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

Administrative Order 2017-60



**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, 2017, 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 October, 2017.

K. M. Moore

**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

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# United States District Court

# for the

# Southern District of Florida

**Revised December 1, ~~2016~~2017**

## UNITED STATES DISTRICT JUDGES

Chief District Judge K. Michael Moore
(305) 523-5160 Miami

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~~(954) 769-5480 Fort Lauderdale~~

Judge Federico A. Moreno
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Judge Ursula Ungaro
(305) 523-5550 Miami

~~Judge Joan A. Lenard~~
~~(305) 523-5500 Miami~~

Judge Donald M. Middlebrooks
(561) 514-3720 West Palm Beach

Judge William P. Dimitrouleas
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~~Judge Kenneth A. Marra~~
~~(561) 514-3760 West Palm Beach~~

Judge Jose E. Martinez
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Judge Cecilia M. Altonaga
(305) 523-5510 Miami

~~Judge James I. Cohn~~
~~(954) 769-5490 Fort Lauderdale~~

Judge Marcia G. Cooke
(305) 523-5150 Miami

Judge Kathleen M. Williams
(305) 523-5540 Miami

Judge Robert N. Scola, Jr.
(305) 523-5140 Miami

Judge Darrin P. Gayles
(305) 523-5170 Miami

Judge Beth Bloom
(954) 769-5680 Fort Lauderdale

Judge Robin L. Rosenberg
(772) 467-2340 Fort Pierce

## SENIOR UNITED STATES DISTRICT JUDGES

Senior Judge James Lawrence King
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Senior Judge Jose A. Gonzalez, Jr.
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Senior Judge William J. Zloch
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Senior Judge Donald L. Graham
(305) 523-5130 Miami

Senior Judge Daniel T. K. Hurley
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Senior Judge Joan A. Lenard
(305) 523-5500 Miami

Senior Judge Patricia A. Seitz
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Senior Judge Paul C. Huck
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Senior Judge Kenneth A. Marra
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Senior Judge James I. Cohn
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## UNITED STATES MAGISTRATE JUDGES

~~Chief United States Magistrate Judge Frank J. Lynch, Jr.~~
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Chief Magistrate Judge Andrea M. Simonton
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Magistrate Judge William C. Turnoff
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Magistrate Judge Lurana S. Snow
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Magistrate Judge Barry S. Seltzer
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Magistrate Judge John J. O'Sullivan
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Magistrate Judge Patrick A. White
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Magistrate Judge James M. Hopkins
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Magistrate Judge Edwin G. Torres
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Magistrate Judge Chris M. McAliley
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Magistrate Judge Jonathan Goodman
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Magistrate Judge Dave Lee Brannon
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Magistrate Judge Alicia M. Otazo-Reyes
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Magistrate Judge William Matthewman
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Magistrate Judge Patrick M. Hunt
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Magistrate Judge Shaniek Maynard
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**OFFICE OF THE CLERK OF COURT**
http://www.flsd.uscourts.gov

Steven M. Larimore
Court Administrator • Clerk of Court

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301 North Miami Avenue, Room 389, Miami, Florida 33128-7788 (305) 523-5100
299 East Broward Boulevard, Room 108, Fort Lauderdale, Florida 33301 (954) 769-5400
701 Clematis Street, Room 202, West Palm Beach, Florida 33401 (561) 803-3400
101 South U.S. Highway 1, Fort Pierce, Florida 34950 (772) 467-2300
301 Simonton Street, Room 130, Key West, Florida 33040 (305) 295-8100

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# *Table of Rules*

## RULE 5.2 PROOF OF SERVICE AND SERVICE BY PUBLICATION

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

**(b) Multiple Copies Unnecessary.** Any document permitted to be filed via CM/ECF, including the corporate disclosure statement required by Federal Rule of Civil Procedure 7.1, shall be deemed to have been delivered in multiple if multiple copies are required to be filed.

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

Effective December 1, 1994. Amended effective December 1, 2001; April 15, 2007; April 15, 2010; April 15, 2011; December 1, 2015.

**Authority**

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

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

## RULE 5.3 FILES AND EXHIBITS

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

**(b) Exhibits.**

(1) ***Delivery to and Retention by Clerk.*** Except as provided by Section 5H of the CM/ECF Administrative Procedures, ~~all exhibits received or~~ each exhibit offered or introduced in evidence at any hearing or trial shall be delivered to the Clerk of the Court, who shall keep ~~them~~ the exhibit in the Clerk of the Court's custody, ~~except~~ until the exhibit is electronically filed with the Court in accordance with subsection (b)(2) of this rule. However, when a party offers or introduces into evidence an exhibit that ~~any~~ consists of narcotics, cash, counterfeit

notes, weapons, precious stones ~~received, including but not limited to~~ or other ~~exhibits~~ items which, because of size or nature, require special handling, that party shall ~~remain in possession of the party introducing same~~ contemporaneously deliver to the Clerk of the Court a photograph of that physical exhibit, which shall later be electronically filed with the Court in accordance with subsection (b)(2) of this rule, and that party shall retain that exhibit (or a representative sample in the case of narcotics and other contraband substances) during the pendency of the proceeding and any appeal~~.~~ , and, in a criminal case, shall retain the exhibit for an additional period of one year after the date on which the pertinent defendant's judgment of conviction becomes final. Nothing contained in this Local Rule shall prevent the Court from entering an order with respect to the handling, custody or storage of any exhibit. The Clerk of the Court shall permit United States Magistrate Judges and official court reporters to have custody of exhibits as may be necessary.

(2) ***Mandatory Electronic Filing.*** Unless otherwise ordered by the Court, within ten (10) days of the conclusion of a hearing or trial, a party must file in the CM/ECF system (a) an electronic version of each documentary exhibit that the party offered or introduced into evidence and (b) a digital photograph of each non-documentary physical exhibit that the party offered or introduced into evidence. Before the electronic filing of such exhibits, the filer must review each exhibit and redact any sensitive, confidential, or private information in accordance with Fed. R. Civ. P. 5.2, Fed. R. Crim. P. 49.1, and CM/ECF Administrative Procedures, Section 6, Redaction of Personal Information, Privacy Policy, and Inappropriate Materials, or seek an order from the Court either to seal the exhibit or to exempt the exhibit from electronic filing under subsection (b)(3)(C) of this rule.

(3) ***Exemptions from Mandatory Electronic Filing.*** The following exhibits shall be exempt from mandatory electronic filing in the CM/ECF system:

(A) Sealed and ex parte exhibits in criminal cases, which must be conventionally filed in accordance with Rule 5.4.

(B) Contraband images, audio recordings, and video recordings, which must be physically filed with the Clerk of the Court within ten (10) days of the conclusion of the hearing or trial, unless otherwise ordered, in the following form: (i) on a CD, DVD, or other electronic medium containing a copy of the exhibit that included the contraband image, audio recording, or video recording, if the exhibit was offered or introduced at trial in electronic form; or (ii) in original physical form if the contraband image was not offered or introduced at trial in electronic form.

(C) When permitted by order of the Court, exhibits containing voluminous amounts of confidential information that is subject to privacy protections in accordance with Fed. R. Civ. P. 5.2, Fed. R. Crim. P. 49.1, or other applicable rule or statute; within ten (10) days of the conclusion of the hearing or trial, unless otherwise ordered, such exhibits must be delivered to the Clerk of the Court either in original physical form or on a CD, DVD, or other electronic medium containing a copy of the exhibit, but such exhibits are not to be filed in the CM/ECF system, and the filer is not required to

comply with CM/ECF Administrative Procedures, Section 6, Redaction of Personal Information, Privacy Policy, and Inappropriate Materials.

(4) ***Certification of Compliance Requirement.*** When the exhibits that were offered or introduced at a trial or hearing are: (i) electronically filed by a party; or (ii) delivered to the Clerk of the Court in accordance with the procedures for exhibits that are exempt from electronic filing, the attorney for that party shall also complete and file a Certification of Compliance Re Admitted Evidence form, which can be found at the Court's website (http://www.flsd.uscourts.gov).

(5) ***Attorney Responsibility and Failure to Comply.*** Unless otherwise ordered, the responsibility for discharging a party's obligations under subsection (b) belongs to the attorney who represented that party at the trial or hearing at which that party offered or introduced an exhibit. A party's failure to timely file exhibits electronically as required by this rule or to timely file its Certification of Compliance Re Admitted Evidence may result in the imposition of sanctions.

(6) ***Dismissals, Acquittals, and Voluntary Dismissals.*** Unless the Court, sua sponte or on motion of a party, orders compliance with subsection (b), such compliance is not required for a criminal jury trial that has concluded in a verdict of acquittal and/or pre-verdict dismissal pursuant to Fed. R. Crim. P. 29(a)-(b) on all charges, or for a civil case that has been dismissed pursuant to Fed. R. Civ. P. 41(a)(1).

**(c) Removal of Exhibits.** ~~All models, diagrams, books, or other exhibits received in evidence or marked for identification in any action or proceeding shall be removed by the filing party.~~ Within ten (10) days after a party electronically files the exhibits it offered or introduced into evidence at a hearing or trial, the party shall make arrangements with the Clerk of the Court to retrieve all of the original exhibits that were electronically filed. Any original exhibits that have been returned to or retained by the filing party after either electronic filing or the submission of electronic copies pursuant to subsections (b)(3)(B) or (b)(3)(C) shall be kept for safe keeping until the conclusion of any appeals, and, in a criminal case, shall be retained for an additional period of one year after the date on which the pertinent defendant's judgment of conviction becomes final; upon order of the Court, the filing party must return the original exhibits to the Clerk of the Court. For any other original exhibit that was offered or introduced in evidence at a hearing or trial and that was retained by the Clerk of the Court because the exhibit was exempt from electronic filing, the party that offered or introduced that exhibit shall retrieve the exhibit from the Clerk of the Court within three (3) months after final adjudication of the action or proceeding and disposition of any appeal~~.~~ and, in a criminal case, shall retain the exhibit until one year after the date on which the pertinent defendant's judgment of conviction becomes final; ~~O~~otherwise, such original exhibits may be destroyed or otherwise disposed of as the Clerk of the Court may deem proper.

[Subsection (d) has been moved to Court's I.O.P.]

Effective December 1, 1994. Amended effective April 15, 2007; April 15, 2010; December 1, 2015; December 1, 2017.

