**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**

**IN RE:** **Administrative Order 2011-82**

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

/

FILED by ___ D.C.
SEP 28 2011
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. – MIAMI

The Court's Ad Hoc Committee on Rules and Procedures has recommended that this Court amend the Local General Rules, including the Discovery Practices Handbook, the Magistrate Judge Rules, and the Special Rules Governing the Admission and Practice of Attorneys. In accordance with Fed. R. Civ. P. 83(a)(1) and Fed. R. Crim. P. 57(a)(1), it is hereby

**ORDERED** that the Clerk of the Court is directed to: (a) publish an abbreviated notice once in the Daily Business Review (in each edition published in Miami-Dade, Broward, and Palm Beach Counties, Florida) alerting the public of the opportunity to comment on the proposed rules; (b) post prominently on the Court's website this Order and the attached proposed rule amendments for the next 30 days; (c) provide notice to this Court's bar through the CM/ECF electronic noticing system; and (d) offer every person who files any papers in any action in this Court, and to give to anyone who so desires, a copy of this Order with the attached proposed rule amendments for the next 30 days.

**IT IS FURTHER ORDERED** that the Court will conduct an *en banc* public hearing on the proposed rule amendments on November 17, 2011, at 4 p.m. at the Paul G. Rogers Federal Building and United States Courthouse, 701 Clematis Street, Ceremonial Courtroom, West Palm Beach, Florida 33401. Those who desire to appear and offer oral comments on the proposed rule amendments at this hearing shall file written notice to that effect with the Clerk of the Court no later than five days prior to the hearing. Those who desire to offer only written comments on the proposed rule amendments should do so in accordance with the mechanism provided on the Court's website in connection with the publication of the proposed rule amendments.

**DONE AND ORDERED** in Chambers at Miami, Florida this 28th day of September, 2011.

**FEDERICO A. MORENO**
**CHIEF UNITED STATES DISTRICT JUDGE**

Copies furnished to:
Honorable Joel F. Dubina, Chief Judge, United States Court of Appeals for the Eleventh Circuit
All Southern District Judges and Magistrate Judges
James Gerstenlauer, Circuit Executive, Eleventh Circuit
Kevin Jacobs, Chair, Ad Hoc Committee on Rules and Procedures
All members of the Ad Hoc Committee on Rules and Procedures
Library

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

## GENERAL RULES

## RULE 1.1 SCOPE OF THE LOCAL RULES

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

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

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

~~**(d) Relationship to Prior Rules.** These Local Rules supersede all prior Local Rules promulgated by this Court or any Judge of this Court.~~

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

~~**(f) Applicability of Rules to Pro Se Litigants.**~~ 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 Dec. 1, 1994; amended effective April 15, 1996; April 15, 1997; April 15, 1998; April 15, 1999; April 15, 2000; April 15, 2001; April 15, 2002; April 15, 2003; April 15, 2004; April 15, 2005; April 15, 2006; April 15, 2007; April 15, 2008; April 15, 2009; April 15, 2010; Dec. 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

~~**(a)** This Court shall be in continuous session at Miami, Fort Lauderdale and West Palm Beach, Florida, for transacting business on all business days throughout the year.~~

~~**(b)** Sessions of this Court shall be held at the places enumerated above as required by Title 28, United States Code, Section 89, and as ordered by the Court.~~

~~**(c)** Miami–Dade County actions and proceedings shall be tried at Miami, Florida.~~

~~**(d)** Monroe County actions and proceedings shall be tried at Key West, Florida.~~

~~**(e)** Broward County actions and proceedings shall be tried at Fort Lauderdale, Florida.~~

~~**(f)** Palm Beach County actions and proceedings shall be tried at West Palm Beach, Florida.~~

~~**(g)** ~~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.

~~**(h)** ~~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 Dec. 1, 1994. Amended effective April 15, 2007; April 15, 2010; Dec. 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~~**

~~**(a)** Separate dockets for all actions and proceedings shall be maintained in the following categories:~~

~~(1) *Civil.*~~
~~(2) *Criminal.*~~

~~**(b)** Within each docket all actions or proceedings shall be numbered consecutively upon the filing of the first document.~~[Repealed]

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

**Authority**

(1993) Former Local Rule 3.

**Comments**

(1993) Renumbered per Model Rules.

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

(2011) Repealed.

**RULE 3.4 ~~ASSIGNMENT OF ACTIONS AND PROCEEDINGS~~**

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

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

~~**(c)** The assignment schedule shall be designed to prevent any litigant from choosing the Judge to whom an action or proceeding is to be assigned, and all attorneys shall conscientiously refrain from attempting to vary this Local Rule.~~

~~**(d)** The District is divided into five (5) Divisions: the Fort Pierce Division (Highlands, Indian River, Martin, Okeechobee and St. Lucie Counties); the West Palm Beach Division (Palm Beach County); the Fort Lauderdale Division (Broward County); the Miami Division (Miami-Dade County); and the Key West Division (Monroe County). Cases are assigned by the Automated Case Assignment System to provide for blind, random assignment of cases and to equitably distribute the District's case load. Each Judge in the District has chambers in one (1) of three (3) Divisions (Miami, Fort Lauderdale or West Palm Beach). A Judge with chambers in one (1) Division may be assigned a case with venue in another Division.~~[Repealed]

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

**Authority**

(1993) Former Local Rule 4.

