
**LOCAL RULES OF COURT
FROM THE US DISTRICT COURT, FLORIDA, MIDDLE DISTRICT
[ALL-IN-ONE DOCUMENT]**

{AS OF: 12/1/2009}
TBD 0.080

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TABLE OF CONTENTS | CHAPTER ONE | ADMINISTRATION OF COURT BUSINESS

#	Rule No	Title	Page
1	1.01	Scope and Construction of Rules	9
2	1.02	Divisions of the Court	10
3	1.03	Docketing and Assignment of Cases	12
4	1.04	Similar or Successive Cases; Duty of Counsel	14
5	1.05	Form of Pleadings; General Requirements	16
6	1.06	Form of Pleadings; Special Requirements	18
7	1.07	Preparation, Service, and Return of Process;	19
8	1.08	Integrity of Files and Records	20
9	1.09	Filing Under Seal	21

TABLE OF CONTENTS | CHAPTER TWO | ATTORNEYS

#	Rule No	Title	Page
10	2.01	General Admission to Practice	24
11	2.02	Special Admission to Practice	26
12	2.03	Appearance and Withdrawal	27
13	2.04	Discipline	28
14	2.05	Appearance by Law Students	31

TABLE OF CONTENTS | CHAPTER THREE | MOTIONS, DISCOVERY AND PRETRIAL...

#	Rule No	Title	Page
15	3.01	Motions, Briefs and Hearings	34
16	3.02	Notice of Depositions	36
17	3.03	Written Interrogatories; Filing of Discovery...	37
18	3.04	Motions to Compel and For Protective Order	38
19	3.05	Case Management	39
20	3.06	Final Pretrial Procedures	45
21	3.07	Marking and Listing Exhibits	47
22	3.08	Notice of Settlements; Dismissal	48
23	3.09	Continuances	49
24	3.10	Failure to Prosecute; Dismissal	50

TABLE OF CONTENTS | CHAPTER FOUR | SPECIAL RULES

#	Rule No	Title	Page
25	4.01	Amendments of Pleadings	52
26	4.02	Removal of Cases from State Court	53
27	4.03	Time of Motion to Join Third Parties	54
28	4.04	Class Actions	55
29	4.05	Temporary Restraining Orders	56
30	4.06	Preliminary Injunctions	58
31	4.07	In Forma Pauperis Proceedings	59
32	4.08	Service of Subpoenas on State and Federal...	60
33	4.09	Marshal's Deeds	61
34	4.10	Release of Information	62
35	4.11	Photographs; Broadcasting or Televising; Use...	65
36	4.12	Pre-Sentence Investigation Reports; Pre-...	67
37	4.13	Court Plans	69
38	4.14	Proceedings Under 28 USC Sections 2254 and 2255	70
39	4.15	Written Stipulations Required	71
40	4.16	Management of Funds Held on Deposit With This...	72
41	4.17	Special Filing and Procedural Requirements...	73
42	4.18	Applications for Costs or Attorney's Fees	75
43	4.19	Provision of Pretrial Services	76

TABLE OF CONTENTS | CHAPTER FIVE | TRIAL AND COURTROOM PROCEDURES

#	Rule No	Title	Page
44	5.01	Juries - Selection; Instructions; Prohibition...	78
45	5.02	Marshal to Attend Court	79
46	5.03	Courtroom Decorum	80
47	5.04	Disposition of Exhibits and Discovery Materials	82

TABLE OF CONTENTS | CHAPTER SIX | UNITED STATES MAGISTRATE JUDGES

#	Rule No	Title	Page
48	6.01	Duties of United States Magistrate Judges	86
49	6.02	Review of Magistrates' Reports and...	91
50	6.03	Misdemeanor and Petty Offenses	92
51	6.04	Reserved	94
52	6.05	Trial of Civil Cases	95

TABLE OF CONTENTS | CHAPTER SEVEN | ADMIRALTY AND MARITIME RULES

#	Rule No	Title	Page
53	7.01	General Provisions	98
54	7.02	Attachment and Garnishment: Special Provisions...	103
55	7.03	Action in Rem	109
56	7.04	Possessory, Petitory and Partition Actions	117
57	7.05	Actions in Rem and Quasi in Rem: General...	118
58	7.06	Actions to Limit Liability	141

TABLE OF CONTENTS | CHAPTER EIGHT | COURT ANNEXED ARBITRATION

#	Rule No	Title	Page
59	8.01	Statement of Purpose; Certification of...	144
60	8.02	Cases for Arbitration	145
61	8.03	Referral to Arbitration	146
62	8.04	Arbitration Hearing	147
63	8.05	Arbitration Award and Judgment	148
64	8.06	Trial de Novo	149

TABLE OF CONTENTS | CHAPTER NINE | COURT ANNEXED MEDIATION

#	Rule No	Title	Page
65	9.01	General Provisions	151
66	9.02	Certification; Qualification and Compensation...	152
67	9.03	Types of Cases Subject to Mediation; Withdrawal	154
68	9.04	Procedures to Refer a Case or Claim to...	155
69	9.05	Scheduling the Mediation Conference	156
70	9.06	Mediation Report; Notice of Settlement; ...	157
71	9.07	Trial Upon Impasse	158
-	n/a	Appendix	159

CHAPTER ONE | LOCAL RULES OF COURT | USFLMD

RULES: 1.01 through 1.09

TITLE: ADMINISTRATION OF COURT BUSINESS

Rule 1.01 | SCOPE AND CONSTRUCTION OF RULES

(a) These rules, made pursuant to the authority of 28 U.S.C. Section 2071, Rule 83, Fed.R.Civ.P., and Rule 57, Fed.R.Cr.P., shall apply to all proceedings in this Court, whether civil or criminal, unless specifically provided to the contrary or necessarily restricted by inference from the context. The Court may prescribe by administrative order procedures for electronic filing and related matters in civil and criminal cases. The administrative order shall govern, notwithstanding these rules, which otherwise will govern to the extent not inconsistent with the administrative order.

(b) These rules are intended to supplement and complement the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, and other controlling statutes and rules of Court. They shall be applied, construed and enforced to avoid inconsistency with other governing statutes and rules of court, and shall be employed to provide fairness and simplicity in procedure, to avoid technical and unjustified delay, and to secure just, expeditious and inexpensive determination of all proceedings.

(c) The Court may suspend application and enforcement of these rules, in whole or in part, in the interests of justice in individual cases by written order. When a judge of this Court in a specific case issues any order which is not consistent with these rules, such order shall constitute a suspension of the rules with respect to the case only, and only to the extent that such order is inconsistent with the rules.

(d) In all circumstances in which these rules, the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, other rules as prescribed by the Supreme Court of the United States, or any statute of the United States, or the Federal Common Law, do not apply, the practices, pleadings, forms and modes of proceedings then existing in like causes in the Courts of the State of Florida shall be followed.

Rule 1.02 | DIVISIONS OF THE COURT

(a) The Middle District of Florida consists of those counties and places of holding court as designated in 28 U.S.C. Section 89.

(b) The District shall be divided into five Divisions to be known as the Jacksonville, Ocala, Orlando, Tampa and Ft. Myers Divisions, as follows:

(1) The Jacksonville Division shall consist of the following counties: Baker, Bradford, Clay, Columbia, Duval, Flagler, Hamilton, Nassau, Putnam, St. Johns, Suwannee and Union. The place of holding court shall be Jacksonville.

(2) The Ocala Division shall consist of the following counties: Citrus, Lake, Marion and Sumter. The place of holding court shall be Ocala.

(3) The Orlando Division shall consist of the following counties: Brevard, Orange, Osceola, Seminole and Volusia. The place of holding court shall be Orlando.

(4) The Tampa Division shall consist of the following counties: Hardee, Hernando, Hillsborough, Manatee, Pasco, Pinellas, Polk and Sarasota. The place of holding court shall be Tampa.

(5) The Fort Myers Division shall consist of the following counties: Charlotte, Collier, DeSoto, Glades, Hendry and Lee. The place of holding court shall be Fort Myers.

(c) All civil proceedings of any kind shall be instituted in that Division encompassing the county or counties having the greatest nexus with the cause, giving due regard to the place where the claim arose and the residence or principal place of business of the parties.

(d) All criminal proceedings of any kind shall be docketed and tried in that Division encompassing the county or counties in which the alleged offense or offenses were committed; provided, however, an indictment returned in any Division shall be valid regardless of the county or counties within the District in which the alleged offense or offenses were committed.

(e) The Court may, within its discretion, or upon good cause shown by any interested party, order that any case, civil or criminal, be transferred from one Division to any other Division for trial, or from one place of holding court to another place of holding court in the same Division.

Rule 1.03 | DOCKETING AND ASSIGNMENT OF CASES

(a) Upon the filing of the initial paper or pleading in any case the Clerk shall docket the proceeding as a civil, criminal or miscellaneous action. Each case or proceeding shall be given a six-part docket number, which includes:

- (1) the one-digit number indicating the division of the Court;
- (2) the two-digit number indicating the year in which the proceeding is initiated;
- (3) the code indicating the docket to which the case is assigned;
- (4) the sequence number of the case or proceeding;
- (5) a designation consisting of a letter or series of letters disclosing the division in which the proceeding is pending; and
- (6) the code indicating the judge to whom the case is assigned (the code shall conform to the code assigned by the Administrative Office of the United States Courts) followed by the initials of the magistrate judge to whom the case is assigned.

(b) Each case, upon the filing of the initial paper or pleading, shall be assigned by the Clerk to an individual judge of the Court who shall thereafter be the presiding judge with respect to that cause. Individual assignment of cases within each Division shall be made at random or by lot in such proportions as the judges of the Court from time to time direct. Neither the Clerk nor any member of his staff shall have any power or discretion in determining the judge to whom any case is assigned. The method of assignment shall be designed to prevent anyone from choosing the judge to whom a case is to be assigned, and all persons shall conscientiously refrain from attempting to circumvent this rule.

(c) No application for any order of court shall be made until the case or controversy in which the matter arises has been docketed and assigned by the Clerk as prescribed by subsection (b) of this rule, and then only to the judge to whom the case has been assigned; provided, however:

(1) When no case has previously been initiated, docketed and assigned, emergency applications arising during days or hours that the Clerk's Office is closed may be submitted to any available judge resident in the appropriate Division, or, if no judge is available in the Division, to any other judge in the District, but the case shall then be docketed and assigned by the Clerk on the next business day and shall thereafter be conducted by the judge to whom it is assigned in accordance with subsection (b) of this rule.

(2) When the judge to whom a case has been assigned is temporarily unavailable due to illness, absence or prolonged engagement in other judicial business, emergency applications arising in the case may be made to the other resident judge in the Division or, if more than one, to the judge who is junior in commission in that Division. If no other judge is available in the Division such applications may be made to any other available judge in the District.

(d) The judge to whom any case is assigned may, at any time, reassign the case to any other consenting judge for any limited purpose or for all further purposes.

(e) The Clerk shall accept for filing all prisoner cases filed with or without the required filing fee or application to proceed in forma pauperis. However, a prisoner case will be subject to dismissal by the Court, sua sponte, if the filing fee is not paid or if the application is not filed within 30 days of the commencement of the action.

