UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

ADMINISTRATIVE ORDER 2014-105

IN RE: AMENDMENTS TO THE LOCAL RULES

_____/

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

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

IT IS FURTHER ORDERED that the foregoing rule amendments shall take effect on December 1, 2014, and shall govern all proceedings thereafter commenced and, insofar as just and practicable, all proceedings then pending.

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

DONE AND ORDERED in Chambers at Miami, Miami-Dade County, Florida this 18th day of November, 2014.

K. MICHAEL MOORE
CHIEF UNITED STATES DISTRICT JUDGE

Copies furnished to:

Honorable Ed Carnes, Chief Judge, United States Court of Appeals for the Eleventh Circuit
All Southern District Judges and Magistrate Judges
James Gerstenlauer, Circuit Executive, Eleventh Circuit
Scott M. Dimond, Chair, Ad Hoc Committee on Rules and Procedures
All Members of the Ad Hoc Committee on Rules and Procedures
Library
Daily Business Review

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

GENERAL RULES

INTRODUCTORY STATEMENT

Members of the bar and the Court are proud of the long tradition of courteous practice in the Southern District of Florida. Indeed, it is a fundamental tenet of this Court that attorneys in this District be governed at all times by a spirit of cooperation, professionalism, and civility. For example, and without limiting the foregoing, it remains the Court's expectation that counsel will seek to accommodate their fellow practitioners, including in matters of scheduling, whenever reasonably possible and that counsel will work to eliminate disputes by reasonable agreement to the fullest extent permitted by the bounds of zealous representation and ethical practice.

RULE 1.1 SCOPE OF THE LOCAL RULES

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

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

Effective December 1, 1994. Amended effective April 15, 1996; April 15, 1997; April 15, 1998; April 15, 1999; April 15, 2000; April 15, 2001; April 15, 2002; April 15, 2003; April 15, 2004; April 15, 2005; April 15, 2006; April 15, 2007; April 15, 2008; April 15, 2009; April 15, 2010; December 1, 2011; December 1, 2014.

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.

(2014) Amended to include a statement regarding professional practice retained from the Southern District of Florida Discovery Practices Handbook, which has been eliminated.

RULE 5.4 FILINGS UNDER SEAL; DISPOSAL OF SEALED MATERIALS

(a) General Policy. Unless otherwise provided by law, Court rule, or Court order, proceedings in the United States District Court are public and Court filings are matters of public record. Where not so provided, a party seeking to file matters under seal and/or ex parte shall follow the procedures prescribed by this Local Rule and ~~pursuant to~~ Section 5A and 5K, as applicable, of the CM/ECF Administrative Procedures, which prohibit~~s~~ the electronic filing of, respectively, sealed and ex parte documents. In criminal matters, the procedures prescribed by this Local Rule and by the CM/ECF Administrative Procedures concerning the filing of ex parte documents shall only apply to cases in which a person already has been charged by criminal complaint, criminal information, or indictment.

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

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

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

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

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

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

(d) Procedure for Filing Ex Parte. A party submitting an ex parte filing shall:

(1) Include the words "ex parte" in the title of the motion and explain the reasons for ex parte treatment. Upon submission, unless the Court directs otherwise the ex-parte filing will be restricted from public view and the docket text appearing on the public docket will reflect only that a restricted filing has been made. Counsel need not serve motions filed ex parte and related documents unless and until the Court so orders.

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

(ed) Court Ruling.

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

(2) *Ex Parte Filings.* Access to ex parte motions and related filings will remain restricted unless the Court orders otherwise.

Effective April 15, 2000. Amended effective April 15, 2001; April 15, 2005; April 15, 2007; April 15, 2010; December 2, 2013; December 1, 2014.

Comments

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

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

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

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

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

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

(2014) Amended to clarify obligations in connection with ex parte filings.

Amendment to CM/ECF Administrative Procedures

5K. Ex parte Filings

All ex parte filings must be filed conventionally in conformity with Local Rule 5.4~~in the conventional manner and must not be filed electronically~~. At the time of filing, ex parte filings will appear on the docket as "restricted" with electronic access limited to the Court, but will thereafter be treated in the manner set forth in Local Rule 5.4.

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 that is filed and submitted via e-mail to the Court as prescribed by Section 3I(6) of the CM/ECF Administrative Procedures.

(3) *Pre-filing Conferences Required of Counsel.* Prior to filing any motion in a civil case, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, to involuntarily dismiss an action, for garnishment or other relief under Federal Rule of Civil Procedure 64, or otherwise properly filed ex parte under the Federal Rules of Civil Procedure and these Local Rules, or a petition to enforce or vacate an arbitration award, counsel for the movant shall confer (orally or in writing), or make reasonable effort to confer (orally or in writing), with all

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

(b) Hearings.

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

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

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

(4) With respect to:

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

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

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

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

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

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

(c) Memorandum of Law. Each party opposing a motion shall serve an opposing memorandum of law no later than fourteen (14) days after service of the motion. Failure to do so may be deemed sufficient cause for granting the motion by default. The movant may, within seven (7) days after service of an opposing memorandum of law, serve a reply memorandum in support of the motion, which reply memorandum shall be strictly limited to rebuttal of matters raised in the memorandum in opposition without reargument of matters covered in the movant's initial memorandum of law. No further or additional memoranda of law shall be filed without prior leave of Court. All materials in support of any motion, response, or reply, including affidavits and declarations, shall be served with the filing.

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

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

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

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

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

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

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

Effective December 1, 1994. Amended effective April 15, 1996; April 15, 1997; April 15, 2000; April 1, 2004; April 15, 2005; April 15, 2006; April 15, 2007; April 15, 2009; April 15, 2010; April 15, 2011; December 1, 2011; December 1, 2014.

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).

(2014) Amended to instruct practitioners to submit proposed orders by email. Amended to add motions for garnishment, ex parte motions, and petitions to enforce or vacate an arbitration award as filings not subject to pre-filing conferral, and to require counsel to identify the date, time, and manner of each unsuccessful attempt to meet and confer. Amended to provide that a request for oral argument be included within a motion or opposing memorandum rather than being filed as a separate document.

RULE 16.2 COURT ANNEXED MEDIATION

(a) General Provisions.

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

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

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

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

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

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

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

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

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

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

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

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

(E) have substantial experience as a mediator.

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

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

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

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

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

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

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

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

(1) Habeas corpus cases;

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

(3) Social Security cases;

(4) Civil forfeiture matters;

(5) IRS summons enforcement actions;

(6) Land condemnation cases;

(7) Default proceedings;

(8) Student loan cases;

(9) Naturalization proceedings filed as civil actions;

(10) Statutory interpleader actions;

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

(12) Letters rogatory; and

(13) Registration of foreign judgments.

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

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

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

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

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

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

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

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

(e) Party Attendance Required. Unless ~~otherwise~~ excused in writing by the presiding Judge ~~in writing,~~ all parties~~, corporate representative,~~ and ~~any other~~ required claims professionals (*e.g.*, insurance adjusters~~, etc.~~)~~,~~ shall be physically present at the mediation conference (*i.e.*, in person if the party is a natural person or by personal attendance of a corporate representative if the party is an entity) 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 representative shall not be solely the public entity's counsel (or firm) of record, however, the representative may be the public entity's in-house counsel where another counsel of record for the public entity is also present. In cases where the in-house counsel is counsel of record, that counsel and another representative may act as duly authorized representatives of the public entity. In cases where the parties include a public entity and/or individuals who were or are employed by a public entity or elected officials of a public entity, such individual parties do not need to attend the mediation conference if all claims asserted against the individuals are covered by insurance or by an indemnification from the public entity for purposes of mediation.

Notwithstanding the foregoing, counsel representing the individual defendants shall provide the individual defendants with notice of the mediation conference and the individual defendants shall have the right to attend the mediation conference. The mediator shall report non-attendance ~~and may recommend that~~to the Court ~~enter sanctions for non attendance~~. Failure to comply with the attendance or settlement authority requirements may subject a party to sanctions by the Court.

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

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

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

(g) Trial upon Failure to Settle.

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

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

Effective December 1, 1994. Amended effective April 15, 1996; April 15, 1997; April 15, 1999; April 15, 2004; April 15, 2005; April 15, 2007; April 15, 2009; April 15, 2010; December 1, 2011; December 3, 2012; December 1, 2014.

Comments

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

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

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

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

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

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

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

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

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

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

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

(2009) Local Rule 16.2.B.3 is amended to prescribe new qualifications for certification as a mediator in this District. Local Rule 16.2.D.1(b) is amended to clarify procedure for mediator

selection by agreement of the parties or for mediator designation by the Clerk of the Court when the parties are unable to agree on a mediator.

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

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

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

(2014) Amended to clarify parties' obligations regarding personal attendance at a mediation conference.

RULE 26.1 DISCOVERY AND DISCOVERY MATERIAL (CIVIL)

(a) Generally. ~~The Discovery Practices Handbook in Appendix A should guide discovery~~. Parties may stipulate in writing to modify any practice or procedure governing discovery hereunder unless doing so would violate a Court-ordered deadline, obligation, or restriction.

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

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

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

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

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

(g) Interrogatories and Production Requests.