**Comments**

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

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

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

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

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

**RULE 3.5 ~~RESPONSIBILITY FOR ACTIONS AND PROCEEDINGS~~**

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

Effective Dec. 1, 1994.

**Authority**

(1993) Former Local Rule 5.1.

**Comment**

(1993) Renumbered per Model Rules.

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

**RULE 3.6 ~~RECUSALS~~**

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

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

**Authority**

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

**Comment**

(1993) Renumbered per Model Rules.

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

**RULE 3.7 ~~REASSIGNMENT OF CASES DUE TO RECUSAL, TEMPORARY ASSIGNMENT OR EMERGENCY~~**

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

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

~~**(c)** Uncontested matters wherein the parties cannot be prejudiced through delay occasioned by the normal course of business shall not be deemed emergency matters for referral.~~

~~**(d)** The Clerk of the Court shall not have any discretion in determining the Judge to whom any such matter is assigned, nor shall the Clerk of the Court disclose the name of the Judge to attorneys or other persons until after the assignment has been made.~~[Repealed]

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

**Authority**

(1993) Former Local Rules 5.3 and 5.4.

**Comments**

(1993) Renumbered per Model Rules.

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

(2011) Repealed and relocated to the Court's 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* ~~F~~form available on the Court's website (www.flsd.uscourts.gov).~~following this Local Rule.~~

(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 Dec. 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; Dec. 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.

~~**SAMPLE FORM FOLLOWING RULE 5.1**~~

~~(1" from top of page, and centered,~~
~~begin title of Court)~~

~~**UNITED STATES DISTRICT COURT**~~
~~**SOUTHERN DISTRICT OF FLORIDA**~~

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

~~A.B.,~~

~~Plaintiff~~

~~vs.~~

~~C.D.,~~

~~Defendant.~~
~~/~~

~~**TITLE OF DOCUMENT**~~

~~Dated: Month, day, year Respectfully submitted,~~

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

**Certificate of Service**

**I hereby certify** that a true and correct copy of the foregoing was served by [specify method of service] on [date] on all counsel or parties of record on the Service List below.

Attorney Name

**SERVICE LIST**

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

Effective Dec. 1, 1994; amended effective April 15, 1999; April 15, 2000; April 15, 2006; April 15, 2007; April 15, 2009; April 15, 2011.

**RULE 5.5 ~~ELECTRONIC FILING THROUGH CM/ECF~~**

~~Documents shall be filed in compliance with the CM/ECF Administrative Procedures.~~[Repealed]

Effective April 15, 2003. Amended effective April 15, 2007.

**Comments**

(2003) Federal Rule of Civil Procedure 5(e) gives the federal courts the authority to permit electronic filing. This Local Rule only authorizes the Clerk of the Court to accept electronic filings, leaving the processes, procedures, standards, etc., to be established by subsequent order of the Court. This was done in order to give the Court the flexibility to adapt, refine, and redefine the process as it grows in acceptance. Relevant Administrative Orders will be available on the Court's Web site (http://www.flsd.uscourts.gov) as they are issued. Upon payment of copying costs, copies also may be obtained at any courthouse or intake counter in the District or by mailing a written request to the following address: E-Filing Administrator, Office of the Clerk, U.S. District Court, 301 North Miami Avenue, Room 321, Miami, Florida 33128.

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

(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~~*See* ~~sample forms following this Local Rule.~~forms available on the Court's website (www.flsd.uscourts.gov).

**(b) Hearings.**

~~No hearing will be held on motions unless set by the Court. Hearings shall be set by the Court under the following circumstances:~~

(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.

(~~2~~3) Discovery motions may be referred to and heard by a United States Magistrate Judge.

(~~3~~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 ~~file and~~ 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.

~~The "Notification of Ninety Days Expiring" shall be filed within fourteen (14) days of the expiration of the applicable ninety (90) day period.~~

**(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. ~~The practice of f~~Filing multiple motions for partial summary judgment ~~shall be~~ is prohibited, absent prior permission of the Court.

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

**(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 ~~thereafter~~.

**(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 Dec. 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; Dec. 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).

~~**SAMPLE FORM FOLLOWING RULE 7.1**~~

~~**CERTIFICATE OF GOOD FAITH CONFERENCE; CONFERRED BUT UNABLE TO RESOLVE ISSUES PRESENTED IN THE MOTION**~~

~~Pursuant to Local Rule 7.1(a)(3)(A), I hereby certify that counsel for the movant has conferred with all parties or non-parties who may be affected by the relief sought in this motion in a good faith effort to resolve the issues but has been unable to resolve the issues.~~

~~_____~~
~~Attorney Name~~

~~**ALTERNATIVELY,**~~

~~**CERTIFICATE OF GOOD FAITH CONFERENCE; UNABLE TO CONFER**~~

~~Pursuant to Local Rule 7.1(a)(3)(B), I hereby certify that counsel for the movant has made reasonable efforts to confer with all parties and non-parties who may be affected by the relief sought in the motion but has been unable to do so. The reasonable efforts made were specifically as follows:~~
~~_____~~
~~_____~~
~~_____~~.

