of Civil Procedure 23 under which it is claimed that the suit is properly maintainable as a class action.

(2) Appropriate allegations thought to justify such claim, including, but not necessarily limited to:

(A) the size (or approximate size) and definition of the alleged class

(B) the basis upon which the plaintiff (or plaintiffs) claims

(i) to be an adequate representative of the class, or

(ii) if the class is composed of defendants, that those named as parties are adequate representatives of the class

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

(D) in actions claimed to be maintainable as class actions under Federal Rule of Civil Procedure 23(b)(3), allegations thought to support the findings required by that subdivision.

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

Effective December 1, 1994. Amended effective April 15, 1996; April 15, 2001; April 15, 2004; April 15, 2007; April 15, 2010; December 1, 2011.

## Authority

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

## Comments

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

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

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

(2001) Corrects typographical error.

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

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

(2011) Amended to eliminate unnecessary language.

## RULE 24.1 CONSTITUTIONAL CHALLENGE TO ACT OF CONGRESS OR STATE STATUTE

**(a) Act of Congress.** Upon the filing of any action in which the constitutionality of an Act of Congress affecting the public interest is challenged, and to which action the United States or an agency, officer, or employee thereof is not a party in its or their official capacity, counsel representing the party who challenges the Act shall forthwith notify the Court of the existence of

the constitutional question. The notice shall contain the full title and number of the action and shall designate the statute assailed and the grounds upon which it is assailed, so that the Court may comply with its statutory duty to certify the fact to the Attorney General of the United States as required by 28 U.S.C. § 2403. The party challenging constitutionality shall also so indicate on the pleading or paper which first does so by stating, immediately following the title of the pleading or paper, "Claim of Unconstitutionality."

**(b) State Statute.** Upon the filing of any action in which the constitutionality of a state statute, charter, ordinance, or franchise is challenged, counsel shall comply with the notice provisions of Florida Statutes § 86.091.

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

Effective December 1, 1994. Amended effective April 15, 2007; April 15, 2010.

**Authority**

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

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

## RULE 26.1 DISCOVERY AND DISCOVERY MATERIAL (CIVIL)

**(a) Generally**. The Discovery Practices Handbook in Appendix A should guide discovery.

**(b) Service and Filing of Discovery Material.** Initial and expert disclosures and the following discovery requests, responses, and notices must not be filed with the Court or the Clerk of the Court, nor proof of service thereof, until they are used in the proceeding or the court orders filing: (1) deposition transcripts, (2) interrogatories (including responses and objections), (3) requests for documents, electronically stored information or things or to permit entry upon land (including responses and objections), (4) requests for admission (including responses and objections), and (5) notices of taking depositions or notices of serving subpoenas.

**(c) Discovery Material to Be Filed with Motions.** If relief is sought under any of the Federal Rules of Civil Procedure, the movant shall file copies of the discovery matters in dispute contemporaneously with any motion.

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

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

**(f) Completion of Discovery.** Discovery must be completed in accordance with the court-ordered discovery cutoff date. Written discovery requests and subpoenas seeking the production of documents must be served in sufficient time that the response is due on or before the discovery cutoff date. Depositions, including any non-party depositions, must be scheduled to occur on or before the discovery cutoff date. Failure by the party seeking discovery to comply with this paragraph obviates the need to respond or object to the discovery, appear at the deposition, or move for a protective order.

**(g) Interrogatories and Production Requests.**

(1) Interrogatories propounded in the form set forth in Appendix B to these Local Rules shall be deemed to comply with the numerical limitations of Federal Rule of Civil Procedure 33(a).

(2) Each interrogatory objection and/or response must immediately follow the quoted interrogatory, and no part of an interrogatory shall be left unanswered merely because an objection is interposed to another part of the interrogatory.

(3)(A) Where an objection is made to any interrogatory or subpart thereof or to any production request under Federal Rule of Civil Procedure 34, the objection shall state with specificity all grounds. Any ground not stated in an objection within the time provided by the Federal Rules of Civil Procedure, or any extensions thereof, shall be waived.

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

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

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

(a) For documents or electronically stored information, to the extent the information is readily obtainable from the witness being deposed or otherwise: (1) the type of document (e.g., letter or memorandum) and, if electronically stored information, the software application used to create it (e.g., MS Word, MS Excel Spreadsheet); (2) general subject matter of the document or electronically stored information; (3) the date of the document or electronically stored information; and (4) such other information as is sufficient to identify

the document or electronically stored information for a subpoena duces tecum, including, where appropriate, the author, addressee, and any other recipient of the document or electronically stored information, and, where not apparent, the relationship of the author, addressee, and any other recipient to each other;

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

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

(4) Whenever a party answers any interrogatory by reference to records from which the answer may be derived or ascertained, as permitted in Federal Rule of Civil Procedure 33(d):

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

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

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

(D) The business records and materials shall be made available for inspection and copying within fourteen (14) days after service of the answers to interrogatories or at a date agreed upon by the parties.

(5) A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the Court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Federal Rule of Civil Procedure 26(b)(2)(C). The Court may specify conditions for the discovery. Absent exceptional circumstances, the Court may not impose sanctions under

these Local Rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

**(h) Discovery Motions.**

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

(2) *Motions to Compel.* Except for motions grounded upon complete failure to respond to the discovery sought to be compelled or upon assertion of general or blanket objections to discovery, motions to compel discovery in accordance with Federal Rules of Civil Procedure 33, 34, 36 and 37, or to compel compliance with subpoenas for production or inspection pursuant to Federal Rule of Civil Procedure 45(c)(2)(B), shall, for each separate interrogatory, question, request for production, request for admission, subpoena request, or deposition question, state: (A) verbatim the specific item to be compelled; (B) the specific objections; (C) the grounds assigned for the objection (if not apparent from the objection); and (D) the reasons assigned as supporting the motion as it relates to that specific item. The party shall write this information in immediate succession (e.g., specific request for production, objection, grounds for the objection, reasons to support motion; next request for production, objection, grounds for the objection, reasons to support motion; and so on) to enable the Court to rule separately on each individual item in the motion.

(3) *Motions for Protective Order.* Except for motions for an order to protect a party or other person from whom discovery is sought from having to respond to an entire set of written discovery, from having to appear at a deposition, or from having to comply with an entire subpoena for production or inspection, motions for protective order under Federal Rule of Civil Procedure 26(c) shall, for each separate interrogatory question, request for production, request for admission, subpoena request, or deposition question, state: (A) verbatim the specific item of discovery; (B) the type of protection the party requests; and (C) the reasons supporting the protection. The party shall write this information in immediate succession (e.g., specific request for protection, protection sought for that request for production, reasons to support protection; next request for production, protection sought for that request for production, reasons to support protection; and so on) to enable the Court to rule separately on each individual item in the motion.

**(i) Reasonable Notice of Taking Depositions.** Unless otherwise stipulated by all interested parties, pursuant to Federal Rule of Civil Procedure 29, and excepting the circumstances governed by Federal Rule of Civil Procedure 30(a), a party desiring to take the deposition within this State of any person upon oral examination shall give at least seven (7) days notice in writing to every other party to the action and to the deponent (if the deposition is not of a party), and a party desiring to take the deposition in another State of any person upon oral examination shall give at least fourteen (14) days notice in writing to every other party to the action and the deponent (if the deposition is not of a party).

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

Notwithstanding the foregoing, in accordance with Federal Rule of Civil Procedure 32(a)(5)(A), no deposition shall be used against a party who, having received less than eleven (11) calendar days' notice of a deposition as computed under Federal Rule of Civil Procedure 6(a), has promptly upon receiving such notice filed a motion for protective order under Federal Rule of Civil Procedure 26(c)(1)(B) requesting that the deposition not be held or be held at a different time or place and such motion is pending at the time the deposition is held.

Effective December 1, 1994. Amended effective April 15, 1996; April 15, 1998; April 15, 2001; paragraph G.3 amended effective April 15, 2003; April 15, 2004; April 15, 2005; April 15, 2007; April 15, 2009; April 15, 2010; April 15, 2011; December 1, 2011.

## Authority

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

## 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 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 Federal Rule of Civil Procedure 26(b)(4)(A).

(1996)[I.] The "attempt to confer" language is added to mirror the obligations imposed by 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 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 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 26.1H.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 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. 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).

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

(2009) Local Rule 26.1.B amended to exempt notices of depositions and notices of serving subpoenas from the filing requirement. Local Rule 26.1.F.2 added to ensure that discovery is completed prior to the discovery cutoff date and to avoid a situation in which discovery requests are propounded just prior to the cutoff date or depositions are noticed to occur after the cutoff date. Local Rule 26.1.G.4 eliminated because word-processing technology renders the requirement to leave space following an interrogatory question unnecessary.

(2010) Amended to conform tabulation to the style used in the federal rules of procedure, change the calculation of time periods to correspond to the amendments to the various federal rules, and correct citations to Fed. R. Civ. P. 26 and 32.

(2011) Amended to require that interrogatory responses be immediately preceded by the interrogatory to which the response is directed.

(2011) Amended to eliminate language redundant of governing Federal Rules of Civil Procedure and to direct attention to the Discovery Practices Handbook.

**RULE 30.1 SANCTIONS FOR ABUSIVE DEPOSITION CONDUCT [Repealed]**

Adopted effective April 15, 1996. Amended effective April 15, 2001; April 15, 2007; April 15, 2010. Repealed December 1, 2011.

(2011) Repealed as unnecessary and in an effort to streamline the Local Rules, but not as an indication that discovery abuses are not sanctionable.

**RULE 34.1 MARKING DOCUMENTS [Repealed]**

Adopted April 15, 2007. Repealed December 1, 2011.

**Comment**

(2011) Repealed and relocated to the Discovery Practices Handbook.

**RULE 40.1 NOTICE THAT ACTION IS AT ISSUE [Repealed]**

Effective December 1, 1994. Amended effective April 15, 2007. Repealed April 15, 2008.

**RULE 41.1 DISMISSAL FOR WANT OF PROSECUTION [Repealed]**

Effective December 1, 1994. Repealed April 15, 2008.

**RULE 45.1 SUBPOENAS FOR DEPOSITION AND TRIAL [Repealed]**

Effective December 1, 1994. Amended effective April 15, 2007; April 15, 2010. Repealed December 1, 2011.

**Comment**

(2011) Repealed as redundant of Federal Rule of Civil Procedure 45.

**RULE 47.1 TAXATION OF COSTS FOR UNDUE INCONVENIENCE TO JURIES**

Whenever a civil case that has been set for jury trial is settled or otherwise disposed of, counsel shall so inform the office of the Judge assigned to the case at least one (1) full business day prior to the day the jury is scheduled to be selected or the trial is scheduled to commence, in order that the jurors may be notified not to attend. If such notice is not given to the Clerk of the Court's Office, then except for good cause shown, juror costs, including attendance fees, mileage, and subsistence, may be assessed equally against the parties and their counsel, or otherwise assessed as directed by the Court.

Effective December 1, 1994. Amended effective April 15, 2007; April 15, 2010; December 1, 2011.

**Authority**

(1993) Former Local Rule 15.

**Comments**

(1993) Renumbered per Model Rules.

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

(2011) Amended to eliminate unnecessary language.

**RULE 56.1 MOTIONS FOR SUMMARY JUDGMENT**

**(a) Statement of Material Facts.** A motion for summary judgment and the opposition thereto shall be accompanied by a statement of material facts as to which it is contended that there does not exist a genuine issue to be tried or there does exist a genuine issue to be tried, respectively. The statement shall:

(1) Not exceed ten (10) pages in length;

(2) Be supported by specific references to pleadings, depositions, answers to interrogatories, admissions, and affidavits on file with the Court; and

(3) Consist of separately numbered paragraphs.

Statements of material facts submitted in opposition to a motion for summary judgment shall correspond with the order and with the paragraph numbering scheme used by the movant, but need not repeat the text of the movant's paragraphs. Additional facts which the party opposing summary judgment contends are material shall be numbered and placed at the end of the opposing party's statement of material facts; the movant shall use that numbering scheme if those additional facts are addressed in the reply.

**(b) Effect of Failure to Controvert Statement of Undisputed Facts.** All material facts set forth in the movant's statement filed and supported as required above will be deemed admitted unless controverted by the opposing party's statement, provided that the Court finds that the movant's statement is supported by evidence in the record.

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

**Authority**

(1993) Former Local Rule 10J.

**Comments**

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

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

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

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

(2008) Local Rule 7.5.C is amended to ensure that statements of material facts filed by movants and opponents shall correspond with each other in numerical order so as to make review of summary judgment motions less burdensome to the Court.

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

(2011) Amended to eliminate reference to Fed.R.Civ.P.56 briefing schedule, which has been eliminated. The briefing time periods set forth in Local Rule 7.1 now apply.

(2011) Renumbered from Local Rule 7.5 and amended to eliminate unnecessary language.

## RULE 62.1 APPEAL BONDS; AUTOMATIC STAY

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

**(b) Extension of Automatic Stay When Notice of Appeal Filed.** If within the fourteen (14) day period established by Federal Rule of Civil Procedure 62(a), a party files any of the motions contemplated in Federal Rule of Civil Procedure 62(b), or a notice of appeal, then unless otherwise ordered by the Court, a further stay shall exist for a period not to exceed thirty (30) days from the entry of the judgment or order. The purpose of this additional stay is to permit the filing of a supersedeas bond, which shall be filed by the end of the thirty (30) day period provided herein.

Effective April 15, 2000. Amended effective April 15, 2007; April 15, 2010.

### Comments

(2000) Added to eliminate the necessity for Court approval of supersedeas bonds in every case in which a money judgment has been entered by fixing a standard amount, and to specify the time by which the bond must be filed in order to stay execution. Extension of the automatic stay is

modeled after W.D.Okla. Local Rule 62.1, N.D.Okla. Local Rule 62.1 and E.D.N.C. Local Rule 97.00.

(2010) Amended to conform tabulation to the style used in the federal rules of procedure and change the calculation of time periods to correspond to the amendments to the various federal rules.

**RULE 67.1 COURT REGISTRY AND WRITS OF GARNISHMENT**

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

**(b)** In any case where an Order of Court directs the Clerk of the Court to handle a specific investment in a different manner than specified by Internal Operating Procedures, the interested party shall serve a copy of the Order upon the Clerk of the Court personally or a deputy clerk specifically designated in accordance with the wording of Federal Rule of Civil Procedure 67, to-wit:

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

**(c)** A party applying for the issuance of a writ of garnishment shall deposit the amount prescribed by applicable Florida law in the non-interest bearing registry of the Court. The deposit is for the attorneys' fees of the garnishee. Once deposited, those monies shall be disbursed as follows:

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

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

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

(4) If garnishment cost deposit monies remain on deposit with the Clerk of the Court more than five (5) years after the conclusion of a case or post-judgment proceedings, including all appeals, and if the Clerk of the Court has made reasonable attempts to provide notice to the depositing party or to distribute those monies without success, those unclaimed monies

shall be moved into the appropriate U.S. Treasury Unclaimed Funds account pursuant to Title 28, United States Code, Section 2042, without further order of Court. Any monies deposited with the U.S. Treasury under these provisions as unclaimed are available for immediate disbursement to any party by the Clerk of the Court upon application and further Court order.

Effective December 1, 1994. Amended effective April 15, 2002; April 15, 2007; April 15, 2010; December 1, 2011.

**Authority**

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

(2002) Federal Rule of Civil Procedure 69, Florida Statute Section 77.28, and Administrative Orders 90–104, 98–51 and 2001–69.

**Comments**

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

(2002) Subparagraph H. added at the request of the Clerk of the Court to clarify responsibilities and procedures for obtaining distribution of garnishment deposits.

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

(2011) Amended to eliminate language that was relocated to the Court's Internal Operating Procedures.

## RULE 77.1 PHOTOGRAPHING, BROADCASTING, TELEVISING

Other than required by authorized personnel in the discharge of official duties, all forms of equipment or means of photographing, tape-recording, broadcasting or televising within the environs of any place of holding court in the District, including courtrooms, chambers, adjacent rooms, hallways, doorways, stairways, elevators or offices of supporting personnel, whether the Court is in session or at recess, is prohibited; except that (a) photographing in connection with naturalization hearings or other special proceedings, as approved by a Judge of this Court, will be permitted; and (b) Judges participating in the Judicial Conference of the United States pilot program may permit recording, broadcasting, and publishing of proceedings in accordance with program guidelines.

Effective December 1, 1994. Amended effective April 15, 2007; December 1, 2011.

**Authority**

(1993) Former Local Rule 20. Renumbered per Model Rules. Model Rules Project has recommended that a rule be included in the Federal Rules of Civil Procedure.

(2011) Amended to provide for participation in pilot program for the study of camera use in district courtrooms pursuant to those guidelines issued by the Judicial Conference Committee on Court Administration and Case Management ( www.uscourts.gov ).

## RULE 77.2 RELEASE OF INFORMATION IN CRIMINAL AND CIVIL PROCEEDINGS

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

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

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

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

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

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

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

(5) The possibility of a plea of guilty to the offense charged or a lesser offense.

(6) Any opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case.

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

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

(e) After the completion of a trial or disposition without trial of any criminal matter, and prior to the imposition of sentence, a lawyer or law firm associated with the prosecution or defense shall refrain from making or authorizing any extrajudicial statement which a reasonable person would expect to be disseminated by means of public communication if there is a reasonable likelihood that such dissemination will affect the imposition of sentence.

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

(g) A lawyer or law firm associated with a civil action shall not during its investigation or litigation make or participate in making an extrajudicial statement, other than a quotation from or reference to public records, which a reasonable person would expect to be

disseminated by means of public communication if there is a reasonable likelihood that such dissemination will interfere with a fair trial and which relates to:

(1) Evidence regarding the occurrence or transaction involved.

(2) The character, credibility, or criminal record of a party, witness, or prospective witness.

(3) The performance or results of any examinations or tests or the refusal or failure of a party to submit to such.

(4) The lawyer's opinion as to the merits of the claims or defenses of a party, except as required by law or administrative rule.

(5) Any other matter reasonably likely to interfere with a fair trial of the action.

Effective December 1, 1994. Amended effective April 15, 2007; April 15, 2010; December 1, 2011.

**Authority**

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

**Comments**

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

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

(2011) Amended to eliminate instructions to Court personnel, which were relocated to the Court's Internal Operating Procedures.

## RULE 87.1 AUTHORITY OF BANKRUPTCY JUDGES TO MAKE LOCAL RULES

The Bankruptcy Judges of the United States Bankruptcy Court in this District may, by action of a majority of the Bankruptcy Judges, make local rules of practice and procedure to govern all cases, proceedings and other matters in the Bankruptcy Court.

Effective December 1, 1994. Amended effective April 15, 2007.

**Comments**

(1993; minor stylistic revisions 1996) Federal Rules of Bankruptcy Procedure 9029 provides that the District Court may promulgate Local Rules governing bankruptcy practice, or may authorize the Bankruptcy Judges to promulgate such rules. Federal Rule of Bankruptcy Procedure 9029 does

not suggest that such a delegation of authority to the Bankruptcy Judges requires a local District Court Local Rule, but might assist readers of the District Court Local Rules if this Local Rule were included. At the least, a general order signed by a majority of the District Court Judges is necessary.

The recognized limitations on the scope of Local Bankruptcy Court Rules, and the procedural mechanism for promulgating those rules, need not be repeated in this Local Rule or order. They are provided in Federal Rule of Bankruptcy Procedure 9029, adopting Federal Rule of Civil Procedure 83.

The one area of bankruptcy practice which is governed throughout the country by local rule is bankruptcy appellate procedure, as to which District Court Local Rules are authorized by Federal Rule of Bankruptcy Procedure 8018.

## RULE 87.2 REFERENCE OF BANKRUPTCY MATTERS

Pursuant to 28 U.S.C. § 157(a) and the General Order of Reference entered July 11, 1984, all cases arising under Title 11 of the United States Code, and proceedings arising in or related to cases under Title 11, United States Code, have been referred to the Bankruptcy Judges for this District and shall be commenced in the Bankruptcy Court pursuant to the Local Bankruptcy Rules. The General Order of Reference also applies to notices of removal pursuant to 28 U.S.C. § 1452(a) which shall be filed with the Clerk of the Bankruptcy Court for the Division of the District where such civil action is pending. The removed claim or cause of action shall be assigned as an adversary proceeding in the Bankruptcy Court.

Former Local Rule 87.2 amended and renumbered as Local Rule 87.4, and new Local Rule 87.2 adopted effective April 15, 1996. Amended effective April 15, 2007; April 15, 2010.

### Comment

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

## RULE 87.3 MOTIONS FOR WITHDRAWAL OF REFERENCE OF CASE OR PROCEEDING FROM THE BANKRUPTCY COURT

A motion to withdraw the reference pursuant to 28 U.S.C. § 157(d) shall be filed with the Clerk of the Bankruptcy Court in accordance with the requirements of Local Bankruptcy Rule 5011–1. Subsequently filed motions for withdrawal of reference in the same case or proceeding shall be regarded as similar actions and proceedings under Local Rule 3.8 and the attorneys of record shall notify the District Court of all such pending actions and proceedings in compliance with Local Rule 3.8. and, if applicable, provide the notice required by Local Rule 7.1(f).

Upon disposition of a motion for withdrawal of reference the Clerk of the District Court shall transmit a copy of the order to the Clerk of the Bankruptcy Court.

Adopted effective April 15, 1996. Amended effective April 15, 1999; April 15, 2007; April 15, 2010.

**Comments**

(1996) This new Local Rule specifies the proper Court for filing motions for withdrawal of reference. By stating all motions to withdraw reference in the same case or proceeding are "similar" and, therefore, require the parties to comply with Local Rule 3.8, the District Court can consolidate these related motions to eliminate the possibility of conflicting orders from different Judges addressing the same issue. The second paragraph has been added because it is critical that the Bankruptcy Court be promptly advised of whether the reference has been withdrawn in whole or in part, since adversary proceedings and cases are not stayed by the filing of a motion to withdraw the reference.

(1999) Amended to reflect renumbered Local Bankruptcy Rules effective December 1, 1998.

## RULE 87.4 BANKRUPTCY APPEALS

Bankruptcy appeals to the District Court are governed by the Federal Rules of Bankruptcy Procedure, particularly Rules 8001 through 8020, and the Local Rules of the Bankruptcy Court. As is authorized by Federal Rule of Bankruptcy Procedure 8018, those rules are supplemented as follows:

**(a) Assignment.** Appeals from orders or judgments entered by the Bankruptcy Court shall generally be assigned in accordance with the Court's Internal Operating Procedures. Appeals from orders in a bankruptcy case or proceeding in which appeals have been taken from prior orders in the same case or proceeding shall be regarded as similar actions and proceedings under Local Rule 3.8 and it will be the continuing obligation of the Clerk of the District Court and the attorneys of record to comply with Local Rule 3.8.

**(b) Limited Authority of Bankruptcy Court to Dismiss Appeals Prior to Transmittal of Record to District Court.** The Bankruptcy Court is authorized and directed to dismiss an appeal for (1) appellant's failure to pay the prescribed filing fees; (2) failure to comply with the time limitations specified in Federal Rule of Bankruptcy Procedure 8002; and (3) appellant's failure to file a designation of the items for the record or copies thereof or a statement of the issues as required by Federal Rule of Bankruptcy Procedure 8006, and Local Bankruptcy Rule 8006-1. The Bankruptcy Court is further authorized and directed to hear, under Federal Rule of Bankruptcy Procedure 9006(b), motions to extend the foregoing deadlines and to consolidate appeals which present similar issues from a common record. Bankruptcy Court orders entered under this subsection may be reviewed by the District Court on motion filed in the District Court within fourteen (14) days after entry of the order sought to be reviewed pursuant to section (c) of this Local Rule.

**(c) Motions for Stay and Other Intermediate Requests for Relief.** Motions for stay pending appeal pursuant to Federal Rule of Bankruptcy Procedure 8005, motions to review Bankruptcy Court orders entered under Federal Rule of Bankruptcy Procedure 9006(b), and other motions

requesting intermediate relief as set forth in Federal Rule of Bankruptcy Procedure 8007(c), shall be accepted for filing in the District Court and shall be assigned a miscellaneous memo case number which will apply only to the motion. No filing fee shall be charged in the District Court. The Clerk of the District Court shall immediately notify the Clerk of the Bankruptcy Court of the assigned case number and Judge. When the record on appeal is transmitted it will be assigned a new case number but will be assigned to the same Judge who considered the motion. The movant shall provide copies of any relevant portions of the Bankruptcy Court record necessary for the District Court to rule on the motion. It shall be the duty of the Clerk of the District Court to immediately transmit a copy of the order ruling on said motion to the Clerk of the Bankruptcy Court. Local Rule 7.1 shall apply to motions for stay and other motions seeking intermediate appellate relief from the District Court.

**(d) Motions for Leave to Appeal.** A motion for leave to appeal shall be filed in the Bankruptcy Court pursuant to Local Bankruptcy Rule 8003-1. Upon transmittal of the motion and related documents to the District Court the matter shall be assigned in the same manner as other miscellaneous motions described in section (c) of this Local Rule.