Rule 1.04 | SIMILAR OR SUCCESSIVE CASES; DUTY OF COUNSEL

(a) Whenever a case, once docketed and assigned, is terminated by any means and is thereafter refiled without substantial change in issues or parties, it shall be assigned, or reassigned if need be, to the judge to whom the original case was assigned. Whenever a second or subsequent case seeking post conviction or other relief by petition for writ of habeas corpus is filed by the same petitioner involving the same conviction, it shall be assigned, or reassigned if need be, to the same judge to whom the original case was assigned. All motions under 28 U.S.C. Section 2255 shall be assigned to the judge to whom the original criminal case was assigned.

(b) **TRANSFER OF RELATED CASES BEFORE TWO OR MORE JUDGES.** If cases assigned to different judges are related because of either a common question of fact or any other prospective duplication in the prosecution or resolution of the cases, a party may move to transfer any related case to the judge assigned to the first-filed among the related cases. The moving party shall file a notice of filing the motion to transfer, including a copy of the motion to transfer, in each related case. The proposed transferor judge shall dispose of the motion to transfer but shall grant the motion only with the consent of the transferee judge. If the transferee judge determines that the same magistrate judge should preside in some or all respects in some or all of the related cases, the Clerk shall assign the magistrate judge assigned to the first-filed among the affected cases to preside in that respect in those cases.

(c) **CONSOLIDATION OF RELATED CASES BEFORE ONE JUDGE.** If cases assigned to a judge are related because of either a common question of law or fact or any other prospective duplication in the prosecution or resolution of the cases, a party may move to consolidate the cases for any or all purposes in accord with Rule 42.Fed.R.Civ.P., or Rule 13, Fed.R.Cr.P. The moving party shall file a notice of filing the motion to consolidate, including a copy of the motion to consolidate, in each related case. If the presiding judge determines that the same magistrate judge should preside in some or all respects in some or all of the consolidated cases, the Clerk shall assign the magistrate judge assigned to the first-filed among the affected cases to preside in that respect in those cases.

(d) All counsel of record in any case have a continuing duty promptly to inform the Court and counsel of the existence of any other case within the purview of this rule, as well as the existence of any similar or related case or proceeding pending before any other court or administrative agency. Counsel shall notify the Court by filing and serving a "**Notice of Pendency of Related Actions**" that identifies and describes any related case.

Rule 1.05 | FORM OF PLEADINGS; GENERAL REQUIREMENTS

(a) Although a quotation of three (3) lines or more may be single-spaced and indented and a footnote shall be single-spaced in no smaller than ten-point type, all pleadings and other papers tendered by counsel for filing shall be typewritten, double-spaced, in at least twelve-point type, and, if filed on paper, shall be on opaque, unglazed, white paper eight and one-half inches wide by eleven inches long (8 ½ x 11), with one and one-fourth inch top, bottom and left margins and a one to one and one-fourth inch right margin. Only one side of the paper may be used.

(b) All pleadings, motions, briefs, applications, and orders tendered by counsel for filing shall contain on the first page a caption as prescribed by Rule 10(a), Fed.R.Civ.P., and in addition thereto shall state in the title the name and designation of the party (as Plaintiff or Defendant or the like) in whose behalf the paper is submitted.

(c) The first pleading filed on behalf of any party or parties represented by counsel shall be signed by at least one attorney in his individual name with the designation "**Trial Counsel**", or the equivalent. Thereafter, until seasonable notice to the contrary is filed with the Court and served upon opposing counsel, such attorney shall be the person responsible for the case with full authority, individually, to conduct all proceedings including trial.

(d) All pleadings, motions, briefs, applications and other papers tendered by counsel for filing shall be signed personally by counsel as required by Rule 11, Fed.R.Civ.P. Immediately under every signature line, additional information shall be given as indicated in the example below:

(signature of counsel)

Type Name of Counsel

Florida Bar Identification Number (if admitted to practice in Florida)

Firm or Business Name

Mailing Address

City, State, Zip Code

Telephone Number

Facsimile Phone Number (if available)

E-mail address

(e) The Clerk is authorized and directed to require a complete and executed AO Form JS44, Civil Cover Sheet, which shall accompany each civil case as a condition to the filing thereof. State and federal prisoners, and other persons filing civil cases pro se are exempt from the requirements of this subsection.

Rule 1.06 | FORM OF PLEADINGS; SPECIAL REQUIREMENTS

(a) If demand for jury trial is contained within a pleading pursuant to Rule 38(b), Fed.R.Civ.P., the title of the pleading shall include the words "And Demand for Jury Trial" or the equivalent.

(b) If a pleading contains a prayer for injunctive relief pursuant to Rule 65, Fed.R.Civ.P., the title of the pleading shall include the words "Injunctive Relief Sought" or the equivalent. (See also Rules 4.05 and 4.06.)

(c) To enable the Court to comply with the provisions of 28 U.S.C. Section 2284, in any case which a party believes may require a three-judge district court, the words, "Three-Judge District Court Requested" or the equivalent shall be included within the title of the first pleading filed by that party. If a three-judge district court is convened all subsequent pleading, motions, briefs, applications and orders shall be tendered for filing in quadruplicate (the original and three copies).

(d) To enable the Court to comply with 28 U.S.C. Section 2403, in any case to which the United States or any agency, officer or employee thereof is not a party, any party who shall draw into question the constitutionality of any Act of Congress affecting the public interest shall forthwith so notify the Clerk in writing, stating the title of the case, its docket number, the Act of Congress in question and the grounds upon which it is assailed.

Rule 1.07 | PREPARATION, SERVICE AND RETURN OF PROCESS; SERVICE OF PLEADINGS SUBSEQUENT TO ORIGINAL COMPLAINT

(a) Counsel shall prepare all process and present it to the Clerk for certification.

(b) When service of process has been effected but no appearance or response is made within the time and manner provided by Rule 12, Fed.R.Civ.P., the party effecting service shall promptly apply to the Clerk for entry of default pursuant to Rule 55(a), Fed.R.Civ.P., and shall then proceed without delay to apply for a judgment pursuant to Rule 55(b), Fed.R.Civ.P., failing which the case shall be subject to dismissal sixty (60) days after such service without notice and without prejudice; provided, however, such time may be extended by order of the Court on reasonable application with good cause shown.

(c) Service of a pleading or paper subsequent to the original complaint may be made by transmitting it by facsimile to the attorney's or party's office with a cover sheet containing the sender's name, firm, address, telephone number, and facsimile number, and the number of pages transmitted. When service is made by facsimile, a copy shall also be served by any other method permitted by Rule 5, Fed. R. Civ. P. Service by delivery after 5:00 p.m. shall be deemed to have been made on the next business day.

Rule 1.08 | INTEGRITY OF FILES AND RECORDS

(a) No person, other than the Clerk or his authorized deputies, shall insert or delete, or deface, or make any entry or correction by interlineation or otherwise, in, from or upon any file or other record of the Court unless expressly permitted or ordered to do so by the Court.

(b) Court files or other papers or records in the possession of the Clerk may be removed from the Clerk's Office only upon written permission or order of the Court which shall specify the time within which the same shall be returned.

Rule 1.09 | FILING UNDER SEAL

(a) Unless filing under seal is authorized by statute, rule, or order, a party seeking to file under seal any paper or other matter in any civil case shall file and serve a motion, the title of which includes the words "Motion to Seal" and which includes

(i) an identification and description of each item proposed for sealing;

(ii) the reason that filing each item is necessary;

(iii) the reason that sealing each item is necessary;

(iv) the reason that a means other than sealing is unavailable or unsatisfactory to preserve the interest advanced by the movant in support of the seal;

(v) a statement of the proposed duration of the seal; and

(vi) a memorandum of legal authority supporting the seal. The movant shall not file or otherwise tender to the Clerk any item proposed for sealing unless the Court has granted the motion required by this section. No settlement agreement shall be sealed absent extraordinary circumstances, such as the preservation of national security, protection of trade secrets or other valuable proprietary information, protection of especially vulnerable persons including minors or persons with disabilities, or protection of nonparties without either the opportunity or ability to protect themselves. Every order sealing any item pursuant this section shall state the particular reason the seal is required.

(b) If filing under seal is authorized by statute, rule, or order (including an order requiring or permitting a seal and obtained pursuant to (a) of this rule), a party seeking to file under seal any paper or other matter in any civil case shall file and serve a motion, the title of which includes the words "Motion to Seal Pursuant to [Statute, Rule, or Order]" and which includes

(i) a citation to the statute, rule, or order authorizing the seal;

(ii) an identification and description of each item submitted for sealing;

(iii) a statement of the proposed duration of the seal;
and

(iv) a statement establishing that the items submitted for sealing are within the identified statute, rule, or order the movant cites as authorizing the seal. The movant shall submit to the Clerk along with a motion under this section each item proposed for sealing. Every order sealing any item pursuant to this section shall state the particular reason the seal is required and shall identify the statute, rule, or order authorizing the seal.

(c) Unless otherwise ordered by the Court for good cause shown, no order sealing any item pursuant to this section shall extend beyond one year, although a seal is renewable by a motion that complies with (b) of this rule, identifies the expiration of the seal, and is filed before the expiration of the seal.

(d) The Clerk shall return to the movant any matter for which sealing is denied.

CHAPTER TWO | ATTORNEYS | USFLMD

RULES: 2.01 through 2.05

TITLE: ATTORNEYS

Rule 2.01 | GENERAL ADMISSION TO PRACTICE

(a) No person shall be permitted to appear or be heard as counsel for another in any proceeding in this Court unless first admitted to practice in the Court pursuant to this rule (or heretofore admitted under prior rules of the Court).

(b) Only those persons who are members in good standing of The Florida Bar shall be eligible for general admission to the bar of the Court. If a person ceases to be a member in good standing of The Florida Bar, that person will be suspended from the bar of the Court until that person is reinstated to The Florida Bar. However, if the suspension from The Florida Bar is 90 days or less, the person will be automatically reinstated. If the suspension is 91 days or more, that person must apply with the Clerk of Court for reinstatement. Each applicant for general admission shall file with the Clerk a written petition setting forth his residence and office address, his general and legal education, and the Courts to which he has previously been admitted to practice. The petition shall be accompanied by the certificates of two members in good standing of the bar of the Court attesting that the applicant is of good moral character and is otherwise competent and eligible for general admission to practice in the Court (provided, however, members in good standing of the bars of the Northern or Southern Districts of Florida shall be admitted on petition without necessity of such certificates). In addition, each applicant shall furnish a certificate certifying that the applicant has read and is familiar with each of the following: The Federal Rules of Evidence, the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, and the Local Rules of the Middle District of Florida.

(c) Petitions for general admission to practice shall be called from time to time in open Court on notice to the applicants; except that, under special circumstances, any United States District Judge or United States Magistrate Judge of the Court may entertain a petition at any time. Upon taking the prescribed oath and payment of the prescribed enrollment fee, the applicant shall then be enrolled as a member of the bar of the Court and the Clerk shall issue a suitable certificate to that effect.

(d) To maintain good standing in the bar of this Court, each attorney admitted under this rule, beginning in the year following the year of the attorney's admission, must pay a periodic fee set by administrative order and, unless exempted by the Chief Judge for good cause, must register with the Clerk of Court and maintain an e-mail address for electronic service by the Clerk during the attorney's membership in the bar of this Court. An attorney who fails to pay timely the periodic fee or fails without exemption to maintain a registered e-mail address is subject to removal from membership in the bar of this Court.