~~_____~~
~~Attorney Name~~

**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.** A draft motion compliant with Local Rule 7.3(a)(1)–(8) must be served but not filed at least ~~within~~ thirty (30) days ~~after entry of the final judgment or order~~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 Dec. 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; Dec. 1, 2011.

## 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.

**RULE 7.5 ~~MOTIONS FOR SUMMARY JUDGMENT~~ [Renumbered: Local Rule 56.1]**

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

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

~~**(c) Statement of Material Facts.** The statement of material facts submitted either in support of or in opposition to a motion for summary judgment 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.

**(d) Effect of Failure to Controvert Statement of Undisputed Facts.** All material facts set forth in the movant's statement filed and supported as required by Local Rule 7.5(c) 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 Dec. 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.

**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.~~

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

In any action or proceeding ~~which~~ that a party believes is required to be heard by a three-judge district court, the words "Three-Judge District Court Requested" ~~or the equivalent~~ 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" ~~or the equivalent~~ on a pleading is a sufficient request under Title 28, United States Code, Section 2284.

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

**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.** ~~All attempts to curry favor with juries by fawning flattery, or pretend solicitude for their personal comfort are unprofessional. Suggestions of counsel, looking to the comfort or convenience of jurors, and propositions to dispense with argument, should be made to the Court out of the jury's hearing.~~ 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 Dec. 1, 1994. Amended effective April 15, 2002; April 15, 2007; April 15, 2010; April 15, 2011<u>; Dec. 1, 2011</u>.

## 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]**

~~Except as otherwise ordered by a Judge of this Court in a particular case or except pursuant to written stipulation of all affected parties, in all civil actions where a pleading contains a RICO cause of action pursuant to 18 U.S.C. §§ 1961-1968, Florida Statutes §§ 772.101-772.104, the party filing the RICO claim shall, within thirty (30) days of the filing (including filing upon removal or transfer), serve a RICO Case Statement.~~

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

> ~~**(a)** State whether the alleged unlawful conduct is in violation of 18 U.S.C. §§ 1962(a), (b), (c), and/or (d) or Florida Statutes §§ 772.101(1), (2), (3) and/or (4). If you allege violations of more than one (1) subsection of 18 U.S.C. § 1962 or Florida Statutes § 772.103, each must be treated or should be pled as a separate RICO claim.~~
>
> ~~**(b)** List each defendant, and separately state the misconduct and basis of liability of each defendant.~~
>
> ~~**(c)** List the wrongdoers, other than the defendants listed above, and separately state the misconduct of each wrongdoer.~~
>
> ~~**(d)** List the victims, and separately state when and how each victim was injured.~~
>
> ~~**(e)** Describe in detail the pattern of racketeering/criminal activity or collection of an unlawful debt for each RICO claim. A description of the pattern of racketeering/criminal activity shall:~~
>
> > ~~(1) separately list the predicate acts/incidents of criminal activity and the specific statutes violated by each predicate act/incident of criminal activity;~~

(2) separately state the dates of the predicate acts/incidents of criminal activity, the participants and a description of the facts surrounding each predicate act/incident of criminal activity;

(3) if the RICO claim is based on the predicate offenses of wire fraud, mail fraud, fraud in connection with a case under Title 11, United States Code, or fraud as defined under Florida Statutes Chapter 817, the "circumstances constituting fraud or mistake shall be stated with particularity." Federal Rule of Civil Procedure 9(b) (identify the time, place, and contents of the misrepresentation or omissions, and the identity of persons to whom and by whom the misrepresentations or omissions were made);

(4) state whether there has been a criminal conviction for any of the predicate acts/incidents of criminal activity;

(5) describe in detail the perceived relationship that the predicate acts/incidents of criminal activity bear to each other or to some external organizing principle that renders them "ordered" or "arranged" or "part of a common plan"; and
(6) explain how the predicate acts/incidents of criminal activity amount to or pose a threat of continued criminal activity.

**(f)** Describe in detail the enterprise for each RICO claim. A description of the enterprise shall:

(1) state the names of the individuals, partnerships, corporations, associations, or other entities constituting the enterprise;

(2) describe the structure, purpose, roles, function, and course of conduct of the enterprise;

(3) state whether any defendants are employees, officers, or directors of the enterprise;

(4) state whether any defendants are associated with the enterprise, and if so, how;

(5) explain how each separate defendant participated in the direction or conduct of the affairs of the enterprise;

(6) state whether you allege (A) that the defendants are individuals or entities separate from the enterprise, or (B) that the defendants are the enterprise itself, or (C) that the defendants are members of the enterprise; and

(7) if you allege any defendants to be the enterprise itself, or members of the enterprise, explain whether such defendants are perpetrators, passive instruments, or victims of the racketeering activity.

**(g)** State whether you allege, and describe in detail, how the pattern of racketeering/criminal activity and the enterprise are separate or have merged into one (1) entity.

**(h)** Describe the relationship between the activities and the pattern of racketeering/criminal activity. Discuss how the racketeering/criminal activity differs from the usual and daily activities of the enterprise, if at all.