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

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

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

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

> (i) The attorney asserting the privilege shall in the objection to the interrogatory or document demand, or subpart thereof, identify the nature of the privilege (including work product) which is being claimed and if the privilege is being asserted in connection with a claim or defense governed by state law, indicate the state's privilege rule being invoked; and
>
> (ii) The following information shall be provided in the objection, unless divulgence of such information would cause disclosure of the allegedly privileged information:
>
> > (a) For documents or electronically stored information, to the extent the information is readily obtainable from the witness being deposed or otherwise: (1) the type of document (e.g., letter or memorandum) and, if electronically stored information, the software application used to create it (e.g., MS Word, MS Excel Spreadsheet); (2) general subject matter of the document or electronically stored information; (3) the date of the document or electronically stored information; and (4) such other information as is sufficient to identify the document or electronically stored information for a subpoena duces tecum, including, where appropriate, the author, addressee, and any other recipient of the document or electronically stored information, and, where not apparent, the relationship of the author, addressee, and any other recipient to each other;
> >
> > (b) For oral communications: (1) the name of the person making the communication and the names of persons present while the communication was made and, where not apparent, the relationship of the persons present to the person making the communication; (2) the date and the place of communication; and (3) the general subject matter of the communication.

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

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

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

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

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

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

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

(6) The documents, electronically stored information, or things should be referenced to 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. The party producing documents in response to a request for production 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.

(7) Each page of any document produced in a non-electronic format must be individually identified by a sequential number that will allow the document to be identified but that does not impair review of the document.

(h) Invocation of Privilege During Depositions.

(1) Where a claim of privilege is asserted during a deposition and information is not provided on the basis of such assertion, upon request the attorney or deponent asserting the privilege shall state the specific nature of the privilege being claimed

unless divulgence of such information would cause disclosure of privileged information,

(2) After a claim of privilege has been asserted, unless divulgence of requested information would cause disclosure of privileged information, the attorney or party seeking disclosure shall have reasonable latitude during the deposition to question the witness to establish other relevant information concerning the assertion of the privilege, including: (A) the applicability of the particular privilege being asserted; (B) circumstances that may constitute an exception to the assertion of the privilege; (C) circumstances that may result in the privilege having been waived; (D) circumstances that may overcome a claim of qualified privilege; (E) for claims of privilege pertaining to documents or electronically stored information: (i) 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); (ii) general subject matter of the document or electronically stored information; (iii) the date of the document or electronically stored information; and (iv) 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; and (F) for claim of privilege pertaining to oral communications: (i) 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 such persons to one another; (ii) the date and place of the communication; and (iii) the general subject matter of the communication.

(~~h~~i) 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. Neither this thirty (30) day period nor any other Court-ordered scheduling deadlines may be extended by stipulation.

(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.

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

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

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

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

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.

(2014) Amended to include provisions that the Court determined should be retained from the Southern District of Florida Discovery Practices Handbook, which has been eliminated, and clarifying that neither the 30-day deadline to file a motion to compel nor any other Court-ordered deadline may be extended by stipulation.

APPENDICES

~~APPENDIX A. DISCOVERY PRACTICES HANDBOOK~~

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

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

~~ORDERED as follows:~~

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

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

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

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

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

~~I. DISCOVERY IN GENERAL~~

~~A. Courtesy and Cooperation Among Counsel.~~

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

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

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

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

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

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

B. Filing of Discovery Materials.

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

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

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

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

D. Timeliness and Sanctions.

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

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

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

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

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

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

E. Completion of Discovery.

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

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

II. DEPOSITIONS

A. General Policy and Practice.

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

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

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

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

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

B. Objections.

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

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

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

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

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

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

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

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

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

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

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

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

D. Non stenographic Recording of Depositions.

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

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

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

b. Prior to the taking of any deposition, the witness shall be first duly sworn by an officer authorized to administer oaths, before whom the deposition is being taken. If the deposition is recorded other than stenographically, the officer designated by Federal Rule of Civil Procedure 28 shall state on the record (a) the officer's name and business address, (b) the date, time and place of the deposition, (c) the deponent's name, (d) administer the oath, and (e) identify all parties present. Items (a) through (c) must be repeated at the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. PRODUCTION OF DOCUMENTS, ELECTRONICALLY STORED INFORMATION AND THINGS

A. Preparation and Interpretation of Requests for Production.

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

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

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

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

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

B. Procedures Governing Manner of Production.

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

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

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

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

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

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

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

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

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

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

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

IV. INTERROGATORIES

A. Preparing and Answering Interrogatories.

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Specify the business records and materials to be produced in sufficient detail to permit the interrogating party to locate and identify the records and to ascertain the answer as readily as could the party from whom discovery is sought.

2. Make its records available in a reasonable manner (i.e., with tables, chairs, lighting, air conditioning or heat if possible, and the like) during normal business hours, or, in lieu of agreement on that, from 9:00 a.m. to 5:00 p.m., Monday through Friday.

3. Make available any electronically stored information or summaries thereof which it has.

4. Provide any relevant compilations, abstracts or summaries either in its custody or reasonably obtainable by it, not prepared in anticipation of litigation. If it has any documents or electronically stored information even arguably subject to this clause but which it declines to produce for some reason, it shall call the circumstances to the attention of the parties who may move to compel.

5. All of the actual clerical data extraction work should be done by the interrogating party unless agreed to the contrary, or unless, after actually beginning the effort, it appears that the task could be performed more efficiently by the producing party. In that event, the interrogating party may ask the Court to review the propriety of Federal Rule of Civil Procedure 33(d) election. In other words, it behooves the producing party to make the search as simple as possible, or the producing party may be required to answer the interrogatory in full.

See Local Rule 26.1(g)(1).

V. PRIVILEGE

A. Invocation of Privilege During Deposition.

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

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

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

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

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

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

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

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

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

(ii) For oral communications:

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

(2) the date and place of communication;

(3) the general subject matter of the communication.

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

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

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

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

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

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

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

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

VI. MOTIONS TO COMPEL OR FOR A PROTECTIVE ORDER

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

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

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

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

APPENDIX ~~B~~A. STANDARD FORM INTERROGATORIES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

PLAINTIFF X

Plaintiff,

vs.

DEFENDANT Y
Defendant.

_____ /

FIRST SET OF RULE 26.1(g) INTERROGATORIES

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

Definitions

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

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

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

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

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

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

(g) The words “pertain to” or “pertaining to” mean: relates to, refers to, contains, concerns, describes, embodies, mentions, constitutes, constituting, supports, corroborates, demonstrates, proves, evidences, shows, refutes, disputes, rebuts, controverts or contradicts.

(h) The term “third party” or “third parties” refers to individuals or entities that are not a party to this action.

(i) The term “action” shall mean the case entitled Plaintiff X v. Defendant Y, Case No. ___, pending in the Unites States District Court for the Southern District of Florida.

(j) The word “identify”, when used in reference to a document (including electronically stored information), means and includes the name and address of the custodian of the document, the location of the document, and a general description of the document, including (1) the type of document (e.g., letter or memorandum) and, if electronically stored information, the software application used to create it (e.g., MS Word or MS Excel Spreadsheet); (2) the general subject matter of the document or electronically stored information; (3) the date of the document or electronically stored information; (4) the author of the document or electronically stored information; (5) the addressee of the document or electronically stored information; and (6) the relationship of the author and addressee to each other.

Instructions

If you object to fully identifying a document, electronically stored information or oral communication because of a privilege, you must nevertheless provide the following information pursuant to Local Rule 26.1(g)(3)(B)(ii), unless divulging the information would disclose the privileged information:

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

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

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

(4) if a document: its type (e.g., letter or memorandum) and, if electronically stored information, the software application used to create it (e.g., MS Word or MS Excel Spreadsheet), and the custodian, location, and such other information sufficient to identify the material for a subpoena duces tecum or a production request, including where appropriate the author, the addressee, and, if not apparent, the relationship between the author and addressee;

(5) if an oral communication: the place where it was made, the names of the persons present while it was made, and, if not apparent, the relationship of the persons present to the declarant; and

(6) the general subject matter of the document, electronically stored information or oral communication.

You are under a continuous obligation to supplement your answers to these interrogatories under the circumstances specified in Federal Rule of Civil Procedure 26(e).

INTERROGATORIES

1. Please provide the name, address, telephone number, place of employment and job title of any person who has, claims to have or whom you believe may have knowledge or information pertaining to any fact alleged in the pleadings (as defined in Federal Rule of Civil Procedure 7(a)) filed in this action, or any fact underlying the subject matter of this action.

2. Please state the specific nature and substance of the knowledge that you believe the person(s) identified in your response to interrogatory no. 1 may have.

3. Please provide the name of each person whom you may use as an expert witness at trial.

4. Please state in detail the substance of the opinions to be provided by each person whom you may use as an expert witness at trial.

5. Please state each item of damage that you claim, whether as an affirmative claim or as a setoff, and include in your answer: the count or defense to which the item of damages relates; the category into which each item of damages falls, i.e. general damages, special or consequential damages (such as lost profits), interest, and any other relevant categories; the factual basis for each item of damages; and an explanation of how you computed each item of damages, including any mathematical formula used.

6. Please identify each document (including electronically stored information) pertaining to each item of damages stated in your response to interrogatory no. 5 above.