**Authority**

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

**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 Sections 5A, 5K, 9A-D, and 10B, as applicable, of the CM/ECF Administrative Procedures. 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~~ file information or documents under seal in a civil case shall:

(1) In a case that is not otherwise sealed in its entirety as permitted or required by federal law, file electronically via CM/ECF a motion to file under seal that sets forth the factual and legal basis for departing from the policy that Court filings ~~be~~ are public and that describes the ~~proposed~~ information or documents to be sealed ~~filing~~ (the "proposed sealed material") with as much particularity as possible, but without attaching or revealing the ~~confidential information.~~ content of the proposed sealed material. The ~~motion~~ proposed sealed material shall not be filed unless the Court grants the motion to file under seal. The motion to file under seal shall specify the proposed duration of the requested sealing. The motion to file under seal ~~(but not the proposed sealed filing)~~ and the docket text shall be publicly available on the docket. ~~The proposed sealed filing must be filed electronically as~~If, prior to the issuance of a ~~sealed~~ ruling on the motion to file under seal, the moving party elects or is required to publicly file a pleading, motion, memorandum, or other document ~~in~~ that attaches or reveals the content of the proposed sealed material, then the moving party must redact from the public filing all content that is the subject of the motion to file under seal. If the Court grants the motion to file under seal, then the moving party shall file any pleading, motion, memorandum, or other document that has been authorized to be filed under seal via CM/ECF using events specifically earmarked for sealed civil filings ~~as described in detail in Section 9 of the~~, but if a redacted filing previously has been made or is accompanying the sealed filing, then the material that is being filed under seal shall be filed as an attachment to a "Notice of Sealed Filing" which shall be filed via CM/ECF ~~Administrative Procedures~~ (using events specifically earmarked for sealed civil filings). The ~~filer~~ moving party must complete any required service of the sealed ~~document(s)~~filing or Notice of Sealed Filing conventionally, indicating the corresponding ~~document~~ docket number of the sealed ~~document(s)~~ filing or Notice of Sealed Filing.

(2) A party appearing pro se seeking to make a filing under seal in a civil case that is not otherwise sealed in its entirety as permitted or required by federal law must ~~file a~~ comply

with the procedures set forth in Local Rule 5.4(b)(1), except that the motion to file under seal ~~and proposed sealed documents~~shall be filed conventionally~~. Proposed sealed documents~~ with the Clerk of Court and, if the Court grants the motion to file under seal, the sealed filing or Notice of Sealed Filing shall be submitted to the Clerk of Court in a plain envelope clearly marked "sealed document" with the case number and style of the case noted on the outside. The ~~filer~~ pro se party must also complete any required service of the sealed ~~document(s)~~filing or Notice of Sealed Filing conventionally indicating the corresponding docket number of the sealed filing or Notice of Sealed Filing.

~~(2) Requests~~ (3) A party or pro se party seeking to seal a case in its entirety ~~require~~ must file a motion to seal ~~that is filed~~ conventionally with the Clerk of Court in a plain envelope clearly marked "sealed document" with the style of the case noted on the outside of the envelope. The motion to seal must set forth the factual and legal basis for departing from the policy that Court filings be public, describe the proposed sealed filing with as much particularity as possible without revealing the confidential information, and specify the proposed duration of the requested sealing. If the motion is granted, subsequent filings shall be filed conventionally with the Clerk of Court as sealed documents in a plain envelope clearly marked "sealed document" with the case number and style of the case noted on the outside. The filer must complete any required service of the sealed document(s) conventionally.

**(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) In criminal matters, 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.

(3) In civil matters, electronically file the ex parte filing via CM/ECF as a restricted document using the events specifically earmarked for ex parte filings as described in Section 9 of the CM/ECF Administrative Procedures.

(4) A party appearing pro se must file documents conventionally.

**(e) 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; December 1, 2015; December 1, 2017.

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

**(b) Hearings.**

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

(2) A party who desires oral argument or a hearing of any motion shall request it within the motion or opposing memorandum in a separate section titled "request for hearing." The request shall set forth in detail the reasons why a hearing is desired and would be helpful to

the Court and shall estimate the time required for argument. The Court in its discretion may grant or deny a hearing as requested, upon consideration of both the request and any response thereto by an opposing party.

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

(4) With respect to:

(A) any motion or other matter 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.** For all motions, except motions served with the summons and complaint, 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. For a motion served with the summons and complaint, the opposing memorandum of law shall be due on the day the response to the complaint is due.

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

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

(B) If the motion or memorandum was served only by mail, 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. Court three (3) more 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.

(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, tables of contents, tables of citations, "request for hearing" sections, 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. This prohibition does not preclude a party from filing both a motion for summary judgment asserting an immunity from suit and a later motion for summary judgment addressing any issues that may remain in the case. This prohibition also is not triggered when, as permitted by Fed. R. Civ. P. 12(d), the Court elects to treat a motion filed pursuant to Fed. R. Civ. P. 12(b) or 12(c) as a summary judgment motion.

**(d) Emergency Motions.** 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 Certification of Emergency form available on the Court's website (www.flsd.uscourts.gov).

As prescribed by Section 10 of the CM/ECF Administrative Procedures, a party seeking to file an emergency motion must file the documents electronically via CM/ECF using the events specifically earmarked for emergency matters. The filer must certify that the matter is a true emergency. Motions are not considered emergencies if the urgency arises due to the attorney's or party's own dilatory conduct. A Certification of Emergency form must be signed and filed as an attachment to the emergency motion in CM/ECF.

Emergency motions in criminal cases that are also ex parte or sealed must be conventionally filed. A party appearing pro se must file emergency matters conventionally.

**(e) Applications Previously Refused.** Whenever any motion or application has been made to any Judge or Magistrate Judge and has been refused in whole or in part, or has been granted conditionally, and a subsequent motion or application is made to a different District Judge or Magistrate Judge for the same relief in whole or in part, upon the same or any alleged different

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

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

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

When a court transfers or a party removes an action to this Court, a true and legible copy of: (a) any pending motion and all documents previously filed in support thereof; and (b) any opposition to any such motion and all documents previously filed in opposition to any such motions, shall be filed by the moving party within seven (7) days of the entry of the order of transfer or the filing of the notice of removal unless those materials already have been made part of the case file in this Court. If there is a motion pending upon transfer or removal for which the moving party has not submitted a memorandum in support, the moving party shall file such memorandum within fourteen (14) days after the filing of the notice of removal or the entry of the order or transfer. If the moving party filed a memorandum in support of the motion prior to removal but any party opposing the motion has not yet filed a memorandum in opposition, any party opposing the motion shall file such memorandum within
fourteen (14) days after the filing of the notice of removal or the entry of the order of transfer. All parties shall then comply with the briefing deadlines provided in Local Rule 7.1(c).

Effective December 1, 1994. Amended effective April 15, 2003; April 15, 2007; April 15, 2010; December 1, 2015.

### Authority

(1993) Former Local Rule 10D.

## RULE 7.3 ATTORNEYS FEES AND COSTS

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

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

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

Effective December 1, 1994. Amended effective April 15, 2002; April 15, 2007; April 15, 2010; April 15, 2011; December 1, 2011; December 1, 2015; December 1, 2016.

**Authority**

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

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

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

Effective December 1, 1994. Amended effective April 15, 2007; December 1, 2015.

**Authority**

(1993) Model Local Rule 15.1.

## RULE 16.1 PRETRIAL PROCEDURE IN CIVIL ACTIONS

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

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

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

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

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

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

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

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

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

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

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

(A) the likelihood of settlement;

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

(C) proposed limits on the time:

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

(ii) to file and hear motions; and

(iii) to complete discovery.

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

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

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

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

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

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

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

(K) any issues about: (i) disclosure, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced; (ii) claims of privilege or of protection as trial-preparation materials, including -- if the parties agree on a procedure to assert those claims after production -- whether to ask the court to include their agreement in an order under Federal Rule of Evidence 502; and (iii) when the parties have agreed to use the ESI Checklist available on the Court's website (www.flsd.uscourts.gov), matters enumerated on the ESI Checklist; and

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

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

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

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

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

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

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

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

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

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

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

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

In all civil cases (except those expressly exempted below) the Court shall enter a Scheduling Order as soon as practicable but in any event within ~~ninety~~ sixty (~~9~~60) days after the appearance of a defendant and within ninety ~~120~~ (90) days after the complaint has been served on a defendant. It is within the discretion of each Judge to decide whether to hold a scheduling conference with the parties prior to entering the Scheduling Order.

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

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

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

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

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

(1) Discuss settlement.

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

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

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

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

**(e) Pretrial Stipulation Must Be Filed.** It shall be the duty of counsel to see that the pretrial stipulation is drawn, executed by counsel for all parties, and filed with the Court no later than seven (7) days prior to the pretrial conference, or if no pretrial conference is held, seven (7) days prior to the call of the calendar. The pretrial stipulation shall contain the following statements in separate numbered paragraphs as indicated:

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

(2) The basis of federal jurisdiction.

(3) The pleadings raising the issues.

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

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

(6) A statement in reasonable detail of issues of fact which remain to be litigated at trial. By way of example, reasonable details of issues of fact would include: (A) As to negligence or contributory negligence, the specific acts or omissions relied upon; (B) As to damages, the precise nature and extent of damages claimed; (C) As to unseaworthiness or

unsafe condition of a vessel or its equipment, the material facts and circumstances relied upon; (D) As to breach of contract, the specific acts or omissions relied upon.

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

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

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

A–Authenticity

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

R–Relevancy

H–Hearsay

UP–Unduly prejudicial-probative value outweighed by undue prejudice

P–Privileged

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

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

(11) Estimated trial time.

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

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

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

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

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

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

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

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

Effective December 1, 1994. Amended effective April 15, 1996; April 15, 1997; April 15, 1998; April 15, 2001; April 15, 2004; April 15, 2007; April 15, 2010; April 15, 2011; December 1, 2011; December 3, 2012; December 1, 2015; December 1, 2017.

**Authority**

(1993) Former Local Rule 17.

## 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 available on the Court's website (www.flsd.uscourts.gov), 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 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. 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 provide the parties with ~~electronically file~~ a Mediation Report. If the mediator is ~~not~~ an authorized ~~CM/ECF~~ user of the Court's electronic filing system (CM/ECF) then~~,~~ the mediator shall electronically file ~~the~~ a Mediation Report. If the mediator is not an authorized CM/ECF user, the mediator shall either: (a) file the Mediation Report ~~in the conventional manner~~conventionally; or (b) with the consent of the parties, arrange for one of the parties to file a "Notice of Filing Mediator's Report," which shall attach the report as an exhibit. ~~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 pursuant to the requirements of S.D. Fla. L.R. 16.4. ~~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; December 1, 2015; December 1, 2017.

**RULE 16.3 CALENDAR CONFLICTS**

Calendar conflicts will be resolved and notice shall be given in accordance with the Resolution of the Florida State-Federal Council Regarding Calendar Conflicts Between State and Federal Courts

(available on the Court's website: www.flsd.uscourts.gov ) or as otherwise agreed to between the Judges in a given case.

Effective April 15, 2000. Amended effective April 15, 2006; April 15, 2007; December 1, 2011; December 1, 2015.