**(i)** Describe what benefits, if any, the enterprise and each defendant received from the pattern of racketeering/criminal activity.

**(j)** Describe the effect of the enterprise's activities on interstate or foreign commerce.

**(k)** If the complaint alleges a violation of 18 U.S.C. § 1962(a) or Florida Statutes § 772.103(1), provide the following information:

(1) describe the amount of income/proceeds derived, directly or indirectly, from a pattern of racketeering/criminal activity, or through the collection of an unlawful debt;

(2) state who received the income/proceeds derived from the pattern of racketeering/criminal activity or through the collection of an unlawful debt and the date of that receipt;

(3) describe how and when such income/proceeds were invested or used in the acquisition of the establishment or operation of the enterprise;

(4) describe how you were directly injured by the investment or use; and

(5) state whether the same entity is both the liable "person" and the "enterprise" under the 18 U.S.C. § 1962(a) or Florida Statutes § 772.103(1) claim.

**(l)** If the complaint alleges a violation of 18 U.S.C. § 1962(b) or Florida Statutes § 772.103(2) provide the following information:

(1) describe in detail the acquisition or maintenance of any interest in or control of the enterprise;

(2) describe when the acquisition or maintenance of an interest in or control of the enterprise occurred;

(3) describe how you were directly injured by this acquisition or maintenance of an interest in or control of the enterprise; and

(4) state whether the same entity is both the liable "person" and the "enterprise" under the 18 U.S.C. § 1962(b) or Florida Statutes § 772.103(2) claim.

**(m)** If the complaint alleges a violation of 18 U.S.C. § 1962(c) or Florida Statutes § 772.103(3), provide the following information:

(1) state who is employed by or associated with the enterprise;

(2) describe what each such person did to conduct or participate in the enterprise's affairs;

(3) describe how you were directly injured by such person's conducting or participating in the enterprise's affairs; and

(4) state whether the same entity is both the liable "person" and the "enterprise" under the 18 U.S.C. § 1962(c) or Florida Statutes § 772.103(3) claim.

**(n)** If the complaint alleges a violation of 18 U.S.C. § 1962(d) or Florida Statutes § 772.103(4), describe in detail the conspiracy, including the identity of the co-conspirators, the object of the conspiracy, and the date and substance of the conspiratorial agreement.

**(o)** Describe the injury to business or property.

**(p)** Describe the nature and extent of the relationship between the injury and each separate RICO violation.

**(q)** For each claim under a subsection of 18 U.S.C. § 1962 or Florida Statutes § 772.103, list the damages sustained by reason of each violation, indicating the amount for which each defendants is liable.

**(r)** Provide any additional information you feel would be helpful to the Court in processing your RICO claim.

Effective April 15, 1998. Amended effective April 15, 2006; April 15, 2007; April 15, 2010.

**Comments**

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

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

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

(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 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 including provisions for disclosure or discovery of electronically stored information;

(C) Any agreements the parties reach for asserting claims of privilege or protection of trial preparation material after production;
(D) A limitation of the time to join additional parties and to amend the pleadings;

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

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

(G) 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;

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

(I) 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) Exchange Expert Witness Summaries/Reports.** Where expert opinion evidence is to be offered at trial, summaries of the expert's anticipated testimony or written expert reports (including lists of the expert's qualifications to be offered at trial, publications and writings, style of case and name of court and Judge in cases in which the expert has previously testified and the subject of that expert testimony, the substance of the facts and all opinions to which the expert is expected to testify, and a summary of the grounds for each opinion) shall be exchanged by the parties no later than ninety (90) days prior to the pretrial conference, or if no pretrial conference is held, ninety (90) days prior to the call of the calendar; provided, however, that if the expert opinion evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party's expert, then the expert summary or report for such evidence shall be served no later than thirty (30) days after the expert summary or report is served by the other party.~~

**(~~l~~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.

**(~~m~~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 Dec. 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; Dec. 1, 2011.

**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.

## 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 is currently a member in good standing and has been admitted for at least ten (10) years to a State Bar or the Bar of the District of Columbia; and

(B) be admitted to the Bar of this Court or demonstrate knowledge of the Local Rules of this Court by passing the attorney admissions examination; 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.

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.~~mediator declared an impasse.~~

(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~~Impasse~~.**

(1) *Trial upon Failure to Settle~~Impasse~~.* If the mediation conference fails to result in a settlement~~ends in an impasse~~, 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.

**(h) Forms for Use in Mediation.**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. ___ –CIV–[JUDGE/MAGISTRATE]

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CAPTION :

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**ORDER OF REFERRAL**

Trial having been set in this matter for _____, 20 ___, pursuant to Federal Rule of Civil Procedure 16 and Local Rule 16.2, it is hereby

ORDERED AND ADJUDGED as follows:

1. All parties are required to participate in mediation. The mediation shall be completed no later than sixty (60) days before the scheduled trial date.

2. Plaintiff's counsel, or another attorney agreed upon by all counsel of record and any unrepresented parties, shall be responsible for scheduling the mediation conference. The parties are encouraged to avail themselves of the services of any mediator on the List of Certified Mediators, maintained in the office of the Clerk of the Court, but may select any other mediator. The parties shall agree upon a mediator within fourteen (14) days from the date hereof. If there is no agreement, lead counsel shall promptly notify the Clerk of the Court in writing and the Clerk of the Court shall designate a mediator from the List of Certified Mediators, which designation shall be made on a blind rotation basis.