Effective April 15, 1998. Amended effective April 15, 2007; April 15, 2009; December. 1, 2011; December 1, 2014.

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RULE 67.1 COURT REGISTRY AND WRITS OF GARNISHMENT

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

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

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

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

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

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

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

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

Effective December 1, 1994. Amended effective April 15, 2002; April 15, 2007; April 15, 2010; December 1, 2011~~.~~; December 1, 2014.

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.

(2014) Amended to eliminate language requiring the deposit of monies for the payment of attorney's fees in the non-interest bearing registry of the Court to correspond to the amendment to Florida Statute Section 77.28.

RULE 88.9 MOTIONS IN CRIMINAL CASES

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

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

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

In addition, at the time of filing motions in criminal cases, counsel for the moving party shall file with the Clerk of the Court a statement certifying either: (1) that counsel have conferred in a good faith effort to resolve the issues raised in the motion and have been unable to do so; or (2) that counsel for the moving party has made reasonable effort (which shall be identified with specificity in the statement) to confer with the opposing party but has been unable to do so. This requirement to confer shall not apply to ex parte filings.

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

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

Effective Dec. 1, 1994. Amended effective April 15, 1996; April 15, 1997; April 15, 1998; April 15, 2003; April 15, 2007; April 15, 2010; December 1, 2014.

Authority

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

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

Comments

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

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

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

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

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

(2014) Amended to clarify counsels' pre-filing conferral obligations in connection with ex parte filings.

ADMIRALTY AND MARITIME RULES

RULE B. ATTACHMENT AND GARNISHMENT: SPECIAL PROVISIONS

(1) Definition of "Not Found Within the District." In an action in personam filed pursuant to Supplemental Rule B, a defendant shall be considered "not found within the District" if the defendant cannot be served within the Southern District of Florida with the summons and complaint as provided by Federal Rule of Civil Procedure 4(e~~d~~)(1) or~~,~~ (2), (g~~3~~), or h(~~61~~).

(2) Verification of Complaint Required. In addition to the specific requirements of Local Admiralty Rule A(5), whenever verification is made by the plaintiff's attorney or agent, and that person does not have personal knowledge, or knowledge acquired in the ordinary course of business of the facts alleged in the complaint, the attorney or agent shall also state the circumstances which make it necessary for that person to make the verification, and shall indicate the source of the attorney's or agent's information.

(3) Pre-seizure Requirements. In accordance with Supplemental Rule B(1), the process of attachment and garnishment shall issue only after one of the following conditions has been met:

(a) *Judicial Review Prior to Issuance.* Except as provided in Local Admiralty Rule B(3)(b), a judicial officer shall first review the verified complaint, and any other relevant case papers, prior to the Clerk of the Court issuing the requested process of attachment and garnishment. No notice of this pre-arrest judicial review is required to be given to any person or prospective party.

If the Court finds that probable cause exists to issue the process of attachment and garnishment, plaintiff shall prepare an order for the Court's signature directing the Clerk of the Court to issue the process. This order shall substantially conform in format and content to the form identified as SDF 1 in the Appendix of these Local Admiralty Rules.

Upon receipt of the signed order, the Clerk of the Court shall file the order and, in accordance with Local Admiralty Rule B(3)(c), issue the summons and process of attachment and garnishment. Thereafter the Clerk of the Court may issue supplemental process without further order of Court.

(b) *Certification of Exigent Circumstances.* If the plaintiff files a written certification that exigent circumstances make review by the Court impracticable, the Clerk of the Court shall, in accordance with Local Admiralty Rule B(3)(c), issue a summons and the process of attachment and garnishment.

Thereafter at any post-attachment proceedings under Supplemental Rule E(4)(f) and Local Admiralty Rule B(5), plaintiff shall have the burden of showing that probable cause existed for the issuance of process, and that exigent circumstances existed which precluded judicial review in accordance with Local Admiralty Rule B(3)(a).

(c) *Preparation and Issuance of the Process of Attachment and Garnishment.* Plaintiff shall prepare the summons and the process of attachment and garnishment, and deliver the documents to the Clerk of the Court for filing and issuance.

The process of attachment and garnishment shall substantially conform in format and content to the form identified as SDF 2 in the Appendix to these Local Admiralty Rules, and shall in all cases give adequate notice of the postseizure provisions of Local Admiralty Rule B(5).

(d) *Marshal's Return of Service.* The Marshal shall file a return of service indicating the date and manner in which service was perfected and, if service was perfected upon a garnishee, the Marshal shall indicate in the return the name, address, and telephone number of the garnishee.

(4) Notification of Seizure to Defendant. In an in personam action under Supplemental Rule B, it is expected that plaintiff and/or garnishee will initially attempt to perfect service of the notice in accordance with Supplemental Rule B(2)(a) or (b).

However, when service of the notice cannot be perfected in accordance with Supplemental Rule B(2)(a) or (b), plaintiff and/or garnishee should then attempt to perfect service in accordance with Supplemental Rule B(2)(c). In this regard, service of process shall be sufficiently served by leaving a copy of the process of attachment and garnishment with the defendant or garnishee at his or her usual place of business.

(5) Post-attachment Review Proceedings.

(a) *Filing a Required Answer.* In accordance with Supplemental Rule E(4)(f), any person who claims an interest in property seized pursuant to Supplemental Rule B must file an answer and claim against the property. The answer and claim shall describe the nature of the claimant's interest in the property, and shall articulate reasons why the seizure should be vacated. The claimant shall serve a copy of the answer and claim upon plaintiff's counsel, the Marshal, and any other party to the litigation. The claimant shall also file a Certificate of Service indicating the date and manner in which service was perfected.

(b) *Hearing on the Answer and Claim.* The claimant may be heard before a judicial officer not less than seven (7) days after the answer and claim has been filed and service has been perfected upon the plaintiff.

If the Court orders that the seizure be vacated, the judicial officer shall also award attorney's fees, costs and other expenses incurred by any party as a result of the seizure.

If the seizure was predicated upon a showing of "exigent circumstances" under Local Admiralty Rule B(3)(b), and the Court finds that such exigent circumstances did not exist, the judicial officer shall award attorney's fees, costs, and other expenses incurred by any party as a result of the seizure.

(6) Procedural Requirement for the Entry of Default. In accordance with Federal Rule of Civil Procedure 55, a party seeking the entry of default in a Supplemental Rule B action shall file a motion and supporting legal memorandum and shall offer other proof sufficient to demonstrate that due notice of the action and seizure have been given in accordance with Local Admiralty Rule B(4).

Upon review of the motion, memorandum, and other proof, the Clerk of the Court shall, where appropriate, enter default in accordance with Federal Rule of Civil Procedure 55(a). Thereafter, the Clerk of the Court shall serve notice of the entry of default upon all parties represented in the action.

(7) Procedural Requirements for the Entry of Default Judgment. Not later than thirty (30) days following notice of the entry of default, the party seeking the entry of default judgment shall file a motion and supporting legal memorandum, along with other appropriate exhibits to the motion sufficient to support the entry of default judgment. The moving party shall serve these papers upon every other party to the action and file a Certificate of Service indicating the date and manner in which service was perfected.

A party opposing the entry of default judgment shall have seven (7) days from the receipt of the motion to file written opposition with the Court. Thereafter, unless otherwise ordered by the Court, the motion for the entry of default judgment will be heard without oral argument.

If the Court grants the motion and enters the default judgment, such judgment shall establish a right on the part of the party or parties in which favor it is entered. The judgment shall be considered prior to any claims of the owner of the defendant property against which it is entered, and to the remnants and surpluses thereof; providing, however, that such a judgment shall not establish any entitlement to the defendant property having priority over non-possessory lien claimants. Obtaining a judgment by default shall not preclude the party in whose favor it is entered from contending and proving that all, or any portion, of the claim or claims encompassed within the judgment are prior to any such non-possessory lien claims.

Effective Dec. 1, 1994. Amended effective April 15, 1998; April 15, 2000; April 15, 2007; April 15, 2010; April 15, 2011; December 1, 2014.

Advisory Notes

(1993) **(a) General Comments.** Local Admiralty Rule B is intended to enhance and codify the local procedural requirements uniquely applicable to actions of maritime attachment and garnishment under Supplemental Rule B. Other local procedural requirements involving actions in rem and quasi in rem proceedings can be found in Local Admiralty Rule E.

When read in conjunction with Supplemental Rule B and E, Local Admiralty Rules B and E are intended to provide a uniform and comprehensive method for constitutionally implementing the long-standing and peculiar maritime rights of attachment and garnishment. The Committee believes that Local Admiralty Rules B and E correct the deficiencies perceived by some courts to exist in the implementation of this unique maritime provision. *Schiffahartsgesellschaft Leonhardt*

& Co. v. A. Bottacchi S.A. de Navegacion, 552 F.Supp. 771 (S.D.Ga.1982); *Cooper Shipping Company v. Century 21,* 1983 A.M.C. 244 (M.D.Fla.1982); *Crysen Shipping Co. v. Bona Shipping Co., Ltd.,* 553 F.Supp. 139 (N.D.Fla.1982); and *Grand Bahama Petroleum Co. v. Canadian Transportation Agencies, Ltd.,* 450 F.Supp. 447 (W.D.Wa.1978), discussing Supplemental Rule (B) proceedings in light of *Fuentes v. Shevin,* 407 U.S. 67, [92 S.Ct. 1983, 32 L.Ed.2d 556] (1972) and *Sniadach v. Family Finance Corp.,* 395 U.S. 337, [89 S.Ct. 1820, 23 L.Ed.2d 349] (1969).