**Authority**

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

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

**RULE 16.4 NOTICE OF SETTLEMENT**

If the parties reach an agreement to settle the entire case or certain claims or issue therein, counsel shall notify the Court of such settlement by filing a notice of settlement within two (2) Court days of such agreement being reached. The notice shall be filed jointly by counsel for all parties to the settlement. Alternatively, the parties may file a notice or stipulation, as applicable, pursuant to Fed. R. Civ. P. 41. But unless such notice or stipulation is filed within two (2) Court days of the parties reaching a settlement, the parties are still required to file a separate notice of settlement.

Effective December 1, 2017.

**RULE 23.1 CLASS ACTIONS**

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

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

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

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

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

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

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

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

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

Since a petitory and possessory action can be joined to obtain original possession, *The Friendship,* Fed.Cas. No. 5,123 (CCD Maine, 1855), this rule contemplates that an expedited hearing will only occur in purely possessory actions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**(4) Form of Stipulation or Bonds.** Except in cases instituted by the United States through information, or complaint of information upon seizures for any breach of the revenues, navigation,

or other laws of the United States, stipulations or bonds in admiralty and maritime actions need not be under seal and may be executed by the agent or attorney of the stipulator or obligor.

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

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

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

(i) Stipulation for the Allocation and Payment of the Marshal's Fees and Expenses. Immediately upon the filing of the intervening complaint, counsel for the intervening plaintiff shall arrange for a conference between all other parties to the action, at which time a good faith effort shall be made to allocate fees and expenses among the parties. Any resulting stipulation between the parties shall be codified and filed with the Court and a copy served upon the Marshal.

(ii) Allocation of Costs and Expenses in the Event That Counsel Cannot Stipulate. The Court expects that counsel will resolve the allocation of costs and expenses in accordance with the preceding paragraph. In the event that such an arrangement cannot be made, the parties shall share in the fees and expenses of the Marshal in proportion to their claims as stated in the original and intervening complaints.

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

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

Upon receipt of this listing, the Marshal shall determine the total expenses incurred to date and shall estimate the expenses to be incurred during the next fourteen (14) days. For the purpose of making this calculation, the total fees and expenses shall be calculated from the

date when continuous and uninterrupted arrest or attachment of the property began, and not prorated from the date a particular party's intervening complaint was filed.

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

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

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

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

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

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

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

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

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

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

**(7) Process Held in Abeyance.**

(a) *When Permitted.* In accordance with Supplemental Rule E(3)(b), a plaintiff may ask the Clerk of the Court not to issue process, but rather to hold the process in abeyance. The Clerk of the Court shall docket this request, and thereafter shall not be responsible for ensuring that process is issued at a later date.

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

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

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

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

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

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

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

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

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

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

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

(b) *Release Pursuant to Court Order.* In accordance with Supplemental Rule E(5)(c), a party may petition to release the vessel pursuant to Court order. A party making such application shall file a Request for Release which shall substantially conform in format and content to the form identified as SDF 8 on the Court's website (www.flsd.uscourts.gov). 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 on the Court's website (www.flsd.uscourts.gov).

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 shall take custody of any vessel, cargo and/or other property arrested, or attached in accordance with these rules. ~~Thereafter, and~~ (*Practitioner's Note*: Notwithstanding the foregoing, in this District it is the practice of the Marshal to *not* take custody of any arrested vessel or execute an arrest warrant until as a ~~such time as~~ substitute custodians is in place). ~~may be~~ If the Marshal takes custody of any such arrested or attached property before a substitute custodian is authorized in accordance with Local Admiralty Rule E(10)(c), then the Marshal shall be responsible for providing adequate and necessary security for the safekeeping of the ~~vessel or~~ property until the substitute custodian is appointed.

In the discretion of the Marshal, such 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 on the Court's website (www.flsd.uscourts.gov).

(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 on the Court's website (www.flsd.uscourts.gov).

(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). 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). 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 December 1, 1994. Amended effective April 15, 1998; April 15, 2007; April 15, 2010; April 15, 2011; December 1, 2014; December 1, 2015; December1, 2017.

**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.

## ~~SPECIAL RULES GOVERNING THE ADMISSION AND PRACTICE OF ATTORNEYS~~RULES GOVERNING THE ADMISSION, PRACTICE, PEER REVIEW, AND DISCIPLINE OF ATTORNEYS

### RULE 1. QUALIFICATIONS FOR ADMISSION

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

Effective December 1, 1994. Amended effective Jan. 1, 1996; April 15, 2002; April 15, 2006; April 15, 2007; December 3, 2012; December 1, 2015; December 1, 2017.

### 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) and shall also pay ~~together with an~~ the 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. ~~.~~ In accordance with Court procedure, the Clerk of the Court shall refer to the Ad Hoc Committee on Attorney Admissions, Peer Review, and Attorney Grievance any applicant for further investigation under Rule 6.

Effective December 1, 1994. Amended effective Jan. 1, 1996; April 15, 2007; December 3, 2012; December 1, 2015; December 1, 2017.

### 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 December 1, 1994. Amended effective Jan. 1, 1996; April 15, 2007; December 1, 2011; December 1, 2015; December 1, 2017.

### 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 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.** An attorney ~~member of the bar of this Court~~ acting on behalf ~~of its~~ this Court's Volunteer Attorney Program ~~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 December 1, 1994. Amended effective Jan. 1, 1996; April 15, 2007; April 15, 2010; December 1, 2014; December 1, 2015; December 1, 2017.

**RULE 5. PEER REVIEW**

**(a) Purpose.** It is recognized that the Court and the bar have a joint obligation to improve the level of professional performance in the courtroom. To this end, the purposes to be accomplished through the Ad Hoc Committee on Attorney Admissions, Peer Review and Attorney Grievance (the "Committee") are to determine whether individual attorneys are failing to perform to an adequate level of competence necessary to protect the interests of their clients, to establish and administer a remedial program designed to raise the competence of an attorney who is not performing adequately, to refer such attorneys to appropriate institutions and professional personnel for assistance in raising his or her level of competency, to determine through evaluation, testing or other appropriate means whether an attorney who has been referred for assistance has attained an adequate level of competency, and to report to the Court any attorney who refuses to cooperate by participating in a remedial program to raise his or her level of competence, or fails to achieve an adequate level of competence within a reasonable time.

**(b) Duties and Responsibilities of the Committee.**

(1) *Referral.* Any District Judge, Magistrate Judge, or Bankruptcy Judge shall refer in writing to the Committee the name of any attorney he or she has observed practicing law in a manner which raises a significant question as to the adequacy of such attorney's ability to represent clients in a competent manner. The referral shall be accompanied by a statement of the reasons why such question is raised.

(2) *Initial Screening.* Promptly after receipt of such a reference the Chairman of the Committee shall advise the attorney that it has been made. Thereafter an Initial Screening Committee shall be selected consisting of three members of the Committee. The Initial Screening Committee may request that the attorney meet with it informally to explain the circumstances which gave rise to the reference and may conduct such preliminary inquiries as it deems advisable. If after such preliminary inquiry the Initial Screening Committee determines that further attention is not needed it shall mark the matter "closed" with notation explaining its determination. Upon closing a matter the Chairman shall notify the referring judge and the attorney.

(3) *Remedial Action.* If the Initial Screening Committee deems that the matter warrants further action, it shall so advise the Chairman who shall then cause a Review Committee to be selected consisting of three members (other than those who served on the Initial Screening Committee). The Review Committee may pursue such inquiries as it deems appropriate and may recommend to the attorney that the attorney take steps to improve the quality of the attorney's professional performance and if so the nature of the recommended action designed to effect such improvement. The attorney shall be advised of any such recommendation in writing and be given the opportunity to respond thereto, to seek revision or revocation of the recommendation or to suggest alternatives thereto. The Review Committee after receiving such response may modify, amend, revoke or adhere to its original recommendation and shall notify the attorney of its final recommendation. Any attorney who takes exception to the proposed Review Committee's final recommendation

shall have the right to have it considered by the full Committee. Any recommendation finally promulgated shall be entered in the records of the Committee. The Committee may develop an appropriate remedial program, including, but not limited to, mandatory participation in continuing legal education programs and participation in group and individual study programs. The Committee may monitor the attorney's progress in following the remedial program developed for him or her. If the attorney's lack of competency relates to drug or alcohol abuse, the Committee may require the attorney to seek treatment for that condition and require the attorney to submit periodic reports from the individuals responsible for such treatment.

**(c) Referral to the Court.** If the Committee finds that there is a substantial likelihood that the attorney's continued practice of law may result in serious harm to the attorney's clients pending completion of a remedial program, it may recommend that the Court consider limiting or otherwise imposing appropriate restrictions on the attorney's continued practice in the District Court.

**(d) Obligation to Cooperate With Committee.** It shall be the obligation of all members of the bar of this District to cooperate with the Committee so that it may effectively assist members of the bar to improve the quality of their professional performance. Any member of the bar of this Court, who is the subject of a reference under Administrative and Practice Rule 5 or who is asked by the Committee to furnish it with relevant information concerning such a reference shall regard it to be an obligation as an officer of this Court to cooperate fully with the Committee which constitutes an official arm of the Court.

**(e) Failure to Respond to Committee.** If an attorney shall refuse to meet with the Committee, furnish it with an explanation of the circumstances which gave rise to the referral, or otherwise cooperate with the Committee, the Court shall be so advised and the attorney's failure to cooperate shall be recorded in the records of the Committee. The Committee shall refer to the Court for appropriate action any attorney who refuses to cooperate in participating in a remedial program, or who fails to achieve an adequate level of competence within a reasonable time.

**(f) Confidentiality.** All matters referred to the Committee, all information in the possession of the Committee and all recommendations or other actions taken by the Committee are matters relating to the administration of the Court and shall be confidential, and shall be disclosed only by order of the Court. Correspondence, records and all written material coming to the Committee shall be retained in an office designated by the Court and are documents of the Court and shall be kept confidential unless the Court directs otherwise. No statement made by the attorney to the Committee shall be admissible in any action for malpractice against the attorney, nor shall any part of the Committee's investigative files be admissible in such proceedings. No statement made by the attorney to the Committee shall be admissible in any action under 28 U.S.C. § 2255 collateral attack for incompetency of counsel in a criminal case, nor shall any part of the Committee's investigative files be admissible in proceedings under 28 U.S.C. § 2255. Likewise, any information given by a client of the attorney to the Committee shall be privileged to the same extent as if the statements were made by the client to the attorney.