3. A place, date and time for mediation convenient to the mediator, counsel of record, and unrepresented parties shall be established. The lead attorney shall complete the form order attached and submit it to the Court.

4. Pursuant to Local Rule 16.2(e), the appearance of counsel and each party or representatives of each party with full authority to enter into a full and complete compromise and settlement is mandatory. If insurance is involved, an adjuster with authority up to the policy limits or the most recent demand, whichever is lower, shall attend.

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

6. At least fourteen (14) days prior to the mediation date, each party shall present to the mediator a confidential brief written summary of the case identifying issues to be resolved.

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

8. The mediator shall be compensated in accordance with the standing order of the Court entered pursuant to Local Rule 16.2(b)(6), or on such basis as may be agreed to in writing by the parties and the mediator selected by the parties. The cost of mediation shall be shared equally by the parties unless otherwise ordered by the Court. All payments shall be remitted to the mediator within forty-five (45) days of the date of the bill. Notice to the mediator of cancellation or settlement prior to the scheduled mediation conference must be given at least three (3) full business days in advance. Failure to do so will result in imposition of a fee for two (2) hours.

9. If a full or partial settlement is reached in this case, counsel shall promptly notify the Court of the settlement in accordance with Local Rule 16. 2(f), by the filing of 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.

10. Within seven (7) days following the mediation conference, the mediator shall file a Mediation Report indicating whether all required parties were present. The report shall also indicate whether the case settled (in full or in part), was adjourned, or whether the <u>case did not settle</u>~~mediator declared an impasse~~.

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

DONE AND ORDERED this ___ day of _____, 20 ___.

_____
U.S. District Judge

Copies furnished:
All counsel of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. ___ –CIV–[JUDGE/MAGISTRATE]

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CAPTION :

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**ORDER SCHEDULING MEDIATION**

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

ENTERED this ___ day of _____, 20 ___.

_____
U.S. District Judge

Copies furnished:

All counsel of record

Effective Dec. 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.

**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.").

**RULE 16.3 CALENDAR CONFLICTS**

~~When an attorney is scheduled to appear in two (2) courts at the same time and cannot arrange for other counsel to represent the clients' interests, the attorney shall give prompt written notice of the conflict to opposing counsel, the Clerk of each Court, and the presiding Judge of each case, if known, and shall present a copy of any prior written trial setting or other conflicting scheduling order. If the presiding Judge of the case cannot be identified, written notice of the conflict shall be given to the Chief Judge of the court having jurisdiction over the case, or to the Chief Judge's designee.~~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; Dec. 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 ~~complaint~~ pleading shall bear next to its caption the legend "~~Complaint~~ Class Action."

**(b)** The ~~complaint~~ 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.

~~**(d)** The foregoing provisions shall apply, with appropriate adaptations, to any counterclaim or crossclaim alleged to be brought for or against a class.~~

Effective Dec. 1, 1994. Amended effective April 15, 1996; April 15, 2001; April 15, 2004; April 15, 2007; April 15, 2010; Dec. 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 26.1 DISCOVERY AND DISCOVERY MATERIAL (CIVIL)**

**(a) ~~Initial Disclosures.~~** ~~Except in categories of proceedings specified in Federal Rule of Civil Procedure 26(a)(1)(E), or to the extent otherwise stipulated or directed by order, a party must comply with the disclosure obligations imposed under Federal Rule of Civil Procedure 26(a)(1), in the form prescribed by Federal Rule of Civil Procedure 26(a)(4).~~ **Generally.** The Discovery Practices Handbook in Appendix A should guide discovery.

**(b) Service and Filing of Discovery Material.** ~~In accordance with Federal Rule of Civil Procedure 5(d),~~ Initial and expert disclosures ~~under Federal Rule of Civil Procedure 26(a)(1) or (2),~~ 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 ~~shall be filed with the Court~~ contemporaneously with any motion ~~filed under these Local Rules by the party seeking to invoke the Court's relief~~.

**(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) ~~Timing~~ Completion of Discovery.**

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

~~(A) Leave of Court is not required under Federal Rule of Civil Procedure 30(a)(2)(C) if a party seeks to take a deposition before the time specified in Federal Rule of Civil Procedure 26(d) if the notice contains a certification, with supporting~~

~~facts, that the person to be examined is expected to leave the United States and be unavailable for examination in this country unless deposed before that time.~~

~~(B) A party may depose any person who has been identified as an expert whose opinions may be presented at trial. The deposition shall not be conducted until after the expert summary or report required by Local Rule 16.1(k) is provided.~~

~~(2) *When Discovery Must Be Completed.*~~ 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) ~~The presumptive limitation on the number of interrogatories (twenty-five (25) questions including all discrete subparts) which may be served without leave of Court or written stipulation, as prescribed by Federal Rule of Civil Procedure 33(a), shall apply to actions in this Court.~~ 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.