Although the Committee is aware of the Eleventh Circuit's decision in *Schiffahartsgesellschaft Leonhardt & Co. v. A. Bottacchi S.A. de Navegacion,* 732 F.2d 1543 (1984), the Committee believes that from both a commercial and legal viewpoint, the better practice is to incorporate the pre-seizure scrutiny and post-attachment review provisions provided by this Local Admiralty Rule. These provisions protect the rights of any person claiming an interest in the seized property by permitting such persons to file a claim against the property, and thereafter permitting a judicial determination of the propriety of the seizure.

(b) Comments on Specific Sections. Local Admiralty Rule B(1) codifies the governing law of this Circuit as set forth in *LaBanca v. Ostermunchner,* 664 F.2d 65 (5th Cir., Unit B, 1981).

Local Admiralty Rule B(2) codifies the verification requirements of Supplemental Rule B(1) and former Local Admiralty Rule 8.

B(3) incorporates the "pre-seizure" and "exigent circumstances" provisions of the August 1, 1985, revision to Local Supplemental Rule B(1). In the routine case, the rule contemplates that issuance of the process of attachment and garnishment be preconditioned upon the exercise of judicial review. This ensures that plaintiff can make an appropriate maritime claim, and present proof that the defendant cannot be found within the District. The rule also contemplates that upon a finding of probable cause, a simple order directing the Clerk of the Court to issue the process shall be entered by the Court.

This rule also incorporates the "exigent circumstances" provision of Supplemental Rule B(1). Read in conjunction with Local Admiralty Rule B(5)(b), this rule requires that the plaintiff carry the burden of proof at any post-attachment proceedings to establish not only the prima facie conditions of a maritime attachment and garnishment action under Supplemental Rule B, but also that "exigent circumstances" precluded judicial review under Local Admiralty Rule B(3)(a). The Committee believes that this additional requirement will place upon plaintiff's counsel a burden of extra caution before invoking the "exigent circumstance" provision of the rule.

Local Admiralty Rule B(5) establishes the post-attachment review provisions potentially applicable to maritime attachment and garnishment proceedings. These proceedings may be invoked by any person claiming an interest in the seized property.

(2000) Local Admiralty Rule B(7) is amended to give the party seeking entry of a default judgment up to thirty days, rather than five days, to file a motion and supporting legal memorandum.

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

(2014) Local Admiralty Rule (B)(1) amended to update references to the Federal Rules of Civil Procedure.

RULE E. ACTIONS IN REM AND QUASI IN REM: GENERAL PROVISIONS

(1) Statement of Itemized Damages and Expenses Required. Every complaint in a Supplemental Rule B and C action shall state the amount of the debt, damages, or salvage for which the action is brought. In addition, the statement shall also specify the amount of any unliquidated claims, including attorneys' fees.

(2) Requirements and Procedures for Effecting Intervention. Whenever a vessel or other property is arrested or attached in accordance with any Supplemental Rule, and the vessel or property is in the custody of the United States Marshal, or duly authorized substitute custodian, any other person having a claim against the vessel or property shall be required to present their claim as indicated below:

(a) *Intervention of Right When No Sale of the Vessel or Property Is Pending.* Except as limited by Local Admiralty Rule E(2)(b), any person having a claim against a vessel or property previously arrested or attached by the Marshal may, as a matter of right, file an intervening complaint at any time before an order is entered by the Court scheduling the vessel or property for sale.

Coincident with the filing of an intervening complaint, the offering party shall prepare and file a supplemental warrant of arrest and/or a supplemental process of attachment and garnishment.

Upon receipt of the intervening complaint and supplemental process, the Clerk of the Court shall conform a copy of the intervening complaint and shall issue the supplemental process. Thereafter, the offering party shall deliver the conformed copy of the intervening complaint and supplemental process to the Marshal for execution. Upon receipt of the intervening complaint and supplemental process, the Marshal shall re-arrest or re-attach the vessel or property in the name of the intervening plaintiff.

Counsel for the intervening party shall serve a copy of the intervening complaint, and copies of all process and exhibits upon all other counsel of record, and shall thereafter file a certificate of service with the Clerk of the Court indicating the manner and date of service.

(b) *Permissive Intervention When the Vessel or Property Has Been Scheduled for Sale by the Court.* Except as indicated below, and subject to any other rule or order of this Court, no person shall have an automatic right to intervene in an action where the Court has ordered the sale of the vessel or property, and the date of the sale is set within twenty-one (21) days from the date the party moves for permission to intervene in accordance with this subsection. In such cases, the person seeking permission to intervene must:

(i) File a motion to intervene and indicate in the caption of the motion a request for expedited hearing when appropriate.

(ii) Include a copy of the anticipated intervening complaint as an exhibit to the motion to intervene.

(iii) Prepare and offer for filing a supplemental warrant of arrest and/or a supplemental process of attachment and garnishment.

(iv) Serve copies of the motion to intervene, with exhibits and proposed supplemental process upon every other party to the litigation.

(v) File a certificate of service indicating the date and manner of service.

Thereafter, the Court may permit intervention under such conditions and terms as are equitable to the interests of all parties; and if intervention is permitted, shall also direct the Clerk of the Court to issue the supplemental process.

Upon receipt of the order permitting intervention, the Clerk of the Court shall file the originally signed intervening complaint, conform a copy of the intervening complaint and issue the supplemental process.

Thereafter, the offering party shall deliver the conformed copy of the intervening complaint and supplemental process to the Marshal for execution. Upon receipt of the intervening complaint and supplemental process, the Marshal shall re-arrest or re-attach the vessel or property in the name of the intervening plaintiff.

Counsel for the intervening party shall also serve a copy of the intervening complaint, exhibits, and supplemental process upon every other party of record and shall thereafter file a Certificate of Service with the Clerk of the Court indicating the manner and date of service.

(3) Special Requirements for Salvage Actions. In cases of salvage, the complaint shall also state to the extent known, the value of the hull, cargo, freight, and other property salvaged, the amount claimed, the names of the principal salvors, and that the suit is instituted in their behalf and in behalf of all other persons associated with them.

In addition to these special pleading requirements, plaintiff shall attach as an exhibit to the complaint a list of all known salvors, and all persons believed entitled to share in the salvage. Plaintiff shall also attach a copy of any agreement of consortship available and known to exist among them collegially or individually.

(4) Form of Stipulation or Bonds. Except in cases instituted by the United States through information, or complaint of information upon seizures for any breach of the revenues, navigation, or other laws of the United States, stipulations or bonds in admiralty and maritime actions need not be under seal and may be executed by the agent or attorney of the stipulator or obligor.

(5) Deposit of Marshal's Fees and Expenses Required Prior to Effecting Arrest, Attachment and/or Garnishment.

(a) *Deposit Required Before Seizure.* Any party seeking the arrest or attachment of property in accordance with Supplemental Rule E shall deposit a sum with the Marshal sufficient to cover the Marshal's estimated fees and expenses of arresting and keeping the property for at least fourteen (14) days. The Marshal is not required to execute process until the deposit is made.

(b) *Proration of Marshal's Fees and Expenses Upon Intervention.* When one or more parties intervene pursuant to Local Admiralty Rule E(2)(a) or (b), the burden of advancing sums to the Marshal sufficient to cover the Marshal's fees and expenses shall be allocated equitably between the original plaintiff, and the intervening party or parties as indicated below:

> (i) Stipulation for the Allocation and Payment of the Marshal's Fees and Expenses. Immediately upon the filing of the intervening complaint, counsel for the intervening plaintiff shall arrange for a conference between all other parties to the action, at which time a good faith effort shall be made to allocate fees and expenses among the parties. Any resulting stipulation between the parties shall be codified and filed with the Court and a copy served upon the Marshal.
>
> (ii) Allocation of Costs and Expenses in the Event That Counsel Cannot Stipulate. The Court expects that counsel will resolve the allocation of costs and expenses in accordance with the preceding paragraph. In the event that such an arrangement cannot be made, the parties shall share in the fees and expenses of the Marshal in proportion to their claims as stated in the original and intervening complaints.

In order to determine the proportionate shares of each party, counsel for the last intervening plaintiff shall determine the total amounts claimed by each party. The individual claims shall be determined from the original and amended complaint, and all other intervening complaints subsequently accepted and processed by the Marshal in accordance with Local Admiralty Rule E(2)(a) or (b).

Thereafter, counsel for the last intervening plaintiff shall deliver to the Marshal a list which summarizes each party's claim, and the proportion which each party's claim bears to the aggregate claims asserted in the litigation, determined to the nearest one-tenth of one percentage point.

Upon receipt of this listing, the Marshal shall determine the total expenses incurred to date and shall estimate the expenses to be incurred during the next fourteen (14) days. For the purpose of making this calculation, the total fees and expenses shall be calculated from the date when continuous and uninterrupted arrest or attachment of the property began, and not prorated from the date a particular party's intervening complaint was filed.