Upon disposition of the motion, the Clerk of the District Court shall immediately transmit a copy of the District Court order to the Clerk of the Bankruptcy Court. If the motion is granted the Clerk of the Bankruptcy Court will proceed to prepare and transmit the record on appeal. A new District Court case number will be assigned to the appeal but it will be assigned to the same Judge who granted the motion for leave to appeal.

**(e) Briefs.**

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

(2) *Length of Briefs*. Absent prior permission from the District Court, the appellant's initial or principal briefs and the appellee's response or principal brief shall not exceed twenty-five (25) pages in length, and appellant's reply briefs, if any, shall not exceed fifteen (15) pages.

**(f) Oral Argument.** Any party requesting oral argument shall make the request within the body of the principal or reply brief, not by separate motion. The setting of oral argument is within the discretion of the District Court.

**(g) Judgment.** Upon receipt of the District Court's opinion, the Clerk of the District Court shall enter judgment in accordance with Federal Rule of Bankruptcy Procedure 8016(a) and in accordance with Federal Rule of Bankruptcy Procedure 8016(b), shall immediately transmit to each party and to the Clerk of the Bankruptcy Court a notice of entry together with a copy of the District Court's opinion.

**(h) Appeal.** If an appeal remains pending three (3) months after its entry on the District Court docket, the appealing party shall file and serve on all parties a "Notice of 90 Days Expiring" in the manner prescribed by Local Rule 7.1(b)(4).

**(i) Notice.** The Clerk of the Bankruptcy Court is directed to enclose a copy of this Local Rule with the notice of appeal provided to each party in accordance with Federal Rule of Bankruptcy Procedure 8004. Failure to receive such a copy will not excuse compliance with all provisions of this Local Rule.

**(j) Court Discretion.** This Local Rule is not intended to exhaust or restrict the District Court's discretion as to any aspect of any appeal.

Former Local Rule 87.2 amended and renumbered as new Local Rule 87.4, effective April 15, 1996. Amended effective April 15, 1999; April 15, 2007; April 15, 2009; April 15, 2010; December 1, 2011.

## Authority

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

## Comments

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

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

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

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

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

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

E. Replaces old Local Rule 87.2.C. Federal Rule of Bankruptcy Procedure 8010(c) provides authority to the District Court to specify different page limits for briefs. This rule supersedes the page limit specified in Federal Rule of Bankruptcy Procedure 8010. This Local Rule also distinguishes the page limitations for bankruptcy appellate briefs from memoranda of law as provided in Local Rule 7.1.C.2.

Also, minor stylistic revisions to entire Local Rule.

(1999) Amended to reflect renumbered Local Bankruptcy Rules effective December 1, 1998.

(2009) Amended to make 87.4.H consistent with Local Rule 7.1.B.3.

(2010) Amended to conform tabulation to the style used in the federal rules of procedure and change the calculation of time periods to correspond to the amendments to the various federal rules.

(2011) Amended to replace reference to Local Rule 3.4 with reference to Internal Operating Procedures.

## RULE 87.5 DESIGNATION OF BANKRUPTCY JUDGES TO CONDUCT JURY TRIALS

The Bankruptcy Judges of this District are specially designated to conduct jury trials, with the express consent of all parties, in all proceedings under 28 U.S.C. § 157 in which the right to a jury trial applies. Pleading and responding to a jury trial demand in bankruptcy cases is governed by Local Bankruptcy Rule 9015-1. Local Rule 47.1 shall apply to jury trials conducted by Bankruptcy Judges under this rule.

Effective April 15, 1999. Amended effective April 15, 2007; April 15, 2010.

### Comment

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

## RULE 88.1 APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS IN CRIMINAL PROCEEDINGS

The appointment of counsel and counsel's obligations in the representation of indigent defendants in criminal proceedings pursuant to Federal Rule of Criminal Procedure 44 shall be in accordance with the "Plan of the United States District Court for the Southern District of Florida Pursuant to

the Criminal Justice Act of 1964, as Amended." The current plan is available on the Court's website (www.flsd.uscourts.gov).
Effective Dec. 1, 1994. Amended effective April 15, 2007; December 3, 2012.

**Authority**

(1993) Former Local Rule 17, updated.

**Comment**

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

(2012) Amended to advise readers that the Plan of the United States District Court for the Southern District of Florida Pursuant to the Criminal Justice Act of 1964 can be found on the Court's website rather than at the Clerk's Office.

## RULE 88.2. POST CONVICTION, HABEAS CORPUS, AND CIVIL RIGHTS PROCEEDINGS

**(a)** The following petitions, motions, and complaints must substantially follow the forms, if any, prescribed by the Court and obtained from the Clerk of the Court upon request:

(1) Petitions for writ of habeas corpus pursuant to 28 U.S.C. § 2241 (common law habeas corpus),

(2) Petitions for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (state prisoner attacking conviction),

(3) Motions to Vacate pursuant to 28 U.S.C. § 2255 (federal prisoner attacking conviction),

(4) Civil rights complaints pursuant to 42 U.S.C. § 1983 (Constitutional deprivation under color of state law),

(5) Civil rights complaints pursuant to *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971) (Constitutional deprivation under color of federal law).

Each must be signed under penalty of perjury by petitioner/movant or by a person authorized to sign it for petitioner/movant and, together with filing fee, if any, shall be filed in the Clerk's Office.

**(b)** When a petition, motion to vacate, or complaint is submitted in forma pauperis, the petitioner/movant/plaintiff shall submit the form "Application to Proceed Without Prepayment of Fees and Affidavit," which may be obtained from the Clerk of the Court, or an affidavit which substantially follows the form, and shall, under oath, set forth information which establishes that he or she is unable to pay the fees and costs of the proceedings referenced above.

Effective Dec. 1, 1994. Amended effective April 15, 2007; April 15, 2010; April 15, 2011; Dec. 1, 2011.

## Authority

(1993) Former Local Rule 18.

## Comments

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

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

(2011) Amended to conform to Section 8 of the CM/ECF Administrative Procedures requiring electronic filing of original complaints.

(2011) Amended to clarify scope of the rule.

## RULE 88.3. PETTY AND CERTAIN MISDEMEANOR OFFENSES

**(a) Covered Offenses.** This Rule shall apply to petty offenses, as defined in 18 U.S.C. § 19, and to certain misdemeanors as shall be identified from time to time by the Court in collateral schedules. Collectively, these petty offenses and identified misdemeanors shall be referred to for purposes of this Rule as "covered offenses."

**(b) Collateral and Mandatory Appearance.**

(1) Covered offenses that are committed on or within the perimeter of Federally-owned or controlled buildings or within the boundaries of National Parks, Preserves, Historic Sites, or Government Reservations, including but not limited to military installations, and violations under various Treaties and Wildlife Acts, for which collateral may be posted and forfeited in lieu of appearance by the person charged, together with the amount of collateral to be posted and offenses for which a mandatory appearance is required shall be in accordance with schedules which may from time to time be approved by the Court and filed with the Clerk of the Court.

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

**(c) Forfeiture of Collateral.**

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

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

**(d) Failure to Post Collateral.**

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

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

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

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

Effective Dec. 1, 1994. Amended effective April 15, 2006; April 15, 2007; April 15, 2009; April 15, 2010; Dec. 1, 2011.

**Authority**

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

**Comments**

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

(2009) Encompasses certain misdemeanors as well as petty offenses.

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

(2011) Amended to merge Local Rule 88.4 into Local Rule 88.3.

**RULE 88.4 CERTAIN OFFENSES PERTAINING TO NATIONAL PARKS, PRESERVES, GOVERNMENT RESERVATIONS, HISTORIC SITES, TREATIES AND WILDLIFE ACTS [Repealed]**

Effective Dec. 1, 1994. Amended effective April 15, 2000; April 15, 2006; April 15, 2007; April 15, 2010. Repealed Dec. 1, 2011.

## Comment

(2011) Repealed and merged into Local Rule 88.3.

## RULE 88.5 SPEEDY TRIAL REPORTS

Counsel for the Government and counsel for each defendant shall, within twenty-one (21) days after arraignment and every twenty-one (21) days thereafter until trial or plea of guilty or nolo contendere, file with the Court a status report as to each defendant which shall include a concise statement of:

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

(b) All excludable time as recorded on the docket on which there is conflict, including the applicable statutes or law.

(c) Computation of the gross time, excludable time, net time remaining, and the final date upon which the defendant can be tried in compliance with the Speedy Trial Plan of this Court.

(d) Any agreement by the parties as to excludable time which exceeds the amount recorded on the docket shall have no effect unless approved by the Court.

Effective Dec. 1, 1994. Amended effective April 15, 1998; April 15, 1999; April 15, 2007; April 15, 2010; Dec. 1, 2011.

## Authority

(1993) Former Local Rule 25. Title 18, United States Code, Section 3161.

## Comments

(1993) Renumbered per Model Rules.

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

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

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

(2011) Amended to eliminate authority of Court to accept a waiver of Speedy Trial rights. *See Zedner v. United States*, 547 U.S. 489 (2006).

## RULE 88.6 DANGEROUS SPECIAL OFFENDER NOTICE [Repealed]

Effective Dec. 1, 1994. Amended effective April 15, 2007; April 15, 2010. Repealed Dec. 1, 2011.

### Authority

(1993) Former Local Rule 26.

### Comment

(2011) Repealed because underlying statutes were themselves repealed and supplanted by the Sentencing Reform Act of 1984.

## RULE 88.7 RETAINED CRIMINAL DEFENSE ATTORNEYS

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

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

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

**(d)** In cases where the defendant moves the Court to proceed in forma pauperis on appeal, or for appointment of Criminal Justice Act appellate counsel, the Court will consider, in passing upon such applications, factors such as (i) the defendant's qualified Sixth Amendment right to counsel of choice, recognizing the distinction between choosing a trial lawyer and choosing an appellate lawyer; (ii) the contract between the defendant and trial counsel; (iii) the defendant's present financial condition and ability to have retained only trial counsel; (iv) retained counsel's appellate experience; (v) the financial burden that prosecuting the appeal would impose upon trial counsel, in view of the fee received and the professional services rendered; and (vi) all other relevant factors, including any constitutional guarantees of the defendant.

**(e)** In assessing whether the legal fees previously paid to defense counsel should reasonably encompass appellate representation, the Court is to apply the provisions of Rule 4-1.5 of the Rules

Regulating The Florida Bar. The Court is to consider the following factors as guides in determining the reasonableness of the fee: (i) the time and labor required, the novelty, complexity, and difficulty of the questions involved, and the skill requisite to perform the legal service proffered; (ii) the likelihood that the acceptance of the particular employment precluded other employment by the lawyer; (iii) the fee, or rate of fee, customarily charged in the locality for legal services of a comparable or similar nature; (iv) the significance of, or amount involved in, the subject matter of the representation, the responsibility involved in the representation, and the results obtained; (v) the time limitations imposed by the client or by the circumstances and, as between attorney and client, any additional or special time demands or requests of the attorney by the client; (vi) the nature and length of the professional relationship of the client; and (vii) the experience, reputation, diligence and ability of the lawyer or lawyers performing the service and the skill, expertise or efficiency of efforts reflected in the actual providing of such services.

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

**(f)** Those parts of proceedings undertaken pursuant to paragraphs (d) and (e) of this Local Rule that involve confidential or privileged information or communications shall be held in camera, ex-parte, and under seal.

Effective Dec. 1, 1994. Amended effective April 15, 2007; April 15, 2010; April 15, 2011; December 2, 2013.

**Authority**

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

**Comments**

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

(2011) New Notice of Permanent Appearance Form approved.

(2013) Amended to clarify that only those parts of proceedings held pursuant to paragraphs (d) and (e) involving confidential or privileged communications need to be held in camera, ex parte, and under seal.

## RULE 88.8 PRESENTENCE INVESTIGATIONS

**(a)** Within seven (7) days following entry of a guilty plea or a verdict of guilty, counsel for the defendant and the probation officer will have made arrangements for the initial interview of the defendant for the PSI.

**(b)** Counsel for the parties shall confer no later than seven (7) days prior to the scheduled sentencing hearing proceeding with respect to the anticipated length of the sentencing and the number of witnesses to be called. If either party reasonably anticipates that the sentencing proceeding will exceed one hour, the party shall file a notice with the Clerk of the Court and shall hand deliver a courtesy copy to the United States Probation Office no later than five (5) days prior to the sentencing proceeding. The notice shall advise the Court of the number of witnesses to be called and the estimated time required for the sentencing proceeding. Additionally, counsel for the parties shall file within the same time period any notice for enhancement of sentence or requests for departure.

**(c)** The recommendation as to sentencing made to the Court by the United States Probation Office shall remain confidential.

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

Effective Dec. 1, 1994. Amended effective April 15, 2007; April 15, 2010; Dec. 1, 2011.

**Authority**

Administrative Order 95–02.

(2010) Amended to conform tabulation to the style used in the federal rules of procedure and change the calculation of time periods to correspond to the amendments to the various federal rules.

(2011) Amended to eliminate language duplicative of Federal Rule of Criminal Procedure 32.

## RULE 88.9 MOTIONS IN CRIMINAL CASES

**(a)** Motions in criminal cases are subject to the requirements of, and shall comply with, Local Rule 7.1. with the following exceptions:

Section 7.1(a)(3), which is superseded by this Local Rule.

Section 7.1(b), which pertains to hearings. Hearings on criminal motions may be set by the Court upon appropriate request or as required by the Federal Rules of Criminal Procedure and/or Constitutional Law.

In addition, at the time of filing motions in criminal cases, counsel for the moving party shall file with the Clerk of the Court a statement certifying either: (1) that counsel have conferred in a good faith effort to resolve the issues raised in the motion and have been unable to do so; or (2) that

counsel for the moving party has made reasonable effort (which shall be identified with specificity in the statement) to confer with the opposing party but has been unable to do so.

**(b)** Motions in criminal cases which require evidentiary support shall be accompanied by a concise statement of the material facts upon which the motion is based.

**(c)** Motions in criminal cases shall be filed within twenty-eight (28) days from the arraignment of the defendant to whom the motion applies, except that motions arising from a post-arraignment event shall be filed within a reasonable time after the event.

Effective Dec. 1, 1994. Amended effective April 15, 1996; April 15, 1997; April 15, 1998; April 15, 2003; April 15, 2007; April 15, 2010.

**Authority**

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

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

**Comments**

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

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

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

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

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

## RULE 88.10 CRIMINAL DISCOVERY

**(a)** The government shall permit the defendant to inspect and copy the following items or copies thereof, or supply copies thereof, which are within the possession, custody or control of the government, the existence of which is known or by the exercise of due diligence may become known to the government:

(1) Written or recorded statements made by the defendant;

(2) The substance of any oral statement made by the defendant before or after his arrest in response to interrogation by a then known-to-be government agent which the government intends to offer in evidence at trial;

(3) Recorded grand jury testimony of the defendant relating to the offenses charged;

(4) The defendant's arrest and conviction record;

(5) Except as provided in Fed. R. Crim. P. 16(a)(2), books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are material to the preparation of the defendant's defense, or which the government intends to use as evidence at trial to prove its case-in-chief, or which were obtained from or belonging to the defendant; and

(6) Results or reports of physical or mental examinations, and of scientific tests or experiments, made in connection with this case.

**(b)** The defendant shall permit the government to inspect and copy the following items, or copies thereof, or supply copies thereof, which are within the possession, custody or control of the defendant, the existence of which is known or by the exercise of due diligence may become known to the defendant:

(1) Books, papers, documents, photographs or tangible objects which the defendant intends to introduce as evidence-in-chief at trial.

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

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

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

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

**(e)** The government shall supply the defendant with a record of prior convictions of any alleged informant who will testify for the government at trial.

**(f)** The government shall state whether defendant was identified in any lineup, showup, photospread or similar identification proceeding, and produce any pictures utilized or resulting therefrom.

**(g)** The government shall advise its agents and officers involved in this case to preserve all rough notes.

**(h)** The government shall advise the defendant(s) of its intention to introduce extrinsic act evidence pursuant to Federal Rule of Evidence 404(b). The government shall provide notice regardless of how it intends to use the extrinsic act evidence at trial, i.e. during its case-in-chief, for impeachment, or for possible rebuttal. Furthermore, the government shall apprise the defense of the general nature of the evidence of the extrinsic acts.

**(i)** The government shall state whether the defendant was an aggrieved person, as defined in 18 U.S.C. § 2510(11), of any electronic surveillance, and if so, shall set forth in detail the circumstances thereof.

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

**(k)** The government shall, upon request, deliver to any chemist selected by the defense, who is presently registered with the Attorney General in compliance with 21 U.S.C. §§ 822 and 823, and 21 C.F.R. § 101.22(8), a sufficient representative sample of any alleged contraband which is the subject of this indictment, to allow independent chemical analysis of such sample.

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

**(m)** The government shall provide the defense, for independent expert examination, copies of all latent fingerprints or palm prints which have been identified by a government expert as those of the defendant.

**(n)** The government shall, upon request of the defendant, disclose to the defendant a written summary of testimony the government reasonably expects to offer at trial under Federal Rules of Evidence 702, 703, or 705. This summary must describe the witnesses' opinions, the bases and the reasons therefor, and the witnesses' qualifications. If the defendant seeks and obtains discovery under this paragraph, or if the defendant has given notice under Federal Rule of Criminal Procedure 12.2(b) of an intent to present expert testimony on the defendant's mental condition, the defendant shall, upon request by the government, disclose to the government a written summary of testimony the defendant reasonably expects to offer at trial under Federal Rules of Evidence 702,

703, 705 or Federal Rule of Criminal Procedure 12.2(b), describing the witnesses' opinions, the bases and the reasons for these opinions, and the witnesses' qualifications.

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

**(p)** The parties shall collaborate in preparation of a written statement to be signed by counsel for each side, generally describing all discovery material exchanged, and setting forth all stipulations entered into at the conference. No stipulations made by defense counsel at the conference shall be used against the defendant unless the stipulations are reduced to writing and signed by the defendant and his counsel. This statement, including any stipulations signed by the defendant and his counsel, shall be filed with the Court within seven (7) days following the conference.

**(q) Schedule of Discovery.**

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

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

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

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

Effective Dec. 1, 1994. Amended effective April 15, 1996; April 15, 1998; April 15, 2000; April 15, 2003; April 15, 2005; April 15, 2007; April 15, 2010; December 2, 2013.

**Authority**

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

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

(1998) Section N is revised to conform to amendments to Federal Rules of Criminal Procedure 16(a)(1)(E) and (b)(1)(C)(ii). Section Q.2 is amended to effectuate discovery within fourteen days

or arraignment, without the entry of a Court order, or within such other time period as the Court may order.

**Comments**

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

(2003) B.3 amended to conform to 2002 amendment of Federal Rule of Criminal Procedure 12.2.

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

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

(2013) Amended at (a)(5) to correspond to amended Fed. R. Crim. P. 16(a)(2).

## RULE 88.11 AFTER HOURS CRIMINAL DUTY PROCEDURES

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

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

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

For after hours arrests, the Duty Assistant United States Attorney shall leave a message on the Duty Magistrate Judge's beeper or cell phone. If by beeper, the call will be returned by the Duty Magistrate Judge. Once the Duty Magistrate Judge sets a bond, the Duty Assistant United States Attorney shall transmit the bond information to the Duty Marshal and/or the arresting agents for

transmittal to the receiving institution. Routine arrests occurring after 10:00 p.m. need not be communicated to the Duty Magistrate Judge that night, but shall be reported by the Duty Assistant United States Attorney to the Duty Magistrate Judge the following morning. In emergency situations, the Duty Magistrate Judge may be contacted directly at any hour.

Since a probable causes determination must be made within forty-eight (48) hours of all arrests, except as Federal Rule of Criminal Procedure 4.1 may otherwise provide, a criminal complaint must be presented directly to a Magistrate Judge for review and approval in all cases where the initial appearance will not take place within forty-eight (48) hours of an arrest.

All after-hours Duty arrests (including but not limited to arrests on warrants where bonds have already bee endorsed/set) shall be reported to the Duty Magistrate Judge by the Duty Assistant United States Attorney.

Effective April 15, 2006. Amended effective April 15, 2007; Dec. 1, 2011.

**Comments**

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

(2011) Amended to refer to the provisions of the amended Federal Rule of Criminal Procedure 4.1, which permit electronic service and filing of all papers in criminal proceedings.

## APPENDICES

### APPENDIX A. DISCOVERY PRACTICES HANDBOOK

### ADMINISTRATIVE ORDER 96-36. ADOPTION OF DISCOVERY PRACTICES HANDBOOK AS APPENDIX TO LOCAL RULES

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

ORDERED as follows:

1. This Order and the Discovery Practices Handbook, in the form attached to this Order, shall be published as an appendix to the Local Rules.

2. The practices set forth in the Discovery Practices Handbook shall not have the force of law, but may be looked to by practitioners for guidance in conducting discovery in this District.

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

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

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

### I. DISCOVERY IN GENERAL

#### A. Courtesy and Cooperation Among Counsel.

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

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

(3) *Stipulations.* The parties may stipulate in writing to modify any practice or procedure governing discovery, except that the parties may not make stipulations extending the time to

answer interrogatories, extending the time to produce documents, electronically stored information and things and extending the time by a request for admissions must be answered where the stipulation would interfere with any time set for completion of discovery, for hearing a motion, or for trial. Stipulations that would so interfere may be made only with Court approval. See Federal Rule of Civil Procedure 29.

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

(5) *Mandatory Disclosure.* The disclosure requirements imposed by Federal Rule of Civil Procedure 26(a)(1)-(4), and the early discovery moratorium imposed by Federal Rule of Civil Procedure 26(d), are applicable to civil proceedings in the Southern District of Florida.

**B. Filing of Discovery Materials.**

(1) *General Rule.* In accordance with Federal Rule of Civil Procedure 5(d) and Local Rule 26.1(b), disclosures under Federal Rules of Civil Procedure 26(a)(1) or (2), and discovery materials shall not be filed with the Court as a matter of course. Disclosures and discovery materials may later be filed if necessary in presentation and consideration of a motion to compel, a motion for protective order, a motion for summary judgment, a motion for injunctive relief, or other similar proceedings.

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

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

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

**D. Timeliness and Sanctions.**

(1) *Timeliness of Discovery Responses.* The Federal Rules of Civil Procedure set forth explicit time limits for responses to discovery requests. Those are the dates by which a lawyer should respond; counsel should not await a Court order. If a lawyer cannot answer on time, an extension of time should first be sought from opposing counsel. If unable to resolve the matter informally,

counsel should move for an extension of time in which to respond, and inform opposing counsel so that, in the meantime, no unnecessary motion to compel a response will be filed.

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

(3) *Objections.* When objections are made to discovery requests, all grounds for the objections must be specifically stated. When objections are untimely made, they are waived. See Local Rule 26.1(g)(3)(A).

(4) *Sanctions.* Because lawyers are expected to respond when the Federal Rules of Civil Procedure require, Federal Rule of Civil Procedure 37 provides that if an opposing lawyer must go to Court to make the recalcitrant party answer, the moving party may be awarded counsel fees incurred in compelling the discovery. Federal Rule of Civil Procedure 37 is enforced in this District. Further, if a Court order is obtained compelling discovery, unexcused failure to provide a timely response is treated by the Court with the gravity it deserves; willful violation of a Court order is always serious and may be treated as contempt.

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

**E. Completion of Discovery.**

(1) *Discovery Completion.* Local Rule 16.1(a) sets discovery completion dates for differentiated case management tracks. The Judges may have individual methods extending the deadline, however, each Judge enforces Local Rule 26.1(f), which requires that discovery be completed and not merely propounded prior to the discovery cutoff date.

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

## II. DEPOSITIONS

### A. General Policy and Practice.

(1) *Scheduling.* A lawyer is normally expected to be courteous and accommodate the schedules of opposing lawyers. In doing so, the attorney can either pre-arrange a deposition, or notice the deposition while at the same time indicating a willingness to be reasonable about any necessary rescheduling. Local Rule 26.1(j) requires at least seven (7) days notice in writing to every other party and to the deponent (if a non-party) for a deposition in this State, and fourteen (14) days notice for an out-of-state deposition. Noncompliance obviates the need for protective order.

Notwithstanding the foregoing, in accordance with Federal Rule of Civil Procedure 32(a)(5)(A), no deposition shall be used against a party who, having received less than fourteen (14) days notice of a deposition as computed under Federal Rule of Civil Procedure 6(a), has promptly upon receiving such notice filed a motion for protective order under Federal Rule of Civil Procedure 26(c)(1)(B) requesting that the deposition not be held or be held at a different time or place and such motion is pending at the time the deposition is held.

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

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

(4) *Length and Number of Depositions.* Under Federal Rule of Civil Procedure 30(d)(2), unless otherwise authorized by the Court or stipulated by the parties, a deposition is limited to one (1) day of seven (7) hours. Under Federal Rule of Civil Procedure 30(a)(2)(A), a party must obtain leave from the Court, and the Court must grant leave to the extent consistent with Federal Rule of Civil Procedure 26(b)(2), if the parties have not stipulated to the deposition and the deposition would result in more than ten (10) depositions being taken under the Rule or Federal Rule of Civil Procedure 31 by the plaintiffs, by the defendants, or by the third-party defendants.