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

(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) ~~Certificate of Counsel.~~** ~~See Local Rule 7.1(a)(3) and Federal Rule of Civil Procedure 37(a)(2).~~

**~~(j)~~ 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.

**~~(k) Length of Depositions.~~** ~~Unless otherwise authorized by the Court or stipulated by the parties, a deposition is limited, under Federal Rule of Civil Procedure 30(d), to one (1) day of seven (7) hours.~~

Effective Dec. 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; Dec. 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]**

~~**(a)** The following abusive deposition conduct is prohibited:~~

> ~~(1) Objections or statements which have the effect of coaching the witness, instructing the witness concerning the way in which he or she should frame a response, or suggesting an answer to the witness.~~
>
> ~~(2) Interrupting examination for an off-the-record conference between counsel and the witness, except for the purpose of determining whether to assert a privilege.~~

(3) Instructing a deponent not to answer a question except when to preserve a privilege, to enforce a limitation on evidence directed by the Court, or to present a motion under Federal Rule of Civil Procedure 30(d)(4).

(4) Filing a motion for protective order or to limit examination without a substantial basis in law.

(5) Questioning that unfairly embarrasses, humiliates, intimidates, or harasses the deponent, or invades his or her privacy absent a clear statement on the record explaining how the answers to such questions will constitute, or lead to, competent evidence admissible at trial.

**(b)** Whenever it comes to the attention of the court that an attorney or party has engaged in abusive deposition conduct, the Court may appoint a special master under Federal Rule of Civil Procedure 53, at the expense of the attorney or person engaging in such conduct (or of both sides), to attend future depositions, exercise such authority, and prepare such reports as the Court shall direct.

**(c)** The Court, if it anticipates deposition abuse, may order that any deposition be taken at the courthouse or special master's office so that, at the request of any party, witness, or counsel, any dispute may be heard and decided immediately by the Court or special master.

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

Adopted effective April 15, 1996. Amended effective April 15, 2001; April 15, 2007; April 15, 2010.

## Authority

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

## Comments

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

(2001) Local Rule 30.1.A.3 is amended to conform to the December 2000 amendment of Federal Rule of Civil Procedure 30.

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

(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]**

~~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 original document of intrinsic value). If documents were obtained from a non-party via subpoena duces tecum or other means, the party producing the documents shall mark them with a distinctive alphanumeric prefix indicating their source. In the event a party produces documents as kept in the ordinary course of business, the producing party's obligation to sequentially number the pages applies only to the documents selected for copying by the receiving party.~~

~~Adopted April 15, 2007.~~

**~~Comment~~**

~~(2007) Added to conform to good practice.~~

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

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

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

> **~~(a)~~** ~~Counsel shall prepare all subpoenas for deposition and trial in civil cases. At the option of counsel, counsel may present them to the Clerk of the Court for issuance. Alternatively, counsel may issue subpoenas pursuant to Federal Rule of Civil Procedure 45, as amended effective December 1, 1991.~~
>
> **~~(b)~~** ~~Subpoenas for deposition in criminal cases may be issued only by order of Court.~~

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

**~~Authority~~**

~~(1993) Clerk's Office; Federal Rules of Civil Procedure 17 and 45.~~

**~~Comments~~**

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

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

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

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

**~~(a) Civil Cases.~~** ~~A jury for the trial of civil cases shall consist of at least six (6) persons.~~

**~~(b) Taxation of Costs.~~** 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 Dec. 1, 1994. Amended effective April 15, 2007; April 15, 2010; Dec. 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 Dec. 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; Dec. 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 67.1 ~~AUTHORIZED DEPOSITORY BANKS~~COURT REGISTRY AND WRITS OF GARNISHMENT**

**(a)** ~~Whenever attorneys, litigants or any other persons or entities are directed to deposit funds within the interest-bearing Court registry, such funds shall be placed by the Clerk of the Court with the Court-designated depository bank.~~

~~**(b)** The Court-designated depository bank shall comply with all applicable statutes, orders, rules and requirements of the Court.~~

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

~~**(d)**~~ 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.

~~**(e)** The Clerk of the Court shall assess a user's fee as promulgated by the Judicial Conference of the United States on deposits in the interest-bearing Court registry. Such fees shall be deducted at~~

~~disbursement and be deposited into a special fund established to reimburse the Judiciary for maintaining registry accounts.~~

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

~~**(g)**~~ **(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~~Section (c) of this Local Rule~~, 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."

**(~~h~~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 Dec. 1, 1994. Amended effective April 15, 2002; April 15, 2007; April 15, 2010; Dec. 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; ~~provided~~ 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 Dec. 1, 1994. Amended effective April 15, 2007; Dec. 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) By Attorneys.~~**

(~~1~~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.

(~~2~~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.

(~~3~~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:

(~~A~~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.

(~~B~~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.

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

(~~D~~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.

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

(~~F~~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.

(~~4~~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.

(~~5~~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.

(~~6~~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.

(~~7~~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:

(~~A~~1) Evidence regarding the occurrence or transaction involved.

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

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

(~~D~~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.