The Marshal shall then apply the percentages determined in the listing, and shall compute the amount of the intervening party's initial deposit requirements. The Marshal shall also utilize this listing to compute any additional deposit requirements which may be necessary pursuant to Local Admiralty Rule E(5)(c).

The Marshal need not re-arrest or re-attach the vessel and/or property until the deposit is received from the intervening plaintiff.

(c) *Additional Deposit Requirements.* Until the property arrested or attached and garnished has been released or otherwise disposed of in accordance with Supplemental Rule E, the Marshal may require from any original and intervening party who has caused the arrest or attachment and garnishment of a vessel or property, to post such additional deposits as the Marshal determines necessary to cover any additional estimated fees or expenses.

(d) *Judicial Relief From Deposit Requirements.* Any party aggrieved by the deposit requirements of Local Admiralty Rule E(5)(b) may apply to the Court for relief. Such application shall be predicated upon a showing that owing to the relative priorities of the claims asserted against the vessel or other property, the deposit requirements operate to impose a burden disproportionate to the aggrieved party's recovery potential.

The judicial officer may adjust the deposit requirements, but in no event shall the proportion required of an aggrieved party be reduced to a percentage less than that imposed upon the claimant whose claim is the smallest among that of claims which the aggrieved party stipulates as having priority over its claim; or, in the absence of such stipulation, the greatest percentage imposed upon any claimant participating in the deposit requirements.

(e) *Consequence of Failing to Comply With Additional Deposit Requirements.* Any party who fails to make the additional deposit as requested by the Marshal may not participate further in the proceeding, except for the purpose of seeking relief from this rule.

Additionally, the Marshal shall notify the Court in writing whenever any party fails to make additional deposits as required by Local Admiralty Rule E(5)(c).

In the event that a party questions its obligations to advance monies required by this rule, the Marshal may apply to the Court for instructions concerning that party's obligation under the rule.

(6) Property in Possession of a United States Officer. Whenever the property to be arrested or attached is in custody of a United States officer, the Marshal shall serve the appropriate process upon the officer or employee; or, if the officer or employee is not found within the District, then to the custodian of the property within the District.

The Marshal shall direct the officer, employee or custodian not to relinquish custody of the property until ordered to do so by the Court.

(7) Process Held in Abeyance.

(a) *When Permitted.* In accordance with Supplemental Rule E(3)(b), a plaintiff may ask the Clerk of the Court not to issue process, but rather to hold the process in abeyance. The

Clerk of the Court shall docket this request, and thereafter shall not be responsible for ensuring that process is issued at a later date.

(b) *When Intervention Is Subsequently Required.* It is the intention of these rules that a vessel or other property should be arrested or attached pursuant to process issued and effected in only one civil action. Therefore, if while process is held in abeyance on one action, the vessel or property is arrested or attached in another action, it shall be the responsibility of the plaintiff who originally requested process be held in abeyance in the first action to voluntarily dismiss without prejudice the first action, insofar as that action seeks to proceed against the property arrested or attached in the second action, and promptly intervene in the second action pursuant to Local Admiralty Rule E(2)(a) or (b).

In order to prevent undue hardship or manifest injustice, motions to consolidate in rem actions against the same vessel or property will be granted only in exceptional circumstances.

(8) Release of Property in Accordance With Supplemental Rule E(5).

(a) *Release by Consent or Stipulation.* Subject to the limitations imposed by Supplemental Rule E(5)(c), the Marshal may release any vessel, cargo or property in the Marshal's possession to the party on whose behalf the property is detained. However, as a precondition to release, the Marshal shall require a stipulation, bond, or other security, expressly authorizing the release. The authorizing instrument shall be signed by the party, or the party's attorney, on whose behalf the property is detained.

The stipulation, bond, or other security shall be posted in an amount equal to, or greater than, the amount required for the following types of action:

(i) Actions Entirely for a Sum Certain. The amount alleged to be due in the complaint, with interest at six percent per annum from the date claimed to be due to a date twenty-four months after the date the claim was filed, or by filing an approved stipulation, or bond for the amount alleged plus interest as computed in this subsection.

The stipulation or bond shall be conditioned to abide by all orders of the Court, and to pay the amount of any final judgment entered by this Court or any appellate Court, with interest.

(ii) Actions Other Than Possessory, Petitory or Partition. Unless otherwise ordered by the Court, the amount of the appraised or agreed value of the property seized, with interest. If an appraised value cannot be agreed upon by the parties, the Court shall order an appraisal in accordance with Local Admiralty Rule F(3).

The stipulation or bond shall be conditioned to abide by all orders of the Court, and to pay the amount of any final judgment entered by this Court or any appellate Court, with interest.

The person consenting or stipulating to the release shall also file a claim in accordance with Local Admiralty Rule E(2)(a) or (b).

(iii) Possessory, Petitory or Partition Actions. The Marshal may release property in these actions only upon order of Court, and upon the subsequent deposit of security and compliance with such terms and/or conditions as the Court deems appropriate.

(b) *Release Pursuant to Court Order.* In accordance with Supplemental Rule E(5)(c), a party may petition to release the vessel pursuant to Court order. A party making such application shall file a Request for Release which shall substantially conform in format and content to the form identified as SDF 8 in the Appendix to these Local Admiralty Rules. Additionally, the party shall prepare, and offer for filing, a proposed order directing the release. This order shall substantially conform in format and content to the form identified as SDF 9 in the Appendix to these Local Admiralty Rules.

However, as a precondition to the release, the Marshal shall require a stipulation, bond, or other security, as specified in Local Admiralty Rule E(8)(a)(i), (ii), or (iii), as appropriate.

(c) *Upon the Dismissal or Discontinuance of an Action.* By coordinating with the Marshal to ensure that all costs and charges of the Court and its officers have first been paid.

(d) *Release Subsequent to the Posting of a General Bond*.

(i) Requirements of a General Bond. General bonds filed pursuant to Supplemental Rule E(5)(b) shall identify the vessel by name, nationality, dimensions, official number or registration number, hailing port and port of documentation.

(ii) Responsibility for Maintaining a Current Listing of General Bonds. The Clerk of the Court shall maintain a current listing of all general bonds. This listing should be maintained in alphabetical order by name of the vessel. The listing will be available for inspection during normal business hours.

(iii) Execution of Process. The arrest of a vessel covered by a general bond shall be stayed in accordance with Supplemental Rule E(5)(b), however, the Marshal shall serve a copy of the complaint upon the master or other person in whose charge or custody the vessel is found. If neither the master nor another person in charge of custody is found aboard the vessel, the Marshal shall make the return accordingly.

Thereafter, it shall be plaintiff's responsibility to advise the owner or designated agent, at the address furnished in the general bond, of (1) the case number; (2) nature of the action and the amount claimed; (3) the plaintiff and name and address of plaintiff's attorney; and (4) the return date for filing a claim.

(9) Application to Modify Security for Value and Interest. At any time, any party having an interest in the subject matter of the action may move the Court, on due notice and for cause, for

greater, better or lesser security, and any such order may be enforced by attachment or as otherwise provided by law.

(10) Custody and Safekeeping.

(a) *Initial Responsibility*. The Marshal shall initially take custody of any vessel, cargo and/or other property arrested, or attached in accordance with these rules. Thereafter, and until such time as substitute custodians may be authorized in accordance with Local Admiralty Rule E(10)(c), the Marshal shall be responsible for providing adequate and necessary security for the safekeeping of the vessel or property.

In the discretion of the Marshal, adequate and necessary security may include the placing of keepers on or near the vessel and/or the appointment of a facility or person to serve as a custodian of the vessel or property.

(b) *Limitations on the Handling, Repairing and Subsequent Movement of Vessels or Property*. Subsequent to the arrest or attachment of a vessel or property, and except as provided in Local Admiralty Rule E(10)(a), no person may handle cargo, conduct repairs, or move a vessel without prior order of Court. Notwithstanding the foregoing, the custodian or substitute custodian is obligated to comply with any orders issued by the Captain of the Port, United States Coast Guard, including an order to move the vessel; and to comply with any applicable federal, state, or local laws or regulations pertaining to vessel and port safety. Any movement of a vessel pursuant to such requirements must not remove the vessel from the District and shall be reported to the Court within twenty-four hours of the vessel's movement.

(c) *Procedures for Changing Custody Arrangements*. Any party may petition the Court to dispense with keepers, remove or place the vessel, cargo and/or other property at a specified facility, designate a substitute custodian for the vessel or cargo, or for other similar relief. The motion shall substantially conform in format and content to the form identified as SDF 5 in the Appendix of these Local Admiralty Rules.

(i) Notification of the Marshal Required. When an application for change in custody arrangements is filed, either before or after the Marshal has taken custody of the vessel or property, the filing party shall serve notice of the application on the Marshal in sufficient time to permit the Marshal to review the indemnification and insurance arrangements of the filing party and substitute custodian. The application shall also be served upon all other parties to the litigation.

(ii) Indemnification Requirements. Any motion for the appointment of a substitute custodian or facility shall include as an exhibit to the motion, a consent and indemnification agreement signed by both the filing party, or the filing party's attorney, and the proposed substitute custodian.

The consent and indemnification agreement shall expressly release the Marshal from any and all liability and responsibility for the care and custody of the property

while in the hands of the substitute custodian; and shall expressly hold the Marshal harmless from any and all claims whatsoever arising from the substitute custodianship. The agreement shall substantially conform in format and content to the form identified as SDF 6 in the Appendix to these Local Admiralty Rules.