**(g) Separation From Disciplinary Proceedings.** Nothing contained herein and no action hereunder shall be construed to interfere with or substitute for any procedure relating to the

~~discipline of any attorney. Any disciplinary actions relating to the inadequacy of an attorney's performance shall occur apart from the proceedings of the Committee in accordance with law and as directed by the Court.~~

~~**(h) Committee Immunity.** Any Committee determination that a referred attorney is adequately competent does not render the Committee potentially liable as a guarantor of the validity of that determination. The Committee is not liable for the misconduct or nonconduct of any referred attorney. Committee members are immune from prosecution for actions taken within the scope of the duties and responsibilities of the Committee as prescribed by the Court. Unauthorized disclosure of confidential information is outside the scope of the Committee's responsibilities.~~

~~**(i) Report to the Court.** Upon completion of the Committee's activities in respect to each attorney referred by the Court, the Committee shall make a report to the Court. The Committee shall make such interim reports or periodic reports relative to its activities as may be requested by the Court.~~

~~Effective December 1, 1994. Amended effective April 15, 2000; April 15, 2002; April 15, 2007; April 15, 2010; December 1, 2015.~~

## RULE 65. STUDENT PRACTICE

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

**(b) Student Requirements.** An eligible student must:

(1) be duly enrolled in a law school;

(2) have completed at least four semesters of legal studies or the equivalent;

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

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

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

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

(7) neither ask for nor receive any compensation or remuneration of any kind for the student's~~his or her~~ services from the person on whose behalf the student ~~he or she~~ renders

services, but this shall not prevent a lawyer, legal aid bureau, law school, public defender agency, or the state from paying compensation to the eligible law student (nor shall it prevent any agency from making such charges for its services as it may otherwise properly require).

**(c) Program Requirements.** The program:

(1) must be a law school clinical practice program for credit, in which a law student obtains academic and practice advocacy training, under supervision of qualified attorneys including federal or state government attorneys or private practitioners;

(2) must be certified by the Court;

(3) must be conducted in such a manner as not to conflict with normal Court schedules;

(4) must be under the direction of a member or members of the regular or adjunct faculty of the law school;

(5) must arrange for the designation and maintenance of an office in this District to which may be sent all notices which the Court may from time to time have occasion or need to send in connection with this Rule or any legal representation provided pursuant to this Rule.

**(d) Supervisor Requirements.** A supervising attorney must:

(1) be a lawyer whose service as a supervising attorney for this program is approved by the dean of the law school in which the law student is enrolled and who is a member of The Florida Bar in good standing;

(2) be a member of the bar of this Court;

(3) be certified by the Court as a student supervisor;

(4) be present with the student when required by the Court;

(5) co-sign all pleadings or other documents filed with this Court;

(6) assume full personal professional responsibility for a student's guidance in any work undertaken and for the quality of a student's work, and be available for consultation with represented clients;

(7) assist the student in his preparation to the extent the supervising attorney considers it necessary.

**(e) Certification of Student, Program and Supervising Attorneys.**

(1) *Students.*

(A) Certification by the law school dean or his designee, if said certification is approved by the Court, shall be filed with the Clerk of the Court, and unless it is sooner withdrawn, shall remain in effect until the expiration of eighteen months;

(B) Certification to appear in a particular case may be withdrawn by the Court at any time, in the discretion of the Court, and without any showing of cause. Notice of termination may be filed with the Clerk of the Court.

(2) *Program.*

(A) Certification of a program by the Court shall be filed with the Clerk of the Court and shall remain in effect indefinitely unless withdrawn by the Court;

(B) Certification of a program may be withdrawn by the Court at the end of any academic year without cause, or at any time, provided notice stating the cause for such withdrawal is furnished to the law school dean.

(3) *Supervising Attorney.*

(A) Certification of a supervising attorney by the law school dean, if said certification is approved by the Court, shall be filed with the Clerk of the Court, and shall remain in effect indefinitely unless withdrawn by the dean or by the Court;

(B) Certification of a supervising attorney may be withdrawn by the Court at the end of any academic year without cause, or at any time upon notice and a showing of cause;

(C) Certification of a supervising attorney may be withdrawn by the dean at any time by mailing of notice to that effect to the Clerk of the Court;

(D) Any Judge of this Court retains the authority to withdraw or limit a supervising attorney's participation in any individual case before the Judge.

**(f) Activities.**

(1) An eligible law student may participate in proceedings in open court ~~appear~~ in ~~this~~ the Bankruptcy Court on behalf of any indigent person if the person on whose behalf ~~he or she~~the student is appearing has indicated in writing ~~the studenttheir his or her~~ consent to that appearance and the supervising attorney has also indicated in writing approval of that appearance. ~~t~~The written consent and approval ~~referred to above~~ shall be filed in the record of the case and shall be brought to the attention of the Judge.

~~(2) An eligible law student may also appear in any criminal matter on behalf of the government with the written approval of the prosecuting attorney or his or her authorized representative and of the supervising attorney.~~

~~(3) An eligible law student may also appear in this Court in any civil matter on behalf of the government, with the written approval of the attorney representing that entity.~~
~~(4) In each case, the written consent and approval referred to above shall be filed in the record of the case and shall be brought to the attention of the Judge.~~

(~~5~~2) The Board of Governors of The Florida Bar shall fix the standards by which indigency is determined under this Rule upon the recommendation of the largest voluntary bar association located in the state judicial circuit in which this program is implemented.

(~~6~~3) In addition, an eligible law student may engage in other activities, under the general supervision of a member of the bar of this Court, but outside the personal presence of that lawyer, including:

(A) preparation of pleadings and other documents to be filed in any matter in which the student is eligible to appear, but such pleadings or documents must be signed by the supervising attorney;

(B) preparation of briefs, abstracts and other documents to be filed in appellate courts, but such documents must be signed by the supervising attorney;

(C) except when the assignment of counsel in the matter is required by any constitutional provision, statute or rule of this Court, assistance to indigent inmates of correctional institutions or other persons who request such assistance in preparing applications for and supporting documents for post-conviction relief. If there is an attorney of record in the matter, all such assistance must be supervised by the attorney of record, and all documents submitted to the Court on behalf of such a client must be signed by the attorney of record;

(D) each document or pleading must contain the name of the eligible law student who has participated in drafting it. If ~~he or she~~the student participated in drafting only a portion of it, that fact may be mentioned.

**(g) Court Administration.** The Chief Judge[1], or one or more members of the Court appointed by the Chief Judge, shall act on behalf of the Court in connection with any function of this Court under this Rule. The Ad Hoc Committee on Attorney Admissions, Peer Review and Attorney Grievance shall assist the Court to administer this Rule including the review of applications and continuing eligibility for certification of programs, supervising attorneys, and students.

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[1] In these Rules, references to the Chief Judge shall mean to the Chief Judge or the Chief Judge's designee.

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

**RULE ~~7~~6. ~~AD HOC~~ COMMITTEE ON ATTORNEY ADMISSIONS, PEER REVIEW, AND ATTORNEY GRIEVANCE**

**(a) Establishment and Membership~~Function~~.** There shall be an Ad Hoc Committee on Attorney Admissions, Peer Review, and Attorney Grievance (the "Committee"). The Committee shall consist of attorneys practicing within this District. The Chief Judge, or one or more members of the Court appointed by the Chief Judge, shall appoint the members of the Committee. In addition to other considerations given by the Court to establish a Committee that reflects the diversity of the Bar of the Court, the geographic location of the members should also be weighed in the Court's selection of members of the Committee.~~Subject to the direction of the Court, the Committee shall have the authority and perform the functions assigned by these Rules and shall otherwise assist the Court in the implementation and evaluation of these Rules.~~ The members shall serve renewable terms of three (3) years and shall be staggered so that one third of the members' terms expire each year. The Chief Judge shall select the Committee Chair. Selections shall be made by Administrative Order entered by the Chief Judge. All persons appointed to the Committee shall serve at the pleasure of the Court. The Committee shall not exceed twenty-five (25) members.

**(b) ~~Memberships~~Purpose.** ~~The Committee shall consist of a group of law school professors and attorneys practicing within this District. The Chief Judge, or one or more members of the Court appointed by the Chief Judge, shall appoint the members of the Committee. The Chief Judge shall select the Committee Chair. Selections shall be made by Administrative Order entered by the Chief Judge. All persons appointed to the Committee shall serve at the pleasure of the Court.~~ Subject to the direction of the Court, the Committee shall have the authority and perform the functions assigned by these Rules and shall otherwise assist the Court in the implementation and evaluation of these Rules. The Committee may under no circumstances initiate and investigate such matters without prior referral by the Court.

(1) *Peer Review.* It is recognized that the Court and the bar have a joint obligation to improve the level of professional performance in the courtroom. To this end, one of the Committee's primary functions is to determine whether individual attorneys are failing to perform to an adequate level of competence necessary to protect the interests of their clients. In furtherance of that objective, the Committee shall have the authority to establish and administer a remedial program designed to raise the competence of an attorney who is not performing adequately; to refer an attorney to appropriate institutions and professional personnel for assistance in raising his or her level of competency; to determine, through evaluation, testing, or other appropriate means, whether an attorney who has been referred for assistance has attained an adequate level of competency; and to report to the Court any attorney who refuses to cooperate by participating in a remedial program to raise the attorney's level of competence, or fails to achieve an adequate level of competence within a reasonable time.

(2) *Attorney Discipline.* The other primary function of the Committee shall be to conduct investigations of alleged misconduct of any attorney—whether a member of the Bar of

this Court or not; to conduct and preside over disciplinary hearings when appropriate and as hereinafter provided; and to submit written findings and recommendations for appropriate action by the Court, except as otherwise described herein.

(A) Standards for Professional Conduct. Acts and omissions by an attorney admitted to practice before this Court, individually or in concert with any other person or persons, which violate the Rules of Professional Conduct, Chapter 4 of the Rules Regulating The Florida Bar, shall constitute "misconduct" and shall be grounds for discipline, whether the act or omission occurred in the course of an attorney/client relationship. Attorneys practicing before this Court shall be governed by this Court's Local Rules, and by the Rules of Professional Conduct, except as otherwise provided by specific Rule of this Court.

(B) Discipline. Discipline for misconduct defined in these Rules may consist of (1) disbarment, (2) suspension, (3) reprimand, (4) monetary sanctions, (5) removal from this Court's roster of attorneys eligible for practice before this Court, or (6) any other sanction the Court may deem appropriate.

(C) Court's Retention of Inherent Power. Nothing contained in these Rules shall be construed to deny the Court its inherent power to maintain control over the proceedings conducted before it or to deny the Court those powers derived from statute, rule, or procedure. When alleged attorney misconduct is brought to the attention of the Court, whether by a Judge of the Court, any lawyer admitted to practice before the Court, any officer or employee of the Court, the Supreme Court of Florida, or otherwise, the Court may, in its discretion, dispose of the matter through the use of its inherent, statutory, or other powers; refer the matter to an appropriate state bar agency for investigation and disposition; refer the matter to the Committee;– or take any other action the Court deems appropriate. These procedures are not mutually exclusive.