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

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

Effective Dec. 1, 1994. Amended effective April 15, 2007; April 15, 2010; Dec. 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 87.4 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 ~~Local Rule 3.4~~. 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)(~~3~~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; Dec. 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 88.2. ~~PETITIONS FOR WRITS OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 and 28 U.S.C. § 2254, MOTIONS PURSUANT TO 28 U.S.C. § 2255 AND CIVIL RIGHTS COMPLAINTS PURSUANT TO 42 U.S.C. § 1983 AND BIVENS~~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 ~~PERTAINING TO PUBLIC BUILDINGS~~**

**(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]**

~~**(a) Covered Offenses.** This Local 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 Local Rule as "covered offenses".~~

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

~~(1) Covered offenses which are committed within the boundaries of National Parks, Preserves, Historic Sites, or Government Reservations, including but not limited to military installations, and violations under the various Treaties and Wildlife Acts, for which collateral may be posted and forfeited in lieu of appearance by the person charged, together with amounts 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, 2000; April 15, 2006; April 15, 2007; April 15, 2010.~~

~~**Authority**~~

~~(1993) Former Local Rule 23.~~

~~**Comments**~~

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

~~(2000) Encompasses certain misdemeanors as well as petty offenses.~~

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

(2011) Repealed and merged into Local Rule 88.3.

**RULE 88.5 SPEEDY TRIAL REPORTS**

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

~~**(b) 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~~1~~) 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~~2~~) All excludable time as recorded on the docket on which there is conflict, including the applicable statutes or law.

(c~~3~~) 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~~4~~) 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]**

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

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

**Authority**

(1993) Former Local Rule 26.

**Comment**

(1993) Renumbered per Model Rules. Title 21, United States Code, Section 849 was repealed by Pub.L. 98-473, effective October 1, 1987. The Sentencing Reform Act requires the Sentencing Commission to specify sentences at or near the maximum term for offenders with prior convictions.

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

**RULE 88.8 PRESENTENCE INVESTIGATIONS**

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

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

~~**(c)** 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.~~

**(d<u>b</u>)** ~~Within fourteen (14) days of receipt of the report, counsel for the defendant and the government must communicate any objections, in writing, to each other and to the probation officer. The probation officer may meet with counsel and the defendant to discuss the objections and may conduct a further investigation and revise the report as appropriate.~~

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

**(f)** ~~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.~~

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

**(h<u>d</u>)** 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<u>; Dec. 1, 2011</u>.

**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.

<u>(2011) Amended to eliminate language duplicative of Federal Rule of Criminal Procedure 32.</u>

**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 cause~~s~~ 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.

**Comment**

(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.

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# 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), ~~Southern District of Florida,~~ 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. ~~*See* Local Rule 26.1(i) requiring a certificate that counsel have conferred before seeking judicial relief.~~

(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 courteous lawyer is normally expected to 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~~i) 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), absent written stipulation of the parties or leave of Court, the number of depositions being taken by each party is limited to ten (10).

**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. ~~See also Local Rule 30.1.~~

(3) *Other Restrictions on Deposition Conduct.* ~~Federal Rule of Civil Procedure 30(d)(1) and Local Rule 30.1, particularly the Local Rule, focus on proper and improper conduct by counsel at depositions.~~ 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.~~take careful note of the provisions of Local Rule 30.1, entitled "Sanctions for Abusive Deposition 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. Depositions of Experts.** A party may depose any person who has been identified as an expert whose opinions may be presented at trial. *See* Federal Rule of Civil Procedure 26(b)(4)(A). However, Local Rule 26.1(f)(1)(B) provides that an expert's deposition may not be conducted until after the expert summary or report required by Local Rule 16.1(k) is provided.~~

~~F~~**E. Sanctions.** ~~Local Rule 30.1 prohibits abusive~~Abusive conduct during deposition is prohibited and may be sanctioned~~and provides both monetary and procedural sanctions for such conduct~~. Examples of abusive ~~Prohibited~~ conduct include~~s~~ "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 ~~I~~if~~n the event~~ ~~the~~a party chooses to produce~~s~~ documents as they are kept in the ordinary course of business, the producing party~~'s~~ shall nevertheless ~~obligation to~~ sequentially number those pages that the receiving party selects for production.~~applies to the documents selected for production by the receiving party. When documents produced in response to a request for production exceed fifty pages, counsel for the party producing the documents shall affix Bates-stamped numbers to each page so that the documents produced can be readily identified and located.~~

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.

~~(11) *Answers to Expert Interrogatories.* The Southern District of Florida has adopted a formal procedure by which expert witness reports and summaries are exchanged ninety (90) days before the pretrial conference (or the calendar call, if no pretrial conference is to be held). See Local Rule 16.1(k). No deposition of an expert may be taken until the expert summary or report has been provided. See Local Rule 26.1(f)(1)(B). However, initial interrogatories seeking the names of expert witnesses and the substance of their opinions may still be served.~~

*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 Rule~~s~~ 26.1(h)~~ and 26.1(i)~~.** The procedures and guidelines governing the filing of motions to compel or for protective order are set forth in Local Rule 26.1(h). ~~Prior to filing such a motion, counsel is required to confer with opposing counsel and both must make a good faith effort to resolve the dispute by agreement. If no conference occurs, counsel for movant must specify in the required certificate what reasonable efforts were made to contact opposing counsel.~~

**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)(~~i~~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.

## 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)~~.G. 6.(b)~~, unless divulging the information would disclose the privileged information:

(1) the nature of the privilege claimed (including work product);

(2) if the privilege is being asserted in connection with a claim or defense governed by state law, the state privilege rule being invoked;

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

(4) if a document: its type (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; Dec. 1, 2011.