**B. Objections.**

(1) *Objections to the Form of Questions.* Federal Rule of Civil Procedure 32(d)(3)(B) provides that an objection to the form of a question is waived unless made during the deposition. Many lawyers make such objections simply by stating "I object to the form of the question." This normally suffices because it is usually apparent that the objection is directed to "leading" or to an insufficient or inaccurate foundation. The interrogating lawyer has a right to ask the objecting party to be more specific in his objection, however, so that the problem with the question, if any, can be understood and, if possible, cured, as the rule contemplates.

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

(3) *Other Restrictions on Deposition Conduct.* Counsel should not attempt to prompt answers by the use of "suggestive", "argumentative," or "speaking" objections; off the record conferences between counsel and witness are inappropriate; instructions not to answer are limited; and witnesses should be treated with courtesy. Those conducting depositions under the Local Rules of this District should be mindful of the Court's authority to sanction abusive conduct.

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

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

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

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

Federal Rule of Civil Procedure 45(a) states in relevant part that:

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

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

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

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

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

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

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

> a. If the deposition of the witness is recorded on videotape or other non-stenographic means, the testimony of the witness does not have to be recorded by a certified stenographic reporter and transcribed in the usual manner, unless such transcripts are to be offered to the Court. See Federal Rules of Civil Procedure 30(b) and 32(c).
>
> b. Prior to the taking of any deposition, the witness shall be first duly sworn by an officer authorized to administer oaths, before whom the deposition is being taken. If the deposition is recorded other than stenographically, the officer designated by Federal Rule of Civil Procedure 28 shall state on the record (a) the officer's name and business address, (b) the date, time and place of the deposition, (c) the deponent's name, (d) administer the oath, and (e) identify all parties present. Items (a) through (c) must be repeated at the

beginning of each unit of recorded tape or other recording medium. See Federal Rule of Civil Procedure 30(b)(4).

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

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

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

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

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

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

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

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

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

a. The deponent must swear or affirm an oath before a person authorized to administer oaths in that District and at the place where the deposition is taken, i.e. the witness may not be sworn telephonically.

b. Speakers must identify themselves whenever necessary for clarity of the record.

c. The court reporter should be at the deponent's location.

**E. Sanctions.** Abusive conduct during deposition is prohibited and may be sanctioned. Examples of abusive conduct includes "coaching" of witness, improper instructions not to answer, and off-the-record conferences except for the purpose of determining whether to assert a privilege.

## III. PRODUCTION OF DOCUMENTS, ELECTRONICALLY STORED INFORMATION AND THINGS

### A. Preparation and Interpretation of Requests for Production.

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

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

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

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

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

### B. Procedures Governing Manner of Production.

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

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

b. Manner of Production. The entire production should be made available simultaneously, and the inspecting attorney or paralegal can determine the order in which to review the materials. While the inspection is in progress, the inspecting person shall also have the right to review again any materials which have already been examined during the inspection.

The producing party has an obligation to explain the general scheme of record-keeping to the inspecting party. The objective is to acquaint the inspecting party generally with how and where the documents, electronically stored information or things are maintained. The documents, electronically stored information or things should be identified with specific paragraphs of a request for production where practicable, unless the producing party exercises its option under Federal Rule of Civil Procedure 34(b) to produce documents as they are kept in the usual course of business. Generally, when materials are produced individually, each specific item should be identified with a paragraph of the request. When materials are produced in categories or in bulk, some reasonable effort should be made to identify certain groups of the production with particular paragraphs of the request or to provide some meaningful description of the materials produced. The producing party is not obligated to rearrange or reorganize the materials.

Obviously, whatever comfort and normal trappings of civilization that are reasonably available should be offered to the inspecting party.

c. Listing or Marking. Federal Rule of Civil Procedure 26(a)(1)(B) requires a party, without awaiting a discovery request, to provide the other parties with a copy of, or a description by category and location, of all documents, electronically stored information and tangible things that are in possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment. A party producing documents in discovery shall sequentially number the pages produced and precede the numbers with a unique prefix, unless so marking a document would materially interfere with its intended use or materially damage it (e.g., an original promissory note or other document of intrinsic value). Even if a party chooses to produce documents as they are kept in the ordinary course of business, the producing party shall nevertheless sequentially number those pages that the receiving party selects for production.

d. Copying. “Copies” includes photocopies and electronic imaging. While copies are often prepared by the producing party for the inspecting party as a matter of convenience or accommodation, the inspecting party has the right to insist on seeing originals and the right to make direct photocopies or images from the originals.

Subject to Federal Rule of Civil Procedure 26(b)(2)(B), the copying of documents and electronically stored information will generally be the responsibility of the inspecting party, but the producing party must render reasonable assistance and cooperation. In the routine case with a manageable number of documents the producing party should allow its personnel and its copying or imaging equipment to be used with the understanding that the inspecting party will pay reasonable charges. The best procedure is for documents to be delivered to an independent copying service, which can mark and, if desired by a party, image the documents at the time photocopies are made. The cost of this procedure shall be borne by the party seeking the discovery, but if an extra copy is made for the party producing the documents, that party shall bear that portion of the cost.

e. Later Inspection. Whether the inspecting party may inspect the production again at a later date (after having completed the entire initial inspection) must be determined on a case-by-case basis.

f. Privilege. Objections to the production of documents, electronically stored information or things based on generalized claims of privilege will be rejected. A claim of privilege must be supported by a statement of particulars sufficient to enable the Court to assess its validity. For a more detailed discussion of the invocation of privilege see the section of this handbook dealing with privilege.

g. General. In most situations the lawyers should be able to reach agreement based upon considerations of reasonableness, convenience and common sense. Since the Discovery Rules contemplate that the lawyers and parties will act reasonably in carrying out the objectives of the Rules, the Court can be expected to deal sternly with a lawyer or party who acts unreasonably to thwart these objectives.

## IV. INTERROGATORIES

### A. Preparing and Answering Interrogatories.

(1) *Informal Requests.* Whenever possible, counsel should try to exchange information informally. The results of such exchanges, to the extent relevant, may then be made of record by requests for admissions.

(2) *Scope of Interrogatories.* The Court will be guided in each case by the limitations stated in Federal Rules of Civil Procedure 26(b) and 33(a). Counsel's signature on interrogatories constitutes a certification of compliance with those limitations. See Federal Rule of Civil Procedure 26(g)(2). Interrogatories should be brief, simple, particularized and capable of being understood by jurors when read in conjunction with the answer. Interrogatories propounded in the form set forth in Appendix B to the Local Rules comply with the limitations of Federal Rules of Civil Procedure 26(b) and 33(a).

(3) *Responses.* Federal Rule of Civil Procedure 33(a) requires the respondent to furnish whatever information is available, even if other requested information is lacking. When in doubt about the meaning of an interrogatory, the responding party should give it a reasonable interpretation (which

may be specified in the response) and answer it so as to disclose rather than deny information. If an answer is made by reference to a document or electronically stored information, it should be attached or identified and made available for inspection. See Federal Rule of Civil Procedure 33(d).

(4) *Objections.* Absent compelling circumstances, failure to assert objections to an interrogatory within the time period for answers constitutes a waiver and will preclude a party from asserting the objection in a response to a motion to compel. Objections should be specific, not generalized.

(5) *Objections Based on Privilege.* Objections based on generalized claims of privilege will be rejected. A claim of privilege must be supported by a statement of particulars sufficient to enable the Court to assess its validity. For a more detailed discussion of the invocation of privilege, see the section of this handbook dealing with privilege.

(6) *Number of Interrogatories.* Under Federal Rule of Civil Procedure 33(a), without leave of Court or written stipulation of the parties, interrogatories are limited to twenty-five (25) in number including all discrete subparts.

(7) *Form Interrogatories.* There are certain kinds of cases which lend themselves to interrogatories which may be markedly similar from case to case, such as employment discrimination and maritime cargo damage suits, for example, or diversity actions in which form interrogatories have been approved by state law. Except for the standard form interrogatories set forth in Appendix B to the Local Rules, interrogatories which parties seek to propound under Local Rules 26.1(g)(3) and 26.1(g)(4) should be carefully reviewed to make certain that they are tailored to the individual case.

(8) *Reference to Deposition, Document or Portion of Electronically Stored Information.* Since a party is entitled to discovery both by deposition and interrogatories, it is ordinarily insufficient to answer an interrogatory by saying something such as "see deposition of Jane Smith," or "see insurance claim." There are a number of reasons for this. For example, a corporation may be required to give its official corporate response even though one of its high-ranking officers has been deposed, since the testimony of an officer may not necessarily represent the full corporate answer. Similarly, a reference to a single document (or portion of electronically stored information) is not necessarily a full answer, and the information in the such material-unlike the interrogatory answer-is not ordinarily set forth under oath.

In some circumstances, it may be appropriate for a party to answer a complex interrogatory by saying something such as "Acme Roofing Company adopts as its answer to this interrogatory the deposition testimony of Jane Smith, its President, shown on pages 127–135 of the deposition transcript." When a party has already fully answered an interrogatory question in the course of a previous deposition, the deposition may be used carefully and in good faith. However, counsel are reminded that for purposes of discovery sanctions, "an evasive or incomplete answer is to be treated as a failure to answer." See Federal Rule of Civil Procedure 37(a)(3).

(9) *"List All Documents."* Interrogatories should be reasonably particularized. For example, an interrogatory such as "Identify each and every document upon which you rely in support of your

claim in Count Two" may well be objectionably broad in an antitrust case, though it may be appropriate in a suit upon a note or under the Truth-in-Lending Act. While there is no bright-line test, common sense and good faith usually suggest whether such a question is proper.

(10) *Federal Rule of Civil Procedure 33(d).* Federal Rule of Civil Procedure 33(d) allows a party in very limited circumstances to produce business records, including documents in lieu of answering interrogatories. To avoid abuses of Federal Rule of Civil Procedure 33(d), the party wishing to respond to interrogatories in the manner contemplated by Federal Rule of Civil Procedure 33(d) should observe the following practice:

> 1. Specify the business records and materials to be produced in sufficient detail to permit the interrogating party to locate and identify the records and to ascertain the answer as readily as could the party from whom discovery is sought.
>
> 2. Make its records available in a reasonable manner (i.e., with tables, chairs, lighting, air conditioning or heat if possible, and the like) during normal business hours, or, in lieu of agreement on that, from 9:00 a.m. to 5:00 p.m., Monday through Friday.
>
> 3. Make available any electronically stored information or summaries thereof which it has.
>
> 4. Provide any relevant compilations, abstracts or summaries either in its custody or reasonably obtainable by it, not prepared in anticipation of litigation. If it has any documents or electronically stored information even arguably subject to this clause but which it declines to produce for some reason, it shall call the circumstances to the attention of the parties who may move to compel.
>
> 5. All of the actual clerical data extraction work should be done by the interrogating party unless agreed to the contrary, or unless, after actually beginning the effort, it appears that the task could be performed more efficiently by the producing party. In that event, the interrogating party may ask the Court to review the propriety of Federal Rule of Civil Procedure 33(d) election. In other words, it behooves the producing party to make the search as simple as possible, or the producing party may be required to answer the interrogatory in full.

See Local Rule 26.1(g)(1).

## V. PRIVILEGE

### A. Invocation of Privilege During Deposition.

(1) *Procedure for Invocation of Privilege.* Where a claim of privilege is asserted during a deposition and information is not provided on the basis of such assertion:

> (a) The attorney asserting the privilege shall identify during the deposition the nature of the privilege (including work product) which is being claimed and if the privilege is being

asserted in connection with a claim or defense governed by state law, indicate the state privilege rule being invoked; and

(b) The following information shall be provided during the deposition at the time the privilege is asserted, if sought, unless divulgence of such information would cause disclosure of privileged information:

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

(1) the type of document, (e.g., letter or memorandum) and, if electronically stored information, the software application used to create it (e.g., MS Word or MS Excel Spreadsheet);

(2) general subject matter of the document or electronically stored information;

(3) the date of the document or electronically stored information;

(4) such other information as is sufficient to identify the document or electronically stored information for a subpoena duces tecum, including, where appropriate, the author, addressee, and any other recipient of the document or electronically stored information, and, where not apparent, the relationship of the author, addressee, and any other recipient to each other;

(ii) For oral communications:

(1) the name of the person making the communication and the names of persons present while the communication was made and, where not apparent, the relationship of the persons present making the communication;

(2) the date and place of communication;

(3) the general subject matter of the communication.

(iii) Objection on the ground of privilege asserted during a deposition may be amplified by the objecting party subsequent to the objection.

(c) After a claim of privilege has been asserted, the attorney seeking disclosure shall have reasonable latitude during the deposition to question the witness to establish other relevant information concerning the assertion of the privilege, unless divulgence of such information would cause disclosure of privileged information, including:

(i) the applicability of the particular privilege being asserted,

(ii) circumstances which may constitute an exception to the assertion of the privilege,

(iii) circumstances which may result in the privilege having been waived, and

(iv) circumstances which may overcome a claim of qualified privilege.

**B. Invocation of Privilege in Other Discovery.** Where a claim of privilege is asserted in responding or objecting to other discovery devices, including interrogatories, requests for production and requests for admissions, and information is not provided on the basis of such assertion, the ground rules set forth above shall also apply. *See* Local Rule 26.1(g)(3). The attorney seeking disclosure of the information withheld may, for the purpose of determining whether to move to compel disclosure, serve interrogatories or notice the depositions of appropriate witnesses to establish other relevant information concerning the assertion of the privilege, including (a) the applicability of the privilege being asserted, (b) circumstances which may constitute an exception to the assertion of the privilege, (c) circumstances which may result in the privilege having been waived, and (d) circumstances which may overcome a claim of qualified privilege.

**C. Exception for Fifth Amendment Privileges.** Nothing in this section is intended to urge or suggest that a party or witness should provide information that might waive the constitutional privilege against self-incrimination. Failure to follow the procedures set forth in this section shall not be deemed to effect a waiver of any such privilege.

## VI. MOTIONS TO COMPEL OR FOR A PROTECTIVE ORDER

**A. Reference to Local Rules 26.1(h).** The procedures and guidelines governing the filing of motions to compel or for protective order are set forth in Local Rule 26.1(h).

**B. Effect of Filing a Motion for a Protective Order.** In addition to the procedures and guidelines governing the filing of motions for a protective order, counsel should be aware that the mere filing of a motion for a protective order does not, absent an order of the Court granting the motion, excuse the moving party from complying with the discovery requested or scheduled. For example, a motion for protective order will not prevent a deposition from occurring; only a Court order granting the motion will accomplish this.

**C. Time for Filing.** Local Rule 26.1(h)(1) requires that all motions related to discovery, including but not limited to motions to compel discovery and motions for protective order, be filed within thirty (30) days of the occurrence of grounds for the motion. Failure to file a discovery motion within thirty (30) days, absent a showing of reasonable cause for a later filing, may constitute a waiver of the relief sought.

Amended effective April 15, 1999; April 15, 2001; April 15, 2006; April 15, 2007; April 15, 2009;December. 1, 2011; December 3, 2012.

## APPENDIX B. STANDARD FORM INTERROGATORIES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. ___ –Civ or Cr–(USDJ's last name/USMJ's last name)

PLAINTIFF X

Plaintiff,

vs.

DEFENDANT Y
Defendant.

_____ /

## FIRST SET OF RULE 26.1(g) INTERROGATORIES

[Plaintiff X or Defendant Y] propounds the following interrogatories upon [Plaintiff X or Defendant Y] and requests that they be answered separately, fully and under oath within thirty (30) days of service pursuant to Federal Rule of Civil Procedure 33 and Local Rule 26.1(g).

**Definitions**

(a) The words "you," "yours" and/or "yourselves" means [Plaintiff X or Defendant Y] and any directors, officers, employees, agents, representatives or other persons acting, or purporting to act, on behalf of [Plaintiff X or Defendant Y].

(b) The singular shall include the plural and vice versa; the terms "and" or "or" shall be both conjunctive and disjunctive; and the term "including" mean "including without limitation".

(c) "Date" shall mean the exact date, month and year, if ascertainable or, if not, the best approximation of the date (based upon relationship with other events).

(d) The word "document" shall mean any writing, recording, electronically stored information or photograph in your actual or constructive possession, custody, care or control, which pertain directly or indirectly, in whole or in part, either to any of the subjects listed below or to any other matter relevant to the issues in this action, or which are themselves listed below as specific documents, including, but not limited to: correspondence, memoranda, notes, messages, diaries, minutes, books, reports, charts, ledgers, invoices, computer printouts, microfilms, video tapes or tape recordings.

(e) “Agent” shall mean: any agent, employee, officer, director, attorney, independent contractor or any other person acting at the direction of or on behalf of another.

(f) “Person” shall mean any individual, corporation, proprietorship, partnership, trust, association or any other entity.

(g) The words “pertain to” or “pertaining to” mean: relates to, refers to, contains, concerns, describes, embodies, mentions, constitutes, constituting, supports, corroborates, demonstrates, proves, evidences, shows, refutes, disputes, rebuts, controverts or contradicts.

(h) The term “third party” or “third parties” refers to individuals or entities that are not a party to this action.

(i) The term “action” shall mean the case entitled Plaintiff X v. Defendant Y, Case No. ___, pending in the Unites States District Court for the Southern District of Florida.

(j) The word “identify”, when used in reference to a document (including electronically stored information), means and includes the name and address of the custodian of the document, the location of the document, and a general description of the document, including (1) the type of document (e.g., letter or memorandum) and, if electronically stored information, the software application used to create it (e.g., MS Word or MS Excel Spreadsheet); (2) the general subject matter of the document or electronically stored information; (3) the date of the document or electronically stored information; (4) the author of the document or electronically stored information; (5) the addressee of the document or electronically stored information; and (6) the relationship of the author and addressee to each other.

**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 Local Rule 26.1(g)(3)(B)(ii), 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 (e.g., letter or memorandum) 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 material for a subpoena duces tecum or a 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.

You are under a continuous obligation to supplement your answers to these interrogatories under the circumstances specified in Federal Rule of Civil Procedure 26(e).

**INTERROGATORIES**

1. Please provide the name, address, telephone number, place of employment and job title of any person who has, claims to have or whom you believe may have knowledge or information pertaining to any fact alleged in the pleadings (as defined in Federal Rule of Civil Procedure 7(a)) filed in this action, or any fact underlying the subject matter of this action.

2. Please state the specific nature and substance of the knowledge that you believe the person(s) identified in your response to interrogatory no. 1 may have.

3. Please provide the name of each person whom you may use as an expert witness at trial.

4. Please state in detail the substance of the opinions to be provided by each person whom you may use as an expert witness at trial.

5. Please state each item of damage that you claim, whether as an affirmative claim or as a setoff, and include in your answer: the count or defense to which the item of damages relates; the category into which each item of damages falls, i.e. general damages, special or consequential damages (such as lost profits), interest, and any other relevant categories; the factual basis for each item of damages; and an explanation of how you computed each item of damages, including any mathematical formula used.

6. Please identify each document (including electronically stored information) pertaining to each item of damages stated in your response to interrogatory no. 5 above.

Effective April 15, 1998. Amended effective April 15, 2007; April 15, 2009; December. 1, 2011.

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## ADMIRALTY AND MARITIME RULES

### RULE A. GENERAL PROVISIONS

**(1) Scope of the Local Admiralty and Maritime Rules.** The Local Admiralty and Maritime Rules apply to the procedures in admiralty and maritime claims within the meaning of Federal Rule of Civil Procedure 9(h), which in turn are governed by the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure.

**(2) Citation Format.**

(a) *The Supplemental Rules* for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure shall be cited as "Supplemental Rule ( ___ )".

(b) The Local Admiralty and Maritime Rules shall be cited as "Local Admiralty Rule (____ )".

**(3) Application of Local Admiralty and Maritime Rules.** The Local Admiralty Rules shall apply to all actions governed by Local Admiralty Rule A(1), and to the extent possible should be construed to be consistent with the other Local Rules of this Court. To the extent that a Local Admiralty Rule conflicts with another Local Rule of this Court, the Local Admiralty Rule shall control.

**(4) Designation of "In Admiralty" Proceedings.** Every complaint filed as a Federal Rule of Civil Procedure 9(h) action shall boldly set forth the words "IN ADMIRALTY" following the designation of the Court. This requirement is in addition to any statements which may be contained in the body of the complaint.

**(5) Verification of Pleadings, Claims and Answers to Interrogatories.** Every complaint and claim filed pursuant to Supplemental Rules B, C and/or D shall be verified on oath or solemn affirmation by a party, or an officer of a corporate party.

If a party or corporate officer is not within the District, verification of a complaint, claim and/or answers to interrogatories may be made by an agent, an attorney-in-fact, or the attorney of record. Such person shall state briefly the source of his or her knowledge, or information and belief, and shall declare that the document affirmed is true to the best of his or her knowledge, and/or information and belief. Additionally, such person shall state that he or she is authorized to make this representation on behalf of the party or corporate officer, and shall indicate why verification is not made by a party or a corporate officer. Such verification will be deemed to have been made by the party to whom the document might apply as if verified personally.

Any interested party may move the Court, with or without a request for stay, for the personal oath or affirmation of a party or all parties, or that of a corporate officer. If required by the Court, such verification may be obtained by commission, or as otherwise provided by Court order.

**(6) Issuance of Process.** Except as limited by the provisions of Supplemental Rule B(1) and Local Admiralty Rule B(3) or Supplemental Rule C(3) and Local Admiralty RuleC(2); or in suits prosecuted in forma pauperis and sought to be filed without prepayment of fees or costs, or without security; all process shall be issued by the Court without further notice of Court.

**(7) Publication of Notices.** Unless otherwise required by the Court, or applicable Local Admiralty or Supplemental Rule, whenever a notice is required to be published by any statute of the United States, or by any Supplemental Rule or Local Admiralty Rule, such notice shall be published at least once, without further order of Court, in an approved newspaper in the county or counties where the vessel or property was located at the time of arrest, attachment, or seizure, and if different, in the county within the Southern District of Florida where the lawsuit is pending.

For purposes of this subsection, an approved newspaper shall be a newspaper of general circulation, designated from time to time by the Court. A listing of these approved newspapers will be made available in the Clerk's Office during normal business hours.

**(8) Form and Return of Process in In Personam Actions.** Unless otherwise ordered by the Court, Federal Rule of Civil Procedure 9(h) process shall be by civil summons, and shall be returnable twenty-one (21) days after service of process; except that process issued in accordance with Supplemental Rule B shall conform to the requirements of that rule.

**(9) Judicial Officer Defined.** As used in these Local Admiralty Rules, the term "judicial officer" or "Court" shall mean either a United States District Judge or a United States Magistrate Judge.

**(10) Appendix of Forms.** The forms presented in the Appendix provide an illustration of the format and content of papers filed in admiralty and maritime actions within the Southern District of Florida. While the forms are sufficient, they are neither mandatory nor exhaustive.

Effective Dec. 1, 1994. Amended effective April 15, 2007; April 15, 2010; April 15, 2011.

## Advisory Notes

(1994) These Local Admiralty Rules were amended in 1994 to make them gender neutral.

(1993) **(a) General Comments.** These Local Admiralty Rules were prepared and submitted to the Court through the Rules Committee of the Southern District of Florida, at the request of a Subcommittee of the Admiralty Law Committee of The Florida Bar.

The Local Admiralty and Maritime Rules are promulgated pursuant to this Court's rule making authority under Federal Rule of Civil Procedure 83, and have been drafted to complement the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure.

The Committee has arranged these Local Admiralty Rules to correspond generally with the ordering of the Supplemental Rules, e.g., Local Admiralty Rule A corresponds generally with

Supplemental Rule A, and each sequentially lettered Local Admiralty Rule addresses the subject matter of the corresponding next-in-order Supplemental Rule.

Reference to the former Local Admiralty Rules refers to the former Local Rules of the Southern District of Florida.

**(b) Comments on Specific Sections.** These Local Admiralty Rules are substantially similar to the Local Rules for the Middle District and therefore provide for consistency and uniformity in admiralty and maritime claims in the state.

A(1) and A(3) continue in substance former Local Admiralty Rule 1(a).

A(4) continues the "IN ADMIRALTY" designation requirements of former Local Admiralty Rule 7(a). Under the revised rule, the "IN ADMIRALTY" designation is required to be posted to all complaints even if the complaint is filed as a Federal Rule of Civil Procedure 9(h) action and jurisdiction would exist on another basis, e.g., federal question or diversity jurisdiction.

A(5) continues the requirements of former Local Admiralty Rule 8.

A(6) continues the requirements of former Local Admiralty Rule 2(a).

A(7) enlarges upon former Local Admiralty Rule 3(a) which addressed notice by publication only in cases filed pursuant to Supplemental Rule C(4). The revised rule extends the publication provisions to all Federal Rule of Civil Procedure 9(h) actions for which notice by publication is required.

In addition, the existing provisions have been altered to require that the publication shall be made both in the county where the vessel, or other property, was located at the time of arrest, attachment or seizure; and if different, in the county within the Division of this Court in which the suit is pending.

A(8) continues the requirements of former Local Admiralty Rule 2(c).