**(c) Procedures.**

(1) *Internal Referral.* Any District Judge, Bankruptcy Judge, or Magistrate Judge may, in the Judge's discretion, refer in writing to the Committee the name of any attorney the Judge observed practicing law in a manner which either: (a) raises a significant question as to the adequacy of such attorney's ability to represent clients in a competent manner (See Rule 6(b)(1) Peer Review); and/or (b) whose acts or omissions may violate the Standards for Professional Conduct (See Rule 6(b)(2)(A)). Each referral shall document the facts of the matter, with the Committee having the discretion to determine the type of review after its initial investigation unless the referral so directs.

(2) *Investigation and Proceedings.* Promptly after receipt of such a referral the Chairperson of the Committee shall select an Investigative Committee consisting of at least three members of the Committee. The Investigative Committee may request that the attorney meet with it informally to explain the circumstances which gave rise to the referral and may conduct such inquiries as it deems appropriate. Following the initial

inquiry, the Investigative Committee shall report its findings and recommendations to the Committee and the Committee may, at its discretion, further investigate, including but not limited to having the attorney appear before the Committee. If the Committee determines that additional investigation is not warranted the Committee shall document the findings in writing and close the investigation. No further action shall be taken unless the Court takes exception to the findings. Upon closing a matter the Chairman shall notify the referring Judge, Chief Judge, Clerk of Court, and the attorney. Otherwise the matter shall proceed to peer review or disciplinary proceedings as further described in subsections (A) and (B) below.

(A) Peer Review –

i. If the Committee determines that the attorney's conduct raises a significant question as to the adequacy of such attorney's ability to represent clients in a competent manner, it shall report its findings to the Chief Judge, Clerk of Court, and the attorney and describe the recommended remedial program designed to raise the competence of the attorney. The remedial program can include, but is not limited to, ordering mandatory participation in continuing legal education programs and participation in group and individual study programs, referring the attorney to appropriate institutions and professional personnel for assistance in raising his or her level of competency, requiring the attorney obtain co-counsel in matters before the Court, and, if the attorney's lack of competency relates to drug or alcohol abuse, requiring the attorney to seek treatment for that condition and requiring the attorney to submit periodic reports from the individuals responsible for such treatment.

ii. If the attorney objects to the Committee's findings or recommendations, the attorney shall have the right to, within fourteen (14) days of receipt of the Committee's findings and recommendations, serve a written response seeking revision or revocation of, or suggesting alternatives to, the findings or proposed recommendations. The Committee shall consider the attorney's response and thereafter shall issue its final Report and Recommendation to the Court.

iii. The Committee is authorized to monitor the attorney's progress to ensure that it is consistent with the Court's Order adopting the Committee's Report and Recommendation, in whole or in part, and may make such interim reports or periodic reports relative to its activities as requested by the Court. Upon completion of the Committee's activities in respect to each attorney referred by the Court, the Committee may file a supplemental Report and Recommendation to the Court. The Supplemental Report and Recommendation shall include documentation as to the Committee's evaluation, testing, or other appropriate means used to determine whether the attorney has attained an adequate level of competency or if the attorney fails to achieve an adequate level of competency within a reasonable time. If the Committee finds that the

attorney has not complied with the Court's order and there is a substantial likelihood that the attorney's continued practice of law may result in serious harm to the attorney's clients, the Committee may undertake disciplinary proceedings pursuant to section (B), infra.

(B) Discipline –

i. If the Committee determines that probable cause exists to support a finding that the attorney has violated the Standards for Professional Conduct it shall provide the attorney with a written Report and Recommendation specifying: (1) its findings of fact supporting a finding of misconduct; and (2) its proposed recommendations as to the disciplinary measures to be applied by the Court. The Report and Recommendation shall also notify the attorney of the attorney's rights and obligations under these Rules.

ii. An attorney who objects to the Committee's Report and Recommendation shall have the right to, within fourteen (14) days of receipt of the Committee's Report and Recommendation, serve a written response seeking revision or revocation of, or suggesting alternatives to, the recommendation, and/or requesting a hearing before the Committee.

iii. If the attorney does not serve a written response within fourteen (14) days, the Committee shall file its Report and Recommendation with the Court, noting that the attorney failed to respond, and shall apply to the Court for the issuance of an order requiring the attorney to show cause within fourteen (14) days after service of that order why the attorney should not be disciplined.

iv. If the attorney serves a written response and requests a hearing, the Committee may, in its discretion, hold a hearing. If no hearing is requested, the Committee shall review the response and make a final Report and Recommendation to the Court. If the attorney fails to appear at the hearing, then the Committee shall take the steps outlined in subsection (B)(iii), supra. If the attorney does appear for the hearing, the attorney shall be entitled to be represented by counsel, to present witnesses and other evidence on his or her behalf, and to confront and cross examine witnesses against the attorney. The attorney does not have the right to confront or cross examine members of the Court or members of the Committee. The disciplinary proceedings before the Committee shall be guided by the Federal Rules of Evidence. The Committee may call the accused attorney as a witness to make specific and complete disclosure of all matters material to the charge of misconduct unless the attorney asserts a privilege or right properly available to the attorney under applicable federal or state law. Upon the conclusion of the hearing, the Committee shall file a final Report and Recommendation to the Court.

v. Upon receipt of the Committee's final Report and Recommendation, the Chief Judge shall issue an order requiring the attorney to show cause within fourteen (14) days why the Committee's final Report and Recommendation should not be adopted by the Court. The Chief Judge may, after considering the attorney's response, by majority vote of the active District Judges thereof, adopt, modify, or reject the Committee's findings that misconduct occurred, and may either impose those sanctions recommended by the Committee or fashion whatever penalties provided by the rules which it deems appropriate.

(3) *Relationship Between Peer Review and Attorney Discipline Functions and Procedures.* Unless otherwise ordered by the Chief Judge, the Committee has discretion to proceed with peer review or undertake disciplinary action. This discretion continues throughout the proceedings to allow the Committee to elevate a peer review action to a disciplinary action or vice versa depending on the facts discovered during the investigation. At any time a State or Federal Bar is investigating the same or similar action of the attorney under review by the Committee, upon review, the Committee may recommend to the Court to stay the proceedings pending the resolution of the investigation. If the Court approves of the stay, the attorney must notify the Court by written notice when the investigation is concluded. Any deadlines imposed under these rules will resume upon receipt of the notice.

(4) *Timing.* Within one hundred and eighty (180) days of receipt of the referral, unless additional time is requested for good cause, the Committee must have submitted its final Report and Recommendation to the Court, setting forth, inter alia, the procedures undertaken and under which rule; what standards of professional conduct have been violated, if any, or competency questioned; recommendations as to remedial or disciplinary measures to be applied; and a recommendation regarding the next steps that the Court should take. The Committee shall include its findings of fact as to the charges of misconduct, recommendations as to whether or not the accused attorney should be found guilty of misconduct justifying disciplinary actions by the Court, and recommendations as to the disciplinary measures to be applied by the Court. The Report and Recommendation shall be accompanied by a transcript of the proceedings before the Committee, all pleadings, and all evidentiary exhibits.

(5) *Interim Restrictions on Practice.* If the Committee finds that there is a substantial likelihood that the attorney's continued practice of law may result in serious harm to the attorney's clients pending completion of an investigation, it may recommend that the Court limit or otherwise impose appropriate restrictions on the attorney's continued practice in the District Court.

**(d) Immunity.** Any Committee determination that a referred attorney is adequately competent does not render the Committee potentially liable as a guarantor of the validity of that determination. The Committee is not liable for the misconduct or nonconduct of any referred attorney. Unauthorized disclosure of confidential information is outside the scope of the

Committee's responsibilities. The members of the Committee, while serving in their official capacities, shall be considered to be representatives of and acting under the powers and immunities of the Court, and shall enjoy all such immunities while acting in good faith and in their official capacities.

**(e) Obligation to Cooperate With Committee.** Any member of the bar of this Court, who is referred to the Committee for any reason shall regard it to be an obligation as an officer of this Court to cooperate fully with the Committee, which constitutes an official arm of the Court. Any failure to cooperate and/or to meet any deadline imposed by the rules, the Committee, or the Court, without good cause shown, will be reported to the Chief Judge and recorded in the records of the Committee and may constitute separate grounds for suspension or disbarment.

**(f) Confidentiality.** All matters referred to the Committee, all information in the possession of the Committee and all recommendations or other actions taken by the Committee are matters relating to the administration of the Court and shall be confidential, and shall be disclosed only by order of the Court. Correspondence, records and all written material coming to the Committee shall be retained in an office designated by the Court and are documents of the Court and shall be kept confidential unless the Court directs otherwise. No statement made by the attorney to the Committee shall be admissible in any action for malpractice against the attorney, nor shall any part of the Committee's investigative files be admissible in such proceedings. No statement made by the attorney to the Committee shall be admissible in any 28 U.S.C. § 2255 collateral attack for incompetency of counsel in a criminal case, nor shall any part of the Committee's investigative files be admissible in proceedings under 28 U.S.C. § 2255. Likewise, any information given by a client of the attorney to the Committee shall be privileged to the same extent as if the statements were made by the client to the attorney.

**(g) Notice.** All referrals, orders, and recommendations shall be provided to the Chief Judge, referring judge, attorney, and the Clerk of Court, unless otherwise specified. Any resulting orders shall be served in accordance with Rule 16.

Effective December 1, 1994. Amended effective April 15, 1996; April 15, 2002; April 15, 2007; April 15, 2010; December 1, 2015.

~~**RULE 8. EFFECTIVE DATES**~~

~~These Rules shall become effective and shall apply to all members of and applicants for admission to the bar as of January 1, 1996.~~

~~Effective December 1, 1994. Amended effective April 15, 1996; December 1, 2015.~~

## RULES GOVERNING ATTORNEY DISCIPLINE

### PREFATORY STATEMENT

Nothing contained in these Rules shall be construed to deny the Court its inherent power to maintain control over the proceedings conducted before it nor to deny the Court those powers derived from statute, rule or procedure, or other rules of court. When alleged attorney misconduct is brought to the attention of the Court, whether by a Judge of the Court, any lawyer admitted to practice before the Court, any officer or employee of the Court, or otherwise, the Court may, in its discretion, dispose of the matter through the use of its inherent, statutory, or other powers; refer the matter to an appropriate state bar agency for investigation and disposition; refer the matter to the Ad Hoc Committee on Attorney Admissions, Peer Review and Attorney Grievance as hereinafter defined; or take any other action the Court deems appropriate. These procedures are not mutually exclusive.

Effective December 1, 1994. Amended effective April 15, 2002; April 15, 2007; December 1, 2015.