Rule 2.02 | SPECIAL ADMISSION TO PRACTICE

(a) Any attorney who is not a resident of Florida but who is a member in good standing of the bar of any District Court of the United States; outside Florida; may appear specially as counsel of record; without formal or general admission; provided, however, such privilege is not abused by appearances in separate cases to such a degree as to constitute the maintenance of a regular practice of law in Florida; and provided further that whenever appearing as counsel by filing any pleading or paper in any case pending in this Court, a non-resident attorney shall file within fourteen (14) days a written designation and consent-to-act on the part of some member of the bar of this Court, resident in Florida, upon whom all notices and papers may be served and who will be responsible for the progress of the case, including the trial in default of the non-resident attorney. In addition to filing the written designation, the non-resident attorney shall comply with both the fee and e-mail registration requirements of Rule 2.01(d), and the written designation shall certify the non-resident attorney's compliance.

(b) An attorney employed full-time by either the United States, an agency of the United States, or a public entity established under the laws of the United States may appear within the course and scope of the attorney's employment as counsel without general or other formal admission.

(c) Any attorney who appears specially in this Court pursuant to subsections (a) or (b) of this rule shall be deemed to be familiar with, and shall be governed by, these rules in general, including Rule 2.04 hereof in particular; and shall also be deemed to be familiar with and governed by the Code of Professional Responsibility and other ethical limitations or requirements then governing the professional behavior of members of The Florida Bar.

(d) In an extraordinary circumstance (such as the hearing of an emergency matter) a lawyer who is not a member of the Middle District bar may move instant for temporary admission provided the lawyer appears eligible for membership in the Middle District bar and simultaneously initiates proceedings for general or special admission to the Middle District bar. Temporary admission expires in thirty days or upon determination of the application for general or special admission, whichever is earlier.

Rule 2.03 | APPEARANCE AND WITHDRAWAL

(a) Every pleading or paper of any kind filed by an attorney in this Court shall conform and be subject to the requirements of Rule 11, Fed.R.Civ.P., and unless otherwise expressly stated therein, shall constitute a general appearance on behalf of the persons or parties for whom the pleading or paper is filed.

(b) No attorney, having made a general appearance under subsection (a) of this rule, shall thereafter abandon the case or proceeding in which the appearance was made, or withdraw as counsel for any party therein, except by written leave of Court obtained after giving ten (10) days' notice to the party or client affected thereby, and to opposing counsel.

(c) In all criminal cases non-payment of attorney's fees shall not be sufficient justification for seeking leave to withdraw if the withdrawal of counsel is likely to cause a continuance of a scheduled trial date; nor shall leave be given to withdraw in any other case, absent compelling ethical considerations, if such withdrawal would likely cause continuance or delay. If a party discharges an attorney it shall be the responsibility of that party to proceed pro se or obtain the appearance of substitute counsel in sufficient time to meet established trial dates or other regularly scheduled proceedings as the Court may direct.

(d) Any party for whom a general appearance of counsel has been made shall not thereafter take any step or be heard in the case in proper person, absent prior leave of Court; nor shall any party, having previously elected to proceed in proper person, be permitted to obtain special or intermittent appearances of counsel except upon such conditions as the Court may specify.

(e) A corporation may appear and be heard only through counsel admitted to practice in the Court pursuant to Rule 2.01 or Rule 2.02.

Rule 2.04 | DISCIPLINE

(a) Any member of the bar of this Court, admitted generally under Rule 2.01 or specially under Rule 2.02, may, after hearing and for good cause shown, be disbarred, suspended, reprimanded or subjected to such other discipline as the Court may deem proper.

(b) Whenever it appears to the Court that any member of its bar, admitted generally under Rule 2.01 or then appearing specially under Rule 2.02, has been disbarred or suspended from practice by the Supreme Court of Florida, or by any other court of competent jurisdiction, as the case might be, or has been disbarred on consent or resigned from the bar of any other court while an investigation into allegations of misconduct is pending, or has been convicted of a felony in any court, such disbarment, suspension, resignation, or conviction shall, twenty-one (21) days thereafter, operate as an automatic suspension of such attorney's right to practice in this Court; provided, however, the attorney may file, within such twenty-one (21) day period, a petition, with a copy served upon the United States Attorney, seeking relief from the operation of this rule, and if a timely petition is filed, suspension shall be stayed until the petition is determined. If such petition is filed by an attorney who has been admitted to practice generally under Rule 2.01 of these rules, it shall be heard and determined by the Chief Judge of the Court sitting with any two or more of other judges of the District as the Chief Judge shall designate. If such petition is filed by an attorney who has been admitted to practice specially under Rule 2.02 of these rules, it shall be heard and determined by the judge assigned to the case in which such special appearance has been made.

(c) Any attorney admitted to practice before this Court, upon being subjected to public discipline by any other Court of the United States or the District of Columbia, or by a court of any state, territory, commonwealth, or possession of the United States, including any attorney who is disbarred on consent or resigns from any bar while an investigation into allegations of misconduct is pending, shall promptly inform the Clerk of this Court of such action.

(d) The professional conduct of all members of the bar of this Court, admitted generally under Rule 2.01 or specially under Rule 2.02, shall be governed by the Model Rules of Professional Conduct of the American Bar Association as modified and adopted by the Supreme Court of Florida to govern the professional behavior of the members of The Florida Bar.

(e) The Court may appoint a Grievance Committee in each Division of the Court to conduct investigations of alleged misconduct on the part of any member of its bar, whether admitted generally under Rule 2.01 or specially under Rule 2.02. Each Grievance Committee shall consist of not less than five members of the bar of this Court regularly practicing in that Division, three of whom shall constitute a quorum. Appointments shall be for three (3) years. The Court shall designate the Chairman of the Committee in each Division, but each Committee shall otherwise organize itself as it sees fit. All proceedings before the Committees may be conducted informally, but shall remain confidential unless otherwise ordered by the Court. Each Committee shall function as follows:

(1) Any matter or question touching upon the professional behavior of a member of the bar may be referred at any time to the Chairman of the appropriate Committee by any judge of the Court. The Chairman of the Committee will promptly designate himself, or some other member, to investigate the matter and make a preliminary report to the Committee as a whole for the Committee's determination as to whether

(i) the inquiry should be terminated because the question raised is unsupported or insubstantial; or

(ii) the question raised justifies further inquiry but should be referred to the appropriate grievance committee of The Florida Bar; or

(iii) the question raised justifies further inquiry and should be pursued by the Committee due to distinctly Federal features or other appropriate reason. The Chairman of the Committee shall then report the Committee's preliminary recommendation to the referring judge and shall follow his direction.

(2) If a Committee is directed by the referring judge to pursue its inquiry, it shall proceed with dispatch to make such further investigation as it deems necessary to make a final report to the Court as to whether there is, or is not, probable cause to believe that the subject member of the bar has been guilty of unprofessional or unethical conduct justifying disciplinary action by the Court. If the Committee makes a report of probable cause, such report shall then be transmitted to the United States Attorney (or, if the United States Attorney be disqualified by interest, to another member of the bar appointed by the Chief Judge for that purpose) who shall file and serve a petition for an order to show cause upon the accused attorney. Such petition, and all further proceedings thereon, shall be heard and determined by the Chief Judge of the District sitting together with any two or more judges of the District as the Chief Judge shall designate.

(f) It shall be the duty of every member of the bar of the Court, admitted generally under Rule 2.01 or specially under Rule 2.02, to respond to and cooperate fully with any Grievance Committee of the Court during the course of any investigation being conducted pursuant to subsection (d) of this rule; provided, however, no attorney shall be entitled as of right to notice of the pendency of any such investigation unless and until he is named in a petition to show cause filed pursuant to subsection (e) (2) of this rule.

(g) Nothing in this rule shall be construed as providing an exclusive procedure for the discipline of members of the bar in appropriate cases, nor as a limitation upon the power of the Court to punish for contempt in appropriate cases.

(h) Attorneys and litigants should conduct themselves with civility and in a spirit of cooperation in order to reduce unnecessary cost and delay.

Rule 2.05 | APPEARANCE BY LAW STUDENTS

(a) The purpose of this rule is to authorize, under certain circumstances, the appearance of eligible law students in this Court as a means of providing assistance to lawyers who represent clients unable to pay for such services, and to encourage participating law schools to provide clinical instruction in the conduct of litigation in federal court.

(b) An eligible law student, as hereafter defined, may appear and be heard in this Court on behalf of any person found by the Court to be indigent and who consents in writing to such appearance. The written consent of the client and his or her attorney of record (the supervising attorney) shall be filed in the case; and, absent excusal by the Court, all such appearances shall be made in the presence of the supervising attorney. An eligible law student shall neither ask for nor receive any compensation or remuneration of any kind for services rendered pursuant to this rule, whether in court or out-of-court.

(c) In addition to appearance in Court, an eligible law student, having the written consent of the client and the supervising attorney as provided in subsection (b) of this rule, may engage in other activities outside the presence, but under the general supervision and direction of the supervising attorney including preparation of pleadings, legal research and brief writing, and preparation of discovery requests and responses. Any paper filed with the Court or served upon the opposing party should reflect the name of the eligible law student, if any, who participated in its preparation, and any such paper must be signed by the supervising attorney as counsel of record. An eligible law student may also engage in the conduct of any informal discovery or investigation authorized by the supervising attorney; may participate in reviewing and inspecting discovery materials; and may participate in oral depositions (provided that the supervising attorney shall be present at all depositions).

(d) An eligible law student is one who

(1) is enrolled in a participating law school accredited by the American Bar Association;

(2) has completed legal studies amounting to at least four semesters or six quarters for which the student has received not less than 48 semester hours or 72 quarter hours of academic credit;

(3) has read and is familiar with the Federal Rules of Civil and Criminal Procedures, the Federal Rules of Evidence, the Code of Professional Responsibility and the Rules of this Court; and

(4) is certified by the Dean of the participating law school as being of good character, competent legal ability, adequately trained to perform as a legal intern, and is otherwise qualified under the terms of this rule.

(e) The certification of a student or students by the participating law school Dean shall be filed with the Clerk and, unless sooner withdrawn, shall remain in effect for so long as the student continues to be enrolled as an active student in the participating law school. Any certification of a student may be withdrawn by the Dean at any time on notice to the Clerk without statement of cause. Similarly, any certification of a student may be terminated by the Court at any time on notice to the Dean without statement of cause.

CHAPTER THREE | LOCAL RULES OF COURT | USFLMD

RULES: 3.01 through 3.10

TITLE: MOTIONS, DISCOVERY AND PRETRIAL PROCEDURES

Rule 3.01 | MOTIONS; BRIEFS AND HEARINGS

(a) In a motion or other application for an order, the movant shall include a concise statement of the precise relief requested, a statement of the basis for the request, and a memorandum of legal authority in support of the request, all of which the movant shall include in a single document not more than twenty-five (25) pages.

(b) Each party opposing a motion or application shall file within fourteen (14) days after service of the motion or application a response that includes a memorandum of legal authority in opposition to the request, all of which the respondent shall include in a document not more than twenty (20) pages.

(c) No party shall file any reply or further memorandum directed to the motion or response allowed in (a) and (b) unless the Court grants leave.

(d) A motion requesting leave to file either a motion in excess of twenty-five (25) pages, a response in excess of twenty (20) pages, or a reply or further memorandum shall not exceed three (3) pages, shall specify the length of the proposed filing, and shall not include, as an attachment or otherwise, the proposed motion, response, reply, or other paper.