A(9) adopts the definition of "Court" provided in the Advisory Notes to the August 1, 1985, amendments to the Supplemental Rules.

As defined in these Local Admiralty Rules, the terms "Court" or "judicial officer" shall extend to United States Magistrates Judges assigned to the Southern District of Florida. The committee notes that the delegation of the duties contemplated by this definition are consistent with the jurisdictional grant to the United States Magistrate Judges as set forth in Title 28, United States Code, Section 636(a).

Where the terms "Court" and "judicial officer" are not used, these Local Admiralty Rules contemplate that without further order of Court, the responsibility of taking the specific action shall be vested with a District Judge.

A(10) provides for an Appendix of Forms to the Local Admiralty Rules. The former Local Admiralty Rules incorporated the text of some forms within the specific Local Admiralty Rules and included some forms in an Appendix. The Appendix of Forms provides an alternate method of presenting the format and content of necessary admiralty forms.

As noted in the revised Local Admiralty Rules, these forms are provided as examples, and are not intended to be mandatory. In addition to the specific forms referred to in the Local Admiralty Rules, the Appendix also includes other commonly used admiralty forms for the use and convenience of counsel.

(1998) These Local Admiralty Rules are amended in 1998 to correct scrivener's errors and to require the custodian or substitute custodian to comply with orders of the Captain of the Port, United States Coast Guard.

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

## RULE B. ATTACHMENT AND GARNISHMENT: SPECIAL PROVISIONS

**(1) Definition of "Not Found Within the District."** In an action in personam filed pursuant to Supplemental Rule B, a defendant shall be considered "not found within the District" if the defendant cannot be served within the Southern District of Florida with the summons and complaint as provided by Federal Rule of Civil Procedure 4(d)(1), (2), (3), or (6).

**(2) Verification of Complaint Required.** In addition to the specific requirements of Local Admiralty Rule A(5), whenever verification is made by the plaintiff's attorney or agent, and that person does not have personal knowledge, or knowledge acquired in the ordinary course of business of the facts alleged in the complaint, the attorney or agent shall also state the circumstances which make it necessary for that person to make the verification, and shall indicate the source of the attorney's or agent's information.

**(3) Pre-seizure Requirements.** In accordance with Supplemental Rule B(1), the process of attachment and garnishment shall issue only after one of the following conditions has been met:

> (a) *Judicial Review Prior to Issuance.* Except as provided in Local Admiralty Rule B(3)(b), a judicial officer shall first review the verified complaint, and any other relevant case papers, prior to the Clerk of the Court issuing the requested process of attachment and garnishment. No notice of this pre-arrest judicial review is required to be given to any person or prospective party.
>
> If the Court finds that probable cause exists to issue the process of attachment and garnishment, plaintiff shall prepare an order for the Court's signature directing the Clerk of the Court to issue the process. This order shall substantially conform in format and content to the form identified as SDF 1 in the Appendix of these Local Admiralty Rules.
>
> Upon receipt of the signed order, the Clerk of the Court shall file the order and, in accordance with Local Admiralty Rule B(3)(c), issue the summons and process of

attachment and garnishment. Thereafter the Clerk of the Court may issue supplemental process without further order of Court.

(b) *Certification of Exigent Circumstances.* If the plaintiff files a written certification that exigent circumstances make review by the Court impracticable, the Clerk of the Court shall, in accordance with Local Admiralty Rule B(3)(c), issue a summons and the process of attachment and garnishment.

Thereafter at any post-attachment proceedings under Supplemental Rule E(4)(f) and Local Admiralty Rule B(5), plaintiff shall have the burden of showing that probable cause existed for the issuance of process, and that exigent circumstances existed which precluded judicial review in accordance with Local Admiralty Rule B(3)(a).

(c) *Preparation and Issuance of the Process of Attachment and Garnishment.* Plaintiff shall prepare the summons and the process of attachment and garnishment, and deliver the documents to the Clerk of the Court for filing and issuance.

The process of attachment and garnishment shall substantially conform in format and content to the form identified as SDF 2 in the Appendix to these Local Admiralty Rules, and shall in all cases give adequate notice of the postseizure provisions of Local Admiralty Rule B(5).

(d) *Marshal's Return of Service.* The Marshal shall file a return of service indicating the date and manner in which service was perfected and, if service was perfected upon a garnishee, the Marshal shall indicate in the return the name, address, and telephone number of the garnishee.

**(4) Notification of Seizure to Defendant.** In an in personam action under Supplemental Rule B, it is expected that plaintiff and/or garnishee will initially attempt to perfect service of the notice in accordance with Supplemental Rule B(2)(a) or (b).

However, when service of the notice cannot be perfected in accordance with Supplemental Rule B(2)(a) or (b), plaintiff and/or garnishee should then attempt to perfect service in accordance with Supplemental Rule B(2)(c). In this regard, service of process shall be sufficiently served by leaving a copy of the process of attachment and garnishment with the defendant or garnishee at his or her usual place of business.

**(5) Post-attachment Review Proceedings.**

(a) *Filing a Required Answer.* In accordance with Supplemental Rule E(4)(f), any person who claims an interest in property seized pursuant to Supplemental Rule B must file an answer and claim against the property. The answer and claim shall describe the nature of the claimant's interest in the property, and shall articulate reasons why the seizure should be vacated. The claimant shall serve a copy of the answer and claim upon plaintiff's counsel, the Marshal, and any other party to the litigation. The claimant shall also file a Certificate of Service indicating the date and manner in which service was perfected.

(b) *Hearing on the Answer and Claim.* The claimant may be heard before a judicial officer not less than seven (7) days after the answer and claim has been filed and service has been perfected upon the plaintiff.

If the Court orders that the seizure be vacated, the judicial officer shall also award attorney's fees, costs and other expenses incurred by any party as a result of the seizure.

If the seizure was predicated upon a showing of "exigent circumstances" under Local Admiralty Rule B(3)(b), and the Court finds that such exigent circumstances did not exist, the judicial officer shall award attorney's fees, costs, and other expenses incurred by any party as a result of the seizure.

**(6) Procedural Requirement for the Entry of Default.** In accordance with Federal Rule of Civil Procedure 55, a party seeking the entry of default in a Supplemental Rule B action shall file a motion and supporting legal memorandum and shall offer other proof sufficient to demonstrate that due notice of the action and seizure have been given in accordance with Local Admiralty Rule B(4).

Upon review of the motion, memorandum, and other proof, the Clerk of the Court shall, where appropriate, enter default in accordance with Federal Rule of Civil Procedure 55(a). Thereafter, the Clerk of the Court shall serve notice of the entry of default upon all parties represented in the action.

**(7) Procedural Requirements for the Entry of Default Judgment.** Not later than thirty (30) days following notice of the entry of default, the party seeking the entry of default judgment shall file a motion and supporting legal memorandum, along with other appropriate exhibits to the motion sufficient to support the entry of default judgment. The moving party shall serve these papers upon every other party to the action and file a Certificate of Service indicating the date and manner in which service was perfected.

A party opposing the entry of default judgment shall have seven (7) days from the receipt of the motion to file written opposition with the Court. Thereafter, unless otherwise ordered by the Court, the motion for the entry of default judgment will be heard without oral argument.

If the Court grants the motion and enters the default judgment, such judgment shall establish a right on the part of the party or parties in which favor it is entered. The judgment shall be considered prior to any claims of the owner of the defendant property against which it is entered, and to the remnants and surpluses thereof; providing, however, that such a judgment shall not establish any entitlement to the defendant property having priority over non-possessory lien claimants. Obtaining a judgment by default shall not preclude the party in whose favor it is entered from contending and proving that all, or any portion, of the claim or claims encompassed within the judgment are prior to any such non-possessory lien claims.

Effective Dec. 1, 1994. Amended effective April 15, 1998; April 15, 2000; April 15, 2007; April 15, 2010; April 15, 2011.

## Advisory Notes

(1993) **(a) General Comments.** Local Admiralty Rule B is intended to enhance and codify the local procedural requirements uniquely applicable to actions of maritime attachment and garnishment under Supplemental Rule B. Other local procedural requirements involving actions in rem and quasi in rem proceedings can be found in Local Admiralty Rule E.

When read in conjunction with Supplemental Rule B and E, Local Admiralty Rules B and E are intended to provide a uniform and comprehensive method for constitutionally implementing the long-standing and peculiar maritime rights of attachment and garnishment. The Committee believes that Local Admiralty Rules B and E correct the deficiencies perceived by some courts to exist in the implementation of this unique maritime provision. *Schiffahartsgesellschaft Leonhardt & Co. v. A. Bottacchi S.A. de Navegacion,* 552 F.Supp. 771 (S.D.Ga.1982); *Cooper Shipping Company v. Century 21,* 1983 A.M.C. 244 (M.D.Fla.1982); *Crysen Shipping Co. v. Bona Shipping Co., Ltd.,* 553 F.Supp. 139 (N.D.Fla.1982); and *Grand Bahama Petroleum Co. v. Canadian Transportation Agencies, Ltd.,* 450 F.Supp. 447 (W.D.Wa.1978), discussing Supplemental Rule (B) proceedings in light of *Fuentes v. Shevin,* 407 U.S. 67, [92 S.Ct. 1983, 32 L.Ed.2d 556] (1972) and *Sniadach v. Family Finance Corp.,* 395 U.S. 337, [89 S.Ct. 1820, 23 L.Ed.2d 349] (1969).

Although the Committee is aware of the Eleventh Circuit's decision in *Schiffahartsgesellschaft Leonhardt & Co. v. A. Bottacchi S.A. de Navegacion,* 732 F.2d 1543 (1984), the Committee believes that from both a commercial and legal viewpoint, the better practice is to incorporate the pre-seizure scrutiny and post-attachment review provisions provided by this Local Admiralty Rule. These provisions protect the rights of any person claiming an interest in the seized property by permitting such persons to file a claim against the property, and thereafter permitting a judicial determination of the propriety of the seizure.

**(b) Comments on Specific Sections.** Local Admiralty Rule B(1) codifies the governing law of this Circuit as set forth in *LaBanca v. Ostermunchner,* 664 F.2d 65 (5th Cir., Unit B, 1981).

Local Admiralty Rule B(2) codifies the verification requirements of Supplemental Rule B(1) and former Local Admiralty Rule 8.

B(3) incorporates the "pre-seizure" and "exigent circumstances" provisions of the August 1, 1985, revision to Local Supplemental Rule B(1). In the routine case, the rule contemplates that issuance of the process of attachment and garnishment be preconditioned upon the exercise of judicial review. This ensures that plaintiff can make an appropriate maritime claim, and present proof that the defendant cannot be found within the District. The rule also contemplates that upon a finding of probable cause, a simple order directing the Clerk of the Court to issue the process shall be entered by the Court.

This rule also incorporates the "exigent circumstances" provision of Supplemental Rule B(1). Read in conjunction with Local Admiralty Rule B(5)(b), this rule requires that the plaintiff carry the burden of proof at any post-attachment proceedings to establish not only the prima facie

conditions of a maritime attachment and garnishment action under Supplemental Rule B, but also that "exigent circumstances" precluded judicial review under Local Admiralty Rule B(3)(a). The Committee believes that this additional requirement will place upon plaintiff's counsel a burden of extra caution before invoking the "exigent circumstance" provision of the rule.

Local Admiralty Rule B(5) establishes the post-attachment review provisions potentially applicable to maritime attachment and garnishment proceedings. These proceedings may be invoked by any person claiming an interest in the seized property.

(2000) Local Admiralty Rule B(7) is amended to give the party seeking entry of a default judgment up to thirty days, rather than five days, to file a motion and supporting legal memorandum.

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

**RULE C. ACTION IN REM**

**(1) Verification Requirements.** Every complaint and claim filed in an in rem proceeding pursuant to Supplemental Rule C shall be verified in accordance with Local Admiralty Rules A(5) and B(2).

**(2) Pre-seizure Requirements.** In accordance with Supplemental Rule C(3), the process of arrest in rem shall issue only after one of the following conditions has been met:

> (a) *Judicial Review Prior to Issuance.* Except as provided in Local Admiralty Rule 3(b)(2), a judicial officer shall first review the verified complaint, and any other relevant case papers, prior to the Clerk of the Court issuing the warrant of arrest and/or summons in rem. No notice of this pre-seizure judicial review is required to be given to any person or prospective party.
>
> If the Court finds that probable cause exists for an action in rem, plaintiff shall prepare an order for the Court's signature directing the Clerk of the Court to issue a warrant of arrest and/or summons. This order shall substantially conform in format and content to the form identified as SDF 2 in the Appendix to these Local Admiralty Rules.
>
> Upon receipt of the signed order, the Clerk of the Court shall file the order and, in accordance with Local Admiralty Rule 3(b)(3), issue the warrant of arrest and/or summons. Thereafter the Clerk of the Court may issue supplemental process without further order of the Court.
>
> (b) *Certification of Exigent Circumstances.* If the plaintiff files a written certification that exigent circumstances make review by the Court impracticable, the Clerk of the Court shall, in accordance with Local Admiralty Rule B(3)(b), issue a warrant of arrest and/or summons.
>
> Thereafter at any post-arrest proceedings under Supplemental Rule E(4)(f) and Local Admiralty Rule C(7), plaintiff shall have the burden of showing that probable cause existed

for the issuance of process, and that exigent circumstances existed which precluded judicial review in accordance with Local Admiralty Rule C(2)(a).

(c) *Preparation and Issuance of the Warrant of Arrest and/or Summons.* Plaintiff shall prepare the warrant of arrest and/or summons, and deliver them to the Clerk of the Court for filing and issuance.

The warrant of arrest shall substantially conform in format and content to the form identified as SDF 4 in the Appendix to these Local Admiralty Rules, and shall in all cases give adequate notice of the post-arrest provisions of Local Admiralty Rule C(7).

**(3) Special Requirements for Actions Involving Freight, Proceeds and/or Intangible Property.**

(a) *Instructions to Be Contained in the Summons.* Unless otherwise ordered by the Court, the summons shall order the person having control of the freight, proceeds and/or intangible property to either:

(i) File a claim within fourteen (14) days, beginning on the next calendar day, including Saturday, Sunday, or a legal holiday, count fourteen days after service of the summons in accordance with Local Admiralty Rule D(6)(a); or

(ii) Deliver or pay over to the Marshal, the freight, proceeds, and/or intangible property, or a part thereof, sufficient to satisfy plaintiff's claim.

The summons shall also inform the person having control of the freight, proceeds, and/or intangible property that service of the summons has the effect of arresting the property, thereby preventing the release, disposal or other distribution of the property without prior order of the Court.

(b) *Requirements for Claims to Prevent the Delivery of Property to the Marshal.* Any claim filed in accordance with Supplemental Rule E(4) and Local Admiralty Rule C(5)(a) shall describe the nature of claimant's interest in the property, and shall articulate reasons why the seizure should be vacated.

The claim shall be served upon the plaintiff, the Marshal, and all other parties to the litigation. Additionally, the claimant shall file a Certificate of Service indicating the date and manner in which service was perfected.

(c) *Delivery or Payment of the Freight, Proceeds, and/or Intangible Property to the United States Marshal.* Unless a claim is filed in accordance with Supplemental Rule E(4)(f), and Local Admiralty Rule C(6)(a), any person served with a summons issued pursuant to Local Admiralty Rule C(2)(a) or C(2)(b), shall within fourteen (14) days, beginning on the next calendar day, including Saturday, Sunday, or a legal holiday, after execution of service, deliver or pay over to the Marshal all, or part of, the freight, proceeds, and/or intangible property sufficient to satisfy plaintiff's claim.

Unless otherwise ordered by the Court, the person tendering control of the freight, proceeds, and/or intangible property shall be excused from any further duty with respect to the property in question.

**(4) Publishing Notice of the Arrest as Required by Supplemental Rule C(4).**

(a) *Time for Publication.* If the property is not released within fourteen (14) days after the execution of process, the notice required by Supplemental Rule C(4) shall be published by the plaintiff in accordance with Local Admiralty Rule A(7). Such notice shall be published within twenty-one (21) days after execution of process. The notice shall substantially conform to the form identified as SDF 7 in the Appendix to these Local Admiralty Rules.

(b) *Proof of Publication.* Plaintiff shall file with the Clerk of the Court proof of publication not later than fourteen (14) days following the last day of publication. It shall be sufficient proof for the plaintiff to file the sworn statement by, or on behalf of, the publisher or editor, indicating the dates of publication, along with a copy or reproduction of the actual publication.

**(5) Undertaking in Lieu of Arrest.** If, before or after the commencement of an action, a party accepts any written undertaking to respond on behalf of the vessel and/or other property in return for foregoing the arrest, the undertaking shall only respond to orders or judgments in favor of the party accepting the undertaking, and any parties expressly named therein, to the extent of the benefit thereby conferred.

**(6) Time for Filing Claim or Answer.** Unless otherwise ordered by the Court, any claimant of property subject to an action in rem shall:

(a) File the claim within fourteen (14) days, beginning on the next calendar day, including Saturday, Sunday, or a legal holiday, after process has been executed; and

(b) Serve an answer within twenty-one (21) days after the filing of the claim.

**(7) Post-arrest Proceedings.** Coincident with the filing of a claim pursuant to Supplemental Rule E(4)(f), and Local Admiralty Rule C(6)(a), the claimant may also file a motion and proposed order directing plaintiff to show cause why the arrest should not be vacated. If the Court grants the order, the Court shall set a date and time for a show cause hearing. Thereafter, if the Court orders the arrest to be vacated, the Court shall award attorney's fees, costs, and other expenses incurred by any party as a result of the arrest.

Additionally, if the seizure was predicated upon a showing of "exigent circumstances" under Local Admiralty Rule C(2)(b), and the Court finds that such exigent circumstances did not exist, the Court shall award attorneys' fees, costs and other expenses incurred by any party as a result of the seizure.

**(8) Procedural Requirements Prior to the Entry of Default.** In accordance with Federal Rule of Civil Procedure 55, a party seeking the entry of default judgment in rem shall first file a motion and supporting legal memorandum.

The party seeking the entry of default shall also file such other proof sufficient to demonstrate that due notice of the action and arrest have been given by:

(a) Service upon the master or other person having custody of the property; and

(b) Delivery, or by certified mail, return receipt requested (or international effective equivalent), to every other person, including any known owner, who has not appeared or intervened in the action, and who is known to have, or claims to have, a possessory interest in the property.

The party seeking entry of default judgment under Local Rule 3(h) may be excused for failing to give notice to such "other person" upon a satisfactory showing that diligent effort was made to give notice without success; and

(c) Publication as required by Supplemental Rule C(4) and Local Admiralty Rule C(4).

Upon review of the motion, memorandum, and other proof, the Clerk of the Court may, where appropriate, enter default in accordance with Federal Rule of Civil Procedure 55. Thereafter, the Clerk of the Court shall serve notice of the entry of default upon all parties represented in the action.

**(9) Procedural Requirements for the Entry of Default Judgment**. Not later than thirty (30) days following notice of the entry of default, the moving party shall file a motion, and supporting legal documents, for the entry of default judgment pursuant to Federal Rule of Civil Procedure 55(b). The moving party may also file as exhibits for the motion such other documentation as may be required to support the entry of default judgment. Thereafter the Court will consider the motion as indicated below:

(a) *When No Person Has Filed a Claim or Answer.* Unless otherwise ordered by the Court, the motion for default judgment will be considered by the Court without oral argument.

(b) *When Any Person Has Filed an Appearance, But Does Not Join in the Motion for Entry of Default Judgment.* If any person has filed an appearance in accordance with Local Admiralty Rule C(6), but does not join in the motion for entry of default judgment, the party seeking the entry of default judgment shall serve notice of the motion upon the party not joining in the motion, and thereafter the opposing party shall have seven (7) days from receipt of the notice to file written opposition with the Court.

If the Court grants the motion and enters the default judgment, such judgment shall establish a right on the part of the party or parties in whose favor it is entered. The judgment shall be considered prior to any claims of the owner of the defendant property against which it is entered, and to the remnants and surpluses thereof; providing, however,

that such a judgment shall not establish any entitlement to the defendant property having priority over non-possessory lien claimants. Obtaining a judgment by default shall not preclude the party in whose favor it is entered from contending and proving that all, or any portion, of the claim or claims encompassed within the judgment are prior to any such non-possessory lien claims.

Effective Dec. 1, 1994. Amended effective April 15, 1998; April 15, 2000; April 15, 2001; April 15, 2007; April 15, 2010; April 15, 2011; December 3, 2012.

## Advisory Notes

(1993) **C(2).** Well reasoned authority has upheld Supplemental Rule C, specifically holding that a pre-seizure judicial hearing is not required where a vessel, freight, or intangible property is proceeded against to enforce a maritime lien. *Amstar Corporation v. SS Alexandros T,* 664 F.2d 904 (4th Cir.1981); Merchants *Nat'l Bank v. Dredge Gen. G.L. Gillespie,* 663 F.2d 1338 (5th Cir. Unit A, 1981); *Schiffahartsgesellschaft Leonhardt & Co. v. A. Bottacchi S.A. de Navegacion,* 732 F.2d 1543 (11th Cir.1984).

The desirability of providing by local admiralty rule an available avenue for reasonably prompt and effective post-arrest judicial relief is indicated. *See, Merchants Nat'l Bank v. Dredge Gen. G.L. Gillespie,* supra, at 1334, 1350. This provision is incorporated in Local Admiralty Rule C(7).

This procedure made available through this rule has proven effective. *Maryland Ship Building & Dry–Dock Co. v. Pacific Ruler Corp.,* 201 F.Supp. 858 (SDNY 1962). In fact, the procedure established by this local rule goes beyond that encountered in *Merchants Nat'l Bank v. Dredge Gen. G.L. Gillespie,* supra, or *Maryland Ship Building & Dry–Dock Co. v. Pacific Ruler Corp.,* supra.

Under this rule, the claimant or intervenor may petition the Court to order the plaintiff to establish probable cause for the arrest of the property. Therefore at an early stage of the litigation, plaintiff can be required to establish a prima facie case that he is asserting a claim which is entitled to the dignity and status of a maritime lien against the arrested property. This rule contemplates the entry of an order with conclusory findings following the post-arrest proceedings. More detailed findings may be requested by any party.

The rule is not intended to provide a method for contesting the amount of security to be posted for the release of the vessel. Once a prima facie case for the maritime lien has been established, or the question of lien status remains uncontested, the matter of security is left to the provisions of Local Admiralty Rule E.

**C(3).** Supplemental Rule C(3) also addresses the less commonly encountered action in rem to enforce a maritime lien against freights, proceeds or other intangible property. The revision to this rule designates the United States Marshal to take custody of all tangible and intangible properties arrested in accordance with this rule, and to bring these properties under the control of the Court. This is the practice in many other districts, and when implemented will provide the greatest uniformity in the treatment of tangible and intangible property.

**C(4).** The substance of former Local Admiralty Rule 3(c) is continued.

**C(5).** Although this section is new to the local rules, it reflects the current local practice with respect to undertakings and stipulations in lieu of arrest. Such undertakings and stipulations have been held effective to permit a Court to exercise its in rem admiralty jurisdiction so long as either at the time the undertaking or stipulation is given, or at any subsequent time prior to the filing of the action, the vessel or other property is, or will be, present within the District.

**C(6).** The substance of former Local Admiralty Rule 2(b) is continued.

**C(7).** See the comments for Local Admiralty Rule C(2).

**C(8) and (9).** These sections are designed to mesh Supplemental Rule (C) with Federal Rule of Civil Procedure 55. For purpose of default and default judgments, the rule recognizes two distinct groups of in rem claimants.

The first category of claimants include those who by ownership or otherwise, would, but for the arrest of the property, be entitled to its possession. Pursuant to Supplemental Rule C(6), these claimants must file a claim setting forth their interest in the property, demand their right to receive possession, and to appear and defend the action. In the case of such claimants, the operation of standard default procedures foreclose their rights to contest positions of the party in whose favor the default is rendered, and the entry of default judgment is both fair and appropriate.

The second category of claimants embodies a potentially numerous and varying class of claimants. The claims of these other claimants do not give rise to a right of possession of the vessel from the marshal or other appropriate custodian, but rather invoke the power of the Court in admiralty to foreclose against the property by the ultimate rendering of a judgment in rem against property entitlements. Such judgments would be predicated upon non-possessory liens.

The time in which the second category of claimants may intervene is governed by the provisions of Local Admiralty Rule E. Such lien claimants are not obligated, and indeed are probably not entitled to file a claim of possession to the vessel, or to answer and defend in the name of the vessel. As to them, in accordance with Federal Rule of Civil Procedure 8, the essential averments of all the complaints are taken as automatically denied.

No default judgments entered pursuant to this rule will operate to adjudicate priorities among competing non-possessory lien claimants.

In attempting to reconcile the traditional notions of default and default judgments with the concept of in rem proceedings, the final language has been formulated to maintain the efficacy of the default procedure without resulting in premature adjudication effecting priorities and distributions. The default procedure establishes in favor of the holder of such a default judgment, a lien position against the proceeds of the property, resulting from any sale or disposition, or, if currency is involved, the ultimate adjudication, inferior to all other competing priorities, except the otherwise escheating right of the property owner to the remnants and surpluses after all full-claims

satisfactions. At the same time, the right of a person obtaining a default judgment to contend and compete with other claimants for priority distribution remains unaffected.