### Source

(1993) Ad Hoc Committee on Attorney Discipline.

### RULE 1. STANDARDS FOR PROFESSIONAL CONDUCT

(a) Acts and omissions by an attorney admitted to practice before this Court, individually or in concert with any other person or persons, which violate the Rules of Professional Conduct, Chapter 4 of the Rules Regulating The Florida Bar shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney/client relationship. Attorneys practicing before this Court shall be governed by this Court's Local Rules, by the Rules of Professional Conduct, as amended from time to time, and, to the extent not inconsistent with the preceding, the American Bar Association Model Rules of Professional Conduct, except as otherwise provided by specific Rule of this Court. [Attorneys practicing before the Court of Appeals shall be governed by that Court's Local Rules and the American Bar Association Model Rules of Professional Conduct, except as otherwise provided by Rule of the Court].

(b) Discipline for misconduct defined in these Rules may consist of (1) disbarment, (2) suspension, (3) reprimand, (4) monetary sanctions, (5) removal from this Court's roster of attorneys eligible for practice before this Court, or (6) any other sanction the Court may deem appropriate.

Effective December 1, 1994. Amended effective April 15, 1996; April 15, 2007; April 15, 2010; December 1, 2015.

**RULE 2. AD HOC COMMITTEE ON ATTORNEY ADMISSIONS, PEER REVIEW AND ATTORNEY GRIEVANCE**

**(a) Establishment and Membership.** There shall be an Ad Hoc Committee on Attorney Admissions, Peer Review and Attorney Grievance (the "Committee"), as established under Rule 7 of the Special Rules Governing the Admission and Practice of Attorneys.

**(b) Purpose and Function.** The purpose and function of the Committee is to conduct, upon referral by the Court, a District Judge, Magistrate Judge or Bankruptcy Judge of the Court, investigations of alleged misconduct of any member of the Bar of this Court, or any attorney appearing and participating in any proceeding before the Court; to conduct, upon referral by the Court, a District Judge, Magistrate Judge or Bankruptcy Judge of the Court, inquiries and investigations into allegations of inadequate performance by an attorney practicing before the Court, as hereinafter provided; to conduct and preside over disciplinary hearings when appropriate and as hereinafter provided; and to submit written findings and recommendations to the Court or referring District Judge, Magistrate Judge or Bankruptcy Judge for appropriate action by the Court, except as otherwise described herein. The members of the Committee, while serving in their official capacities, shall be considered to be representatives of and acting under the powers and immunities of the Court, and shall enjoy all such immunities while acting in good faith and in their official capacities.

**(c) Jurisdiction and Powers.**

(1) The Court may, in its discretion, refer to the Committee any accusation or evidence of misconduct by way of violation of the disciplinary rules on the part of any member of the bar with respect to any professional matter before this Court for such investigation, hearing, and report as the Court deems advisable. [The Court of Appeals may, in addition to or instead of referring a disciplinary matter to its own Grievance Committee, refer a complaint to the Chief Judge of a District Court for referral to the District Court's Committee.] The Committee may, in its discretion, refer such matters to an appropriate state bar for preliminary investigation, or may request the Court to appoint special counsel to assist in or exclusively conduct such proceedings, as hereinafter provided in these Rules. (See Rule 11, infra.) The Court may also, in its discretion, refer to the Committee any matter concerning an attorney's failure to maintain an adequate level of competency in his or her practice before this Court, as hereinafter provided. (See Rule 8, infra.) The Committee may under no circumstances initiate and investigate such matters without prior referral by the Court.

(2) The Committee shall be vested with such powers as are necessary to conduct the proper and expeditious disposition of any matter referred by the Court, including the power to compel the attendance of witnesses, to take or cause to be taken the deposition of any witnesses, and to order the production of books, records, or other documentary evidence, and those powers described elsewhere in these Rules. The Chairman, or in his or her

absence each member of the Committee, has the power to administer oaths and affirmations to witnesses.

Effective December 1, 1994. Amended effective April 15, 2000; April 15, 2002; April 15, 2007; April 15, 2010; December 1, 2015.

**RULE 3. DISCIPLINARY PROCEEDINGS**

(a) When misconduct or allegations of misconduct which, if substantiated, would warrant discipline on the part of an attorney admitted to practice before this Court shall come to the attention of a District Judge, Magistrate Judge or Bankruptcy Judge of this Court, whether by complaint or otherwise, the District Judge, Magistrate Judge or Bankruptcy Judge may, in his or her discretion, refer the matter to the Committee for investigation and, if warranted, the prosecution of formal disciplinary proceedings or the formulation of such other recommendation as may be appropriate. [The Court of Appeals may, in addition to or instead of referring a disciplinary matter to its own Grievance Committee, refer a complaint to the Chief Judge of a District Court for consideration.]

(b) Should the Committee conclude, after investigation and review, that a formal disciplinary proceeding should not be initiated against an attorney because sufficient evidence is not present or for any other valid reason, the Committee shall file with the Court a recommendation for disposition of the matter, whether by dismissal, admonition, deferral, or any other action. In cases of dismissal, the attorney who is the subject of the investigation need not be notified that a complaint has been submitted or of its ultimate disposition. All investigative reports, records, and recommendations generated by or on behalf of the Committee under such circumstances shall remain strictly confidential.

(c) If the Committee concludes from preliminary investigation, or otherwise, that probable cause exists, the Committee shall file with the Court a written report of its investigation, stating with specificity the facts supporting its conclusion, and shall apply to the Court for the issuance of an order requiring the attorney to show cause within thirty (30) days after service of that order why the attorney should not be disciplined. The order to show cause shall set forth the particular act or acts of conduct for which he or she is sought to be disciplined. A copy of the Committee's written report should be provided to the attorney along with the show cause order. The accused attorney may file with the Committee within fourteen (14) days' of service of the order a written response to the order to show cause. After receipt of the attorney's response, if any, the Committee may request that the Court rescind its previously issued order to show cause. If the show cause order is not rescinded, and upon at least fourteen (14) days' notice, the cause shall be set for hearing before the Committee. A record of all proceedings before the Committee shall be made, and shall be made available to the attorney. That record, and all other materials generated by or on behalf of the Committee or in relation to any disciplinary proceedings before the Committee, shall in all other respects remain strictly confidential unless and until otherwise ordered by the Court. In the event the attorney does not appear, the Committee may recommend summary action and shall report its recommendation forthwith to the Court. In the event that the attorney does appear, he or she shall be entitled to be represented by counsel, to present witnesses and other evidence on his or

~~her behalf, and to confront and cross-examine witnesses against him. Except as otherwise ordered by the Court or provided in these Rules, the disciplinary proceedings before the Committee shall be guided by the spirit of the Federal Rules of Evidence. Unless he or she asserts a privilege or right properly available to him or her under applicable federal or state law, the accused attorney may be called as a witness by the Committee to make specific and complete disclosure of all matters material to the charge of misconduct.~~

~~(d) Upon completion of a disciplinary proceeding, the Committee shall make a full written report to the Court. The Committee shall include its findings of fact as to the charges of misconduct, recommendations as to whether or not the accused attorney should be found guilty of misconduct justifying disciplinary actions by the Court, and recommendations as to the disciplinary measures to be applied by the Court. The report shall be accompanied by a transcript of the proceedings before the Committee, all pleadings, and all evidentiary exhibits. A copy of the report and recommendation shall also be furnished the attorney. The Committee's written report, transcripts of the proceedings, and all related materials shall remain confidential unless and until otherwise ordered by the Court.~~

~~(e) Upon receipt of the Committee's finding that misconduct occurred, the Court shall issue an order requiring the attorney to show cause why the Committee's recommendation should not be adopted by the Court. The Court may, after considering the attorney's response, by majority vote of the active District Judges thereof, adopt, modify, or reject the Committee's findings that misconduct occurred, and may either impose those sanctions recommended by the Committee or fashion whatever penalties provided by the rules which it deems appropriate.~~

~~Effective December 1, 1994. Amended effective April 15, 2000; April 15, 2002; April 15, 2007; April 15, 2010; December 1, 2015.~~

## RULE 47. ATTORNEYS CONVICTED OF CRIMES

**(a)** Upon the filing with this Court of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before the Court has been convicted in any court of the United States, or the District of Columbia, or of any state, territory, commonwealth, or possession of the United States of any serious crime as herein defined, the Court shall enter an order immediately suspending that attorney, whether the conviction resulted from a plea of guilty, nolo contendere, verdict after trial, or otherwise, and regardless of the pendency of any appeal. The suspension so ordered shall remain in effect until final disposition of the disciplinary proceedings to be commenced upon such conviction. A copy of such order shall be immediately served upon the attorney. Upon good cause shown, the Court may set aside such order when it appears in the interest of justice to do so.

(1) *Adjudication Withheld.* Where a criminal proceeding results in an adjudication being withheld, the Court shall issue an Order to Show Cause for the attorney to respond within thirty (30) days before the issuance of any discipline.

**(b)** The term "serious" crime shall include any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction in which it was entered, involves false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or the use of dishonesty, or an attempt, conspiracy, or solicitation of another to commit a "serious crime."

**(c)** A certified copy of a judgment of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney based on the conviction.

**(d)** Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious crime, the Court may, in addition to suspending that attorney in accordance with the provisions of this Rule, also refer the matter to the Committee for institution of disciplinary proceedings in which the sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that a disciplinary proceeding so instituted will not be brought to final hearing until all appeals from the conviction are concluded.

**(e)** An attorney suspended under the provisions of this Rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed, but the reinstatement will not terminate any disciplinary proceedings then pending against the attorney, the disposition of which shall be determined by the Committee on the basis of all available evidence pertaining to both guilt and the extent of the discipline to be imposed.

Effective December 1, 1994. Amended effective April 15, 2002; April 15, 2007; April 15, 2010; December 1, 2015; December 1, 2017.

## RULE 85. DISCIPLINE IMPOSED BY OTHER COURTS

**(a)** An attorney admitted to practice before this Court shall, upon being subjected to reprimand, discipline, suspension, or disbarment by a court of any state, territory, commonwealth, or possession of the United States, or ~~upon being subject to any form of public discipline, including but not limited to suspension or disbarment,~~ by any other court of the United States or the District of Columbia, shall promptly inform the Clerk of the Court of such action.

**(b)** Upon the filing of a certified copy of a judgment or order demonstrating that an attorney admitted to practice before this Court has been disciplined by another court as described above, this Court may refer the matter to the Committee for a recommendation for appropriate action, or may issue a notice directed to the attorney containing:

(1) A copy of the judgment or order from the other court, and

(2) An order to show cause directing that the attorney inform this Court, within thirty (30) days after service of ~~that order upon the attorney~~ the order to show cause, of any claim by the attorney predicated upon the grounds set forth in subsection ~~E~~(e), ~~supra~~infra, that the imposition of identical discipline by the Court would be unwarranted and the reasons therefor.