(e) Motions of an emergency nature may be considered and determined by the Court at any time, in its discretion (see also, Rule 4.05). The unwarranted designation of a motion as an emergency motion may result in the imposition of sanctions.

(f) All applications to the Court (i) requesting relief in any form, or (ii) citing authorities or presenting argument with respect to any matter awaiting decision, shall be made in writing (except as provided in Rule 7(b) of the Federal Rules of Civil Procedure) in accordance with this rule and in appropriate form pursuant to Rule 1.05; and, unless invited or directed by the presiding judge, shall not be addressed or presented to the Court in the form of a letter or the like. All pleadings and papers to be filed shall be filed with the Clerk of the Court and not with the judge thereof, except as provided by Rule 1.03(c) of these Rules.

(g) Before 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, the moving party

shall confer with counsel for the opposing party in a good faith effort to resolve the issues raised by the motion, and shall file with the motion a statement (1) certifying that the moving counsel has conferred with opposing counsel and (2) stating whether counsel agree on the resolution of the motion. A certification to the effect that opposing counsel was unavailable for a conference before filing a motion is insufficient to satisfy the parties' obligation to confer. The moving party retains the duty to contact opposing counsel expeditiously after filing and to supplement the motion promptly with a statement certifying whether or to what extent the parties have resolved the issue(s) presented in the motion. If the interested parties agree to all or part of the relief sought in any motion, the caption of the motion shall include the word "unopposed," "agreed," or "stipulated" or otherwise succinctly inform the reader that, as to all or part of the requested relief, no opposition exists.

(h) All dispositive motions must be so designated in the caption of the motion. All dispositive motions which are not decided within one hundred and eighty (180) days of the responsive filing (or the expiration of the time allowed for its filing under the local rules) shall be brought to the attention of the district judge by the movant by filing a "Notice To the Court" within ten days after the time for deciding the motion has expired. Movant shall file an additional "Notice To The Court" after the expiration of each and every additional thirty day period during which the motion remains undecided. Movant shall provide the Chief Judge of the Middle District with a copy of each and every "Notice To The Court" which movant is required to file under this rule.

(i) The use of telephonic hearings and conferences is encouraged, whenever possible, particularly when counsel are located in different cities.

(j) Motions and other applications will ordinarily be determined by the Court on the basis of the motion papers and briefs or legal memoranda; provided, however, the Court may allow oral argument upon the written request of any interested party or upon the Court's own motion. Requests for oral argument shall accompany the motion, or the opposing brief or legal memorandum, and shall estimate the time required for argument. All hearings on motions shall be noticed by the Clerk, as directed by the judge assigned to the case, either on regular motion days if practicable (pursuant to Rule 78, Fed.R.Civ.P.), or at such other times as the Court shall direct.

Rule 3.02 | NOTICE OF DEPOSITIONS

Unless otherwise stipulated by all interested parties pursuant to Rule 29, Fed.R.Civ.P., and excepting the circumstances governed by Rule 30(a), Fed.R.Civ.P., a party desiring to take the deposition of any person upon oral examination shall give at least fourteen (14) days notice in writing to every other party to the action and to the deponent (if the deponent is not a party).

**Rule 3.03 | WRITTEN INTERROGATORIES; FILING OF DISCOVERY MATERIAL;
EXCHANGE OF DISCOVERY REQUEST BY COMPUTER DISK**

(a) Written interrogatories shall be so prepared and arranged that a blank space shall be provided after each separately numbered interrogatory. The space shall be reasonably calculated to enable the answering party to insert the answer within the space.

(b) The original of the written interrogatories and a copy shall be served on the party to whom the interrogatories are directed, and copies on all other parties. No copy of the written interrogatories shall be filed with the Court by the party propounding them. The answering party shall use the original of the written interrogatories for his answers and objections, if any; and the original shall be returned to the party propounding the interrogatories with copies served upon all other parties. The interrogatories as answered or objected to shall not be filed with the Court as a matter of course, but may later be filed by any party in whole or in part if necessary to presentation and consideration of a motion to compel, a motion for summary judgment, a motion for injunctive relief, or other similar proceedings.

(c) Notices of the taking of oral depositions shall not be filed with the Court as a matter of course (except as necessary to presentation and consideration of motions to compel); and transcripts of oral depositions shall not be filed unless and until requested by a party or ordered by the Court.

(d) Requests for the production of documents and other things, matters disclosed pursuant to Fed. R. Civ. P. 26, and requests for admission, and answers and responses thereto, shall not be filed with the Court as a matter of course but may later be filed in whole or in part if necessary to presentation and consideration of a motion to compel, a motion for summary judgment, a motion for injunctive relief, or other similar proceedings.

(e) Litigants' counsel should utilize computer technology to the maximum extent possible in all phases of litigation i.e., to serve interrogatories on opposing counsel with a copy of the questions on computer disk in addition to the required printed copy.

Rule 3.04 | MOTIONS TO COMPEL AND FOR PROTECTIVE ORDER

(a) A motion to compel discovery pursuant to Rule 36 or Rule 37, Fed.R.Civ.P., shall include quotation in full of each interrogatory, question on deposition, request for admission, or request for production to which the motion is addressed; each of which shall be followed immediately by quotation in full of the objection and grounds therefor as stated by the opposing party; or the answer or response which is asserted to be insufficient, immediately followed by a statement of the reason the motion should be granted. The opposing party shall then respond as required by Rule 3.01(b) of these rules.

(b) For the guidance of counsel in preparing or opposing contemplated motions for a protective order pursuant to Rule 26(c), Fed.R.Civ.P., related to the place of taking a party-litigant's deposition, or the deposition of the managing agent of a party, it is the general policy of the Court that a non-resident plaintiff may reasonably be deposed at least once in this District during the discovery stages of the case; and that a non-resident defendant who intends to be present in person at trial may reasonably be deposed at least once in this District either during the discovery stages of the case or within a week prior to trial as the circumstances seem to suggest. Otherwise, depositions of parties should usually be taken as in the case of other witnesses pursuant to Rule 45(d), Fed.R.Civ.P.. A non-resident, within the meaning of this rule, is a person residing outside the State of Florida.

Rule 3.05 | CASE MANAGEMENT

(a) As soon as practicable after the filing of any civil action, the Clerk shall designate the case for future management on one of three tracks. The Clerk will notify the Plaintiff of such designation and the Plaintiff must then serve that notice upon all other parties. However, in cases governed by Rule 4.02, the Clerk will notify the party effecting removal, as specified in Rule 4.02(b), who then must serve that notice upon all other parties. The presiding judge may thereafter direct at any time that a case be redesignated from one track to a different track.

(b) Cases shall be designated by the Clerk to their appropriate tracks as follows:

(1) The following categories of proceedings are Track One Cases:

(A) an action for review on an administrative record;

(B) a petition for habeas corpus or other proceeding to challenge a criminal conviction or sentence;

(C) an action brought without counsel by a person in custody of the United States, a state, or a state subdivision;

(D) an action to enforce or quash an administrative summons or subpoena;

(E) an action by the United States to recover benefit payments;

(F) an action by the United States to collect on a student loan guaranteed by the United States;

(G) a proceeding ancillary to proceedings in other courts; and

(H) an action to enforce an arbitration award.

(2) Track Two cases shall include all cases not designated as Track One Cases, and not within the definition of Track Three Cases as hereafter stated. Track Two Cases will normally consist of non-complex actions which will require a trial, either jury or non-

jury, absent earlier settlement or disposition by summary judgment or some other means.

(3) Track Three Cases shall include those cases involving class action or antitrust claims, securities litigation, mass disaster or other complex tort cases, or those actions presenting factual or legal issues arising from the presence of multiple parties or multiple claims portending extensive discovery procedures or numerous legal issues such that the management techniques recommended in the current edition of the Manual For Complex Litigation should be considered and applied as appropriate to the circumstances of the case. Track Three Cases shall also include any action so imminently affecting the public interest (e.g. legislative redistricting, school desegregation, voting rights) as to warrant heightened judicial attention or expedited treatment.

(c) The following procedures shall apply depending upon the Track to which a case has been designated:

(1) Track One Cases - -

(A) Government foreclosure or recovery cases, motions to withdraw references to the Bankruptcy Court, and proceedings under 28 USC §2255 will normally be managed by the presiding District Judge pursuant to notices or orders entered by the Judge, or by the Clerk under the Court's direction, in each such case. (B) Other Track One cases will normally be referred at the time of filing to the Magistrate Judges for management by them in accordance with other provisions of these local rules or standing orders entered in each Division of the Court governing the duties and responsibilities of the Magistrate Judges. Such cases will then be managed by them pursuant to notices or orders entered by the Magistrate Judge, or by the Clerk under the Court's direction, in each such case.

(2) Track Two Cases - -

(A) All Rule 12, F. R. Civ. P., motions will be promptly considered by the Court and will normally

be decided within sixty (60) days after receipt of the last paper directed to the motion.

(B) Counsel and any unrepresented party shall meet within 60 days after service of the complaint upon any defendant, or the first appearance of any defendant, regardless of the pendency of any undecided motions, for the purpose of preparing and filing a Case Management Report in the form prescribed below. Unless the Court orders otherwise, parties represented by counsel are permitted, but are not required, to attend the case management meeting. The Case Management Report must be filed within 14 days after the meeting. Unless otherwise ordered by the Court, a party may not seek discovery from any source before the meeting.

(C) The Case Management Report shall include:

(i) The date(s) and time(s) of the meetings of the parties and the identity of the persons present.

(ii) A date by which the parties have agreed to prediscovery disclosures of core information, either voluntarily or as may be required by the Federal Rules of Civil Procedure or other provisions of these rules, and a detailed description of the information scheduled for disclosure.

(iii) A discovery plan which shall include a detailed description of the discovery each party intends to pursue (requests for admission, requests for production or inspection, written interrogatories, oral depositions), the time during which each form of discovery will be pursued, the proposed date for completion of discovery, and such other matters relating to discovery as the parties may agree upon (e.g., handling of confidential information, limits on the number or length of depositions, assertion of privileges).

(iv) A final date for the filing of all motions for leave to file third party claims or to join other parties and specification of a final date for the filing of any motions for summary judgment.

(v) A statement concerning the intent of the parties regarding alternative dispute resolution (settlement negotiations, court annexed arbitration under Chapter Eight or court annexed mediation under Chapter Nine of these rules), and specification of a date by which the parties will either report to the court concerning prospective settlement or apply for an order invoking arbitration or mediation.

(vi) A date by which the parties will be ready for a final pretrial conference and subsequent trial.

(vii) The signature of all counsel and all unrepresented parties either in a single document or duplicate originals.

(viii) A statement assessing the need for a preliminary pretrial conference before entry of a Case Management and Scheduling Order.

(D) Upon receipt of the Case Management Report the court will either

(i) schedule a preliminary pretrial conference to further discuss the content of the report and the subjects enumerated in Rule 16, F.R.Civ.P., before the entry of a Case Management and Scheduling Order, or

(ii) enter a Case Management and Scheduling Order. The Case Management and Scheduling Order will establish a discovery plan and a schedule of dates including the dates of a final pretrial conference and trial (or specify dates after which a pretrial conference or trial may be scheduled on twenty-one (21) days' notice).