(2000) Local Admiralty Rule C(9) is amended to give the party seeking entry of a default judgment up to thirty days, rather than five days, to file a motion and supporting legal memorandum.

(2001) Corrections to rule number references.

(2010) Amended to conform tabulation to the style used in the Federal Rules of Civil Procedure.

(2012) Amended to correct tabulation and internal citation errors in C(6) and C(7) and to relocate appendix of forms to the Court's website.

## RULE D. POSSESSORY, PETITORY AND PARTITION ACTIONS

**(1) Establishing Dates for the Return of Process.** In possessory actions filed pursuant to Supplemental Rule D, the Court may order that process be returnable at a time shorter than that prescribed by Federal Rule of Civil Procedure 12(a).

If the Court shortens the time, the Court shall specify the date upon which the answer must be filed, and may also set a hearing date to expedite the disposition of the possessory action. When possible, possessory actions shall be given preference on a judicial officer's calendar.

Effective Dec. 1, 1994. Amended effective April 15, 2007; April 15, 2010; April 15, 2011.

### Advisory Notes

(1993) This rule continues in substance the provisions of former Local Admiralty Rule 15.

The rule recognizes the equity in allowing for a prompt resolution in possessory actions. Since a possessory action is brought to reinstate an owner of a vessel alleging wrongful deprivation of property, rather than to allow original possession, the rule permits the Court to expedite these actions, thereby providing a quick remedy for the one wrongfully deprived of his rightful property. *See Silver v. Sloop Silver Cloud,* 259 F.Supp. 187 (S.D.N.Y. 1966).

Since a petitory and possessory action can be joined to obtain original possession, *The Friendship*, Fed.Cas. No. 5,123 (CCD Maine, 1855), this rule contemplates that an expedited hearing will only occur in purely possessory actions.

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

## RULE E. ACTIONS IN REM AND QUASI IN REM: GENERAL PROVISIONS

**(1) Statement of Itemized Damages and Expenses Required.** Every complaint in a Supplemental Rule B and C action shall state the amount of the debt, damages, or salvage for

which the action is brought. In addition, the statement shall also specify the amount of any unliquidated claims, including attorneys' fees.

**(2) Requirements and Procedures for Effecting Intervention.** Whenever a vessel or other property is arrested or attached in accordance with any Supplemental Rule, and the vessel or property is in the custody of the United States Marshal, or duly authorized substitute custodian, any other person having a claim against the vessel or property shall be required to present their claim as indicated below:

(a) *Intervention of Right When No Sale of the Vessel or Property Is Pending.* Except as limited by Local Admiralty Rule E(2)(b), any person having a claim against a vessel or property previously arrested or attached by the Marshal may, as a matter of right, file an intervening complaint at any time before an order is entered by the Court scheduling the vessel or property for sale.

Coincident with the filing of an intervening complaint, the offering party shall prepare and file a supplemental warrant of arrest and/or a supplemental process of attachment and garnishment.

Upon receipt of the intervening complaint and supplemental process, the Clerk of the Court shall conform a copy of the intervening complaint and shall issue the supplemental process. Thereafter, the offering party shall deliver the conformed copy of the intervening complaint and supplemental process to the Marshal for execution. Upon receipt of the intervening complaint and supplemental process, the Marshal shall re-arrest or re-attach the vessel or property in the name of the intervening plaintiff.

Counsel for the intervening party shall serve a copy of the intervening complaint, and copies of all process and exhibits upon all other counsel of record, and shall thereafter file a certificate of service with the Clerk of the Court indicating the manner and date of service.

(b) *Permissive Intervention When the Vessel or Property Has Been Scheduled for Sale by the Court.* Except as indicated below, and subject to any other rule or order of this Court, no person shall have an automatic right to intervene in an action where the Court has ordered the sale of the vessel or property, and the date of the sale is set within twenty-one (21) days from the date the party moves for permission to intervene in accordance with this subsection. In such cases, the person seeking permission to intervene must:

(i) File a motion to intervene and indicate in the caption of the motion a request for expedited hearing when appropriate.

(ii) Include a copy of the anticipated intervening complaint as an exhibit to the motion to intervene.

(iii) Prepare and offer for filing a supplemental warrant of arrest and/or a supplemental process of attachment and garnishment.

(iv) Serve copies of the motion to intervene, with exhibits and proposed supplemental process upon every other party to the litigation.

(v) File a certificate of service indicating the date and manner of service.

Thereafter, the Court may permit intervention under such conditions and terms as are equitable to the interests of all parties; and if intervention is permitted, shall also direct the Clerk of the Court to issue the supplemental process.

Upon receipt of the order permitting intervention, the Clerk of the Court shall file the originally signed intervening complaint, conform a copy of the intervening complaint and issue the supplemental process.

Thereafter, the offering party shall deliver the conformed copy of the intervening complaint and supplemental process to the Marshal for execution. Upon receipt of the intervening complaint and supplemental process, the Marshal shall re-arrest or re-attach the vessel or property in the name of the intervening plaintiff.

Counsel for the intervening party shall also serve a copy of the intervening complaint, exhibits, and supplemental process upon every other party of record and shall thereafter file a Certificate of Service with the Clerk of the Court indicating the manner and date of service.

**(3) Special Requirements for Salvage Actions.** In cases of salvage, the complaint shall also state to the extent known, the value of the hull, cargo, freight, and other property salvaged, the amount claimed, the names of the principal salvors, and that the suit is instituted in their behalf and in behalf of all other persons associated with them.

In addition to these special pleading requirements, plaintiff shall attach as an exhibit to the complaint a list of all known salvors, and all persons believed entitled to share in the salvage. Plaintiff shall also attach a copy of any agreement of consortship available and known to exist among them collegially or individually.

**(4) Form of Stipulation or Bonds.** Except in cases instituted by the United States through information, or complaint of information upon seizures for any breach of the revenues, navigation, or other laws of the United States, stipulations or bonds in admiralty and maritime actions need not be under seal and may be executed by the agent or attorney of the stipulator or obligor.

**(5) Deposit of Marshal's Fees and Expenses Required Prior to Effecting Arrest, Attachment and/or Garnishment.**

(a) *Deposit Required Before Seizure.* Any party seeking the arrest or attachment of property in accordance with Supplemental Rule E shall deposit a sum with the Marshal sufficient to cover the Marshal's estimated fees and expenses of arresting and keeping the property for at least fourteen (14) days. The Marshal is not required to execute process until the deposit is made.

(b) *Proration of Marshal's Fees and Expenses Upon Intervention.* When one or more parties intervene pursuant to Local Admiralty Rule E(2)(a) or (b), the burden of advancing sums to the Marshal sufficient to cover the Marshal's fees and expenses shall be allocated equitably between the original plaintiff, and the intervening party or parties as indicated below:

> (i) Stipulation for the Allocation and Payment of the Marshal's Fees and Expenses. Immediately upon the filing of the intervening complaint, counsel for the intervening plaintiff shall arrange for a conference between all other parties to the action, at which time a good faith effort shall be made to allocate fees and expenses among the parties. Any resulting stipulation between the parties shall be codified and filed with the Court and a copy served upon the Marshal.
>
> (ii) Allocation of Costs and Expenses in the Event That Counsel Cannot Stipulate. The Court expects that counsel will resolve the allocation of costs and expenses in accordance with the preceding paragraph. In the event that such an arrangement cannot be made, the parties shall share in the fees and expenses of the Marshal in proportion to their claims as stated in the original and intervening complaints.

In order to determine the proportionate shares of each party, counsel for the last intervening plaintiff shall determine the total amounts claimed by each party. The individual claims shall be determined from the original and amended complaint, and all other intervening complaints subsequently accepted and processed by the Marshal in accordance with Local Admiralty Rule E(2)(a) or (b).

Thereafter, counsel for the last intervening plaintiff shall deliver to the Marshal a list which summarizes each party's claim, and the proportion which each party's claim bears to the aggregate claims asserted in the litigation, determined to the nearest one-tenth of one percentage point.

Upon receipt of this listing, the Marshal shall determine the total expenses incurred to date and shall estimate the expenses to be incurred during the next fourteen (14) days. For the purpose of making this calculation, the total fees and expenses shall be calculated from the date when continuous and uninterrupted arrest or attachment of the property began, and not prorated from the date a particular party's intervening complaint was filed.

The Marshal shall then apply the percentages determined in the listing, and shall compute the amount of the intervening party's initial deposit requirements. The Marshal shall also utilize this listing to compute any additional deposit requirements which may be necessary pursuant to Local Admiralty Rule E(5)(c).

The Marshal need not re-arrest or re-attach the vessel and/or property until the deposit is received from the intervening plaintiff.

(c) *Additional Deposit Requirements.* Until the property arrested or attached and garnished has been released or otherwise disposed of in accordance with Supplemental Rule E, the Marshal may require from any original and intervening party who has caused the arrest or attachment and garnishment of a vessel or property, to post such additional deposits as the Marshal determines necessary to cover any additional estimated fees or expenses.

(d) *Judicial Relief From Deposit Requirements.* Any party aggrieved by the deposit requirements of Local Admiralty Rule E(5)(b) may apply to the Court for relief. Such application shall be predicated upon a showing that owing to the relative priorities of the claims asserted against the vessel or other property, the deposit requirements operate to impose a burden disproportionate to the aggrieved party's recovery potential.

The judicial officer may adjust the deposit requirements, but in no event shall the proportion required of an aggrieved party be reduced to a percentage less than that imposed upon the claimant whose claim is the smallest among that of claims which the aggrieved party stipulates as having priority over its claim; or, in the absence of such stipulation, the greatest percentage imposed upon any claimant participating in the deposit requirements.

(e) *Consequence of Failing to Comply With Additional Deposit Requirements.* Any party who fails to make the additional deposit as requested by the Marshal may not participate further in the proceeding, except for the purpose of seeking relief from this rule.

Additionally, the Marshal shall notify the Court in writing whenever any party fails to make additional deposits as required by Local Admiralty Rule E(5)(c).

In the event that a party questions its obligations to advance monies required by this rule, the Marshal may apply to the Court for instructions concerning that party's obligation under the rule.

**(6) Property in Possession of a United States Officer.** Whenever the property to be arrested or attached is in custody of a United States officer, the Marshal shall serve the appropriate process upon the officer or employee; or, if the officer or employee is not found within the District, then to the custodian of the property within the District.

The Marshal shall direct the officer, employee or custodian not to relinquish custody of the property until ordered to do so by the Court.

**(7) Process Held in Abeyance.**

(a) *When Permitted.* In accordance with Supplemental Rule E(3)(b), a plaintiff may ask the Clerk of the Court not to issue process, but rather to hold the process in abeyance. The Clerk of the Court shall docket this request, and thereafter shall not be responsible for ensuring that process is issued at a later date.

(b) *When Intervention Is Subsequently Required.* It is the intention of these rules that a vessel or other property should be arrested or attached pursuant to process issued and

effected in only one civil action. Therefore, if while process is held in abeyance on one action, the vessel or property is arrested or attached in another action, it shall be the responsibility of the plaintiff who originally requested process be held in abeyance in the first action to voluntarily dismiss without prejudice the first action, insofar as that action seeks to proceed against the property arrested or attached in the second action, and promptly intervene in the second action pursuant to Local Admiralty Rule E(2)(a) or (b).

In order to prevent undue hardship or manifest injustice, motions to consolidate in rem actions against the same vessel or property will be granted only in exceptional circumstances.

**(8) Release of Property in Accordance With Supplemental Rule E(5).**

(a) *Release by Consent or Stipulation.* Subject to the limitations imposed by Supplemental Rule E(5)(c), the Marshal may release any vessel, cargo or property in the Marshal's possession to the party on whose behalf the property is detained. However, as a precondition to release, the Marshal shall require a stipulation, bond, or other security, expressly authorizing the release. The authorizing instrument shall be signed by the party, or the party's attorney, on whose behalf the property is detained.

The stipulation, bond, or other security shall be posted in an amount equal to, or greater than, the amount required for the following types of action:

(i) Actions Entirely for a Sum Certain. The amount alleged to be due in the complaint, with interest at six percent per annum from the date claimed to be due to a date twenty-four months after the date the claim was filed, or by filing an approved stipulation, or bond for the amount alleged plus interest as computed in this subsection.

The stipulation or bond shall be conditioned to abide by all orders of the Court, and to pay the amount of any final judgment entered by this Court or any appellate Court, with interest.

(ii) Actions Other Than Possessory, Petitory or Partition. Unless otherwise ordered by the Court, the amount of the appraised or agreed value of the property seized, with interest. If an appraised value cannot be agreed upon by the parties, the Court shall order an appraisal in accordance with Local Admiralty Rule F(3).

The stipulation or bond shall be conditioned to abide by all orders of the Court, and to pay the amount of any final judgment entered by this Court or any appellate Court, with interest.

The person consenting or stipulating to the release shall also file a claim in accordance with Local Admiralty Rule E(2)(a) or (b).

(iii) Possessory, Petitory or Partition Actions. The Marshal may release property in these actions only upon order of Court, and upon the subsequent deposit of security and compliance with such terms and/or conditions as the Court deems appropriate.

(b) *Release Pursuant to Court Order.* In accordance with Supplemental Rule E(5)(c), a party may petition to release the vessel pursuant to Court order. A party making such application shall file a Request for Release which shall substantially conform in format and content to the form identified as SDF 8 in the Appendix to these Local Admiralty Rules. Additionally, the party shall prepare, and offer for filing, a proposed order directing the release. This order shall substantially conform in format and content to the form identified as SDF 9 in the Appendix to these Local Admiralty Rules.

However, as a precondition to the release, the Marshal shall require a stipulation, bond, or other security, as specified in Local Admiralty Rule E(8)(a)(i), (ii), or (iii), as appropriate.

(c) *Upon the Dismissal or Discontinuance of an Action.* By coordinating with the Marshal to ensure that all costs and charges of the Court and its officers have first been paid.

(d) *Release Subsequent to the Posting of a General Bond.*

(i) Requirements of a General Bond. General bonds filed pursuant to Supplemental Rule E(5)(b) shall identify the vessel by name, nationality, dimensions, official number or registration number, hailing port and port of documentation.

(ii) Responsibility for Maintaining a Current Listing of General Bonds. The Clerk of the Court shall maintain a current listing of all general bonds. This listing should be maintained in alphabetical order by name of the vessel. The listing will be available for inspection during normal business hours.

(iii) Execution of Process. The arrest of a vessel covered by a general bond shall be stayed in accordance with Supplemental Rule E(5)(b), however, the Marshal shall serve a copy of the complaint upon the master or other person in whose charge or custody the vessel is found. If neither the master nor another person in charge of custody is found aboard the vessel, the Marshal shall make the return accordingly.

Thereafter, it shall be plaintiff's responsibility to advise the owner or designated agent, at the address furnished in the general bond, of (1) the case number; (2) nature of the action and the amount claimed; (3) the plaintiff and name and address of plaintiff's attorney; and (4) the return date for filing a claim.

**(9) Application to Modify Security for Value and Interest.** At any time, any party having an interest in the subject matter of the action may move the Court, on due notice and for cause, for greater, better or lesser security, and any such order may be enforced by attachment or as otherwise provided by law.

**(10) Custody and Safekeeping.**

(a) *Initial Responsibility*. The Marshal shall initially take custody of any vessel, cargo and/or other property arrested, or attached in accordance with these rules. Thereafter, and until such time as substitute custodians may be authorized in accordance with Local Admiralty Rule E(10)(c), the Marshal shall be responsible for providing adequate and necessary security for the safekeeping of the vessel or property.

In the discretion of the Marshal, adequate and necessary security may include the placing of keepers on or near the vessel and/or the appointment of a facility or person to serve as a custodian of the vessel or property.

(b) *Limitations on the Handling, Repairing and Subsequent Movement of Vessels or Property*. Subsequent to the arrest or attachment of a vessel or property, and except as provided in Local Admiralty Rule E(10)(a), no person may handle cargo, conduct repairs, or move a vessel without prior order of Court. Notwithstanding the foregoing, the custodian or substitute custodian is obligated to comply with any orders issued by the Captain of the Port, United States Coast Guard, including an order to move the vessel; and to comply with any applicable federal, state, or local laws or regulations pertaining to vessel and port safety. Any movement of a vessel pursuant to such requirements must not remove the vessel from the District and shall be reported to the Court within twenty-four hours of the vessel's movement.

(c) *Procedures for Changing Custody Arrangements*. Any party may petition the Court to dispense with keepers, remove or place the vessel, cargo and/or other property at a specified facility, designate a substitute custodian for the vessel or cargo, or for other similar relief. The motion shall substantially conform in format and content to the form identified as SDF 5 in the Appendix of these Local Admiralty Rules.

(i) Notification of the Marshal Required. When an application for change in custody arrangements is filed, either before or after the Marshal has taken custody of the vessel or property, the filing party shall serve notice of the application on the Marshal in sufficient time to permit the Marshal to review the indemnification and insurance arrangements of the filing party and substitute custodian. The application shall also be served upon all other parties to the litigation.

(ii) Indemnification Requirements. Any motion for the appointment of a substitute custodian or facility shall include as an exhibit to the motion, a consent and indemnification agreement signed by both the filing party, or the filing party's attorney, and the proposed substitute custodian.

The consent and indemnification agreement shall expressly release the Marshal from any and all liability and responsibility for the care and custody of the property while in the hands of the substitute custodian; and shall expressly hold the Marshal harmless from any and all claims whatsoever arising from the substitute

custodianship. The agreement shall substantially conform in format and content to the form identified as SDF 6 in the Appendix to these Local Admiralty Rules.

(iii) Court Approval Required. The motion to change custody arrangements, and indemnification and consent agreement shall be referred to a judicial officer who shall determine whether the facility or substitute custodian is capable of safely keeping the vessel, cargo and/or property.

(d) *Insurance Requirements*.

(i) Responsibility for Initially Obtaining Insurance. Concurrent with the arrest or attachment of a vessel or property, the Marshal shall obtain insurance to protect the Marshal, the Marshal's deputies, keepers, and custodians from liability arising from the arrest or attachment.

The insurance shall also protect the Marshal and the Marshal's deputies or agents from any liability arising from performing services undertaken to protect the vessel, cargo and/or property while that property is in the custody of the Court.

(ii) Payment of Insurance Premiums. It shall be the responsibility of the party applying for the arrest or attachment of a vessel, cargo and/or property to promptly reimburse the Marshal for premiums paid to effect the necessary insurance.

The party applying for change in custody arrangements shall be responsible for paying the Marshal for any additional premium associated with the change.

(iii) Taxation of Insurance Premiums. The premiums charged for the liability insurance will be taxed as an expense of custody while the vessel, cargo and/or property is in custodia legis.

**(11) Preservation, Humanitarian and Repatriation Expenses.**

(a) *Limitations on Reimbursement for Services and/or Supplies Provided to a Vessel or Property in Custody*. Except in cases of emergency or undue hardship, no person will be entitled to claim as an expense of administration the costs of services or supplies furnished to a vessel, cargo and/or property unless such services or supplies have been furnished to the Marshal upon the Marshal's order, or pursuant to an order of this Court.

Any order issued pursuant to this subsection shall require the person furnishing the services or supplies to file a weekly invoice. This invoice shall be set forth in the format prescribed in Local Admiralty Rule E(11)(e).

(b) *Preservation Expenses for the Vessel and Cargo*. The Marshal, or substitute custodian, is authorized to incur expenses reasonably deemed necessary in maintaining the vessel, cargo and/or property in custody for the purpose of preventing the vessel, cargo and/or property from suffering loss or undue deterioration.

(c) *Expenses for Care and Maintenance of a Crew*. Except in an emergency, or upon the authorization of a judicial officer, neither the Marshal nor substitute custodian shall incur expenses for feeding or otherwise maintaining the crew.

Applications for providing food, water and necessary medical services for the maintenance of the crew may be submitted, and decided ex parte by a judicial officer, providing such an application is made by some person other than the owner, manager or general agent of the vessel.

Such applications must be filed within thirty (30) days from the date of the vessel's initial seizure. Otherwise, except in the case of an emergency, such applications shall be filed and served upon all parties, who in turn shall have fourteen (14) days from receipt of the application to file a written response, beginning on the next calendar day, including Saturday, Sunday, or a legal holiday.

Expenses for feeding or otherwise maintaining the crew, when incurred in accordance with this subsection, shall be taxed as an expense of administration and not as an expense of custody.

(d) *Repatriation Expenses*. Absent an order of Court expressly ordering the repatriation of the crew and/or passengers, and directing that the expenses be taxed as a cost of administration, no person shall be entitled to claim these expenses as expenses of administration.

(e) *Claim by a Supplier for Payment of Charges*. Any person who claims payment for furnishing services or supplies in compliance with Local Admiralty Rule E(11), shall submit an invoice to the Marshal's Office for review and approval.

The claim shall be presented in the form of a verified claim, and shall be submitted within a reasonable time after furnishing the services or supplies, but in no event shall a claim be accepted after the vessel, or property has been released. The claimant shall file a copy of the verified claim with the Marshal, and also serve the substitute custodian and all other parties to the litigation.

The Marshal shall review the claim, make adjustments or recommendations to the claim as are appropriate, and shall thereafter forward the claim to the Court for approval. The Court may postpone the hearing on an individual claim until a hearing can be set to consolidate other claims against the property.

**(12) Property in Incidental Custody and Otherwise Not Subject to the Arrest or Attachment.**

(a) *Authority to Preserve Cargo in Incidental Custody*. The Marshal, or an authorized substitute custodian, shall be responsible for securing, maintaining and preserving all property incidentally taken into custody as a result of the arrest or attachment of a vessel or

property. Incidental property may include, but shall not be limited to, laden cargo not itself the subject of the arrest or attachment.

The Marshal or other custodian shall maintain a separate account of all costs and expenses associated with the care and maintenance of property incidentally taken into custody.

Any person claiming entitlement to possession of property incidentally taken into custody shall be required, as a precondition of receiving possession, to reimburse the Marshal for such separately accounted expenses. Monies received by the Marshal will be credited against both the expense of custody and administration.

(b) *Separation, Storage and Preservation of Property in Incidental Custody*. Any party, or the Marshal, may petition the Court to permit the separation and storage of property in incidental custody from the property actually arrested or attached.

When separation of the property is ordered to protect the incidentally seized property from undue deterioration; provide for safer storage; meet an emergency; reduce the expenses of custody; or to facilitate a sale of the vessel or other property pursuant to Local Admiralty Rule E(16); the costs of such separation shall be treated as an expense of preservation and taxed as a cost of custody.

(c) *Disposal of Unclaimed Property*. Property incidentally in custody and not subsequently claimed by any person entitled to possession, shall be disposed of in accordance with the laws governing the disposition of property abandoned to the United States of America.

Except when prohibited by prevailing federal statute, the resulting net proceeds associated with the disposition of abandoned property shall be applied to offset the expense of administration, with the remainder escheating to the United States of America as provided by law.

**(13) Dismissal.**

(a) *By Consent*. No action may be dismissed pursuant to Federal Rule of Civil Procedure 41(a) unless all costs and expenses of the Court and its officials have first been paid.

Additionally, if there is more than one plaintiff or intervening plaintiff, no dismissal may be taken by a plaintiff unless that party's proportionate share of costs and expenses has been paid in accordance with Local Admiralty Rule E(6).

(b) *Involuntary Dismissal*. If the Court enters a dismissal pursuant to Federal Rule of Civil Procedure 41(b), the Court shall also designate the costs and expenses to be paid by the party or parties so dismissed.

**(14) Judgments.**

(a) *Expenses of Sureties as Costs*. If costs are awarded to any party, then all reasonable premiums or expenses paid by the prevailing party on bonds, stipulations and/or other security shall be taxed as costs in the case.

(b) *Costs of Arrest or Attachment*. If costs are awarded to any party, then all reasonable expenses paid by the prevailing party incidental to, or arising from the arrest or attachment of any vessel, property and/or cargo shall be taxed as costs in the case.

**(15) Stay of Final Order.**

(a) *Automatic Stay for Fourteen Days*. In accordance with Federal Rule of Civil Procedure 62(a), no execution shall issue upon a judgment, nor shall seized property be released pursuant to a judgment or dismissal, until fourteen (14) days after the entry of the judgment or order of dismissal.

(b) *Stays Beyond the Fourteen Day Period*. If within the fourteen (14) day period established by Federal Rule of Civil Procedure 62(a), a party files any of the motions contemplated in Federal Rule of Civil Procedure 62(b), or a notice of appeal, then unless otherwise ordered by the Court, a further stay shall exist for a period not to exceed thirty (30) days from the entry of the judgment or order. The purpose of this additional stay is to permit the Court to consider an application for the establishment of a supersedeas bond and to order the date upon which the bond shall be filed with the Court.

**(16) Notice of Sale.**

(a) *Publication of Notice*. In an action in rem or quasi in rem, and except in suits on behalf of the United States of America where other notice is prescribed by statute, the Marshal shall publish notice in any of the newspapers approved pursuant to Local Admiralty Rule A(7).