**(c)** In the event that the discipline imposed in the other jurisdiction has been stayed there, any reciprocal disciplinary proceedings instituted or discipline imposed in this Court shall be deferred until such stay expires.

**(d)** After consideration of the response called for by the order issued pursuant to subsection B, supra, or after expiration of the time specified in that order, the Court may impose the identical discipline or may impose any other sanction the Court may deem appropriate.

**(e)** A final adjudication in another court that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purpose of a disciplinary proceeding in this Court, unless the attorney demonstrates and the Court is satisfied that upon the face of the record upon which the discipline in another jurisdiction is predicated it clearly appears that:

(1) the procedure in that other jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(2) there was such an infirmity of proof establishing misconduct as to give rise to the clear conviction that this Court could not, consistent with its duty, accept as final the conclusion on that subject; or

(3) the imposition of the same discipline by this Court would result in grave injustice; or

(4) the misconduct established is deemed by this Court to warrant substantially different discipline.

**(f)** This Court may at any stage ask the Committee to conduct disciplinary proceedings or to make recommendations to the Court for appropriate action in light of the imposition of professional discipline by another court.

Effective December 1, 1994. Amended effective April 15, 2002; April 15, 2007; April 15, 2010; December 1, 2015; December 1, 2017.

## RULE ~~9~~6. DISCIPLINE ON CONSENT, ~~OR~~ RESIGNATION, OR INACTIVE STATUS IN OTHER COURTS

**(a)** Any attorney admitted to practice before this Court shall, upon being suspended or disbarred on consent, ~~or~~ resigning, or being placed on inactive status with ~~from~~ any other bar while an investigation into allegations of misconduct is pending, promptly inform the Clerk of the Court of such suspension or disbarment on consent, ~~or~~ resignation, or inactive status, within thirty (30) days of its occurrence.

**(b)** An attorney admitted to practice before this Court who shall be suspended or disbarred on consent, ~~or~~ resign, or placed on inactive status with ~~from~~ the bar of any other court of the United States or the District of Columbia, or from the bar of any state, territory, commonwealth, or

possession of the United States while an investigation into allegations of misconduct is pending shall, upon the filing with this Court of a certified copy of the judgment or order accepting such suspension or disbarment on consent, ~~or~~ resignation, or inactive status, cease to be permitted to practice before this Court and be stricken from the roll of attorneys admitted to practice before this Court until further order of the Court..

(c) Any attorney who has resigned from or been placed on inactive status with The Florida Bar while an investigation into allegations of misconduct is pending shall inform the Clerk of the Court within thirty (30) days. Upon receipt of notice of such action, the attorney's ability to practice before this Court shall be administratively suspended and the attorney may not resume practice before this Court until they certify that they are an active attorney in good standing with The Florida Bar. There is no inactive status other than for government attorneys in this Court. An attorney may resign from the bar of this Court by notifying the Clerk of Court in writing and only if the attorney is in good standing, is not counsel of record in an active case, and is not subject to any disciplinary proceedings. Upon receipt of the notice of resignation, the attorney will be ineligible to practice in this Court and must reapply for admission pursuant to Rule 2 of these rules.

Effective December 1, 1994. Amended effective April 15, 2007; April 15, 2010; April 15, 2011; December 1, 2015; December 1, 2017.

**RULE ~~7~~10. DISCIPLINE ON CONSENT WHILE UNDER DISCIPLINARY INVESTIGATION OR PROSECUTION**

**(a)** Any attorney admitted to practice before this Court who is the subject of an investigation into, or a pending proceeding by a court of any state, territory, commonwealth, or possession of the United States, or by any other court of the United States or the District of Columbia involving, allegations of misconduct may consent to suspension or disbarment, but only by delivering to this Court an affidavit stating that the attorney desires to consent to suspension or disbarment and that:

(1) the attorney's consent is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of so consenting;

(2) the attorney is aware that there is a presently pending investigation or proceeding involving allegations that there exist grounds for the attorney's discipline the nature of which the attorney shall specifically set forth;

(3) the attorney acknowledges that the material facts so alleged are true; and

(4) the attorney so consents because the attorney knows that if charges were predicated upon the matters under investigation, or if the proceeding were prosecuted, the attorney could not successfully defend ~~himself~~ themself.

**(b)** Upon receipt of the required affidavit, this Court shall enter an order suspending or disbarring the attorney.

**(c)** The order suspending or disbarring the attorney on consent shall be a matter of public record. However, the affidavit required pursuant to the provisions of this Rule shall not be publicly disclosed or made available for use in any other proceeding except upon order of this Court.

Effective December 1, 1994. Amended effective April 15, 2007; April 15, 2010; April 15, 2011; December 1, 2015; December 1, 2017.

**RULE 118. ~~INCOMPETENCE AND~~ INCAPACITY**

**(a)** When it comes to the attention of the Court that an attorney has been judicially declared incompetent, involuntarily committed to a mental hospital, placed on inactive status or resigned, or has been suspended by another jurisdiction due to such mental incompetence or incapacity or on the basis of physical infirmity or illness, the Court, upon proper proof of the fact, shall enter an order immediately placing the attorney on the Court's inactive list until further order of the Court. If the Court becomes aware that an attorney is incapacitated by reason of mental infirmity or illness or because of the use of drugs or intoxicants, it shall also refer the matter to the Committee to investigate the matter in accordance with the procedures herein.

~~When it appears that an attorney for whatever reason is failing to perform to an adequate level of competence necessary to protect his or her client's interests, the Court may take any remedial action which it deems appropriate, including but not limited to referral of the affected attorney to appropriate institutions and professional personnel for assistance in raising the affected attorney's level of competency. The Court may also, in its discretion, refer the matter to the Committee for further investigation and recommendation.~~

~~**(b)** A referral to the Committee of any matter concerning an attorney's failure to maintain an adequate level of competency in his or her practice before this Court is not a disciplinary matter and does not implicate the formal procedures previously described in these Rules. Upon a referral of this sort, the Committee may request that the attorney meet with it informally and explain the circumstances which gave rise to the referral and may conduct such preliminary inquiries as it deems advisable. If after meeting with the attorney and conducting its preliminary inquiries the Committee determines that further attention is not needed, the Committee shall so notify the referring Judge and consider all inquiries terminated.~~

~~**(c)** If after meeting with the attorney and conducting its preliminary inquiries the Committee deems the matter warrants further action, it may recommend to the attorney that the attorney take steps to improve the quality of his or her professional performance and shall specify the nature of the recommended action designed to effect such improvement. The attorney shall be advised of any such recommendation in writing and be given the opportunity to respond thereto, to seek review or revocation of the recommendation, or to suggest alternatives thereto. The Committee may, after receiving such response, modify, amend, revoke, or adhere to its original recommendation. If the attorney agrees to comply with the Committee's final recommendation, the Committee shall report to the referring Judge that the matter has been resolved by the consent of the affected attorney. The Committee may monitor the affected attorney's compliance with its recommendation and may request the assistance of the Court in ensuring that the attorney is complying with the final recommendation.~~

~~(d) If the Committee finds that there is a substantial likelihood that the affected attorney's continued practice of law may result in serious harm to the attorney's clients pending completion of the remedial program, it may recommend that the Court consider limiting or otherwise imposing appropriate restrictions on the attorney's continuing practice before the Court. The Court may take any action which it deems appropriate to effectuate the Committee's recommendation.~~

~~(e) Any attorney who takes exception with the Committee's final recommendation shall have the right to have the Court, consisting of the active Judges thereof, consider the recommendation and the response of the affected attorney. The Court may, after considering the attorney's response, by majority vote of the active Judges thereof, adopt, modify, or reject the Committee's recommendations as to the necessary remedial actions and may take whatever actions it deems appropriate to ensure the attorney's compliance.~~

~~(f) All information, reports, records, and recommendations gathered, possessed, or generated by or on behalf of the Committee in relation to the referral of a matter concerning an attorney's failure to maintain an adequate level of competency in his or her practice before this Court shall be confidential unless and until otherwise ordered by the Court.~~

~~(g) Nothing contained herein and no action taken hereunder shall be construed to interfere with or substitute for any procedure relating to the discipline of any attorney as elsewhere provided in these Rules. Any disciplinary actions relating to the inadequacy of an attorney's performance shall occur apart from the proceedings of the Committee in accordance with law and as directed by the Court.~~

Effective December 1, 1994. Amended effective April 15, 2002; April 15, 2007; April 15, 2010; December 1, 2015; December 1, 2017.

**RULE 12 9. REINSTATEMENT**

**(a) After Disbarment or Suspension.** An attorney suspended for ninety (90) days ~~three months~~ or less shall be automatically reinstated at the end of the period of suspension upon the filing with this Court of an affidavit of compliance with the provisions of the order. An attorney suspended for more than ninety (90) days ~~three months~~ or disbarred may not resume the practice of law before this Court until reinstated by order of the Court. An attorney seeking reinstatement after reciprocal disbarment or suspension must meet the same criteria as an attorney seeking original admission under Rule ~~1~~ 2~~of the Special Rules Governing the Admission and Practice of Attorneys~~, in that ~~he or she~~the ~~student~~attorney must first seek and obtain reinstatement by The Florida Bar. An attorney seeking reinstatement after disbarment or suspension originating in this Court must first certify their good standing with The Florida Bar.

**(b) Time of Application Following Disbarment/Suspension.** An attorney who has been disbarred after hearing or consent may not apply for reinstatement until the expiration of at least ~~five~~ three (3) years from the effective date of disbarment. An attorney who has been suspended for more than ninety (90) days may not apply for reinstatement until expiration of the suspension or in the case of reciprocal discipline, upon proof that the attorney has been reinstated by the court in which the attorney was disciplined.

**(c) Hearing on Application.** Petitions for reinstatement by a disbarred or suspended attorney under this Rule shall be filed with the Chief Judge of this Court. ~~If~~ If the disciplinary action was reciprocal, ~~The~~ the Chief Judge may rule on the petition or, submit it to the active Judges of the Court to be determined by majority vote. If the disciplinary action originated in this Court then it shall be submitted to the active Judges of the Court and determined by majority vote. Prior to submitting the petition to the active Judges of the Court, the Chief Judge may ~~submit the petition to the Court or may, in his or her discretion,~~ refer the petition to the Committee which shall within ~~thirty~~ sixty (~~30~~60) days of the referral schedule a hearing at which the petitioner shall have the burden of establishing by clear and convincing evidence that ~~he or she~~the attorney has the moral qualifications, competency, and learning in the law required for admission to practice before this Court and that ~~his or her~~the attorney resumption of the practice of law will not be detrimental to the integrity and standing of the bar or the administration of justice, or subversive of the public interest. Upon completion of the hearing the Committee shall make a full report to the Court. The Committee shall include its findings of fact as to the petitioner's fitness to resume the practice of law and its recommendations as to whether or not the petitioner should be reinstated.