(iii) Court Approval Required. The motion to change custody arrangements, and indemnification and consent agreement shall be referred to a judicial officer who shall determine whether the facility or substitute custodian is capable of safely keeping the vessel, cargo and/or property.

(d) *Insurance Requirements*.

(i) Responsibility for Initially Obtaining Insurance. Concurrent with the arrest or attachment of a vessel or property, the Marshal shall obtain insurance to protect the Marshal, the Marshal's deputies, keepers, and custodians from liability arising from the arrest or attachment.

The insurance shall also protect the Marshal and the Marshal's deputies or agents from any liability arising from performing services undertaken to protect the vessel, cargo and/or property while that property is in the custody of the Court.

(ii) Payment of Insurance Premiums. It shall be the responsibility of the party applying for the arrest or attachment of a vessel, cargo and/or property to promptly reimburse the Marshal for premiums paid to effect the necessary insurance.

The party applying for change in custody arrangements shall be responsible for paying the Marshal for any additional premium associated with the change.

(iii) Taxation of Insurance Premiums. The premiums charged for the liability insurance will be taxed as an expense of custody while the vessel, cargo and/or property is in custodia legis.

(11) Preservation, Humanitarian and Repatriation Expenses.

(a) *Limitations on Reimbursement for Services and/or Supplies Provided to a Vessel or Property in Custody*. Except in cases of emergency or undue hardship, no person will be entitled to claim as an expense of administration the costs of services or supplies furnished to a vessel, cargo and/or property unless such services or supplies have been furnished to the Marshal upon the Marshal's order, or pursuant to an order of this Court.

Any order issued pursuant to this subsection shall require the person furnishing the services or supplies to file a weekly invoice. This invoice shall be set forth in the format prescribed in Local Admiralty Rule E(11)(e).

(b) *Preservation Expenses for the Vessel and Cargo*. The Marshal, or substitute custodian, is authorized to incur expenses reasonably deemed necessary in maintaining the vessel,

cargo and/or property in custody for the purpose of preventing the vessel, cargo and/or property from suffering loss or undue deterioration.

(c) *Expenses for Care and Maintenance of a Crew*. Except in an emergency, or upon the authorization of a judicial officer, neither the Marshal nor substitute custodian shall incur expenses for feeding or otherwise maintaining the crew.

Applications for providing food, water and necessary medical services for the maintenance of the crew may be submitted, and decided ex parte by a judicial officer, providing such an application is made by some person other than the owner, manager or general agent of the vessel.

Such applications must be filed within thirty (30) days from the date of the vessel's initial seizure. Otherwise, except in the case of an emergency, such applications shall be filed and served upon all parties, who in turn shall have fourteen (14) days from receipt of the application to file a written response, beginning on the next calendar day, including Saturday, Sunday, or a legal holiday.

Expenses for feeding or otherwise maintaining the crew, when incurred in accordance with this subsection, shall be taxed as an expense of administration and not as an expense of custody.

(d) *Repatriation Expenses*. Absent an order of Court expressly ordering the repatriation of the crew and/or passengers, and directing that the expenses be taxed as a cost of administration, no person shall be entitled to claim these expenses as expenses of administration.

(e) *Claim by a Supplier for Payment of Charges*. Any person who claims payment for furnishing services or supplies in compliance with Local Admiralty Rule E(11), shall submit an invoice to the Marshal's Office for review and approval.

The claim shall be presented in the form of a verified claim, and shall be submitted within a reasonable time after furnishing the services or supplies, but in no event shall a claim be accepted after the vessel, or property has been released. The claimant shall file a copy of the verified claim with the Marshal, and also serve the substitute custodian and all other parties to the litigation.

The Marshal shall review the claim, make adjustments or recommendations to the claim as are appropriate, and shall thereafter forward the claim to the Court for approval. The Court may postpone the hearing on an individual claim until a hearing can be set to consolidate other claims against the property.

(12) Property in Incidental Custody and Otherwise Not Subject to the Arrest or Attachment.

(a) *Authority to Preserve Cargo in Incidental Custody*. The Marshal, or an authorized substitute custodian, shall be responsible for securing, maintaining and preserving all

property incidentally taken into custody as a result of the arrest or attachment of a vessel or property. Incidental property may include, but shall not be limited to, laden cargo not itself the subject of the arrest or attachment.

The Marshal or other custodian shall maintain a separate account of all costs and expenses associated with the care and maintenance of property incidentally taken into custody.

Any person claiming entitlement to possession of property incidentally taken into custody shall be required, as a precondition of receiving possession, to reimburse the Marshal for such separately accounted expenses. Monies received by the Marshal will be credited against both the expense of custody and administration.

(b) *Separation, Storage and Preservation of Property in Incidental Custody*. Any party, or the Marshal, may petition the Court to permit the separation and storage of property in incidental custody from the property actually arrested or attached.

When separation of the property is ordered to protect the incidentally seized property from undue deterioration; provide for safer storage; meet an emergency; reduce the expenses of custody; or to facilitate a sale of the vessel or other property pursuant to Local Admiralty Rule E(16); the costs of such separation shall be treated as an expense of preservation and taxed as a cost of custody.

(c) *Disposal of Unclaimed Property*. Property incidentally in custody and not subsequently claimed by any person entitled to possession, shall be disposed of in accordance with the laws governing the disposition of property abandoned to the United States of America.

Except when prohibited by prevailing federal statute, the resulting net proceeds associated with the disposition of abandoned property shall be applied to offset the expense of administration, with the remainder escheating to the United States of America as provided by law.

(13) Dismissal.

(a) *By Consent*. No action may be dismissed pursuant to Federal Rule of Civil Procedure 41(a) unless all costs and expenses of the Court and its officials have first been paid.

Additionally, if there is more than one plaintiff or intervening plaintiff, no dismissal may be taken by a plaintiff unless that party's proportionate share of costs and expenses has been paid in accordance with Local Admiralty Rule E(6).

(b) *Involuntary Dismissal*. If the Court enters a dismissal pursuant to Federal Rule of Civil Procedure 41(b), the Court shall also designate the costs and expenses to be paid by the party or parties so dismissed.

(14) Judgments.

(a) *Expenses of Sureties as Costs*. If costs are awarded to any party, then all reasonable premiums or expenses paid by the prevailing party on bonds, stipulations and/or other security shall be taxed as costs in the case.

(b) *Costs of Arrest or Attachment*. If costs are awarded to any party, then all reasonable expenses paid by the prevailing party incidental to, or arising from the arrest or attachment of any vessel, property and/or cargo shall be taxed as costs in the case.

(15) Stay of Final Order.

(a) *Automatic Stay for Fourteen Days*. In accordance with Federal Rule of Civil Procedure 62(a), no execution shall issue upon a judgment, nor shall seized property be released pursuant to a judgment or dismissal, until fourteen (14) days after the entry of the judgment or order of dismissal.

(b) *Stays Beyond the Fourteen Day Period*. If within the fourteen (14) day period established by Federal Rule of Civil Procedure 62(a), a party files any of the motions contemplated in Federal Rule of Civil Procedure 62(b), or a notice of appeal, then unless otherwise ordered by the Court, a further stay shall exist for a period not to exceed thirty (30) days from the entry of the judgment or order. The purpose of this additional stay is to permit the Court to consider an application for the establishment of a supersedeas bond and to order the date upon which the bond shall be filed with the Court.

(16) Notice of Sale.

(a) *Publication of Notice*. In an action in rem or quasi in rem, and except in suits on behalf of the United States of America where other notice is prescribed by statute, the Marshal shall publish notice in any of the newspapers approved pursuant to Local Admiralty Rule A(7).

(b) *Duration of Publication*. Unless otherwise ordered by the Court, applicable Supplemental Rule, or Local Admiralty Rule, publication of the notice of sale shall be made at least twice; the first publication shall be at least fourteen (14) days prior to the date of the sale, and the second at least seven (7) days prior to the date of the sale.

(17) Sale of a Vessel or Property.

(a) *Payment of the Purchase Price*. Unless otherwise provided in the order of sale, the person whose bid is accepted shall pay the Marshal the purchase price in the manner provided below;

(i) If the Bid Is Not More Than $500.00. The successful bidder shall immediately pay the full purchase price.

(ii) If the Bid Is More Than $500.00. The bidder shall immediately deposit with the Marshal $500.00, or ten percent of the bid, whichever sum is greater. Thereafter the bidder shall pay the remaining purchase price within seven (7) days.

If an objection to the sale is filed within the time permitted by Local Admiralty Rule E(17)(g), the successful bidder is excused from paying the remaining purchase price until seven (7) days after the Court confirms the sale.

(b) *Method of Payment*. Unless otherwise ordered by the Court, payments to the Marshal shall be made in cash, certified check or cashier's check.

(c) *Custodial Costs Pending Payment*. When a successful bidder fails to pay the balance of the bid within the time allowed by Local Admiralty Rule E(17)(a)(ii), or within the time permitted by order of the Court, the Marshal shall charge the successful bidder for the cost of keeping the property from the date payment of the balance was due, to the date the bidder takes delivery of the property.