(b) *Duration of Publication*. Unless otherwise ordered by the Court, applicable Supplemental Rule, or Local Admiralty Rule, publication of the notice of sale shall be made at least twice; the first publication shall be at least fourteen (14) days prior to the date of the sale, and the second at least seven (7) days prior to the date of the sale.

**(17) Sale of a Vessel or Property.**

(a) *Payment of the Purchase Price*. Unless otherwise provided in the order of sale, the person whose bid is accepted shall pay the Marshal the purchase price in the manner provided below;

(i) If the Bid Is Not More Than $500.00. The successful bidder shall immediately pay the full purchase price.

(ii) If the Bid Is More Than $500.00. The bidder shall immediately deposit with the Marshal $500.00, or ten percent of the bid, whichever sum is greater. Thereafter the bidder shall pay the remaining purchase price within seven (7) days.
If an objection to the sale is filed within the time permitted by Local Admiralty Rule E(17)(g), the successful bidder is excused from paying the remaining purchase price until seven (7) days after the Court confirms the sale.

(b) *Method of Payment*. Unless otherwise ordered by the Court, payments to the Marshal shall be made in cash, certified check or cashier's check.

(c) *Custodial Costs Pending Payment*. When a successful bidder fails to pay the balance of the bid within the time allowed by Local Admiralty Rule E(17)(a)(ii), or within the time permitted by order of the Court, the Marshal shall charge the successful bidder for the cost of keeping the property from the date payment of the balance was due, to the date the bidder takes delivery of the property.

The Marshal may refuse to release the property until these additional charges have been paid.

(d) *Default for Failure to Pay the Balance*. The person who fails to pay the balance of the bid within the time allowed shall be deemed to be in default. Thereafter a judicial officer may order that the sale be awarded to the second highest bidder, or may order a new sale as appropriate.

Any sum deposited by the bidder in default shall be forfeited, and the amount shall be applied by the Marshal to any additional costs incurred because of the forfeiture and default, including costs incident to resale. The balance of the deposit, if any, shall be retained in the registry and subject to further order of the Court.

(e) *Marshal's Report of Sale*. At the conclusion of the sale, the Marshal shall file a written report of the sale to include the date of the sale, the price obtained, and the name and address of the buyer.

(f) *Confirmation of Sale*. Unless an objection is timely filed in accordance with this rule, or the purchaser is in default for failing to pay the balance of the purchase price, plaintiff shall proceed to have the sale confirmed on the day following the last day for filing objections.

In order to confirm the sale, plaintiff's counsel shall file a "Request for Confirmation of Sale" on the day following the last day for filing an objection. The "Request for Confirmation of Sale" shall substantially conform in format and content to the form identified as SDF 10 in the Appendix to these Local Admiralty Rules. Plaintiff's counsel shall also prepare and offer for filing a "Confirmation of the Sale." The "Confirmation of Sale" shall substantially conform in format and content to the form identified as SDF 11 in the Appendix to these Local Admiralty Rules. Thereafter the Clerk of the Court shall file and docket the confirmation and shall promptly transmit a certified copy of the "Confirmation of Sale" to the Marshal's Office.

Unless otherwise ordered by the Court, if the plaintiff fails to timely file the "Request for Confirmation of Sale" and proposed "Confirmation of Sale," the Marshal shall assess any continuing costs or expenses for custody of the vessel or property against the plaintiff.

(g) *Objections to Confirmation*.

(i) Time for Filing Objections. Unless otherwise permitted by the Court, an objection must be filed within seven (7) days following the sale. The party or person filing an objection shall serve a copy of the objection upon the Marshal and all other parties to the action, and shall also file a Certificate of Service indicating the date and manner of service. Opposition to the objection must be filed within seven (7) days after receipt of the objection of the sale.

The Court shall consider the objection, and any opposition to the objection, and shall confirm the sale, order a new sale, or grant other relief as appropriate.

(ii) Deposit of Preservation or Maintenance Costs. In addition to filing written objections, any person objecting to the sale shall also deposit with the Marshal the cost of keeping the property for at least fourteen (14) days. Proof of the deposit with the Marshal's Office shall be delivered to the Clerk of the Court's Office by the moving party. The Court will not consider the objection without proof of this deposit.

If the objection is sustained, the objector will be reimbursed for the expense of keeping the property from the proceeds of any subsequent sale, and any remaining deposit will be returned to the objector upon Court order.

If the objection is denied, the sum deposited by the objector will be applied to pay the fees and expenses incurred by the Marshal in keeping the property from the date the objection was filed until the sale is confirmed. Any remaining deposit will be returned to the objector upon order of Court.

(h) *Confirmation of Title*. Failure of a party to give the required notice of an action and arrest of a vessel, property and/or cargo, or failure to give required notice of a sale, may afford grounds for objecting to the sale, but such failure does not affect the title of a good faith purchaser of the property.

**(18) Post–Sale Claim.** Claims against the proceeds of a sale authorized by these rules, except for seamen's wages, will not be admitted on behalf of lienors who file their claims after the sale.

Unless otherwise ordered by the Court, any claims filed after the date of the sale shall be limited to the remnants and surplus arising from the sale.

Effective Dec. 1, 1994. Amended effective April 15, 1998; April 15, 2007; April 15, 2010; April 15, 2011.

## Advisory Notes

(1993) **Local Admiralty Rule E(1).** This section continues the provisions of former Local Rule 7(c).

**Local Admiralty Rule E(2).** This section is new. The rules do not require an intervening plaintiff to undertake the formal steps required to issue the original process of arrest or attachment pursuant to Local Admiralty Rule B(3) or C(2); rather the Committee believes that intervening parties need only apply for supplemental process, which in accordance with the August 1, 1985, amendments to Supplemental Rule B and C, may be issued by the Clerk of the Court without further order of the Court. The Committee recommends the re-arrest or re-attachment provisions of this rule in order to accommodate the administrative and records keeping requirements of the Marshal's Office.

The revision also reflects the elimination of the initial security deposit formerly required by Local Admiralty Rule 5(e). The Marshal shall, however, assess custodial costs against the intervening plaintiff in accordance with Local Admiralty Rule E(5)(b).

**Local Admiralty Rule E(3).** This section continues the provisions of former Local Rule 7(e).

**Local Admiralty Rule E(4).** This section continues the provisions of former Local Rule 6.

**Local Admiralty Rule E(5).** The Marshal, as an officer of the Court whose fiscal affairs are regulated by statute and order, is precluded by law from expending funds of the United States to maintain custody of vessels or other property pursuant to claims being asserted by the several states, any foreign sovereigns, or any private parties. This prohibition extends to incurring obligations which, if not satisfied, otherwise might be asserted as a claim against the United States. Consequently, before undertaking to arrest or attach property, the Marshal must receive funds in advance of incurring such obligations sufficient to satisfy them.

Past experience indicates that not infrequently vessels or other properties arrested for nonpayment of incurred obligations will be ultimately sold for satisfaction, to the extent possible, of pending claims. In such cases, substitute security is never given, and the property must be retained in custody for a sufficient period of time to permit the Court to determine the status of the situation and to order appropriate procedures. In such instances, custodial costs tend to be substantial and, by the very nature of the circumstances, the claimants and potential claimants can be both large in number and will vary markedly in the amounts of their respective individual claims. Apportioning the obligation to make advances against custodial costs over this range of claims and claimants has resulted in frequent calls for judicial intervention.

It was the Committee's view that a system initially self-executing and ministerial would minimize situations calling for judicial intervention while affording the Marshal the protection of assured and certain procedures. At the same time, the Committee was strongly of the opinion that the rules should do substantial equity as between claims showing wide variation in amounts and potential priorities and, at the same time, should be so structured as to require all potential claimants to come forward and share in the cost of custody, discouraging the sometime practice of claimants' waiting

to intervene until the last moment in order to allow other parties to bear the burdens of making such advances.

A concern was expressed about the position of parties having large, but clearly inferior claims, who, in equity should not be required to share on a prorated value-of-the-claim-asserted basis with claimants who have obvious priority. A typical example of such a situation would involve a mortgagee of a foreign-flag vessel appearing as a claimant in an action along with lien claimants alleging to have supplied necessaries to a vessel in ports of the United States, the mortgagee's position being subordinated by virtue of Title 46, United States Code, Section 951. After considering all possible alternatives, it was obvious that this limited range of situations could not be addressed through a mechanism for automatic administration and, consequently, the provision providing for judicial relief in the event of hardship or inequity was included.

**Local Admiralty Rule E(6).** Section (6) is new. It reflects the approach embodied in the local rules of those districts which have addressed the question of properties subject to arrest but already in the possession of an officer of the United States.

**Local Admiralty Rule E(7).** The provisions of Section (7) are new. Paragraph (a), following rules promulgated in other districts, states what is understood by the Advisory Committee to have been the practice in this District. Paragraph (b) is designed to mesh the concept of process held in abeyance with the requirements of Local Admiralty Rule E(2) regarding intervening claims, and is designed to foreclose the possibility of a vessel or other property being arrested or attached in the District as a result of more than one civil action. Since under Local Rule 5(b), the automatic, permissive intervention is not triggered until the vessel or other property has been arrested, attached or seized, a suit in rem in which process is held in abeyance will not form the basis for such an intervention. On the other hand, once the property is arrested, attached or seized, the issuance of process in the earlier suit would be destructive of the "only one civil action" concept, and, consequently paragraph (b) requires a party whose process was held in abeyance to refile as an intervenor pursuant to Local Admiralty Rule E(2), making provision for the proper disposition of the earlier action.

**Local Admiralty Rule E(8).** Section (8) continues the provisions of former Local Rule 11.

**Local Admiralty Rule E(9).** Section (9) is new. The provisions of Section (j) are expressly authorized by Supplemental Rule E(6) and offer some potential relief from the automatic operations and other provisions of Supplemental Rule E regarding security for value and interest. The decision in *Industria Nacional del Papel, C.A. M V Albert F.*, 730 F.2d 622 (11th Cir. 1984), indicates that such an application must be made prior to the entry of judgment.

**Local Admiralty Rule E(10).** Section (10) is new. It is designed to reflect the actual practice in the District, and follows the rules promulgated in several other districts. In formulating this Local Admiralty Rule, the Committee studied Section 6.3 of the "Marshal's Manual," the internal operating guide for the United States Marshal's Service. Section 10(b) was amended in 1998 to permit substitute custodians to move arrested vessels, pursuant to an order of the United States Coast Guard Captain of the Port ("COTP"), without first obtaining permission from the Court. The change was prompted by instances where substitute custodians declined to obey a COTP order to

move an arrested vessel, citing Local Admiralty Rule E(10)(b) and its requirement that Court permission be first obtained. Any movement of a vessel pursuant to a COTP order must not take the vessel out of the District. A corresponding change was made in Form 5, paragraph (5).

**Local Admiralty Rule E(11).** Section (11) is new. It addresses areas which in recent litigation in the District have called excessively for interim judicial administration. While the subject matter is covered in the rules promulgated in other districts, Section (11) differs from the approach of other districts in providing for a more positive control of expenses being incurred in connection with vessels or other property in the custody of the Court, and is designed to avoid accumulated costs being advanced for the first time well after having been incurred.

**Local Admiralty Rule E(12).** Section (12) is new. It addresses a situation which has arisen in the District in the past and which can be foreseen as possibly arising in the future. While the subject is not addressed in other local rules studied by any oft-cited leading cases, it was the opinion of the Advisory Committee that the area should be addressed by Local Admiralty Rule and that the provisions of Section (12) are both consistent with the general maritime laws of the United States and designed to permit efficient administration without the necessity for undue judicial intervention. As with the claims of intervenors and the allocation of deposits against custodial costs, the provisions of Section (12), in keeping with the design of these Local Admiralty Rules, are intended to be essentially self-executing, with the emphasis on the ministerial role of Court officers and services.

**Local Admiralty Rule E(13).** Section (13) continues the provisions of former Local Rule 17(a). It follows Federal Rule of Civil Procedure 41, and addresses the necessarily greater concern for costs and expenses inherent in the in rem admiralty procedure.

**Local Admiralty Rule E(14).** Section (14) continues the provisions of former Local Rule 13.

**Local Admiralty Rule E(15).** Section (15) incorporates the provisions of former Local Rule 14.

**Local Admiralty Rule E(16) and (17).** The provisions of former Local Rule 4 have been expanded to provide a standardized procedure governing sales of property, which procedure the Court, at its option, may utilize, in whole or in part, thus shortening and simplifying orders related to sales and accompanying procedures.

**Local Admiralty Rule E(18).** Consistent with the provision of Local Admiralty Rule E(2), this section gives express notice of the distinct positions of claims pre-sale and post-sale.

(2010) Local Admiralty Rule E(16)(b). The dates of publication were changed to conform with the 2009 changes to the deadline calculations of the Federal Rules.

## RULE F. ACTIONS TO LIMIT LIABILITY

**(1) Monition, Injunction and Publication of the Notice**. Upon the plaintiff's filing of an Ad Interim Stipulation of Value or otherwise posting a deposit or transfer in compliance with Supplemental Rules F(1) and F(2), the Court shall immediately issue a Monition and Injunction

pursuant to Supplemental Rule F(3). The Monition and Injunction shall: enjoin the further prosecution of any action or proceeding against the plaintiff or the plaintiff's property with respect to any claim subject to limitation in the action; order that all persons asserting claims with respect to which the complaint seeks limitation to file their respective claims pursuant to Supplemental Rule F(4); order that public notice be effectuated by the plaintiff pursuant to Supplemental Rule F(4); and approve the Ad Interim Stipulation of Value or other form of deposit, transfer or security if it meets the requirements of Supplemental Rules F(1) and F(2). Upon the issuance of the Monition and Injunction by the Court, the plaintiff shall effect publication of the notice in accordance with the provisions set forth in Supplemental Rule F(4) and Local Admiralty Rule A(7). This Local Rule does not affect a claimant's right to assert the insufficiency of the fund or security under Supplemental Rule F(7).

**(2) Proof of Publication.** Plaintiff shall file proof of publication of the notice to claimants with the Court within seven (7) days after the date fixed by the Court pursuant to Supplemental Rule F(4). It shall be sufficient proof for plaintiff to file the sworn statement or a declaration pursuant to 28 U.S.C. § 1746 by, or on behalf of, the publisher or editor, indicating the dates of publication, along with a copy or reproduction of the actual publication.

**(3) Security and Appraisals Pursuant to Supplemental Rule F(7).** Upon the filing of a claimant's motion pursuant to Supplemental Rule F(7) demanding an increase in the funds deposited in Court or the security given by plaintiff, the Court shall order an appraisement of the value of the plaintiff's interest in the vessel and pending freight.

Upon receipt of the order directing the appraisal, the parties shall have seven (7) days to file a written stipulation to an appraiser. In the event that the parties do not file a stipulation, the Court shall appoint the appraiser.

The appraiser shall promptly conduct an appraisal and thereafter file the appraisal with the Clerk of the Court and serve a copy of the appraisal upon the moving party and the plaintiff. The appraiser shall also file a Certificate of Service indicating the date and manner in which service was perfected.

At such time that the parties agree to the quantum of the plaintiff's Ad Interim Stipulation of Value, deposit or security, or alternatively, the Court finds that the plaintiff's Ad Interim Stipulation of Value is insufficient or excessive, the Court shall order that a deposit or security be effectuated for the amount agreed by the parties or the amount found by the Court to be sufficient, after the date for objections to the appraisal under Supplemental Rule F(4) has passed and the Court has ruled on the objections. The Joint Stipulation of the Parties as to the Value of the Vessel shall substantially conform to the form identified as SDF 18 in the Appendix of these Local Admiralty Rules.

**(4) Objections to the Appraisal.** Any party may move to set aside the appraisal within fourteen (14) days following the filing of the appraisal with the Clerk of the Court.

**(5) Fees of the Appraiser.** The Court shall establish the fee to be paid the appraiser. Unless otherwise ordered by the Court, the fee shall be taxed against the party seeking relief under Supplemental Rule F(7).

**(6) Order of Proof at Trial.** In an action where plaintiff seeks to limit liability, the claimants shall offer their proof at trial first, whether the right to limit arises as a claim or as a defense.

Effective Dec. 1, 1994. Amended effective April 15, 2007; April 15, 2010; April 15, 2011.

**Advisory Notes**

(1993) **Local Admiralty Rule F(1).** This section incorporates the publication provisions of Local Admiralty Rule A(7), and applies them to limitation of liability actions. The rule provides for the publication of the notice required by Supplemental Rule F(4) without further order of the Court. The Advisory Committee believes that this self-executing aspect of the rule will save judicial time and at the same time will not impair the rights of any party or claimant.

**Local Admiralty Rule F(2).** The Advisory Committee determined that filing proof of publication with the Clerk of the Court was essential in order to establish an adequate record of the publication.

**Local Admiralty Rule F(3).** This section continues in substance the provisions of former Local Admiralty Rule 10.

(2010) **Local Admiralty Rule F(1).** The Advisory Committee determined that the publication of the notice without court order did not meet the self-executing aspect of the rule as contemplated in 1993.

Amended to conform tabulation to the style used in the federal rules of procedure.

**Local Admiralty Rule F(2).** The advisory Committee believes that the previous language “not later than the return date” was vague. The language was changed to remove any confusion on the definition of “return date” and the time by which the plaintiff is required to file the proof of publication. The addition of the language “or a declaration pursuant to 28 U.S.C. § 1746" was added to deal with any exigent circumstances.

**Local Admiralty Rule F(3).** The Advisory Committee determined that while the previous Local Rule references a claimant’s demand for an increase, it fails to consider instances where the claimants accept the plaintiff’s Ad Interim Stipulation of Value, obviating the need to post further security.

**Local Admiralty Rule F(6).** The Maritime Law Association of the United States (“MLA”) has approved Model Local Admiralty Rules dated May 2, 2008. The Advisory Committee has adopted MLA Model Local Admiralty Rule F(2) because the Committee believes that although petitioners in limitation of liability proceedings are the plaintiffs, in practice they are defending claims of claimants and therefore the claimants should offer proof at trial first.

## MAGISTRATE JUDGE RULES

### RULE 1. AUTHORITY OF UNITED STATES MAGISTRATE JUDGES

**(a) Duties Under 28 U.S.C. § 636(a).** Each United States Magistrate Judge of this Court is authorized to perform the duties prescribed by 28 U.S.C. § 636(a), and may-

(1) Exercise all the powers and duties conferred or imposed upon United States Commissioners by law and the Federal Rules of Criminal Procedure;

(2) Administer oaths and affirmations, impose conditions of release under 18 U.S.C. § 3146, and take acknowledgments, affidavits, and depositions; and

(3) Conduct extradition proceedings, in accordance with 18 U.S.C. § 3184.

**(b) Disposition of Misdemeanor Cases—18 U.S.C. § 3401; Federal Rule of Criminal Procedure 58.** A Magistrate Judge may-

(1) Arraign and try persons accused of, and sentence persons convicted of, misdemeanors committed within this District in accordance with 18 U.S.C. § 3401 and Federal Rule of Criminal Procedure 58;

(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.

**(c) Determination of Non-dispositive Pretrial Matters—28 U.S.C. § 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.

**(d) Recommendations Regarding Case–Dispositive Motions—28 U.S.C. § 636(b)(1)(B).**

(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:

(A) Motions for injunctive relief, including temporary restraining orders and preliminary and permanent injunctions;

(B) Motions for judgment on the pleadings;

(C) Motions for summary judgment;

(D) Motions to dismiss or permit the maintenance of a class action;

(E) Motions to dismiss for failure to state a claim upon which relief may be granted;

(F) Motions to involuntarily dismiss an action;

(G) Motions for review of default judgments;

(H) Motions to dismiss or quash an indictment or information made by a defendant; and

(I) Motions to suppress evidence in a criminal case.

(2) A Magistrate Judge may determine any preliminary matters and conduct any necessary evidentiary hearing or other proceeding arising in the exercise of the authority conferred by this subsection.

**(e) Prisoner Cases Under 28 U.S.C. §§ 2254 and 2255.** A Magistrate Judge may perform any or all of the duties imposed upon a District Judge by the rules governing proceedings in 28 U.S.C. §§ 2254 and 2255. In so doing, a Magistrate Judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a District Judge a report containing proposed findings of fact and recommendations for disposition of the petition by the District Judge. Any order disposing of the petition may only be made by a District Judge.

**(f) Prisoner Cases Under 42 U.S.C. § 1983.** A Magistrate Judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a District Judge a report containing proposed findings of fact and recommendation for the disposition of petitions filed by prisoners challenging the conditions of their confinement.

**(g) Special Master References.** A Magistrate Judge may be designated by a District Judge to serve as a special master in appropriate civil cases in accordance with 28 U.S.C. § 636(b)(2) and Federal Rules of Civil Procedure 53. Upon the consent of the parties, a Magistrate Judge may be designated by a District Judge to serve as a special master in any civil case, notwithstanding the limitations of Federal Rule of Civil Procedure 53(b).

**(h) Conduct of Trials and Disposition of Civil Cases Upon Consent of the Parties– 28 U.S.C. § 636(c).** Upon the consent of the parties, a full-time Magistrate Judge may conduct any or all proceedings in any civil case which is filed in this Court, including the conduct of a jury or nonjury trial, and may order the entry of a final judgment, in accordance with 28 U.S.C. § 636(c). In the course of conducting such proceedings upon consent of the parties, a Magistrate Judge may hear and determine any and all pre-trial and post-trial motions which are filed by the parties, including case-dispositive motions.

**(i) Other Duties.** A Magistrate Judge is also authorized to—

(1) Exercise general supervision of civil and criminal calendars, conduct calendar and status calls, and determine motions to expedite or postpone the trial of cases for the District Judges;

(2) Conduct pretrial conferences, settlement conferences, omnibus hearings, and related pretrial proceedings in civil and criminal cases;

(3) Conduct arraignments in criminal cases not triable by the Magistrate Judge and take not guilty pleas in such cases;

(4) Receive grand jury returns in accordance with Federal Rule of Criminal Procedure 6(f);

(5) Accept waivers of indictment, pursuant to Federal Rule of Criminal Procedure 7(b);

(6) Conduct voir dire and select petit juries for the Court;

(7) Accept petit jury verdicts in civil cases in the absence of a District Judge;

(8) Conduct necessary proceedings leading to the potential revocation of probation;

(9) Issue subpoenas, writs of habeas corpus ad testificandum or habeas corpus ad prosequendum, or other orders necessary to obtain the presence of parties, witnesses or evidence needed for Court proceedings;

(10) Order the exoneration or forfeiture of bonds;

(11) Conduct proceedings for the collection of civil penalties of not more than $200 assessed under the Federal Boat Safety Act of 1971, in accordance with 46 U.S.C. § 1484(d);

(12) Conduct examinations of judgment debtors in accordance with Federal Rule of Civil Procedure 69;

(13) Conduct proceedings for initial commitment of narcotics addicts under Title III of the Narcotic Addict Rehabilitation Act;

(14) Perform the functions specified in 18 U.S.C. §§ 4107, 4108 and 4109, regarding proceedings for verification of consent by offenders to transfer to or from the United States and the appointment of counsel therein;

(15) Preside at naturalization hearings and ceremonies; and

(16) Perform any additional duty as is not inconsistent with the Constitution and laws of the United States.

Effective Dec. 1, 199. Amended effective April 15, 1998; April 15, 2007; April 15, 2010.

**Comments**

(1998) Conforms Rule 1(b)(1) to 1997 amendments to Federal Rule of Criminal Procedure 58.

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

## RULE 2. ASSIGNMENT OF MATTERS TO MAGISTRATE JUDGES

All civil and criminal cases in this District shall be filed with the Clerk of the Court and assigned to a District Judge in accordance with Local Rules 1 through 7. Responsibility for the case remains with the District Judge throughout its duration, except that the District Judge may refer to a Magistrate Judge any matter within the scope of these Magistrate Judge Rules.

No specific order of reference shall be required except as otherwise provided in these Magistrate Judge Rules.

Nothing in these Magistrate Judge Rules shall preclude a District Judge from reserving any proceeding for conduct by a District Judge rather than a Magistrate Judge.

Effective Dec. 1, 1994. Amended effective April 15, 2007.

## RULE 3. PROCEDURES BEFORE THE MAGISTRATE JUDGE

**(a) In General.** In performing duties for the Court, a Magistrate Judge shall conform to all applicable provisions of federal statutes and rules, to the general procedural rules of this Court, and to the requirements specified in any order of reference from a District Judge.

**(b) Special Provisions for the Disposition of Civil Cases by a Magistrate Judge on Consent of the Parties—Title 28, United States Code, Section 636(c).**

(1) *Notice.* The Clerk of the Court shall notify the parties in all civil cases that they may consent to have the Magistrate Judge who is assigned to the case at the time of the consent conduct any or all proceedings in the case and order the entry of a final judgment. Such notices shall be handed or mailed to the plaintiff or his representative at the time an action is filed and to other parties as attachments to copies of the complaint and summons, when served. Additional notices may be furnished to the parties at later stages of the proceedings, and may be included with pretrial notices and instructions.