(E) It is the goal of the court that a trial will be conducted in all Track Two Cases within two years after the filing of the complaint, and that most such cases will be tried within one year after the filing of the complaint. A motion to amend any pleading or a motion for continuance of any pretrial conference, hearing, or trial is distinctly disfavored after entry of the Case Management and Scheduling Order.

(3) Track Three Cases - -

(A) The provisions of subsections (c)(2)(A), (B) and (c)(I)-(vii) of this rule shall apply to all Track Three Cases.

(B) Upon receipt of the Case Management Report, if not sooner in some cases, the Court will schedule and conduct a preliminary pretrial conference to discuss with the parties the content of the report and the subjects enumerated in Rule 16, F.R.Civ.P., before the entry of a Case Management and Scheduling Order.

(C) The Case Management and Scheduling Order will establish a discovery plan and will also schedule such additional preliminary pretrial conferences as may seem necessary as well as a final pretrial conference and trial (or specify dates after which a pretrial conference or trial may be scheduled on twenty-one (21) days' notice).

(D) It is the goal of the court that a trial will be conducted in all Track Three Cases within three years after the filing of the complaint, and that most such cases will be tried within two (2) years after the filing of the complaint or on an acutely accelerated schedule if the public interest requires. A motion to amend any pleading or to continue any pretrial conference, hearing or trial is severely disfavored because, in light of the need for special judicial attention, counsel should prosecute or defend a Track Three Case only if able to accommodate the scheduling demands.

(d) The disclosures required by Fed.R.Civ.P. 26 (including the initial disclosures specified in Rule 26(a)(1)) shall be made in Track Two and Track Three Cases in the time and manner required by that rule unless otherwise ordered by the Court or stipulated by the parties. If the parties stipulate not to exchange initial disclosures, the Court may order the parties to exchange similar information pursuant to Fed.R.Civ.P.16. Track One Cases are exempt from the initial disclosures provisions of Rule 26(a)(1).

Rule 3.06 | FINAL PRETRIAL PROCEDURES

(a) Final pretrial conferences may be scheduled by the Court pursuant to Rule 16(d), Fed.R.Civ.P., in any civil case on not less than twenty-one (21) days notice.

(b) In any case in which a final pretrial conference is scheduled by the Court (or in any case in which the Court directs the preparation and filing of a pretrial statement in accordance with this rule, but without scheduling a pretrial conference), it shall be the responsibility of counsel for all parties to meet together no later than fourteen (14) days before the date of the final pretrial conference (or at such other time as the Court may direct) in a good faith effort to:

- (1) discuss the possibility of settlement;
- (2) stipulate to as many facts or issues as possible;
- (3) examine all exhibits and Rule 5.04 exhibit substitutes or documents and other items of tangible evidence to be offered by any party at trial;
- (4) exchange the names and addresses of all witnesses; and
- (5) prepare a pretrial statement in accordance with subsection (c) of this rule.

(c) The pretrial statement shall be filed with the Court no later than seven (7) days before the date of the final pretrial conference (or at such other time as the Court may direct), and shall contain:

- (1) the basis of federal jurisdiction;
- (2) a concise statement of the nature of the action;
- (3) a brief, general statement of each party's case;
- (4) a list of all exhibits and Rule 5.04 exhibit substitutes to be offered at trial with notation of all objections thereto;
- (5) a list of all witnesses who may be called at trial;
- (6) a list of all expert witnesses including, as to each such witness, a statement of the subject matter and a summary of the substance of his or her testimony;

(7) in cases in which any party claims money damages, a statement of the elements of each such claim and the amount being sought with respect to each such element;

(8) a list of all depositions to be offered in evidence at trial (as distinguished from possible use for impeachment), including a designation of the pages and lines to be offered from each deposition;

(9) a concise statement of those facts which are admitted and will require no proof at trial, together with any reservations directed to such admissions;

(10) a concise statement of applicable principles of law on which there is agreement;

(11) a concise statement of those issues of fact which remain to be litigated (without incorporation by reference to prior pleadings and memoranda);

(12) a concise statement of those issues of law which remain for determination by the Court (without incorporation by reference to prior pleadings or memoranda);

(13) a concise statement of any disagreement as to the application of the Federal Rules of Evidence or the Federal Rules of Civil Procedure;

(14) a list of all motions or other matters which require action by the Court; and

(15) the signatures of counsel for all parties.

(d) If a final pretrial conference is scheduled by the Court, lead trial counsel for each party shall attend.

(e) All pleadings filed by any party prior to filing of the pretrial statement shall be deemed to be merged therein, or in any subsequent pretrial order entered by the Court. The pretrial statement and the pretrial order, if any, will control the course of the trial and may not be amended except by order of the Court in the furtherance of justice. If new evidence or witnesses are discovered after filing of the pretrial statement, the party desiring to use the same shall immediately notify opposing counsel and the Court, and such use shall be permitted only by order of the Court in the furtherance of justice

Rule 3.07 | MARKING AND LISTING EXHIBITS

(a) In advance of trial and, when reasonable, in advance of evidentiary hearing, counsel for each party in any case shall obtain from the Clerk (or from an outside source in the format utilized by the Clerk or in a format approved by the presiding judge), tabs or labels. These tabs or labels shall be used for the marking and identification of each exhibit proposed to be offered in evidence or otherwise tendered to any witness during trial and evidentiary hearing and for the marking and identification of photographs and reductions proposed to be offered with exhibits in accordance with Rule 5.04. Counsel shall identify a photograph or reduction offered with an exhibit with the number identifying the exhibit.

(b) Upon marking exhibits, counsel shall also prepare a list of such exhibits, in sequence, with a descriptive notation sufficient to identify each separate numbered exhibit. Counsel shall furnish copies of the list to opposing counsel and three copies to the Court at the commencement of trial and, when reasonable, at the commencement of evidentiary hearing. (See also Rules 5.03 and 5.04.)

Rule 3.08 | NOTICE OF SETTLEMENTS; DISMISSAL

(a) It shall be the duty of all counsel to immediately notify the Court upon the settlement of any case.

(b) When notified that a case has been settled and for purposes of administratively closing the file, the Court may order that a case be dismissed subject to the right of any party to move the Court within sixty (60) days thereafter (or within such other period of time as the Court may specify) for the purpose of entering a stipulated form of final order or judgment; or, on good cause shown, to reopen the case for further proceedings.

Rule 3.09 | CONTINUANCES

(a) No trial, hearing or other proceeding shall be continued upon stipulation of counsel alone, but a continuance may be allowed by order of the Court for good cause shown.

(b) Failure to complete discovery procedures within the time established pursuant to Rule 3.05 of these rules shall not constitute cause for continuance unless such failure or inability is brought to the attention of the Court at least sixty (60) days in advance of any scheduled trial date and is not the result of lack of diligence in pursuing such discovery.

(c) Except for good cause shown, no continuance shall be granted on the ground that a party or witness has not been served with process or a subpoena, as the case might be, unless the moving party, at least seven (7) days before the return date, has delivered the papers to be served to the Marshal (or other appropriate person) for that purpose.

(d) Motions to continue trial must be signed by the attorney of record who shall certify that the moving party has been informed of the motion and has consented to it.

Rule 3.10 | FAILURE TO PROSECUTE: DISMISSAL

(a) Whenever it appears that any case is not being diligently prosecuted the Court may, on motion of any party or on its own motion, enter an order to show cause why the case should not be dismissed, and if no satisfactory cause is shown, the case may be dismissed by the Court for want of prosecution.

CHAPTER FOUR | LOCAL RULES OF COURT | USFLMD

RULES: 4.01 through 4.19

TITLE: SPECIAL RULES

Rule 4.01 | AMENDMENTS OF PLEADINGS

(a) Unless otherwise directed by the Court, any party permitted to amend a pleading shall file the amended pleading in its entirety with the amendments incorporated therein.

Rule 4.02 | REMOVAL OF CASES FROM STATE COURT

(a) All cases removed to this Court from the courts of the State of Florida shall be docketed and assigned, in accordance with Rule 1.03 of these rules, in the Division encompassing the county of the State in which the case was pending.

(b) The party effecting removal shall file with the notice of removal a true and legible copy of all process, pleadings, orders, and other papers or exhibits of every kind, including depositions, then on file in the state court.

(c) When a case is removed to this Court with pending motions on which briefs or legal memoranda have not been submitted, the moving party shall file and serve a supporting brief within fourteen (14) days after the removal in accordance with Rule 3.01(a) of these rules, and the party or parties opposing the motion shall then comply with Rule 3.01(b) of these rules.

Rule 4.03 | TIME OF MOTION TO JOIN THIRD PARTIES

(a) Any motion by a defendant for leave to join a third-party defendant pursuant to Rule 14(a), Fed.R.Civ.P., shall be made within six (6) months from the date of service of the moving defendant's answer to the complaint, or at least sixty (60) days prior to a scheduled trial date, whichever first occurs.

(b) A motion by a plaintiff for leave to join a third-party defendant pursuant to Rule 14(b), Fed.R.Civ.P., shall be made within six (6) months from the date of service of the moving plaintiff's reply to the counterclaim, or at least sixty (60) days prior to a scheduled trial date, whichever first occurs.

(c) The provision of this rule may be suspended upon a showing of good cause therefor.

Rule 4.04 | CLASS ACTIONS

(a) In any case sought to be maintained as a class action pursuant to Rule 23, Fed.R.Civ.P., the complaint shall contain, under a separate heading styled "**CLASS ACTION ALLEGATIONS**", detailed allegations of fact showing the existence of the several prerequisites to a class action as enumerated in Rule 23(a) and (b), Fed.R.Civ.P.

(b) Within ninety (90) days following the filing of the initial complaint in such an action, unless the time is extended by the Court for cause shown, the named plaintiff or plaintiffs shall move for a determination under Rule 23(c)(1) as to whether the case is to be maintained as a class action. The motion shall be supported by a memorandum as required by Rule 3.01(a) of these rules; and, in addition to a showing of the prerequisites as required by subsection (a) of this rule, the motion shall contain a detailed description or definition of the class (and sub-classes, if any), and the number of persons in the class. If a determination is sought that the action shall be maintained under Rule 23(b)(3), the motion shall also suggest a means of providing, and defraying the cost of, the notice required by Rule 23(c)(2), Fed.R.Civ.P. If discovery relating to class action issues is needed, the parties may move the Court for leave to take such discovery prior to the case management meeting.

(c) In ruling upon a motion made under subsection (b) of this rule, the Court may allow the class action, may disallow and strike the class action allegations, or may order postponement of the determination pending additional discovery or such other preliminary procedures as may appear appropriate in the circumstances.

(d) The foregoing provisions of this rule shall apply, with appropriate adaptations, to any complaint alleged to be brought against a class, and to counterclaims or cross-claims brought for a class.

Rule 4.05 | TEMPORARY RESTRAINING ORDERS

(a) Pursuant to Rule 65(b), Fed.R.Civ.P., temporary restraining orders may be issued without notice to be effective for a period of fourteen (14) days unless extended or sooner dissolved. Such orders will be entered only in emergency cases to maintain the status quo until the requisite notice may be given and an opportunity is afforded to opposing parties to respond to the application for a preliminary injunction. (See Rule 4.06 of these rules.)

(b) Due to previously scheduled business it will not ordinarily be possible for the Court to interrupt its daily calendar in order to conduct a hearing or entertain oral presentation and argument incident to an application for a temporary restraining order. The Court's decision, of necessity, will usually be made solely on the basis of the complaint and other supporting papers submitted pursuant to this rule. Accordingly, all applications for temporary restraining orders must be presented as follows:

(1) The request for the issuance of the temporary restraining order should be made by a separate motion entitled "**Motion for Temporary Restraining Order**".