The Marshal may refuse to release the property until these additional charges have been paid.

(d) *Default for Failure to Pay the Balance*. The person who fails to pay the balance of the bid within the time allowed shall be deemed to be in default. Thereafter a judicial officer may order that the sale be awarded to the second highest bidder, or may order a new sale as appropriate.

Any sum deposited by the bidder in default shall be forfeited, and the amount shall be applied by the Marshal to any additional costs incurred because of the forfeiture and default, including costs incident to resale. The balance of the deposit, if any, shall be retained in the registry and subject to further order of the Court.

(e) *Marshal's Report of Sale*. At the conclusion of the sale, the Marshal shall file a written report of the sale to include the date of the sale, the price obtained, and the name and address of the buyer.

(f) *Confirmation of Sale*. Unless an objection is timely filed in accordance with this rule, or the purchaser is in default for failing to pay the balance of the purchase price, plaintiff shall proceed to have the sale confirmed on the day following the last day for filing objections.

In order to confirm the sale, plaintiff's counsel shall file a "Request for Confirmation of Sale" on the day following the last day for filing an objection. *See* forms available on the Court's website (www.flsd.uscourts.gov) ~~The "Request for Confirmation of Sale" shall substantially conform in format and content to the form identified as SDF 10 in the Appendix to these Local Admiralty Rules~~. Plaintiff's counsel shall also prepare and offer for filing a "Confirmation of the Sale." *See* forms available on the Court's website (www.flsd.uscourts.gov)~~The "Confirmation of Sale" shall substantially conform in format and content to the form identified as SDF 11 in the Appendix to these Local Admiralty~~

~~Rules~~. Thereafter the Clerk of the Court shall file and docket the confirmation and shall promptly transmit a certified copy of the "Confirmation of Sale" to the Marshal's Office.

Unless otherwise ordered by the Court, if the plaintiff fails to timely file the "Request for Confirmation of Sale" and proposed "Confirmation of Sale," the Marshal shall assess any continuing costs or expenses for custody of the vessel or property against the plaintiff.

(g) *Objections to Confirmation.*

(i) Time for Filing Objections. Unless otherwise permitted by the Court, an objection must be filed within seven (7) days following the sale. The party or person filing an objection shall serve a copy of the objection upon the Marshal and all other parties to the action, and shall also file a Certificate of Service indicating the date and manner of service. Opposition to the objection must be filed within seven (7) days after receipt of the objection of the sale.

The Court shall consider the objection, and any opposition to the objection, and shall confirm the sale, order a new sale, or grant other relief as appropriate.

(ii) Deposit of Preservation or Maintenance Costs. In addition to filing written objections, any person objecting to the sale shall also deposit with the Marshal the cost of keeping the property for at least fourteen (14) days. Proof of the deposit with the Marshal's Office shall be delivered to the Clerk of the Court's Office by the moving party. The Court will not consider the objection without proof of this deposit.

If the objection is sustained, the objector will be reimbursed for the expense of keeping the property from the proceeds of any subsequent sale, and any remaining deposit will be returned to the objector upon Court order.

If the objection is denied, the sum deposited by the objector will be applied to pay the fees and expenses incurred by the Marshal in keeping the property from the date the objection was filed until the sale is confirmed. Any remaining deposit will be returned to the objector upon order of Court.

(h) *Confirmation of Title.* Failure of a party to give the required notice of an action and arrest of a vessel, property and/or cargo, or failure to give required notice of a sale, may afford grounds for objecting to the sale, but such failure does not affect the title of a good faith purchaser of the property.

(18) Post–Sale Claim. Claims against the proceeds of a sale authorized by these rules, except for seamen's wages, will not be admitted on behalf of lienors who file their claims after the sale.

Unless otherwise ordered by the Court, any claims filed after the date of the sale shall be limited to the remnants and surplus arising from the sale.

Effective Dec. 1, 1994. Amended effective April 15, 1998; April 15, 2007; April 15, 2010; April 15, 2011; December 1, 2014.

Advisory Notes

(1993) **Local Admiralty Rule E(1).** This section continues the provisions of former Local Rule 7(c).

Local Admiralty Rule E(2). This section is new. The rules do not require an intervening plaintiff to undertake the formal steps required to issue the original process of arrest or attachment pursuant to Local Admiralty Rule B(3) or C(2); rather the Committee believes that intervening parties need only apply for supplemental process, which in accordance with the August 1, 1985, amendments to Supplemental Rule B and C, may be issued by the Clerk of the Court without further order of the Court. The Committee recommends the re-arrest or re-attachment provisions of this rule in order to accommodate the administrative and records keeping requirements of the Marshal's Office.

The revision also reflects the elimination of the initial security deposit formerly required by Local Admiralty Rule 5(e). The Marshal shall, however, assess custodial costs against the intervening plaintiff in accordance with Local Admiralty Rule E(5)(b).

Local Admiralty Rule E(3). This section continues the provisions of former Local Rule 7(e).

Local Admiralty Rule E(4). This section continues the provisions of former Local Rule 6.

Local Admiralty Rule E(5). The Marshal, as an officer of the Court whose fiscal affairs are regulated by statute and order, is precluded by law from expending funds of the United States to maintain custody of vessels or other property pursuant to claims being asserted by the several states, any foreign sovereigns, or any private parties. This prohibition extends to incurring obligations which, if not satisfied, otherwise might be asserted as a claim against the United States. Consequently, before undertaking to arrest or attach property, the Marshal must receive funds in advance of incurring such obligations sufficient to satisfy them.

Past experience indicates that not infrequently vessels or other properties arrested for nonpayment of incurred obligations will be ultimately sold for satisfaction, to the extent possible, of pending claims. In such cases, substitute security is never given, and the property must be retained in custody for a sufficient period of time to permit the Court to determine the status of the situation and to order appropriate procedures. In such instances, custodial costs tend to be substantial and, by the very nature of the circumstances, the claimants and potential claimants can be both large in number and will vary markedly in the amounts of their respective individual claims. Apportioning the obligation to make advances against custodial costs over this range of claims and claimants has resulted in frequent calls for judicial intervention.

It was the Committee's view that a system initially self-executing and ministerial would minimize situations calling for judicial intervention while affording the Marshal the protection of assured and certain procedures. At the same time, the Committee was strongly of the opinion that the rules should do substantial equity as between claims showing wide variation in amounts and potential

priorities and, at the same time, should be so structured as to require all potential claimants to come forward and share in the cost of custody, discouraging the sometime practice of claimants' waiting to intervene until the last moment in order to allow other parties to bear the burdens of making such advances.

A concern was expressed about the position of parties having large, but clearly inferior claims, who, in equity should not be required to share on a prorated value-of-the-claim-asserted basis with claimants who have obvious priority. A typical example of such a situation would involve a mortgagee of a foreign-flag vessel appearing as a claimant in an action along with lien claimants alleging to have supplied necessaries to a vessel in ports of the United States, the mortgagee's position being subordinated by virtue of Title 46, United States Code, Section 951. After considering all possible alternatives, it was obvious that this limited range of situations could not be addressed through a mechanism for automatic administration and, consequently, the provision providing for judicial relief in the event of hardship or inequity was included.

Local Admiralty Rule E(6). Section (6) is new. It reflects the approach embodied in the local rules of those districts which have addressed the question of properties subject to arrest but already in the possession of an officer of the United States.

Local Admiralty Rule E(7). The provisions of Section (7) are new. Paragraph (a), following rules promulgated in other districts, states what is understood by the Advisory Committee to have been the practice in this District. Paragraph (b) is designed to mesh the concept of process held in abeyance with the requirements of Local Admiralty Rule E(2) regarding intervening claims, and is designed to foreclose the possibility of a vessel or other property being arrested or attached in the District as a result of more than one civil action. Since under Local Rule 5(b), the automatic, permissive intervention is not triggered until the vessel or other property has been arrested, attached or seized, a suit in rem in which process is held in abeyance will not form the basis for such an intervention. On the other hand, once the property is arrested, attached or seized, the issuance of process in the earlier suit would be destructive of the "only one civil action" concept, and, consequently paragraph (b) requires a party whose process was held in abeyance to refile as an intervenor pursuant to Local Admiralty Rule E(2), making provision for the proper disposition of the earlier action.

Local Admiralty Rule E(8). Section (8) continues the provisions of former Local Rule 11.

Local Admiralty Rule E(9). Section (9) is new. The provisions of Section (j) are expressly authorized by Supplemental Rule E(6) and offer some potential relief from the automatic operations and other provisions of Supplemental Rule E regarding security for value and interest. The decision in *Industria Nacional del Papel, C.A. M V Albert F.*, 730 F.2d 622 (11th Cir. 1984), indicates that such an application must be made prior to the entry of judgment.

Local Admiralty Rule E(10). Section (10) is new. It is designed to reflect the actual practice in the District, and follows the rules promulgated in several other districts. In formulating this Local Admiralty Rule, the Committee studied Section 6.3 of the "Marshal's Manual," the internal operating guide for the United States Marshal's Service. Section 10(b) was amended in 1998 to permit substitute custodians to move arrested vessels, pursuant to an order of the United States

Coast Guard Captain of the Port ("COTP"), without first obtaining permission from the Court. The change was prompted by instances where substitute custodians declined to obey a COTP order to move an arrested vessel, citing Local Admiralty Rule E(10)(b) and its requirement that Court permission be first obtained. Any movement of a vessel pursuant to a COTP order must not take the vessel out of the District. A corresponding change was made in Form 5, paragraph (5).