**(d) Conditions of Reinstatement.** If after consideration of the Committee's report and recommendation the Court finds that the petitioner is unfit to resume the practice of law, the petition shall be dismissed. If after consideration of the Committee's ~~report~~ Report and ~~recommendation~~ Recommendation the Court finds that the petitioner is fit to resume the practice of law, the Court shall reinstate ~~him or her~~the attorney, provided that the judgment may make reinstatement conditional upon the payment of all or part of the costs of the proceedings, and on the making of partial or complete restitution to all parties harmed by the petitioner whose conduct led to the suspension or disbarment. Provided further, that if the petitioner has been suspended or disbarred for five (5) years or more, reinstatement may be conditioned, in the discretion of the Court, upon the furnishing of proof of competency and learning in the law, which proof may include certification by the bar examiners of a state or other jurisdiction of the attorney's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment. Provided further that any reinstatement may be subject to any conditions which the Court in its discretion deems appropriate.

**(e) Successive Petitions.** No petition for reinstatement under this Rule shall be filed within ~~one~~ three (3) years following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person.

**(f) Deposit for Costs of Proceeding.** Petitions for reinstatement under this Rule shall be accompanied by a deposit in an amount to be set ~~from time to time~~ by the Court in consultation with the Committee to cover anticipated costs of the reinstatement proceeding.

Effective December 1, 1994. Amended effective April 15, 2002; April 15, 2006; April 15, 2007; April 15, 2010; December 1, 2015; December 1, 2017.

**RULE 13. DUTIES OF THE CLERK WITH RESPECT TO CONVICTIONS OR DISCIPLINE BY OTHER COURTS**

**(a)** Upon being informed that an attorney admitted to practice before this Court has been convicted of any crime, the Clerk of the Court shall determine whether the court in which such conviction occurred has forwarded a certificate of such conviction to this Court. If a certificate has not been so forwarded, the Clerk of the Court shall promptly obtain a certificate and file it with this Court.

**(b)** Upon being informed that an attorney admitted to practice before this Court has been subjected to discipline by another court, the Clerk of the Court shall determine whether a certified or exemplified copy of the disciplinary judgment or order has been filed with this Court, and, if not, the Clerk of the Court shall promptly obtain a certified or exemplified copy of the disciplinary judgment or order and file it with this Court.

**(c)** Whenever it appears that any person who has been convicted of any crime or disbarred or suspended or censured or disbarred on consent by this Court is admitted to practice law in any other jurisdiction or before any other court, this Court shall, within fourteen (14) days of that conviction, disbarment, suspension, censure, or disbarment on consent, transmit to the disciplinary authority in such other jurisdiction, or for such other court, a certificate of the conviction or a certified or exemplified copy of the judgment or order of disbarment, suspension, censure, or disbarment on consent, as well as the last known office and residence addresses of the disciplined attorney.

**(d)** The Clerk of the Court shall, likewise, promptly notify the National Discipline Bank operated by the American Bar Association of any order imposing public discipline on any attorney admitted to practice before this Court.

Effective December 1, 1994. Amended effective April 15, 2007; April 15, 2010; December 1, 2015; December 1, 2017.

**RULE ~~10~~14. ATTORNEYS SPECIALLY ADMITTED**

Whenever an attorney applies to be admitted or is admitted to this Court for purposes of a particular proceeding (pro hac vice), the attorney shall be deemed thereby to have conferred disciplinary jurisdiction upon this Court for any alleged misconduct arising in the course of or in the preparation for such a proceeding which is a violation of this Court's Local Rules and/or the Rules of Professional Conduct adopted by this Court as provided in these Rules.

Effective December 1, 1994. Amended effective April 15, 2010; December 1, 2017.

**RULE ~~11~~15. APPOINTMENT OF COUNSEL**

Whenever, at the direction of the Court or upon request of the Committee, counsel is to be appointed pursuant to these rules to investigate or assist in the investigation of misconduct, to prosecute or assist in the prosecution of disciplinary proceedings, or to assist in the disposition of a reinstatement petition filed by a disciplined attorney, this Court, by a majority vote of the active

Judges thereof, may appoint as counsel any active member of the bar of this Court, or may, in its discretion, appoint the disciplinary agency of the highest court of the state wherein the Court sits, or other disciplinary agency having jurisdiction.

Effective December 1, 1994. Amended effective April 15, 2002; April 15, 2010; December 1, 2017.

**RULE ~~12~~16. SERVICE OF PAPER AND OTHER NOTICES**

Service of an order to show cause instituting a formal disciplinary proceeding shall be made by personal service or by registered or certified mail addressed to the affected attorney at the address shown on the roll of attorneys admitted to practice before this Court or by email upon consent of the affected attorney to waive formal service. Service of any other papers or notices required by these Rules subsequent to the original order to show cause shall be deemed to have been made if such paper or notice is mailed to the attorney at the address shown on the roll of attorneys admitted to practice before the Court, or to counsel or the respondent's attorney at the address indicated in the most recent pleading or document filed by them in the course of any proceeding, or any other method permitted by Federal Rule of Civil Procedure 5(b).

Effective December 1, 1994. Amended effective April 15, 2007; April 15, 2010; April 15, 2011; December 1, 2015; December 1, 2017.

~~**RULE 13. DUTIES OF THE CLERK**~~

~~**(a)** Upon being informed that an attorney admitted to practice before this Court has been convicted of any crime, the Clerk of the Court shall determine whether the court in which such conviction occurred has forwarded a certificate of such conviction to this Court. If a certificate has not been so forwarded, the Clerk of the Court shall promptly obtain a certificate and file it with this Court.~~

~~**(b)** Upon being informed that an attorney admitted to practice before this Court has been subjected to discipline by another court, the Clerk of the Court shall determine whether a certified or exemplified copy of the disciplinary judgment or order has been filed with this Court, and, if not, the Clerk of the Court shall promptly obtain a certified or exemplified copy of the disciplinary judgment or order and file it with this Court.~~

~~**(c)** Whenever it appears that any person who has been convicted of any crime or disbarred or suspended or censured or disbarred on consent by this Court is admitted to practice law in any other jurisdiction or before any other court, this Court shall, within fourteen (14) days of that conviction, disbarment, suspension, censure, or disbarment on consent, transmit to the disciplinary authority in such other jurisdiction, or for such other court, a certificate of the conviction or a certified or exemplified copy of the judgment or order of disbarment, suspension, censure, or disbarment on consent, as well as the last known office and residence addresses of the disciplined attorney.~~

~~**(d)** The Clerk of the Court shall, likewise, promptly notify the National Discipline Bank operated by the American Bar Association of any order imposing public discipline on any attorney admitted to practice before this Court.~~

~~Effective December 1, 1994. Amended effective April 15, 2007; April 15, 2010; December 1, 2015.~~

United States District Court
Southern District of Florida

# Checklist for Rule 26(f) Conference Regarding Electronically Stored Information ("ESI")

In connection with the Federal Rule of Civil Procedure 26(f) conference and in preparing the Local Rule 16.1(b)(2) conference report, the Court encourages the use of the following checklist. The usefulness of any particular topic may depend on the nature and complexity of the matter.

## I. Preservation

- The ranges of creation or receipt dates for any ESI to be preserved.
- The description of ESI from sources that are not reasonably accessible because of undue burden or cost and that will not be reviewed for responsiveness or produced, but that will be preserved in accordance with Federal Rule of Civil Procedure 26(b)(2)(B).
- The description of ESI from sources that: (a) the party believes could contain relevant information; but (b) has determined, under the proportionality factors, is not discoverable and should not be preserved.
- Whether to continue any interdiction of any document-destruction program, such as ongoing erasures of e-mails, voicemails, and other electronically recorded material.
- The number and names or general job titles or descriptions of custodians for whom ESI will be preserved (e.g., "HR head," "scientist," "marketing manager").
- The list of systems, if any, that contain ESI not associated with individual custodians and that will be preserved, such as enterprise databases.
- Any disputes related to scope or manner of preservation.

## II. Liaison

- The identity of each party's e-discovery liaison, who will be knowledgeable about and responsible for each party's ESI.

## III. Informal Discovery About Location and Types of Systems

- Identification of systems from which discovery will be prioritized (e.g., e-mail, finance, HR systems).
- Descriptions and location of systems in which potentially discoverable information is stored.
- How potentially discoverable information is stored.
- How discoverable information can be collected from systems and media in which it is stored.

## IV. Proportionality and Costs

- The amount and nature of the claims being made by either party.
- The nature and scope of burdens associated with the proposed preservation and discovery of ESI.
- The likely benefit of the proposed discovery.

- Costs that the parties will share to reduce overall discovery expenses, such as the use of a common electronic-discovery vendor or a shared document repository, or other cost-saving measures.
- Limits on the scope of preservation or other cost-saving measures.
- Whether there is relevant ESI that will not be preserved in accordance with Federal Rule of Civil Procedure 26(b)(1), requiring discovery to be proportionate to the needs of the case.

**V. Search**

- The search method(s), including specific words or phrases or other methodology, that will be used to identify discoverable ESI and filter out ESI that is not subject to discovery.
- The quality-control method(s) the producing party will use to evaluate whether a production is missing relevant ESI or contains substantial amounts of irrelevant ESI.

**VI. Phasing**

- Whether it is appropriate to conduct discovery of ESI in phases.
- Sources of ESI most likely to contain discoverable information and that will be included in the first phases of Federal Rule of Civil Procedure 34 document discovery.
- Sources of ESI less likely to contain discoverable information from which discovery will be postponed or not reviewed.
- Custodians (by name or role) most likely to have discoverable information and whose ESI will be included in the first phases of document discovery.
- Custodians (by name or role) less likely to have discoverable information from whom discovery of ESI will be postponed or avoided.
- The time period during which discoverable information was most likely to have been created or received.

**VII. Production**

- The formats in which structured ESI (database, collaboration sites, etc.) will be produced.
- The formats in which unstructured ESI (e-mail, presentations, word processing, etc.) will be produced.
- The extent, if any, to which metadata will be produced and the fields of metadata to be produced.
- The production format(s) that ensure(s) that any inherent searchability of ESI is not degraded when produced.

**VIII. Privilege**

- How any production of privileged or work-product protected information will be handled.
- Whether the parties can agree on alternative ways to identify documents withheld on the grounds of privilege or work product to reduce the burdens of such identification.
- Whether the parties will enter into a Federal Rule of Evidence 502(d) stipulation and order that addresses inadvertent or agreed production.