(2) *Execution of Consent.* The Clerk of the Court shall not accept a consent form unless it has been signed by all the parties in a case. The plaintiff shall be responsible for securing the execution of a consent form by the parties and for filing such form with the Clerk of the Court. No consent form will be made available, nor will its contents be made known, to any District Judge or Magistrate Judge, unless all parties have consented to the reference to a Magistrate Judge. No Magistrate Judge, District Judge, or other Court official may attempt to persuade or induce any party to consent to the reference of any matter to a Magistrate Judge. This rule, however, shall not preclude a District Judge or Magistrate

Judge from informing the parties that they may have the option of referring a case to a Magistrate Judge.

(3) *References.* After the consent form has been executed and filed, the Clerk of the Court shall transmit it to the District Judge to whom the case has been assigned for consideration of approval and possible referral of the case to the Magistrate Judge assigned to the case, by specific order of reference. Once the case has been assigned to that Magistrate Judge, the Magistrate Judge shall have the authority to conduct any and all proceedings to which the parties have consented and to direct the Clerk of the Court to enter a final judgment in the same manner as if a District Judge had presided.

Effective Dec. 1, 1994. Amended effective April 15, 2007; Dec. 1, 2011.

**Comment**

(2011) Amended to permit a reply and to make clear that the parties' consent applies only to the Magistrate Judge then assigned to the case.

**RULE 4. REVIEW AND APPEAL**

**(a) Appeal of Non-dispositive Matters–Government Appeal of Release Order.**

(1) *Appeal of Non-dispositive Matters—28 U.S.C. § 636(b)(1)(A).* Any party may appeal from a Magistrate Judge's order determining a motion or matter under subsection 1(c) of these rules, supra, within fourteen (14) days after being served with the Magistrate Judge's order, unless a different time is prescribed by the Magistrate Judge or District Judge. Such party shall file with the Clerk of the Court, and serve on all parties, written objections which shall specifically set forth the order, or part thereof, appealed from a concise statement of the alleged error in the Magistrate Judge's ruling, and statutory, rule, or case authority, in support of the moving party's position. Any party may respond to another party's objections within fourteen (14) days after being served with a copy thereof. The objecting party may file a reply within seven (7) days after service of the response. Absent prior permission from the Court, no party shall file any objections or responses to another party's objections exceeding twenty pages in length. The District Judge shall consider the appeal and shall set aside any portion of the Magistrate Judge's order found to be clearly erroneous or contrary to law. The District Judge may also reconsider sua sponte any matter determined by a Magistrate Judge under this rule.

(2) *Government Appeal of Release Order*. At the conclusion of a hearing pursuant to 18 U.S.C. § 3142 in which a Magistrate Judge has entered an order granting pretrial release, the government may make an ore tenus motion that the Magistrate Judge exercise discretion to stay the release order for a reasonable time, to allow the government to pursue review or appeal of the release order, in accordance with 18 U.S.C. § 3145.

If a stay is ordered pursuant to this rule, the Clerk of the Court is directed to obtain the tape recording or cassette immediately after the hearing and deliver the cassettes or tapes

promptly to the appropriate court reporter so that an expedited transcript can be delivered to the District Judge within forty-eight (48) hours of the hearing at which the release order is entered. The United States Attorney's Office is to pay the court reporter's charges.

**(b) Review of Case–Dispositive Motions and Prisoner Litigation—28 U.S.C. § 636(b)(1)(B).** Any party may object to a Magistrate Judge's proposed findings, recommendations or report under subsections 1(d), (e), and (f) of these rules, supra, within fourteen (14) days after being served with a copy thereof, or within such other time as may be allowed by the Magistrate Judge or District Judge. Such party shall file with the Clerk of the Court, and serve on all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made, the specific basis for such objections, and supporting legal authority. Any party may respond to another party's objections within fourteen (14) days after being served with a copy thereof, or within such other time as may be allowed by the Magistrate Judge or District Judge. Absent prior permission from the Court, no party shall file any objections or responses to another party's objections exceeding twenty (20) pages in length. A District Judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. The District Judge, however, need conduct a new hearing only in his discretion or where required by law, and may consider the record developed before the Magistrate Judge, making his own determination on the basis of that record. The District Judge may also receive further evidence, recall witnesses, or recommit the matter to the Magistrate Judge with instructions.

**(c) Special Master Reports—28 U.S.C. § 636(b)(2).** Any party may seek review of, or action on, a special master report filed by a Magistrate Judge in accordance with the provisions of Federal Rules of Civil Procedure 53(e).

**(d) Appeal From Judgments in Misdemeanor Cases—18 U.S.C. § 3402 [Deleted].** Replaced by Federal Rule of Criminal Procedure 58.

**(e) Appeal From Judgments in Civil Cases Disposed of on Consent of the Parties—28 U.S.C. § 636(c).**

(1) *Appeal to the Court of Appeals*. Upon the entry of judgment in any civil case disposed of by a Magistrate Judge on consent of the parties under authority of 28 U.S.C. § 636(c) and subsection 1(h) of these rules, supra, an aggrieved party shall appeal directly to the United States Court of Appeals for this Circuit in the same manner as an appeal from any other judgment of this Court.

(2) *Appeal to a District Judge [Deleted]*. See Pub.L. No. 104–317 § 207, 110 Stat. 3847 (Oct. 19, 1996) (repealing 28 U.S.C. § 636(c)(4) and (5).

Effective Dec. 1, 1994. Amended effective April 15, 1996; April 15, 1997; April 15, 1998; April 15, 1999; April 15, 2007; April 15, 2010; Dec. 1, 2011.

## Comments

(1994) Magistrate Judge Rule 4(a) now conforms to language of Title 28, United States Code, Section 636(b)(1)(A) and Federal Rule of Civil Procedure 72.

(1996) Section (a)(1) prescribes a time within which a party may respond to another party's objections to a Magistrate Judge's order on a non-dispositive motion determined under Title 28, United States Code, Section 636(b)(1)(A).

(1997) Section (a)(2) repeals automatic stay provision of government appeal of bond order and recognizes Magistrate Judge's authority to exercise discretion to stay release order.

(1998) Magistrate Judge Rule 4(d) is deleted in favor of Federal Rule of Criminal Procedure 58, but retains a modified title and a cross-reference to Rule 58 to avoid confusion about the proper procedure for misdemeanor appeals. Magistrate Judge Rule 4(e)(2) is deleted to conform to the 1997 amendments to Federal Rules of Criminal Procedure 73(d), 74, 75 and 76, which abrogated the optional appeal route from a Magistrate Judge to a District Judge.

(1999) Magistrate Judge Rules 4(a)(1) and (b) are amended to impose page limitations on objections, and responses to objections, to Magistrate Judges' non-dispositive orders under Title 28, United States Code, Section 636(b)(1)(A) and reports and recommendations under 28 U.S.C. § 636(b)(1)(B).

(2011) Amended to permit a reply and to make clear that the parties' consent applies only to the Magistrate Judge then assigned to the case.

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## SPECIAL RULES GOVERNING THE ADMISSION AND PRACTICE OF ATTORNEYS

### RULE 1. QUALIFICATIONS FOR ADMISSION

An attorney is qualified for admission to the bar of this District if the attorney is currently a member in good standing of The Florida Bar.

Effective Dec. 1, 1994. Amended effective Jan. 1, 1996; April 15, 2002; April 15, 2006; April 15, 2007; December 3, 2012.

**Comment**

(2007) Amended to eliminate references to a common test with the Northern District of Florida, which has been eliminated.

(2012) Amended to eliminate requirement to pass admission examination.

### RULE 2. PROCEDURE FOR APPLYING FOR ADMISSION AND PROOF OF QUALIFICATIONS

Each applicant for admission shall submit a verified petition setting forth the information specified on the form available on the Court's website (www.flsd.uscourts.gov) together with an application fee in the amount set by the Court. Upon receipt of the application fee, the Clerk of the Court shall require each qualified practitioner to sign the oath of admission and shall place such applicant on the roll of attorneys of the bar of this Court.

Effective Dec. 1, 1994. Amended effective Jan. 1, 1996; April 15, 2007; December 3, 2012.

**Comment**

(2007) Amended to eliminate references to a common test with the Northern District of Florida, which has been eliminated, and to eliminate procedures for obtaining admission to the Northern District.

(2012) Amended to eliminate references to admission examination and to direct practitioners to the Court's website for the petition for admission to the bar of this Court.

### RULE 3. RETENTION OF MEMBERSHIP IN THE BAR OF THIS COURT

To remain an attorney in good standing of the bar of this Court, each member must remain an active attorney in good standing of The Florida Bar, specifically including compliance with all requirements of the Rules Regulating The Florida Bar, as promulgated by the Supreme Court of Florida, and submit timely payment of the attorney renewal fee every other year commencing March 15, 2012, or as otherwise ordered by the Court. Attorneys who are not in good standing of the bar of this Court may not practice before the Court.

Effective Dec. 1, 1994. Amended effective Jan. 1, 1996; April 15, 2007; Dec. 1, 2011.

**Comment**

(2011) Amended to include requirement of a renewal fee and to make clear that attorneys not in good standing may not practice before the Court.

**RULE 4. APPEARANCES**

**(a) Who May Appear Generally.** Except when an appearance pro hac vice is permitted by the Court, only members of the bar of this Court may appear as attorneys in the Courts of this District. Attorneys residing and practicing within this District are expected to be members of the bar of this Court.

**(b) Appearance Pro Hac Vice.**

(1) Any attorney who is a member in good standing of the bar of any United States Court, or of the highest Court of any State or Territory or Insular Possession of the United States, but is not admitted to practice in the Southern District of Florida may, upon written application filed by counsel admitted to practice in this District, be permitted to appear and participate in a particular case. A certification that the applicant has studied the Local Rules shall accompany the application together with such appearance fee as may be required by administrative order. If permission to appear pro hac vice is granted, such appearance shall not constitute formal admission or authorize the attorney to file documents via CM/ECF.

(2) Lawyers who are not members of the bar of this Court shall not be permitted to engage in general practice in this District. For purposes of this rule, more than three appearances within a 365–day period in separate representations before the Courts of this District shall be presumed to be a "general practice." Upon written motion and for good cause shown the Court may waive or modify this prohibition.

(3) The application shall designate a member of the bar of this Court, who maintains an office in this State for the practice of law and who is authorized to file through the Court's electronic filing system, with whom the Court and opposing counsel may readily communicate regarding the conduct of the case, upon whom filings shall be served, and who shall be required to electronically file all documents and things that may be filed electronically, and who shall be responsible for filing documents in compliance with the CM/ECF Administrative Procedures. *See* Section 2B of the CM/ECF Administrative Procedures. The application must be accompanied by a written statement consenting to the designation, and the address and telephone number of the named designee. Upon written motion and for good cause shown the Court may waive or modify the requirements of such designation.

**(c) Appearance Ad Hoc.** A member of the bar of this Court acting on behalf of its Volunteer Lawyers' Project may, upon written motion and by leave of court, be permitted to appear for an

individual proceeding pro se in a civil matter for the sole purpose of assisting in the discovery process. If the appearance is permitted, when its purpose has been completed the attorney shall give notice to the Court, the pro se civil litigant, and opposing counsel that the ad hoc appearance is terminated.

**(d) Government Attorneys.** Any full-time United States Attorney, Assistant United States Attorney, Federal Public Defender and Assistant Federal Public Defender and attorney employed full time by and representing the United States government, or any agency thereof, and any Attorney General and Assistant Attorney General of the State of Florida may appear and participate in particular actions or proceedings on behalf of the attorney's employer in the attorney's official capacity without petition for admission. Any attorney so appearing is subject to all rules of this Court.

Effective Dec. 1, 1994. Amended effective Jan. 1, 1996; April 15, 2007; April 15, 2010.

**Comments**

(1994) Expands right to practice to additional government lawyers.

(2007) Allows a member of the bar of this District to appear as local counsel so long as he or she maintains an office in Florida; limits the number of *pro hac vice* (limited) appearances within a year; provides that where limited appearances have been permitted, all filings are to be made by designated local counsel as provided for in the Court's electronic filing protocols; amended to conform to CM/ECF Administrative Procedures, which exclude non-members of the local bar from filing via CM/ECF, and creates a special appearance category to facilitate the efforts of the Court's Volunteer Lawyers' Project.

(2010) Amended to correct usage of "limited appearance," which is now properly "appearance pro hac vice," and "special appearance," which is now "appearance ad hoc," and to conform tabulation to the style used in the federal rules of procedure.

## RULE 5. PEER REVIEW

**(a) Purpose.** It is recognized that the Court and the bar have a joint obligation to improve the level of professional performance in the courtroom. To this end, the purposes to be accomplished through the Ad Hoc Committee on Attorney Admissions, Peer Review and Attorney Grievance (the "Committee") are to determine whether individual attorneys are failing to perform to an adequate level of competence necessary to protect the interests of their clients, to establish and administer a remedial program designed to raise the competence of an attorney who is not performing adequately, to refer such attorneys to appropriate institutions and professional personnel for assistance in raising his or her level of competency, to determine through evaluation, testing or other appropriate means whether an attorney who has been referred for assistance has attained an adequate level of competency, and to report to the Court any attorney who refuses to cooperate by participating in a remedial program to raise his or her level of competence, or fails to achieve an adequate level of competence within a reasonable time.

**(b) Duties and Responsibilities of the Committee.**

(1) *Referral*. Any District Judge, Magistrate Judge, or Bankruptcy Judge shall refer in writing to the Committee the name of any attorney he or she has observed practicing law in a manner which raises a significant question as to the adequacy of such attorney's ability to represent clients in a competent manner. The referral shall be accompanied by a statement of the reasons why such question is raised.

(2) *Initial Screening*. Promptly after receipt of such a reference the Chairman of the Committee shall advise the attorney that it has been made. Thereafter an Initial Screening Committee shall be selected consisting of three members of the Committee. The Initial Screening Committee may request that the attorney meet with it informally to explain the circumstances which gave rise to the reference and may conduct such preliminary inquiries as it deems advisable. If after such preliminary inquiry the Initial Screening Committee determines that further attention is not needed it shall mark the matter "closed" with notation explaining its determination. Upon closing a matter the Chairman shall notify the referring judge and the attorney.

(3) *Remedial Action*. If the Initial Screening Committee deems that the matter warrants further action, it shall so advise the Chairman who shall then cause a Review Committee to be selected consisting of three members (other than those who served on the Initial Screening Committee). The Review Committee may pursue such inquiries as it deems appropriate and may recommend to the attorney that the attorney take steps to improve the quality of the attorney's professional performance and if so the nature of the recommended action designed to effect such improvement. The attorney shall be advised of any such recommendation in writing and be given the opportunity to respond thereto, to seek revision or revocation of the recommendation or to suggest alternatives thereto. The Review Committee after receiving such response may modify, amend, revoke or adhere to its original recommendation and shall notify the attorney of its final recommendation. Any attorney who takes exception to the proposed Review Committee's final recommendation shall have the right to have it considered by the full Committee. Any recommendation finally promulgated shall be entered in the records of the Committee. The Committee may develop an appropriate remedial program, including, but not limited to, mandatory participation in continuing legal education programs and participation in group and individual study programs. The Committee may monitor the attorney's progress in following the remedial program developed for him or her. If the attorney's lack of competency relates to drug or alcohol abuse, the Committee may require the attorney to seek treatment for that condition and require the attorney to submit periodic reports from the individuals responsible for such treatment.

**(c) Referral to the Court.** If the Committee finds that there is a substantial likelihood that the attorney's continued practice of law may result in serious harm to the attorney's clients pending completion of a remedial program, it may recommend that the Court consider limiting or otherwise imposing appropriate restrictions on the attorney's continued practice in the District Court.

**(d) Obligation to Cooperate With Committee.** It shall be the obligation of all members of the bar of this District to cooperate with the Committee so that it may effectively assist members of the bar to improve the quality of their professional performance. Any member of the bar of this Court, who is the subject of a reference under Administrative and Practice Rule 5 or who is asked by the Committee to furnish it with relevant information concerning such a reference shall regard it to be an obligation as an officer of this Court to cooperate fully with the Committee which constitutes an official arm of the Court.

**(e) Failure to Respond to Committee.** If an attorney shall refuse to meet with the Committee, furnish it with an explanation of the circumstances which gave rise to the referral, or otherwise cooperate with the Committee, the Court shall be so advised and the attorney's failure to cooperate shall be recorded in the records of the Committee. The Committee shall refer to the Court for appropriate action any attorney who refuses to cooperate in participating in a remedial program, or who fails to achieve an adequate level of competence within a reasonable time.

**(f) Confidentiality.** All matters referred to the Committee, all information in the possession of the Committee and all recommendations or other actions taken by the Committee are matters relating to the administration of the Court and shall be confidential, and shall be disclosed only by order of the Court. Correspondence, records and all written material coming to the Committee shall be retained in an office designated by the Court and are documents of the Court and shall be kept confidential unless the Court directs otherwise. No statement made by the attorney to the Committee shall be admissible in any action for malpractice against the attorney, nor shall any part of the Committee's investigative files be admissible in such proceedings. No statement made by the attorney to the Committee shall be admissible in any action under 28 U.S.C. § 2255 collateral attack for incompetency of counsel in a criminal case, nor shall any part of the Committee's investigative files be admissible in proceedings under 28 U.S.C. § 2255. Likewise, any information given by a client of the attorney to the Committee shall be privileged to the same extent as if the statements were made by the client to the attorney.

**(g) Separation From Disciplinary Proceedings.** Nothing contained herein and no action hereunder shall be construed to interfere with or substitute for any procedure relating to the discipline of any attorney. Any disciplinary actions relating to the inadequacy of an attorney's performance shall occur apart from the proceedings of the Committee in accordance with law and as directed by the Court.

**(h) Committee Immunity.** Any Committee determination that a referred attorney is adequately competent does not render the Committee potentially liable as a guarantor of the validity of that determination. The Committee is not liable for the misconduct or nonconduct of any referred attorney. Committee members are immune from prosecution for actions taken within the scope of the duties and responsibilities of the Committee as prescribed by the Court. Unauthorized disclosure of confidential information is outside the scope of the Committee's responsibilities.

**(i) Report to the Court.** Upon completion of the Committee's activities in respect to each attorney referred by the Court, the Committee shall make a report to the Court. The Committee shall make such interim reports or periodic reports relative to its activities as may be requested by the Court.

Effective Dec. 1, 1994. Amended effective April 15, 2000; April 15, 2002; April 15, 2007; April 15, 2010.

**Comments**

(2000) Clarification of the authority and responsibilities of District Judges, Magistrate Judges and Bankruptcy Judges.

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

**RULE 6. STUDENT PRACTICE**

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

**(b) Student Requirements.** An eligible student must:

(1) be duly enrolled in a law school;

(2) have completed at least four semesters of legal studies or the equivalent;

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

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

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

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

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

**(c) Program Requirements.** The program:

(1) must be a law school clinical practice program for credit, in which a law student obtains academic and practice advocacy training, under supervision of qualified attorneys including federal or state government attorneys or private practitioners;

(2) must be certified by the Court;

(3) must be conducted in such a manner as not to conflict with normal Court schedules;

(4) must be under the direction of a member or members of the regular or adjunct faculty of the law school;

(5) must arrange for the designation and maintenance of an office in this District to which may be sent all notices which the Court may from time to time have occasion or need to send in connection with this Rule or any legal representation provided pursuant to this Rule.

**(d) Supervisor Requirements.** A supervising attorney must:

(1) be a lawyer whose service as a supervising attorney for this program is approved by the dean of the law school in which the law student is enrolled and who is a member of The Florida Bar in good standing;

(2) be a member of the bar of this Court;

(3) be certified by the Court as a student supervisor;

(4) be present with the student when required by the Court;

(5) co-sign all pleadings or other documents filed with this Court;

(6) assume full personal professional responsibility for a student's guidance in any work undertaken and for the quality of a student's work, and be available for consultation with represented clients;

(7) assist the student in his preparation to the extent the supervising attorney considers it necessary.

**(e) Certification of Student, Program and Supervising Attorneys.**

(1) *Students*.

(A) Certification by the law school dean or his designee, if said certification is approved by the Court, shall be filed with the Clerk of the Court, and unless it is sooner withdrawn, shall remain in effect until the expiration of eighteen months;

(B) Certification to appear in a particular case may be withdrawn by the Court at any time, in the discretion of the Court, and without any showing of cause. Notice of termination may be filed with the Clerk of the Court.

(2) *Program*.

(A) Certification of a program by the Court shall be filed with the Clerk of the Court and shall remain in effect indefinitely unless withdrawn by the Court;

(B) Certification of a program may be withdrawn by the Court at the end of any academic year without cause, or at any time, provided notice stating the cause for such withdrawal is furnished to the law school dean.

(3) *Supervising Attorney*.

(A) Certification of a supervising attorney by the law school dean, if said certification is approved by the Court, shall be filed with the Clerk of the Court, and shall remain in effect indefinitely unless withdrawn by the dean or by the Court;

(B) Certification of a supervising attorney may be withdrawn by the Court at the end of any academic year without cause, or at any time upon notice and a showing of cause;

(C) Certification of a supervising attorney may be withdrawn by the dean at any time by mailing of notice to that effect to the Clerk of the Court;

(D) Any Judge of this Court retains the authority to withdraw or limit a supervising attorney's participation in any individual case before the Judge.

**(f) Activities.**

(1) An eligible law student may appear in this Court on behalf of any indigent person if the person on whose behalf he or she is appearing has indicated in writing his or her consent to that appearance and the supervising attorney has also indicated in writing approval of that appearance.

(2) An eligible law student may also appear in any criminal matter on behalf of the government with the written approval of the prosecuting attorney or his or her authorized representative and of the supervising attorney.

(3) An eligible law student may also appear in this Court in any civil matter on behalf of the government, with the written approval of the attorney representing that entity.

(4) In each case, the written consent and approval referred to above shall be filed in the record of the case and shall be brought to the attention of the Judge.

(5) The Board of Governors of The Florida Bar shall fix the standards by which indigency is determined under this Rule upon the recommendation of the largest voluntary bar association located in the state judicial circuit in which this program is implemented.

(6) In addition, an eligible law student may engage in other activities, under the general supervision of a member of the bar of this Court, but outside the personal presence of that lawyer, including:

(A) preparation of pleadings and other documents to be filed in any matter in which the student is eligible to appear, but such pleadings or documents must be signed by the supervising attorney;

(B) preparation of briefs, abstracts and other documents to be filed in appellate courts, but such documents must be signed by the supervising attorney;

(C) except when the assignment of counsel in the matter is required by any constitutional provision, statute or rule of this Court, assistance to indigent inmates of correctional institutions or other persons who request such assistance in preparing applications for and supporting documents for post-conviction relief. If there is an attorney of record in the matter, all such assistance must be supervised by the attorney of record, and all documents submitted to the Court on behalf of such a client must be signed by the attorney of record;

(D) each document or pleading must contain the name of the eligible law student who has participated in drafting it. If he or she participated in drafting only a portion of it, that fact may be mentioned.

**(g) Court Administration.** The Chief Judge, or one or more members of the Court appointed by the Chief Judge, shall act on behalf of the Court in connection with any function of this Court under this Rule. The Ad Hoc Committee on Attorney Admissions, Peer Review and Attorney Grievance shall assist the Court to administer this Rule including the review of applications and continuing eligibility for certification of programs, supervising attorneys, and students.

Effective Dec. 1, 1994. Amended effective April 15, 1996; April 15, 2002; April 15, 2007; April 15, 2010.

**Comments**

(1996) [D.2.] Deletion of reference to Trial Bar to conform to new Local Rules 1 through 4 of the Special Rules Governing the Admission and Practice of Attorneys, effective January 1, 1996.

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

## RULE 7. AD HOC COMMITTEE ON ATTORNEY ADMISSIONS, PEER REVIEW AND ATTORNEY GRIEVANCE

**(a) Establishment and Function.** There shall be an Ad Hoc Committee on Attorney Admissions, Peer Review and Attorney Grievance (the "Committee"). Subject to the direction of the Court, the Committee shall have the authority and perform the functions assigned by these Rules and shall otherwise assist the Court in the implementation and evaluation of these Rules.

**(b) Memberships.** The Committee shall consist of a group of law school professors and attorneys practicing within this District. The Chief Judge, or one or more members of the Court appointed by the Chief Judge, shall appoint the members of the Committee. The Chief Judge shall select the Committee Chair. Selections shall be made by Administrative Order entered by the Chief Judge. All persons appointed to the Committee shall serve at the pleasure of the Court.

Effective Dec. 1, 1994. Amended effective April 15, 1996; April 15, 2002; April 15, 2007; April 15, 2010.

**Comments**

(1996) Section A. and B.2. Deletion of references to District Trial Experience Committee to conform to new Local Rules 1 through 4 of the Special Rules Governing the Admission and Practice of Attorneys, effective January 1, 1996.

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

## RULE 8. EFFECTIVE DATES

These Rules shall become effective and shall apply to all members of and applicants for admission to the bar as of January 1, 1996.

Effective Dec. 1, 1994. Amended effective April 15, 1996.

