

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

ADMINISTRATIVE ORDER 2020-71

IN RE:

AMENDMENTS TO THE LOCAL RULES

FILED BY CW D.C.

Oct 8, 2020

ANGELA E. NOBLE
CLERK U.S. DIST. CT.
S. D. OF FLA. - MIA

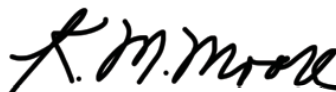
THIS COURT has given notice and an opportunity to be heard in accordance with Fed. R. Civ. P. 83 and Fed. R. Crim. P. 57, has conducted an *en banc* hearing, and has considered the comments of the public and the report of the Court's Ad Hoc Committee on Rules and Procedures with regard to proposed amendments, in the form attached, that amend the Local General Rules, the Magistrate Rules, and the Rules Governing the Admission, Practice, Peer Review, and Discipline 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, 2020, 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 7th day of October, 2020.



K. MICHAEL MOORE

CHIEF UNITED STATES DISTRICT JUDGE

Copies furnished to:

Hon. William H. Pryor, Jr., Chief Judge, United States Court of Appeals for the Eleventh Circuit
All Southern District Judges and Magistrate Judges
James Gerstenlauer, Circuit Executive, Eleventh Circuit
Angela E. Noble, Court Administrator · Clerk of Court
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

RULE 5.1 FILING AND COPIES

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

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

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

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

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

(5) Include a caption with:

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

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

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

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

Exception:

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

(6) For each counsel for any party, include: (A)-a signature block with the counsel's name, street address, telephone number, e-mail address, and Florida Bar or other applicable bar

identification number. ~~of all counsel for the party and (B) if the document is not required to be electronically served via CM/ECF, a certificate of service that contains the name, street address, telephone number, and e-mail address of all counsel for all parties, including the attorney filing the pleading, motion, or other paper. See form available on the Court's website (www.flsd.uscourts.gov).~~

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

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

Effective December 1, 1994. Amended effective April 15, 1996; April 15, 1998; April 15, 1999; April 15, 2000; April 15, 2001; paragraph E added effective April 15, 2003; April 15, 2007; April 15, 2009; April 15, 2010; April 15, 2011; December 1, 2011; December 1, 2015; December 1, 2016; December 3, 2018; December 2, 2019; December 1, 2020.

RULE 5.1 FILING AND COPIES

(b) Service and Filing of Documents Via CM/ECF. All documents required to be served shall be filed in compliance with the CM/ECF Administrative Procedures; except for: (A) documents exempted under Section 5 of the CM/ECF Administrative Procedures; and (B) documents that are not permitted to be filed at the time of service by rule, statute, or other proscription. Pro se parties are exempted from this requirement pursuant to Section 2C of the CM/ECF Administrative Procedures. Nonetheless, and notwithstanding any certificate of service to the contrary, the date that a submission from a party who is exempt from electronic filing is docketed by the Clerk of Court shall be deemed the date that such submission is served. The requirements of paragraphs (a)(2)(6) above shall apply to documents filed via CM/ECF. See Section 3A of the CM/ECF Administrative Procedures.

Effective December 1, 1994. Amended effective April 15, 1996; April 15, 1998; April 15, 1999; April 15, 2000; April 15, 2001; paragraph E added effective April 15, 2003; April 15, 2007; April 15, 2009; April 15, 2010; April 15, 2011; December 1, 2011; December 1, 2015; December 1, 2016; December 3, 2018; December 2, 2019; December 1, 2020.

RULE 5.2 PROOF OF SERVICE AND SERVICE BY PUBLICATION

(a) **Certification of Service.** ~~Each~~ If a pleading or paper required by Federal Rule of Civil Procedure 5 to be served on the other parties is served on any party by a method other than CM/ECF, that pleading or paper 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~~ identifies the persons or firms served, their relationship to the action or proceeding, their street address, telephone number, and email address, and the date, ~~and~~ method ~~and address~~ of service. See form available on the Court's website (www.flscourts.gov). Signature by the party or its attorney on the ~~original certificate of service~~ constitutes a representation that service has been made.

Effective December 1, 1994. Amended effective December 1, 2001; April 15, 2007; April 15, 2010; April 15, 2011; December 1, 2015; December 1, 2020.

RULE 7.1 MOTIONS, GENERAL

(c) Memorandum of Law.

(1) *Requirements and Timing.* For all motions, except motions served with the summons and complaint, each party opposing a motion shall file and serve an opposing memorandum of law no later than fourteen (14) days after ~~filing and~~ 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 ~~filing and~~ service of an opposing memorandum of law, file and 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 and served 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.

Time shall be computed under this Local Rule in accordance with applicable federal rules of procedure (*e.g.*, Fed. R. Civ. P. 6(a) and Fed. R. Crim. P. 45(a)).

RULE 7.1 MOTIONS, GENERAL

(c) Memorandum of Law.

(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. As long as no substantive part of the submission appears on the same page(s), the following items do not count toward page limitations for purposes of this rule and any other rules or orders setting forth page limitations: 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 and service of 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.

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; December 3, 2018; December 2, 2019; December 1, 2020.