(2) The motion must be supported by allegations of specific facts shown in the verified complaint or accompanying affidavits, not only that the moving party is threatened with irreparable injury, but that such injury is so imminent that notice and a hearing on the application for preliminary injunction is impractical if not impossible (Rule 65(b), Fed.R.Civ.P.)

(3) The motion should also:

(i) describe precisely the conduct sought to be enjoined;

(ii) set forth facts on which the Court can make a reasoned determination as to the amount of security which must be posted pursuant to Rule 65(c), Fed.R.Civ.P.;

(iii) be accompanied by a proposed form of temporary restraining order prepared in strict accordance with the several requirements contained in Rule 65(b) and (d), Fed.R.Civ.P.; and

(iv) should contain or be accompanied by a supporting legal memorandum or brief.

(4) The brief or legal memorandum submitted in support of the motion must address the following issues:

(i) the likelihood that the moving party will ultimately prevail on the merits of the claim;

(ii) the irreparable nature of the threatened injury and the reason that notice cannot be given;

(iii) the potential harm that might be caused to the opposing parties or others if the order is issued; and

(iv) the public interest, if any.

(5) If a temporary restraining order is issued by the Court it will be the responsibility of the successful movant to obtain immediate service of process upon the defendants, or parties enjoined, pursuant to Rule 4, Fed.R.Civ.P. In addition to the summons, complaint and temporary restraining order, the papers served must also include all motions, briefs, affidavits and exhibits submitted to the Court, as well as such additional affidavits or other papers upon which the moving party will rely in seeking to convert the temporary restraining order into a preliminary injunction. The papers so served must also include a notice of the hearing time fixed by the Court for consideration of the application for preliminary injunction. The hearing will usually be scheduled within fourteen (14) days or prior to expiration of the temporary restraining order under Rule 65(b), Fed.R.Civ.P.

(6) If a temporary restraining order is denied; and if the reason for the denial would not, as a matter of law, also preclude the issuance of a preliminary injunction; and if the moving party desires to pursue the request for a preliminary injunction; then the requirements of the preceding paragraph (5), and the remaining provisions of this rule, shall apply to the same extent as if a temporary restraining order had been issued.

Rule 4.06 | PRELIMINARY INJUNCTIONS

(a) A preliminary injunction may not be issued absent notice (Rule 65(a)(1), Fed.R.Civ.P.), which must be given at least fourteen (14) days in advance of the hearing (Rule 6(c), Fed.R.Civ.P.).

(b) All hearings scheduled on applications for a preliminary injunction will be limited in the usual course to argument of counsel unless the Court grants express leave to the contrary in advance of the hearing pursuant to Rule 43(e), Fed.R.Civ.P. In order to develop a record and the positions of the parties in advance of the hearing, the following procedure shall apply:

(1) The party applying for the preliminary injunction shall fully comply with the procedural requirements of Rule 4.05(b)(1) through (b)(5) of these rules pertaining to temporary restraining orders.

(2) Service of all papers and affidavits upon which the moving party intends to rely must be served with the motion (Rule 6(c), Fed.R.Civ.P.).

(3) The party or parties opposing the application must file with the Clerk's Office, and deliver to the moving party, all counter or opposing affidavits, and a responsive brief, not later than at least seven (7) days before the hearing (Rule 6(c), Fed.R.Civ.P.).

(4) Lengthy briefs, affidavits and other papers are counterproductive and should be avoided. If the parties desire additional time to prepare, and so stipulate in writing, the scheduled hearing may be postponed and the temporary restraining order (if one has been issued) will be extended as provided in Rule 65(b), Fed.R.Civ.P. In the event the hearing is postponed, any additional papers must be filed in advance of the re-scheduled hearing according to the time periods specified in paragraphs (2) and (3) above (as required by Rule 6(d), Fed.R.Civ.P.).

Rule 4.07 | IN FORMA PAUPERIS PROCEEDINGS

(a) Cases commenced *in forma pauperis* with appropriate affidavit of indigency pursuant to 28 U.S.C. Section 1915, or other applicable statutes (including such proceedings initiated by prisoners under 28 U.S.C. Sections 2254 or 2255), shall be docketed and assigned by the Clerk in accordance with Rules 1.03 or 1.04 as in any other case; provided, however, the case shall then be transmitted, prior to issuance of any process, to the judge to whom the case has been assigned. The Court may dismiss the case if satisfied that the action is frivolous or malicious, as provided by 28 U.S.C. Section 1915(e); or may enter such other orders as shall seem appropriate to the pendency of the cause, including an order that the party seeking leave to proceed *in forma pauperis* shall pay a stated portion of the Clerk's and/or Marshal's fees within a prescribed time, failing which the action may be dismissed without prejudice. (See also Rule 4.14.)

(b) All persons applying to proceed *in forma pauperis* shall be deemed to have consented to the entry of an order by the Court directing payment of all non-prepaid fees and costs out of any recovery, including a reasonable attorney's fee if counsel has been appointed by the Court to represent such person.

Rule 4.08 | SERVICE OF SUBPOENAS ON STATE AND FEDERAL OFFICERS

(a) Absent prior permission of the Court, no party shall cause to be issued and served any subpoena requiring the attendance, for deposition or for trial, of any state or federal judicial officer, or other person then holding an elective state or federal office.

Rule 4.09 | MARSHAL'S DEEDS

(a) Unless otherwise ordered by the Court, Marshal's deeds for property sold in execution or upon foreclosure or other order or decree of the Court shall not be acknowledged or delivered until ten (10) days after the date of sale and thereafter pending a ruling by the Court upon objections or other applications, if any, filed within such fourteen (14) day period.

Rule 4.10 | RELEASE OF INFORMATION

(a) All government personnel, including Marshals, Deputy Marshals, Court Clerks, Deputy Clerks, Probation Officers, and Court Reporters, among others, together with state or federal law enforcement personnel associated or assisting in the preparation or trial of a criminal case, are prohibited from disclosing for dissemination by any means of public communication, without authorization by the Court, information relating to an imminent or pending criminal case that is not part of the public records of the Court.

(b) It is the duty of the lawyer not to release or authorize the release of information or opinion for dissemination by any means of public communication in connection with pending or imminent criminal litigation with which he is associated, if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice. Where there is any such reasonable likelihood, the following will apply:

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

(2) From the time of arrest, issuance of an arrest warrant, or the filing of a complaint, information, or indictment in any criminal matter until the commencement of trial or disposition without trial, a lawyer associated with the prosecution or defense shall not release or authorize release of any extrajudicial statement, for dissemination by any means of public communication, relating to that matter and concerning:

(i) the prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the accused, except that the lawyer may make a factual statement of the

accused's name, age, residence, occupation, and family status, and if the accused has not been apprehended, a lawyer associated with the prosecution may release any information necessary to aid in his apprehension or to warn the public of any dangers he may present;

(ii) the existence or contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement;

(iii) the performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;

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

(v) the possibility of a plea of guilty to the offense charged or a lesser offense; or

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

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

(d) During the trial of any criminal matter, including the period of selection of the jury, no lawyer associated with the prosecution or defense shall give or authorize any extrajudicial statement or interview, relating to the trial or the parties or issues in the trial, for dissemination by any means of public communication, except that the lawyer may quote from or refer without comment to public records of the court in the case.

(e) Unless otherwise provided by law, all preliminary criminal proceeding including preliminary examinations and hearings on pretrial motions, shall be held in open court and shall be available for attendance and observation by the public; provided that, upon motion made or agreed to by the defense, the Court, in the exercise of its discretion, may order that a pretrial proceeding be closed to the public in whole or in part, on the grounds:

(1) that there is a reasonable likelihood that the dissemination of information disclosed at such proceeding would impair the defendant's right to a fair trial; and

(2) that reasonable alternatives to closure will not adequately protect defendant's right to a fair trial. If the Court so orders, it shall state for the record its specific findings concerning the need for closure.

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

(g) In a widely publicized or sensational case, the Court on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of any party to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the Court may deem appropriate for inclusion in such an order.

Rule 4.11 | PHOTOGRAPHS; BROADCASTING OR TELEVISIONING; USE OF COMPUTERS AND COMMUNICATION DEVICES

(a)

(1) As approved by the Judicial Conference of the United States at its March, 1979 meeting, the taking of photographs and the recording or taping of ceremonies for the investing of judicial officers and of naturalization proceedings and the possession of necessary equipment therefor is authorized in courtrooms of this Court and the environs thereof. At least three (3) hours prior notice of the use of recording or television equipment shall be given to the presiding judge who may control the placement of such equipment in the courtroom.

(2) Otherwise, the taking of photographs, the operation of recording or transmission devices, and the broadcasting or televising of proceedings in any courtroom or hearing room of this Court, or the environs thereof, either while the Court is in session or at recesses between sessions when Court officials, attorneys, jurors, witnesses or other persons connected with judicial proceedings of any kind are present, are prohibited.

(b) In order to facilitate the enforcement of subsection (a)(2) of this rule, no photographic, broadcasting, television, sound or recording equipment of any kind (except that of Court personnel and as authorized by subsection (a)(1) hereof) will be permitted in that part of any building where federal judicial proceedings of any kind are usually conducted in this District, as is designated by the resident judges of the Division in which such building is located. Such designation shall be made by order, filed in the office of the Clerk in such division. Except that of Court personnel, cellular telephones and computer equipment are likewise prohibited in that part of any building where federal judicial proceedings of any kind are usually conducted in this District, as designated by the resident judges in the manner set forth in the preceding sentence, unless otherwise permitted by the judicial officer before whom the particular case or proceeding is pending. This rule does not prohibit the possession of telephonic pagers in such locations, provided that such pagers are either switched off or placed in a silent activation mode while in such locations.

(c) Employees of other federal agencies resident within the security perimeters of buildings in this District housing federal courts or proceedings, with valid agency identification, are permitted to transport any of the equipment identified above through security checkpoints for the purpose of using same, in their official capacities, within areas of such buildings not covered by subsection (b) of this rule. Said equipment shall be subject to inspection by the United States Marshals Service.

Rule 4.12 | PRE-SENTENCE INVESTIGATION REPORTS; PRE-SENTENCING PROCEDURES

(a) Ordinarily, sentencing will occur within seventy-five (75) calendar days following the defendant's plea of guilt or nolo contendere, or upon being found guilty. The Court may either shorten or lengthen for good cause the time limits prescribed in this rule. On request, the defendant's counsel is entitled to notice and a reasonable opportunity to attend any interview of the defendant by the probation officer in the course of a presentence investigation.

(b) Not less than thirty-five (35) days prior to the date set for sentencing, the probation officer shall disclose the presentence investigation report to the defendant and to counsel for the defendant and the Government, unless the defendant waives this minimum period. Within fourteen (14) days thereafter, counsel (or the defendant if acting pro se) shall communicate in writing to the probation officer and to each other any objections they may have as to any material information, sentencing classifications, sentencing guideline ranges, and policy statements contained in or omitted from the report.

(c) After receiving counsel's objections, the probation officer shall conduct any further investigation and make any revisions to the presentence report that may be necessary. The officer may require counsel for both parties as well as the defendant and/or the case agent to meet with the officer to discuss unresolved factual and legal issues. All counsel shall make themselves available to the officer for this purpose on short notice regardless of place of residence.