**Comment**

(1996) Deletion of reference to Trial Bar to conform to new Local Rules 1 through 4 of the Special Rules Governing the Admission and Practice of Attorneys, effective January 1, 1996, and to prescribe uniform effective date for amendments to Special Rules Governing the Admission and Practice of Attorneys other than Rules 1 through 4, as approved effective April 15, 1996.

# RULES GOVERNING ATTORNEY DISCIPLINE

## PREFATORY STATEMENT

Nothing contained in these Rules shall be construed to deny the Court its inherent power to maintain control over the proceedings conducted before it nor to deny the Court those powers derived from statute, rule or procedure, or other rules of court. When alleged attorney misconduct is brought to the attention of the Court, whether by a Judge of the Court, any lawyer admitted to practice before the Court, any officer or employee of the Court, or otherwise, the Court may, in its discretion, dispose of the matter through the use of its inherent, statutory, or other powers; refer the matter to an appropriate state bar agency for investigation and disposition; refer the matter to the Ad Hoc Committee on Attorney Admissions, Peer Review and Attorney Grievance as hereinafter defined; or take any other action the Court deems appropriate. These procedures are not mutually exclusive.

Effective Dec. 1, 1994. Amended effective April 15, 2002; April 15, 2007.

Source

(1993) Ad Hoc Committee on Attorney Discipline.

**Comments**

(1993) The new Rules are intended to substitute for the existing Rules of Disciplinary Enforcement and Rules of Grievance Committee in their entirety.

(1996) These Rules have been amended to delete references to the Code of Professional Responsibility, and to correctly identify the Rules of Professional Conduct, Chapter 4 of the Rules Regulating The Florida Bar.

## RULE 1. STANDARDS FOR PROFESSIONAL CONDUCT

**(a)** Acts and omissions by an attorney admitted to practice before this Court, individually or in concert with any other person or persons, which violate the Rules of Professional Conduct, Chapter 4 of the Rules Regulating The Florida Bar shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney/client relationship. Attorneys practicing before this Court shall be governed by this Court's Local Rules, by the Rules of Professional Conduct, as amended from time to time, and, to the extent not inconsistent with the preceding, the American Bar Association Model Rules of Professional Conduct, except as otherwise provided by specific Rule of this Court. [Attorneys practicing before the Court of Appeals shall be governed by that Court's Local Rules and the American Bar Association Model Rules of Professional Conduct, except as otherwise provided by Rule of the Court].

**(b)** Discipline for misconduct defined in these Rules may consist of (1) disbarment, (2) suspension, (3) reprimand, (4) monetary sanctions, (5) removal from this Court's roster of attorneys eligible for practice before this Court, or (6) any other sanction the Court may deem appropriate.

Effective Dec. 1, 1994. Amended effective April 15, 1996; April 15, 2007; April 15, 2010.

**Comment**

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

## RULE 2. AD HOC COMMITTEE ON ATTORNEY ADMISSIONS, PEER REVIEW AND ATTORNEY GRIEVANCE

**(a) Establishment and Membership.** There shall be an Ad Hoc Committee on Attorney Admissions, Peer Review and Attorney Grievance (the "Committee"), as established under Rule 7 of the Special Rules Governing the Admission and Practice of Attorneys.

**(b) Purpose and Function.** The purpose and function of the Committee is to conduct, upon referral by the Court, a District Judge, Magistrate Judge or Bankruptcy Judge of the Court, investigations of alleged misconduct of any member of the Bar of this Court, or any attorney appearing and participating in any proceeding before the Court; to conduct, upon referral by the Court, a District Judge, Magistrate Judge or Bankruptcy Judge of the Court, inquiries and investigations into allegations of inadequate performance by an attorney practicing before the Court, as hereinafter provided; to conduct and preside over disciplinary hearings when appropriate and as hereinafter provided; and to submit written findings and recommendations to the Court or referring District Judge, Magistrate Judge or Bankruptcy Judge for appropriate action by the Court, except as otherwise described herein. The members of the Committee, while serving in their official capacities, shall be considered to be representatives of and acting under the powers and immunities of the Court, and shall enjoy all such immunities while acting in good faith and in their official capacities.

**(c) Jurisdiction and Powers.**

(1) The Court may, in its discretion, refer to the Committee any accusation or evidence of misconduct by way of violation of the disciplinary rules on the part of any member of the bar with respect to any professional matter before this Court for such investigation, hearing, and report as the Court deems advisable. [The Court of Appeals may, in addition to or instead of referring a disciplinary matter to its own Grievance Committee, refer a complaint to the Chief Judge of a District Court for referral to the District Court's Committee.] The Committee may, in its discretion, refer such matters to an appropriate state bar for preliminary investigation, or may request the Court to appoint special counsel to assist in or exclusively conduct such proceedings, as hereinafter provided in these Rules. (See Rule 11, infra.) The Court may also, in its discretion, refer to the Committee any matter concerning an attorney's failure to maintain an adequate level of competency in his or her practice before this Court, as hereinafter provided. (See Rule 8, infra.) The Committee may under no circumstances initiate and investigate such matters without prior referral by the Court.

(2) The Committee shall be vested with such powers as are necessary to conduct the proper and expeditious disposition of any matter referred by the Court, including the power to compel the attendance of witnesses, to take or cause to be taken the deposition of any witnesses, and to order the production of books, records, or other documentary evidence, and those powers described elsewhere in these Rules. The Chairman, or in his or her absence each member of the Committee, has the power to administer oaths and affirmations to witnesses.

Effective Dec. 1, 1994. Amended effective April 15, 2000; April 15, 2002; April 15, 2007; April 15, 2010.

**Comments**

(2000) Clarification of the authority and responsibilities of District Judges, Magistrate Judges and Bankruptcy Judges.
(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

## RULE 3. DISCIPLINARY PROCEEDINGS

**(a)** When misconduct or allegations of misconduct which, if substantiated, would warrant discipline on the part of an attorney admitted to practice before this Court shall come to the attention of a District Judge, Magistrate Judge or Bankruptcy Judge of this Court, whether by complaint or otherwise, the District Judge, Magistrate Judge or Bankruptcy Judge may, in his or her discretion, refer the matter to the Committee for investigation and, if warranted, the prosecution of formal disciplinary proceedings or the formulation of such other recommendation as may be appropriate. [The Court of Appeals may, in addition to or instead of referring a disciplinary matter to its own Grievance Committee, refer a complaint to the Chief Judge of a District Court for consideration.]

**(b)** Should the Committee conclude, after investigation and review, that a formal disciplinary proceeding should not be initiated against an attorney because sufficient evidence is not present or for any other valid reason, the Committee shall file with the Court a recommendation for disposition of the matter, whether by dismissal, admonition, deferral, or any other action. In cases of dismissal, the attorney who is the subject of the investigation need not be notified that a complaint has been submitted or of its ultimate disposition. All investigative reports, records, and recommendations generated by or on behalf of the Committee under such circumstances shall remain strictly confidential.

**(c)** If the Committee concludes from preliminary investigation, or otherwise, that probable cause exists, the Committee shall file with the Court a written report of its investigation, stating with specificity the facts supporting its conclusion, and shall apply to the Court for the issuance of an order requiring the attorney to show cause within thirty (30) days after service of that order why the attorney should not be disciplined. The order to show cause shall set forth the particular act or acts of conduct for which he or she is sought to be disciplined. A copy of the Committee's written report should be provided to the attorney along with the show cause order. The accused attorney may file with the Committee within fourteen (14) days of service of the order a written response to the order to show cause. After receipt of the attorney's response, if any, the Committee may request that the Court rescind its previously issued order to show cause. If the show cause order is not rescinded, and upon at least fourteen (14) days notice, the cause shall be set for hearing before the Committee. A record of all proceedings before the Committee shall be made, and shall be made available to the attorney. That record, and all other materials generated by or on behalf of the Committee or in relation to any disciplinary proceedings before the Committee, shall in all other respects remain strictly confidential unless and until otherwise ordered by the Court. In the event the attorney does not appear, the Committee may recommend summary action and shall report its recommendation forthwith to the Court. In the event that the attorney does appear, he or she shall be entitled to be represented by counsel, to present witnesses and other evidence on his or her behalf, and to confront and cross examine witnesses against him. Except as otherwise ordered by the Court or provided in these Rules, the disciplinary proceedings before the Committee shall be guided by the spirit of the Federal Rules of Evidence. Unless he or she asserts a privilege or right properly available to him or her under applicable federal or state law, the accused attorney may be called as a witness by the Committee to make specific and complete disclosure of all matters material to the charge of misconduct.

**(d)** Upon completion of a disciplinary proceeding, the Committee shall make a full written report to the Court. The Committee shall include its findings of fact as to the charges of misconduct, recommendations as to whether or not the accused attorney should be found guilty of misconduct justifying disciplinary actions by the Court, and recommendations as to the disciplinary measures to be applied by the Court. The report shall be accompanied by a transcript of the proceedings before the Committee, all pleadings, and all evidentiary exhibits. A copy of the report and recommendation shall also be furnished the attorney. The Committee's written report, transcripts of the proceedings, and all related materials shall remain confidential unless and until otherwise ordered by the Court.

**(e)** Upon receipt of the Committee's finding that misconduct occurred, the Court shall issue an order requiring the attorney to show cause why the Committee's recommendation should not be adopted by the Court. The Court may, after considering the attorney's response, by majority vote of the active District Judges thereof, adopt, modify, or reject the Committee's findings that misconduct occurred, and may either impose those sanctions recommended by the Committee or fashion whatever penalties provided by the rules which it deems appropriate.

Effective Dec. 1, 1994. Amended effective April 15, 2000; April 15, 2002; April 15, 2007; April 15, 2010.

**Comments**

(2000) Clarification of the authority and responsibilities of District Judges, Magistrate Judges and Bankruptcy Judges.

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

## RULE 4. ATTORNEYS CONVICTED OF CRIMES

**(a)** Upon the filing with this Court of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before the Court has been convicted in any court of the United States, or the District of Columbia, or of any state, territory, commonwealth, or possession of the United States of any serious crime as herein defined, the Court shall enter an order immediately suspending that attorney, whether the conviction resulted from a plea of guilty, nolo contendere, verdict after trial, or otherwise, and regardless of the pendency of any appeal. The suspension so ordered shall remain in effect until final disposition of the disciplinary proceedings to be commenced upon such conviction. A copy of such order shall be immediately served upon the attorney. Upon good cause shown, the Court may set aside such order when it appears in the interest of justice to do so.

**(b)** The term "serious" crime shall include any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction in which it was entered, involves false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or the use of dishonesty, or an attempt, conspiracy, or solicitation of another to commit a "serious crime."

**(c)** A certified copy of a judgment of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney based on the conviction.

**(d)** Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious crime, the Court may, in addition to suspending that attorney in accordance with the provisions of this Rule, also refer the matter to the Committee for institution of disciplinary proceedings in which the sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that a disciplinary proceeding so instituted will not be brought to final hearing until all appeals from the conviction are concluded.

**(e)** An attorney suspended under the provisions of this Rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed, but the reinstatement will not terminate any disciplinary proceedings then pending against the attorney, the disposition of which shall be determined by the Committee on the basis of all available evidence pertaining to both guilt and the extent of the discipline to be imposed.

Effective Dec. 1, 1994. Amended effective April 15, 2002; April 15, 2007; April 15, 2010.

**Comment**

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

## RULE 5. DISCIPLINE IMPOSED BY OTHER COURTS

**(a)** An attorney admitted to practice before this Court shall, upon being subjected to suspension or disbarment by a court of any state, territory, commonwealth, or possession of the United States, or upon being subject to any form of public discipline, including but not limited to suspension or disbarment, by any other court of the United States or the District of Columbia, promptly inform the Clerk of the Court of such action.

**(b)** Upon the filing of a certified copy of a judgment or order demonstrating that an attorney admitted to practice before this Court has been disciplined by another court as described above, this Court may refer the matter to the Committee for a recommendation for appropriate action, or may issue a notice directed to the attorney containing:

(1) A copy of the judgment or order from the other court, and

(2) An order to show cause directing that the attorney inform this Court, within thirty (30) days after service of that order upon the attorney, of any claim by the attorney predicated upon the grounds set forth in subsection E, supra, that the imposition of identical discipline by the Court would be unwarranted and the reasons therefor.

**(c)** In the event that the discipline imposed in the other jurisdiction has been stayed there, any reciprocal disciplinary proceedings instituted or discipline imposed in this Court shall be deferred until such stay expires.

**(d)** After consideration of the response called for by the order issued pursuant to subsection B, supra, or after expiration of the time specified in that order, the Court may impose the identical discipline or may impose any other sanction the Court may deem appropriate.

**(e)** A final adjudication in another court that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purpose of a disciplinary proceeding in this Court, unless the attorney demonstrates and the Court is satisfied that upon the face of the record upon which the discipline in another jurisdiction is predicated it clearly appears that:

(1) the procedure in that other jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(2) there was such an infirmity of proof establishing misconduct as to give rise to the clear conviction that this Court could not, consistent with its duty, accept as final the conclusion on that subject; or

(3) the imposition of the same discipline by this Court would result in grave injustice; or

(4) the misconduct established is deemed by this Court to warrant substantially different discipline.

**(f)** This Court may at any stage ask the Committee to conduct disciplinary proceedings or to make recommendations to the Court for appropriate action in light of the imposition of professional discipline by another court.

Effective Dec. 1, 1994. Amended effective April 15, 2002; April 15, 2007; April 15, 2010.

**Comment**

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

## RULE 6. DISCIPLINE ON CONSENT OR RESIGNATION IN OTHER COURTS

**(a)** Any attorney admitted to practice before this Court shall, upon being suspended or disbarred on consent or resigning from any other bar while an investigation into allegations of misconduct is pending, promptly inform the Clerk of the Court of such suspension or disbarment on consent or resignation.

**(b)** An attorney admitted to practice before this Court who shall be suspended or disbarred on consent or resign from the bar of any other court of the United States or the District of Columbia, or from the bar of any state, territory, commonwealth, or possession of the United States while an investigation into allegations of misconduct is pending shall, upon the filing with this Court of a

certified copy of the judgment or order accepting such suspension or disbarment on consent or resignation, cease to be permitted to practice before this Court and be stricken from the roll of attorneys admitted to practice before this Court.

Effective Dec. 1, 1994. Amended effective April 15, 2007; April 15, 2010; April 15, 2011.

**Comments**

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

(2011) Amended to apply to suspensions as well as disbarments or resignations.

## RULE 7. DISCIPLINE ON CONSENT WHILE UNDER DISCIPLINARY INVESTIGATION OR PROSECUTION

**(a)** Any attorney admitted to practice before this Court who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may consent to suspension or disbarment, but only by delivering to this Court an affidavit stating that the attorney desires to consent to suspension or disbarment and that:

> (1) the attorney's consent is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of so consenting;
>
> (2) the attorney is aware that there is a presently pending investigation or proceeding involving allegations that there exist grounds for the attorney's discipline the nature of which the attorney shall specifically set forth;
>
> (3) the attorney acknowledges that the material facts so alleged are true; and
>
> (4) the attorney so consents because the attorney knows that if charges were predicated upon the matters under investigation, or if the proceeding were prosecuted, the attorney could not successfully defend himself.

**(b)** Upon receipt of the required affidavit, this Court shall enter an order suspending or disbarring the attorney.

**(c)** The order suspending or disbarring the attorney on consent shall be a matter of public record. However, the affidavit required pursuant to the provisions of this Rule shall not be publicly disclosed or made available for use in any other proceeding except upon order of this Court.

Effective Dec. 1, 1994. Amended effective April 15, 2007; April 15, 2010; April 15, 2011.

**Comments**

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

(2011) Amended to apply to suspensions as well as disbarments or resignations.

## RULE 8. INCOMPETENCE AND INCAPACITY

**(a)** When it appears that an attorney for whatever reason is failing to perform to an adequate level of competence necessary to protect his or her client's interests, the Court may take any remedial action which it deems appropriate, including but not limited to referral of the affected attorney to appropriate institutions and professional personnel for assistance in raising the affected attorney's level of competency. The Court may also, in its discretion, refer the matter to the Committee for further investigation and recommendation.

**(b)** A referral to the Committee of any matter concerning an attorney's failure to maintain an adequate level of competency in his or her practice before this Court is not a disciplinary matter and does not implicate the formal procedures previously described in these Rules. Upon a referral of this sort, the Committee may request that the attorney meet with it informally and explain the circumstances which gave rise to the referral and may conduct such preliminary inquiries as it deems advisable. If after meeting with the attorney and conducting its preliminary inquiries the Committee determines that further attention is not needed, the Committee shall so notify the referring Judge and consider all inquiries terminated.

**(c)** If after meeting with the attorney and conducting its preliminary inquiries the Committee deems the matter warrants further action, it may recommend to the attorney that the attorney take steps to improve the quality of his or her professional performance and shall specify the nature of the recommended action designed to effect such improvement. The attorney shall be advised of any such recommendation in writing and be given the opportunity to respond thereto, to seek review or revocation of the recommendation, or to suggest alternatives thereto. The Committee may, after receiving such response, modify, amend, revoke, or adhere to its original recommendation. If the attorney agrees to comply with the Committee's final recommendation, the Committee shall report to the referring Judge that the matter has been resolved by the consent of the affected attorney. The Committee may monitor the affected attorney's compliance with its recommendation and may request the assistance of the Court in ensuring that the attorney is complying with the final recommendation.

**(d)** If the Committee finds that there is a substantial likelihood that the affected attorney's continued practice of law may result in serious harm to the attorney's clients pending completion of the remedial program, it may recommend that the Court consider limiting or otherwise imposing appropriate restrictions on the attorney's continuing practice before the Court. The Court may take any action which it deems appropriate to effectuate the Committee's recommendation.

**(e)** Any attorney who takes exception with the Committee's final recommendation shall have the right to have the Court, consisting of the active Judges thereof, consider the recommendation and the response of the affected attorney. The Court may, after considering the attorney's response, by majority vote of the active Judges thereof, adopt, modify, or reject the Committee's recommendations as to the necessary remedial actions and may take whatever actions it deems appropriate to ensure the attorney's compliance.

**(f)** All information, reports, records, and recommendations gathered, possessed, or generated by or on behalf of the Committee in relation to the referral of a matter concerning an attorney's failure to maintain an adequate level of competency in his or her practice before this Court shall be confidential unless and until otherwise ordered by the Court.

**(g)** Nothing contained herein and no action taken hereunder shall be construed to interfere with or substitute for any procedure relating to the discipline of any attorney as elsewhere provided in these Rules. Any disciplinary actions relating to the inadequacy of an attorney's performance shall occur apart from the proceedings of the Committee in accordance with law and as directed by the Court.

Effective Dec. 1, 1994. Amended effective April 15, 2002; April 15, 2007; April 15, 2010.

**Comment**

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

**RULE 9. REINSTATEMENT**

**(a) After Disbarment or Suspension.** An attorney suspended for three months or less shall be automatically reinstated at the end of the period of suspension upon the filing with this Court of an affidavit of compliance with the provisions of the order. An attorney suspended for more than three months or disbarred may not resume the practice of law before this Court until reinstated by order of the Court. An attorney seeking reinstatement after reciprocal disbarment or suspension must meet the same criteria as an attorney seeking original admission under Rule 1 of the Special Rules Governing the Admission and Practice of Attorneys, in that he or she must first seek and obtain reinstatement by The Florida Bar.

**(b) Time of Application Following Disbarment.** An attorney who has been disbarred after hearing or consent may not apply for reinstatement until the expiration of at least five years from the effective date of disbarment.

**(c) Hearing on Application.** Petitions for reinstatement by a disbarred or suspended attorney under this Rule shall be filed with the Chief Judge of this Court. The Chief Judge may submit the petition to the Court or may, in his or her discretion, refer the petition to the Committee which shall within thirty (30) days of the referral schedule a hearing at which the petitioner shall have the burden of establishing by clear and convincing evidence that he or she has the moral qualifications, competency, and learning in the law required for admission to practice before this Court and that his or her resumption of the practice of law will not be detrimental to the integrity and standing of the bar or the administration of justice, or subversive of the public interest. Upon completion of the hearing the Committee shall make a full report to the Court. The Committee shall include its findings of fact as to the petitioner's fitness to resume the practice of law and its recommendations as to whether or not the petitioner should be reinstated.

**(d) Conditions of Reinstatement.** If after consideration of the Committee's report and recommendation the Court finds that the petitioner is unfit to resume the practice of law, the

petition shall be dismissed. If after consideration of the Committee's report and recommendation the Court finds that the petitioner is fit to resume the practice of law, the Court shall reinstate him or her, provided that the judgment may make reinstatement conditional upon the payment of all or part of the costs of the proceedings, and on the making of partial or complete restitution to all parties harmed by the petitioner whose conduct led to the suspension or disbarment. Provided further, that if the petitioner has been suspended or disbarred for five years or more, reinstatement may be conditioned, in the discretion of the Court, upon the furnishing of proof of competency and learning in the law, which proof may include certification by the bar examiners of a state or other jurisdiction of the attorney's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment. Provided further that any reinstatement may be subject to any conditions which the Court in its discretion deems appropriate.

**(e) Successive Petitions.** No petition for reinstatement under this Rule shall be filed within one year following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person.

**(f) Deposit for Costs of Proceeding.** Petitions for reinstatement under this Rule shall be accompanied by a deposit in an amount to be set from time to time by the Court in consultation with the Committee to cover anticipated costs of the reinstatement proceeding.

Effective Dec. 1, 1994. Amended effective April 15, 2002; April 15, 2006; April 15, 2007; April 15, 2010.

**Comments**

(2006) Section A is amended to clarify that a petitioner seeking reinstatement after reciprocal disbarment or suspension must first be reinstated in Florida.

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.

## RULE 10. ATTORNEYS SPECIALLY ADMITTED

Whenever an attorney applies to be admitted or is admitted to this Court for purposes of a particular proceeding (pro hac vice), the attorney shall be deemed thereby to have conferred disciplinary jurisdiction upon this Court for any alleged misconduct arising in the course of or in the preparation for such a proceeding which is a violation of this Court's Local Rules and/or the Rules of Professional Conduct adopted by this Court as provided in these Rules.

Effective Dec. 1, 1994. Amended effective April 15, 2010.

## RULE 11. APPOINTMENT OF COUNSEL

Whenever, at the direction of the Court or upon request of the Committee, counsel is to be appointed pursuant to these rules to investigate or assist in the investigation of misconduct, to prosecute or assist in the prosecution of disciplinary proceedings, or to assist in the disposition of a reinstatement petition filed by a disciplined attorney, this Court, by a majority vote of the active

Judges thereof, may appoint as counsel any active member of the bar of this Court, or may, in its discretion, appoint the disciplinary agency of the highest court of the state wherein the Court sits, or other disciplinary agency having jurisdiction.

Effective Dec. 1, 1994. Amended effective April 15, 2002; April 15, 2010.

## RULE 12. SERVICE OF PAPER AND OTHER NOTICES

Service of an order to show cause instituting a formal disciplinary proceeding shall be made by personal service or by registered or certified mail addressed to the affected attorney at the address shown on the roll of attorneys admitted to practice before this Court or by email upon consent of the affected attorney to waive formal service. Service of any other papers or notices required by these Rules subsequent to the original order to show cause shall be deemed to have been made if such paper or notice is mailed to the attorney at the address shown on the roll of attorneys admitted to practice before the Court, or to counsel or the respondent's attorney at the address indicated in the most recent pleading or document filed by them in the course of any proceeding, or any other method permitted by Federal Rule of Civil Procedure 5(b).

Effective Dec. 1, 1994. Amended effective April 15, 2007; April 15, 2010; April 15, 2011.

### Comment

(2011) Amended to provide for service by email or other methods upon consent.

## RULE 13. DUTIES OF THE CLERK

**(a)** Upon being informed that an attorney admitted to practice before this Court has been convicted of any crime, the Clerk of the Court shall determine whether the court in which such conviction occurred has forwarded a certificate of such conviction to this Court. If a certificate has not been so forwarded, the Clerk of the Court shall promptly obtain a certificate and file it with this Court.

**(b)** Upon being informed that an attorney admitted to practice before this Court has been subjected to discipline by another court, the Clerk of the Court shall determine whether a certified or exemplified copy of the disciplinary judgment or order has been filed with this Court, and, if not, the Clerk of the Court shall promptly obtain a certified or exemplified copy of the disciplinary judgment or order and file it with this Court.

**(c)** Whenever it appears that any person who has been convicted of any crime or disbarred or suspended or censured or disbarred on consent by this Court is admitted to practice law in any other jurisdiction or before any other court, this Court shall, within fourteen (14) days of that conviction, disbarment, suspension, censure, or disbarment on consent, transmit to the disciplinary authority in such other jurisdiction, or for such other court, a certificate of the conviction or a certified or exemplified copy of the judgment or order of disbarment, suspension, censure, or disbarment on consent, as well as the last known office and residence addresses of the disciplined attorney.

**(d)** The Clerk of the Court shall, likewise, promptly notify the National Discipline Bank operated by the American Bar Association of any order imposing public discipline on any attorney admitted to practice before this Court.

Effective Dec. 1, 1994. Amended effective April 15, 2007; April 15, 2010.

**Comment**

(2010) Amended to conform tabulation to the style used in the federal rules of procedure.