RULE 7.3 ATTORNEYS FEES AND COSTS

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

- (1) be filed and served within sixty (60) days of the entry of the final judgment or order giving rise to the claim, regardless of the prospect or pendency of supplemental review or appellate proceedings;
- (2) identify the judgment or other order which gives rise to the motion, as well as the statute, rule, or other grounds entitling the moving party to the award;
- (3) state the amount sought;
- (4) disclose the terms of any applicable fee agreement;
- (5) provide:
 - (A) the identity, experience, and qualifications for each timekeeper for whom fees are sought;
 - (B) the number of hours reasonably expended by each such timekeeper;
 - (C) a description of the tasks done during those hours; and
 - (D) the hourly rate(s) claimed for each timekeeper;
- (6) describe and document with invoices all incurred and claimed fees and expenses not taxable under 28 U.S.C. § 1920;
- (7) be verified; and
- (8) certify that a good faith effort to resolve issues by agreement occurred pursuant to Local Rule 7.3(b), describing what was and was not resolved by agreement and addressing separately the issues of entitlement to fees and amount.

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

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

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

Effective December 1, 1994. Amended effective April 15, 1999; April 15, 2001; April 15, 2005; April 15, 2006; April 15, 2007; April 15, 2010; April 15, 2011; December 1, 2011; December 3, 2012; December 1, 2015; December 2, 2019; December 1, 2020.

RULE 11.1 ATTORNEYS

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

(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~~ Rules Governing the Admission, Practice, Peer Review, and Discipline of Attorneys.

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; December 2, 2019; December 1, 2020.

RULE 77.1 PHOTOGRAPHING, BROADCASTING, TELEVISIONING

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

Effective December 1, 1994. Amended effective April 15, 2007; December 1, 2011; December 1, 2015; December 3, 2018; December 1, 2020.

RULE 88.10 CRIMINAL DISCOVERY

(a) A defendant's request to the Court for entry of the Standing Discovery Order shall constitute a discovery request by the defendant under Fed. R. Crim. P. 16(a)(1)(A), (B), (C), (D), (E), and (F), and, following entry of the Standing Discovery Order, the government shall comply with the obligations imposed upon it by Fed. R. Crim. P. 16(a)(1)(A-F), and shall permit the defendant to inspect and copy the written or recorded statements made by the defendant, or copies thereof, or supply copies thereof, which are within the possession, custody or control of the government, the existence of which is known or by the exercise of due diligence may become known to the government, all subject to the provisions of Fed. R. Crim. P. 16(a)(2).

(b) Following a defendant's request to the Court for entry of the Standing Discovery Order and the Court's entry of the Standing Discovery Order, the defendant, subject to the provisions of Fed. R. Crim. P. 16(b)(2), shall:

(1) after the government complies with Fed. R. Crim. P. 16(a)(1)(E), comply with the obligations that arise under Fed. R. Crim. P. 16(b)(1)(A); and

(2) after the government complies with Fed. R. Crim. P. 16(a)(1)(F), comply with the obligations that arise under Fed. R. Crim. P. 16(b)(1)(B).

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

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

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

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

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

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

Effective December 1, 1994. Amended effective April 15, 1996; April 15, 1998; April 15, 2000; April 15, 2003; April 15, 2005; April 15, 2007; April 15, 2010; December 2, 2013; December 1, 2015; December 1, 2016; December 2, 2019; December 1, 2020.

RULE 4. REVIEW AND APPEAL

(a) Appeal of Non-dispositive Matters-Government Appeal of Release Order.

(1) *Appeal of Non-dispositive Matters*—28 U.S.C. § 636(b)(1)(A). Any party may appeal from a Magistrate Judge's order determining a motion or matter under subsection 1(c) of these rules, supra, within fourteen (14) days after being served with the Magistrate Judge's order, unless a different time is prescribed by the Magistrate Judge or District Judge. Such party shall file with the Clerk of the Court, and serve on all parties, written objections which shall specifically set forth the order, or part thereof, appealed from; a concise statement of the alleged error in the Magistrate Judge's ruling; and statutory, rule, or case authority, in support of the moving party's position. Any party may respond to another party's objections within fourteen (14) days after being served with a copy thereof, or within such other time as may be allowed by the Magistrate Judge or District Judge. ~~The objecting party may file and serve a reply within seven (7) days after service of the response.~~ Absent prior permission from the Court, no party shall file any objections or responses to another party's objections exceeding twenty pages in length. The District Judge shall consider the appeal and shall set aside any portion of the Magistrate Judge's order found to be clearly erroneous or contrary to law. The District Judge may also reconsider sua sponte any matter determined by a Magistrate Judge under this rule.

(2) *Government Appeal of Release Order.* At the conclusion of a hearing pursuant to 18 U.S.C. § 3142 in which a Magistrate Judge has entered an order granting pretrial release, the government may make an ore tenus motion that the Magistrate Judge exercise discretion to stay the release order for a reasonable time, to allow the government to pursue review or appeal of the release order, in accordance with 18 U.S.C. § 3145.

If a stay is ordered pursuant to this rule, the Clerk of the Court is directed to obtain the tape recording or cassette immediately after the hearing and deliver the cassettes or tapes promptly to the appropriate court reporter so that an expedited transcript can be delivered to the District Judge within forty-eight (48) hours of the hearing at which the release order is entered. The United States Attorney's Office is to pay the court reporter's charges.

Effective December 1, 1994. Amended effective April 15, 1996; April 15, 1997; April 15, 1998; April 15, 1999; April 15, 2007; April 15, 2010; December 1, 2011; December 1, 2015; December 2, 2019; December 1, 2020.

RULE 5. STUDENT PRACTICE

(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 in good standing 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.

Effective December 1, 1994. Amended effective April 15, 1996; April 15, 2002; April 15, 2007; April 15, 2010; December 1, 2015; December 1, 2017; December 2, 2019; December 1, 2020.