Local Admiralty Rule E(11). Section (11) is new. It addresses areas which in recent litigation in the District have called excessively for interim judicial administration. While the subject matter is covered in the rules promulgated in other districts, Section (11) differs from the approach of other districts in providing for a more positive control of expenses being incurred in connection with vessels or other property in the custody of the Court, and is designed to avoid accumulated costs being advanced for the first time well after having been incurred.

Local Admiralty Rule E(12). Section (12) is new. It addresses a situation which has arisen in the District in the past and which can be foreseen as possibly arising in the future. While the subject is not addressed in other local rules studied by any oft-cited leading cases, it was the opinion of the Advisory Committee that the area should be addressed by Local Admiralty Rule and that the provisions of Section (12) are both consistent with the general maritime laws of the United States and designed to permit efficient administration without the necessity for undue judicial intervention. As with the claims of intervenors and the allocation of deposits against custodial costs, the provisions of Section (12), in keeping with the design of these Local Admiralty Rules, are intended to be essentially self-executing, with the emphasis on the ministerial role of Court officers and services.

Local Admiralty Rule E(13). Section (13) continues the provisions of former Local Rule 17(a). It follows Federal Rule of Civil Procedure 41, and addresses the necessarily greater concern for costs and expenses inherent in the in rem admiralty procedure.

Local Admiralty Rule E(14). Section (14) continues the provisions of former Local Rule 13.

Local Admiralty Rule E(15). Section (15) incorporates the provisions of former Local Rule 14.

Local Admiralty Rule E(16) and (17). The provisions of former Local Rule 4 have been expanded to provide a standardized procedure governing sales of property, which procedure the Court, at its option, may utilize, in whole or in part, thus shortening and simplifying orders related to sales and accompanying procedures.

Local Admiralty Rule E(18). Consistent with the provision of Local Admiralty Rule E(2), this section gives express notice of the distinct positions of claims pre-sale and post-sale.

(2010) Local Admiralty Rule E(16)(b). The dates of publication were changed to conform with the 2009 changes to the deadline calculations of the Federal Rules.

<u>(2014) Local Admiralty Rule (E)(17) was amended to clarify that forms referenced in the rule are found on the Court's website rather than in the Appendix.</u>

SPECIAL RULES GOVERNING THE ADMISSION AND PRACTICE OF ATTORNEYS

RULE 1. QUALIFICATIONS FOR ADMISSION

An attorney is qualified for admission to the bar of this District if the attorney is currently a member in good standing of The Florida Bar.

Effective Dec. 1, 1994. Amended effective Jan. 1, 1996; April 15, 2002; April 15, 2006; April 15, 2007; December 3, 2012.

Comment

(2007) Amended to eliminate references to a common test with the Northern District of Florida, which has been eliminated.

(2012) Amended to eliminate requirement to pass admission examination.

RULE 2. PROCEDURE FOR APPLYING FOR ADMISSION AND PROOF OF QUALIFICATIONS

Each applicant for admission shall submit a verified petition setting forth the information specified on the form available on the Court's website (www.flsd.uscourts.gov) together with an application fee in the amount set by the Court. Upon receipt of the application fee, the Clerk of the Court shall require each qualified practitioner to sign the oath of admission and shall place such applicant on the roll of attorneys of the bar of this Court.

Effective Dec. 1, 1994. Amended effective Jan. 1, 1996; April 15, 2007; December 3, 2012.

Comment

(2007) Amended to eliminate references to a common test with the Northern District of Florida, which has been eliminated, and to eliminate procedures for obtaining admission to the Northern District.

(2012) Amended to eliminate references to admission examination and to direct practitioners to the Court's website for the petition for admission to the bar of this Court.

RULE 3. RETENTION OF MEMBERSHIP IN THE BAR OF THIS COURT

To remain an attorney in good standing of the bar of this Court, each member must remain an active attorney in good standing of The Florida Bar, specifically including compliance with all requirements of the Rules Regulating The Florida Bar, as promulgated by the Supreme Court of Florida, and submit timely payment of the attorney renewal fee every other year commencing March 15, 2012, or as otherwise ordered by the Court. Attorneys who are not in good standing of the bar of this Court may not practice before the Court.

Effective Dec. 1, 1994. Amended effective Jan. 1, 1996; April 15, 2007; Dec. 1, 2011.

Comment

(2011) Amended to include requirement of a renewal fee and to make clear that attorneys not in good standing may not practice before the Court.

RULE 4. APPEARANCES

(a) Who May Appear Generally. Except when an appearance pro hac vice is permitted by the Court, only members of the bar of this Court may appear as attorneys in the Courts of this District. Attorneys residing and practicing within this District are expected to be members of the bar of this Court.

(b) Appearance Pro Hac Vice.

(1) Any attorney who is a member in good standing of the bar of any United States Court, or of the highest Court of any State or Territory or Insular Possession of the United States, but is not admitted to practice in the Southern District of Florida may, upon written application filed by counsel admitted to practice in this District, be permitted to appear and participate in a particular case. A certification that the applicant has studied the Local Rules shall accompany the application together with such appearance fee as may be required by administrative order. If permission to appear pro hac vice is granted, such appearance shall not constitute formal admission or authorize the attorney to file documents via CM/ECF.

(2) Lawyers who are not members of the bar of this Court shall not be permitted to engage in general practice in this District. For purposes of this rule, more than three appearances within a 365–day period in separate representations before the Courts of this District shall be presumed to be a "general practice." Upon written motion and for good cause shown the Court may waive or modify this prohibition.

(3) The application shall designate a member of the bar of this Court, who maintains an office in this State for the practice of law and who is authorized to file through the Court's electronic filing system, with whom the Court and opposing counsel may readily communicate regarding the conduct of the case, upon whom filings shall be served, and who shall be required to electronically file and serve all documents and things that may be filed and served electronically, and who shall be responsible for filing and serving documents in compliance with the CM/ECF Administrative Procedures. *See* Section 2B of the CM/ECF Administrative Procedures. The application must be accompanied by a written statement consenting to the designation, and the address and telephone number of the named designee. Upon written motion and for good cause shown the Court may waive or modify the requirements of such designation.

(c) Appearance Ad Hoc. A member of the bar of this Court acting on behalf of its Volunteer Lawyers' Project may, upon written motion and by leave of court, be permitted to appear for an

individual proceeding pro se in a civil matter for the sole purpose of assisting in the discovery process. If the appearance is permitted, when its purpose has been completed the attorney shall give notice to the Court, the pro se civil litigant, and opposing counsel that the ad hoc appearance is terminated.

(d) Government Attorneys. Any full-time United States Attorney, Assistant United States Attorney, Federal Public Defender and Assistant Federal Public Defender and attorney employed full time by and representing the United States government, or any agency thereof, and any Attorney General and Assistant Attorney General of the State of Florida may appear and participate in particular actions or proceedings on behalf of the attorney's employer in the attorney's official capacity without petition for admission. Any attorney so appearing is subject to all rules of this Court.

Effective Dec. 1, 1994. Amended effective Jan. 1, 1996; April 15, 2007; April 15, 2010; December 1, 2014.

Comments

(1994) Expands right to practice to additional government lawyers.

(2007) Allows a member of the bar of this District to appear as local counsel so long as he or she maintains an office in Florida; limits the number of *pro hac vice* (limited) appearances within a year; provides that where limited appearances have been permitted, all filings are to be made by designated local counsel as provided for in the Court's electronic filing protocols; amended to conform to CM/ECF Administrative Procedures, which exclude non-members of the local bar from filing via CM/ECF, and creates a special appearance category to facilitate the efforts of the Court's Volunteer Lawyers' Project.

(2010) Amended to correct usage of "limited appearance," which is now properly "appearance pro hac vice," and "special appearance," which is now "appearance ad hoc," and to conform tabulation to the style used in the federal rules of procedure.

(2014) Rule 4(b)(3) was amended to specify the requirement of service as well as filing.

PROPOSED SAMPLE FORM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. ___ –CIV–[JUDGE/MAGISTRATE]

Plaintiff,

v.

Defendant.
_____/

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. Unless excused in writing by the presiding Judge all parties and required claims professionals (*e.g.*, insurance adjusters) shall be physically present at the mediation conference (*i.e.*, in person if the party is a natural person or by personal attendance of a corporate representative if the party is an entity) 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 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 representative shall not be solely the public entity's counsel (or firm) of record, however, the representative may be the public entity's in-house counsel where another counsel of record for the public entity is also present. In cases where the in-house counsel is counsel of record, that counsel and another representative may act as duly authorized representatives of the public entity. In cases where the parties include a public entity and/or individuals who were or are employed by a public entity or elected officials of a public entity, such individual parties do not need to attend the mediation conference if all claims asserted against the individuals are covered by insurance or by an indemnification from the public entity for purposes of mediation. Notwithstanding the foregoing, counsel representing the individual defendants shall provide the individual defendants with notice of the mediation conference and the individual defendants shall have the right to attend the mediation conference. The mediator shall report non-attendance to the Court. ~~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 case did not settle.

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