(d) No later than seven (7) days prior to the date of the sentencing hearing, the probation officer shall submit the presentence report to the sentencing judge. The report shall be accompanied by an addendum setting forth any objections counsel may have made that have not been resolved, together with the officer's comments thereon. The probation officer shall certify that the contents of the report including any revisions thereof, have been disclosed to the defendant and to counsel for the defendant and the Government, that the content of the addendum has been communicated to the defendant and to counsel, and that the addendum fairly states any remaining objections.

(e) Except for any objection made under subdivision (b) that has not been resolved, the Court, at the sentencing, may accept the presentence report as its findings of fact. The Court, however, for good cause shown, may allow a new objection to be raised at any time before the imposition of sentence. In resolving disputed issues of fact, the Court may consider any reliable information presented by the probation officer, the defendant or the Government.

(f) The Court directs the probation officer not to disclose the probation officer's recommendation, if any, on the sentence, pursuant to its authority in Rule 32(e)(3).

(g) The presentence report shall be deemed to have been disclosed:

1. When a copy of the report is physically delivered.
2. One day after the report's availability for inspection is orally communicated.
3. Three (3) days after a copy of the report or notice of its availability is mailed.

(h) No confidential records of the Court maintained at the probation office, including presentence reports and probation supervision reports, shall be sought by any applicant except by written petition to the Court establishing with particularity the need for specific information believed to be contained in such records. When a demand for disclosure of such information for such records is made by way of subpoena or other judicial process served upon a probation officer of this Court, the probation officer may file a petition seeking instruction from the Court with respect to the manner in which he should respond to such subpoena or such process.

(i) Any party filing an appeal or cross appeal in any criminal case in which it is expected that an issue will be asserted pursuant to 18 U.S.C. Section 3742 concerning the sentence imposed by the Court shall immediately notify the probation officer who shall then file with the Clerk for inclusion in the record in camera a copy of the presentence investigation report. The probation officer shall also furnish, at the same time, a copy of the presentence report to the Government and to the defendant.

Rule 4.13 | COURT PLANS

(a) Pursuant to the requirements of the Criminal Justice Act of 1964, as amended, 18 U.S.C. Section 3006A, the Court has adopted, with the approval of the Judicial Council of the Eleventh Circuit, a plan for the assignment of counsel to represent indigent defendants in criminal proceedings pursuant to Rule 44, Fed.R.Cr.P.. A copy of the plan, as amended, shall be available for inspection in the Clerk's offices during regular business hours.

(b) Pursuant to the requirements of the Jury Selection and Service Act of 1968, as amended, 28 U.S.C. Section 1863, the Court has adopted, with the approval of the Judicial Council of the Eleventh Circuit, a plan for the random selection of grand and petit jurors. A copy of the plan, as amended, shall be available for inspection in the Clerk's offices during regular business hours.

(c) Pursuant to the requirements of the Speedy Trial Act of 1974, 18 U.S.C. Section 3165, and Rule 50(b), Fed.R.Cr.P., the Court has adopted, with the approval of the Judicial Council of the Eleventh Circuit, a plan to minimize undue delay and further prompt disposition of criminal cases. A copy of the plan, as amended, shall be available for inspection in the Clerk's offices during regular business hours.

Rule 4.14 | PROCEEDINGS UNDER 28 U.S.C. SECTIONS 2254 and 2255

(a) All proceedings instituted in this Court pursuant to 28 U.S.C. Sections 2254 and 2255, respectively, shall be governed by the Rules pertaining to such proceedings as prescribed by the Supreme Court of the United States, including the model forms appended thereto.

(b) In proceedings instituted *in forma pauperis* under 28 U.S.C. Section 2254 and 42 U.S.C. Section 1983 by persons in custody, the Court may order, as a condition to allowing the case to proceed, that the Clerk's and Marshal's fees be paid by the petitioner if it appears that he has \$25.00 or more to his credit (in Section 2254 cases), or \$120.00 or more to his credit (in Section 1983 cases), in any account maintained for him by custodial authorities.

Rule 4.15 | WRITTEN STIPULATIONS REQUIRED

(a) No stipulation or agreement between any parties or their attorneys, the existence of which is not conceded, in relation to any aspect of any pending case, will be considered by the Court unless the same is made before the Court and noted in the record or is reduced to writing and subscribed by the party or attorney against whom it is asserted.

Rule 4.16 | MANAGEMENT OF FUNDS HELD ON DEPOSIT WITH THIS COURT

(a) Any party wishing to deposit funds pursuant to Rule 67, Fed.R.Civ.P., may do so upon notice to every other party and upon leave of Court. The party making the deposit should prepare an order for entry by the Court. Absent good cause shown, the order should direct the Clerk of Court to deposit the funds into a special interest bearing account. Pursuant to Rule 67, Fed.R.Civ.P., the party making the deposit shall also serve a copy of the order upon either the Clerk of Court, the Chief Deputy Clerk, the Chief Financial Deputy Clerk, or the appropriate resident clerk's office Division Manager. Absent personal service upon one of those individuals, the Clerk of Court and members of his staff shall be relieved and discharged of any personal liability which might result from non-compliance with the deposit instructions contained in the order or in this Rule.

(b) Except for funds held by the Clerk as non-appropriated funds, as provided in the Guidelines and Plan for the Administration of Non-Appropriated Funds adopted by the Middle District of Florida, funds deposited with the Court that are not governed by subsection (a) of this Rule shall be deposited by the Clerk into the treasury of the United States; provided, however, that the Court may, by administrative order, permit deposit of registry funds into interest bearing accounts when the amount to be deposited exceeds a minimum sum stated in the administrative order. Final disposition of such deposits, as well as any earned interest, shall be determined by subsequent order of the Court.

Rule 4.17 | SPECIAL FILING AND PROCEDURAL REQUIREMENTS APPLICABLE TO HABEAS CORPUS CAPITAL CASES

(a) **Applicability:** The provisions of this Rule shall only apply to those habeas corpus capital cases brought pursuant to 28 U.S.C. Section 2254 in which a Florida state court has imposed a sentence of death, a death warrant has been signed and the petitioner's execution has been scheduled. In view of the limited time normally available to the Court to fully consider the merits of a habeas corpus petition under such conditions, special filing and procedural requirements addressed in this Rule shall apply, except to the extent that in the opinion of the assigned judge their application in a particular proceeding would not be feasible or would work an injustice.

(b) **Responsibility for Lodging a Complete Copy of the State Court Record:** In any habeas corpus capital case falling within the scope of this Rule, the Attorney General's Office for the State of Florida shall promptly lodge with the appropriate divisional clerk's office an "**Advance Appendix**" containing a complete copy of the state court record. The appendix shall include, but not be limited to the record of: pretrial proceedings; guilt/innocence phase of trial proceedings; sentencing proceedings; and direct state court appeal and collateral proceedings including the appeal of post-trial motions. Any portion of the state court record that is not immediately available due to ongoing state court proceedings, shall be lodged immediately thereafter in the form of a "**Supplemental Appendix**."

(c) **Responsibility for Indexing and Tabbing the Appendices:** Coincident with the lodging of any appendices, the Attorney General's Office shall also be responsible for:

- (1) Preparing and lodging a Master Index to each appendix;
- (2) Tabbing the first page of every appendix document and cross referencing the index tab number to the appropriate item on the Index; and
- (3) Serving a copy of each Index on counsel for the petitioner and lodging a Certificate of Service to indicate compliance with this requirement.

(d) **Manner of Service:** In order to facilitate the timely and efficient processing of habeas corpus capital cases, all pleadings and other papers tendered for filing shall be served on opposing counsel by the most expeditious means available, including use of overnight mail delivery service.

(e) **Order to Answer:** Counsel for the respondent is hereby directed to file an answer to the petition immediately following receipt of the served petition and shall not await further Court order.

(f) **Disposition of Appendices:** The petition and/or answer may refer to any portion of the appendices lodged with the Clerk by citing to the appropriate tab number and page. All appendices lodged with the Clerk pursuant to Rule 4.17(b) shall be filed in the district court record upon the receipt and filing of a petition for writ of habeas corpus. In the event the petitioner receives a stay of execution at the state court level, the Clerk shall return the lodged appendices to the Attorney General's Office.

Rule 4.18 | APPLICATIONS FOR COSTS OR ATTORNEY'S FEES

(a) In accordance with Fed. R. Civ. P. 54, all claims for costs or attorney's fees preserved by appropriate pleading or pretrial stipulation shall be asserted by separate motion or petition filed not later than fourteen (14) days following the entry of judgment. The pendency of an appeal from the judgment shall not postpone the filing of a timely application pursuant to this rule.

Rule 4.19 | PROVISION OF PRETRIAL SERVICES

(a) Pretrial services within the purview of 18 U.S.C. Section 3152 et seq. shall be supervised and provided by the Chief Pretrial Services Officer of this Court pursuant to 18 U.S.C. Section 3152(a). Any federal officer taking or receiving custody of a defendant in the Middle District of Florida shall immediately notify the pretrial services office of such detention, the name of the defendant, the charge(s) against him, and the place in which the defendant is being detained. A pretrial services officer shall then interview the defendant as soon as practicable at his place of confinement or, if the defendant has been released, at such other places as the pretrial services office shall specify.

(b) No confidential records of the Court maintained at the pretrial services office shall be sought by any applicant except by written petition to the Court establishing with particularity the need for specific information believed to be contained in such records. When a demand for disclosure of such information or such records is made by way of subpoena or other judicial process served upon a pretrial services officer of this Court, the pretrial services officer may file a petition seeking instruction from the Court with respect to the manner in which he should respond to such subpoena or such process.

CHAPTER FIVE | LOCAL RULES OF COURT | USFLMD

RULES: 5.01 through 5.04

TITLE: TRIAL AND COURTROOM PROCEDURES

Rule 5.01 | JURIES -- SELECTION; INSTRUCTIONS; PROHIBITION OF POST-TRIAL INTERVIEWS

(a) In all civil cases tried by jury, in accordance with Fed. R. Civ. P. 48, the jury shall consist of 6 to 12 persons as the Court may specify.

(b) The method of voir dire examination and exercise of challenges in selection of the jury shall be as specified by the presiding judge. A list of the venire will be furnished to counsel only at the time the case is called for trial, and prior to commencement of voir dire examination (unless otherwise required by governing rule or statute), and must be returned to the Clerk when the jury is empaneled. No person shall copy from or reproduce, in whole or in part, any list of veniremen.

(c) All requests for instructions to the jury shall be submitted in writing within the time specified by the presiding judge. Such requests, and supplemental requests, if any, shall be marked with the name and number of the case; shall designate the party submitting the request; shall be numbered in sequence; and shall contain citation of supporting authorities, if any.

(d) No attorney or party shall undertake, directly or indirectly, to interview any juror after trial in any civil or criminal case except as permitted by this Rule. If a party believes that grounds for legal challenge to a verdict exist, he may move for an order permitting an interview of a juror or jurors to determine whether the verdict is subject to the challenge. The motion shall be served within fourteen (14) days after rendition of the verdict unless good cause is shown for the failure to make the motion within that time. The motion shall state the name and address of each juror to be interviewed and the grounds for the challenge that the moving party believes may exist. The presiding judge may conduct such hearings, if any, as necessary, and shall enter an order denying the motion or permitting the interview. If the interview is permitted, the Court may prescribe the place, manner, conditions, and scope of the interview.