**~~APPENDIX C. FORM OF DEFENDANT'S WAIVER OF STATUTORY RIGHT TO SPEEDY TRIAL~~**

~~UNITED STATES DISTRICT COURT~~
~~SOUTHERN DISTRICT OF FLORIDA~~

~~Case No. ___ Cr (USDJ's last name/USMJ's last name)~~

~~UNITED STATES OF AMERICA,~~

~~Plaintiff,~~

~~vs.~~

~~John Doe and Jane Doe,~~

~~Defendants.~~

~~_____/~~

**~~DEFENDANT'S WAIVER OF STATUTORY RIGHT TO SPEEDY TRIAL~~**

~~I am the defendant named above. I have been advised of my statutory right to a speedy trial under Title 18 United States Code, Sections 3161–3174. I understand my right to a speedy trial under the federal statutes, yet I waive that right as permitted by the statute and SOUTHERN DISTRICT OF FLORIDA LOCAL RULE 88.5. I waive this right freely and voluntarily.~~

~~_____~~
~~Defendant~~

~~EXECUTED in Open Court in the Southern District of Florida, this ___ day of _____, 20 ___.~~

~~Respectfully submitted,~~

_____

~~Counsel for the Defendant~~

~~Effective April 15, 1999. Amended effective April 15, 2007.~~

## MAGISTRATE JUDGE RULES

### 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 ~~a~~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 ~~a~~the Magistrate Judge assigned to the case, by specific order of reference. Once the case has been assigned to ~~a~~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 April 15, 2007; Dec. 1, 2011.

Comments

(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~~, or within such other time as may be allowed by the Magistrate Judge or District Judge~~. 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.

## MAGISTRATE FORMS

## NOTICE OF RIGHT TO CONSENT TO DISPOSITION OF A CIVIL CASE BY A UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

In accordance with the provisions of 28 U.S.C. §636(c), you are hereby notified that the full-time Magistrate Judges of this District, in addition to their other duties, may, upon the consent of all the parties in a civil case, conduct any or all proceedings in a civil case, including a jury or non-jury trial, and order the entry of a final judgment. Copies of appropriate consent forms for this purpose are available from the Clerk of the Court.

You should be aware that your decision to consent, or not to consent, to the referral of your case to ~~a~~the ~~-~~Magistrate Judge assigned to the case for disposition is entirely voluntary and should be communicated solely to the Clerk of the Court. Only if all the parties to the case consent to the reference to ~~a~~the Magistrate Judge will either ~~a~~the District Judge or Magistrate Judge be informed of your decision.

Your opportunity to have your case disposed of by ~~a~~the Magistrate Judge is subject to the discretion of the Court. Accordingly, the District Judge to whom your case is assigned must approve the reference of the case to a Magistrate Judge for disposition, by Order of Reference.

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

Comment

(2011) Amended to clarify that consent applied only to the Magistrate Judge then assigned to the case.

**CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE JUDGE**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. _____

_____ )

Plaintiff, )

)

vs. )

_____ )

Defendant. )

_____ )

**CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE JUDGE**

In accordance with the provisions of 28 U.S.C. § 636(c), the parties to the above-captioned civil matter hereby waive their right to proceed before a District Judge of this Court and consent to have ~~a~~the Magistrate Judge currently assigned to the case [INSERT MAGISTRATE JUDGE'S NAME] conduct any and all further proceedings in the case (including the trial) and order the entry of judgment. The parties do not consent to the reassignment to any other or successor Magistrate Judge.

_____
Attorney Name (Bar Number)
Attorney E-mail Address
Firm Name
Street Address
City, State, Zip Code
Telephone: (xxx)xxx–xxxx
Facsimile: (xxx)xxx–xxxx
Attorneys for Plaintiff
[Party Name(s)]

_____
Attorney Name (Bar Number)
Attorney E-mail Address
Firm Name
Street Address
City, State, Zip Code
Telephone: (xxx)xxx–xxxx
Facsimile: (xxx)xxx–xxxx
Attorneys for Defendant
[Party Name(s)]

NOTE: Return this form to the Clerk of the Court only if it has been executed by all parties to the case.

_____

**ORDER OF REFERENCE**

IT IS HEREBY ORDERED that the above-captioned matter be referred to Magistrate Judge _____ for the conduct of all further proceedings and the entry of judgment in accordance with Title 28 United States Code Section 636(c) and the foregoing consent of the parties.

_____ _____

Date United States Magistrate Judge

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

**Comment**

(2006) The form for Consent to Proceed Before a United States Magistrate Judge is amended to reflect the amendments to Title 28, United States Code, Section 636(c), which eliminated appeals by consent of the parties to District Judges.

(2011) Amended to clarify that consent applied only to the Magistrate Judge then assigned to the case.

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## SPECIAL RULES GOVERNING THE ADMISSION AND PRACTICE OF ATTORNEYS

### 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.

Comments

(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.