Rule 5.02 | MARSHAL TO ATTEND COURT

(a) Unless excused by the presiding judge, the United States Marshal of this District, or his Deputy, shall be in attendance during all sessions of any kind conducted in open court.

Rule 5.03 | COURTROOM DECORUM

(a) The purpose of this rule is to state, for the guidance of those heretofore unfamiliar with the traditions of this Court, certain basic principles concerning courtroom behavior and decorum. The requirements stated in this rule are minimal, not all-inclusive; and are intended to emphasize and supplement, not supplant or limit, the ethical obligations of counsel under the Code of Professional Responsibility or the time honored customs of experienced trial counsel. Individual judges of the Court may, in any case, or generally, announce and enforce additional prohibitions or requirements; or may excuse compliance with any one or more of the provisions of this rule.

(b) When appearing in this Court, unless excused by the presiding Judge, all counsel (including, where the context applies, all persons at counsel table) shall abide by the following:

- (1) Stand as Court is opened, recessed or adjourned.
- (2) Stand when the jury enters or retires from the courtroom.
- (3) Stand when addressing, or being addressed by, the Court.
- (4) Stand at the lectern while examining any witness; except that counsel may approach the Clerk's desk or the witness for purposes of handling or tendering exhibits.
- (5) Stand at the lectern while making opening statements or closing arguments.
- (6) Address all remarks to the Court, not to opposing counsel.
- (7) Avoid disparaging personal remarks or acrimony toward opposing counsel and remain wholly detached from any ill feeling between the litigants or witnesses.
- (8) Refer to all persons, including witnesses, other counsel and the parties by their surnames and not by their first or given names.

(9) Only one attorney for each party shall examine, or cross examine each witness. The attorney stating objections, if any, during direct examination, shall be the attorney recognized for cross examination.

(10) Counsel should request permission before approaching the bench; and any documents counsel wish to have the Court examine should be handed to the Clerk.

(11) Any paper or exhibit not previously marked for identification (see Rule 3.07) should first be handed to the Clerk to be marked before it is tendered to a witness for his examination; and any exhibit offered in evidence should, at the time of such offer, be handed to opposing counsel.

(12) In making objections counsel should state only the legal grounds for the objection and should withhold all further comment or argument unless elaboration is requested by the Court.

(13) In examining a witness, counsel shall not repeat or echo the answer given by the witness.

(14) Offers of, or requests for, a stipulation should be made privately, not within the hearing of the jury.

(15) In opening statements and in arguments to the jury, counsel shall not express personal knowledge or opinion concerning any matter in issue; shall not read or purport to read from deposition or trial transcripts, and shall not suggest to the jury, directly or indirectly, that it may or should request transcripts or the reading of any testimony by the reporter.

(16) Counsel shall admonish all persons at counsel table that gestures, facial expressions, audible comments, or the like, as manifestations of approval or disapproval during the testimony of witnesses, or at any other time, are absolutely prohibited.

Rule 5.04 | DISPOSITION OF EXHIBITS AND DISCOVERY MATERIALS

(a) Sensitive Exhibits and Exhibits Other Than Documents: Sensitive exhibits shall include, but are not necessarily limited to, drugs, weapons, currency, exhibits of a pornographic nature, and articles of high monetary value. When offering sensitive exhibits and exhibits other than documents into evidence, offering counsel shall also offer photographs of the exhibits. Counsel will be deemed by the Court to stipulate to substitution of the photographs for the exhibits in the record on appeal, unless otherwise ordered by the Court.

(b) Documentary Exhibits Larger than 8-1/2" x 11": When offering into evidence a documentary exhibit larger or smaller than 8-1/2" x 11", counsel shall also offer an 8-1/2" x 11" reduction or enlargement of the exhibit. Counsel will be deemed by the Court to stipulate to the substitution of the 8-1/2" x 11" reduction or enlargement for the exhibits in the record on appeal, unless otherwise ordered by the Court.

(c) Clerk's Disposition Schedule: The Clerk shall dispose of exhibits in accordance with the following schedule:

(1) Sensitive Exhibits: Sensitive exhibits offered or received into evidence or otherwise filed with the Clerk during any proceeding in this Court shall be maintained in the custody of the Clerk during the hours in which the Court is in session. At the conclusion of each daily proceeding, and when Court recesses if the presiding judge so directs, the Clerk shall return all sensitive exhibits to offering counsel or their delegates who shall then be responsible for maintaining custody and the integrity of such exhibits until the next session of Court at which time they shall be returned to the Clerk. After a verdict is rendered in a jury case or final order is entered in a non-jury case, with the approval of the presiding judge, the Clerk shall immediately return custody of sensitive exhibits to the offering or filing counsel. It shall be the responsibility of counsel to safely maintain all exhibits thus returned during the time permitted for an appeal and thereafter during the pendency of an appeal should one be taken.

(2) Documents Larger Than 8-1/2" x 11" and Exhibits Other Than Documents: A document larger or smaller than 8-1/2" x 11" or an exhibit other than a document offered or received into evidence or otherwise filed with the Clerk during any proceeding in this Court shall be delivered to and kept by the Clerk until a verdict is rendered in a jury case or until the entry of a final order by the Court in a non-jury case. Thereafter, unless otherwise ordered by the Court, the Clerk shall immediately return custody of the exhibit to the offering or filing counsel. It shall be the responsibility of counsel to safely maintain all exhibits thus returned to counsel during the time permitted for filing an appeal and during the pendency of any appeal should one be taken. The Clerk shall handle and dispose of any photograph or reduction offered with an exhibit in the manner described in subsection (3) below unless otherwise ordered by the Court.

(3) Other Exhibits and Discovery Materials: Other exhibits and discovery materials offered or received in evidence or otherwise filed with the Clerk during any proceeding in this Court and any photographs or reductions offered pursuant to subsections (a) and (b) shall be delivered to the Clerk who shall keep them in custody unless otherwise ordered by the Court, except that the Clerk may, without special order, permit an official court reporter to retain custody pending preparation of the transcript and transmit such items to a court of appeals. All such exhibits, discovery materials, photographs and reductions remaining in the custody of the Clerk shall be taken away by counsel within three (3) months after the case is finally decided, unless an appeal is taken in the United States Court of Appeals for the Eleventh Circuit. It shall be the responsibility of counsel to safely maintain exhibits thus taken away during the time permitted for an appeal with any other court and thereafter during the pendency of an appeal with such court should one be taken. In all cases in which an appeal is taken with the United States Court of Appeals for the Eleventh Circuit, all exhibits, photographs and reductions shall be taken away within thirty (30) days after the filing and recording of the mandate of that court.

(d) Destruction of Exhibits: The Clerk may notify counsel in writing of the requirement that exhibits, discovery materials, photographs, and reductions be removed, and if they are not removed within thirty (30) days, the Clerk may destroy them or make such other disposition as the Court may direct.

CHAPTER SIX | LOCAL RULES OF COURT | USFLMD

RULES: 6.01 through 6.05

TITLE: UNITED STATES MAGISTRATE JUDGES

Rule 6.01 | DUTIES OF UNITED STATES MAGISTRATE JUDGES

(a) In addition to the powers and duties set forth in 28 U.S.C. Section 636(a), the United States Magistrate Judges are hereby authorized, pursuant to 28 U.S.C. Section 636(b), to perform any and all additional duties, as may be assigned to them from time to time by any judge of this Court, which are not inconsistent with the Constitution and laws of the United States.

(b) The assignment of duties to United States Magistrate Judges by the judges of the Court may be made by standing order entered jointly by the resident judges in any Division of the Court; or by any individual judge, in any case or cases assigned to him, through written order or oral directive made or given with respect to such case or cases.

(c) The duties authorized to be performed by United States Magistrate Judges, when assigned to them pursuant to subsection (b) of this rule, shall include, but are not limited to:

(1) Issuance of search warrants upon a determination that probable cause exists, pursuant to Rule 41, Fed.R.Cr.P., and issuance of administrative search warrants upon proper application meeting the requirements of applicable law.

(2) Processing of complaints and issuing appropriate summonses or arrest warrants for the named defendants. (Rule 4, Fed.R.Cr.P.)

(3) Conduct of initial appearance proceedings for defendants, informing them of their rights, admitting them to bail and imposing conditions of release. (Rule 5, Fed.R.Cr.P. and 18 U.S.C. Section 3146)

(4) Appointment of counsel for indigent persons and administration of the Court's Criminal Justice Act Plan, including maintenance of a register of eligible attorneys and the approval of attorneys' compensation and expense vouchers. (18 U.S.C. Section 3006A; Rule 44, Fed.R.Cr.P.; and Rule 4.13(a) of these rules)

(5) Conduct of full preliminary examinations. (Rule 5.1, Fed.R.Cr.P. and 18 U.S.C. Section 3060)

(6) Conduct of removal hearings for defendants charged in other districts, including the issuance of warrants of removal. (Rule 40, Fed.R.Cr.P.)

(7) Issuance of writs of habeas corpus *ad testificandum* and habeas corpus *ad prosequendum*. (28 U.S.C. Section 2241(c)(5))

(8) Setting of bail for material witnesses and holding others to security of the peace and for good behavior. (18 U.S.C. Section 3149 and 18 U.S.C. Section 3043)

(9) Issuance of warrants and conduct of extradition proceedings pursuant to 18 U.S.C. Section 3184.

(10) The discharge of indigent prisoners or persons imprisoned for debt under process or execution issued by a federal court. (18 U.S.C. Section 3569 and 28 U.S.C. Section 2007)

(11) Issuance of an attachment or other orders to enforce obedience to an Internal Revenue Service summons to produce records or give testimony. (26 U.S.C. Section 7604(a) and (b))

(12) Conduct of post-indictment arraignments, acceptance of not guilty pleas, acceptance of guilty pleas in felony cases with the consent of the Defendant, and the ordering of a presentence investigation report concerning any defendant who signifies the desire to plead guilty. (Rules 10, 11(a) and 32(c), Fed.R.Cr.P.)

(13) Acceptance of the return of an indictment by the grand jury, issuance of process thereon and, on motion of the United States, ordering dismissal of an indictment or any separate count thereof. (Rules 6(f) and 48(a), Fed.R.Cr.P.)

(14) Supervision and determination of all pretrial proceedings and motions made in criminal cases through the Court's Omnibus Hearing procedure or otherwise including, without limitation, motions and orders made pursuant to Rules 12, 12.2(c), 15, 16, 17, 17.1 and 28, Fed.R.Cr.P., 18 U.S.C. Section 4244, orders determining excludable time under 18 U.S.C. Section 3161, and orders dismissing a complaint without prejudice for failure to return a timely indictment under 18 U.S.C. Section 3162; except that a magistrate judge shall not grant a motion to dismiss or quash an indictment or information made by the defendant, or a motion to suppress evidence, but may make recommendations to the Court concerning them.

(15) Conduct of hearings and issuance of orders upon motions arising out of grand jury proceedings including orders entered pursuant to 18 U.S.C. Section 6003, and orders involving enforcement or modification of subpoenas, directing or regulating lineups, photographs, handwriting exemplars, fingerprinting, palm printing, voice identification, medical examinations, and the taking of blood, urine, fingernail, hair and bodily secretion samples (with appropriate medical safeguards).

(16) Conduct of preliminary and final hearings in all probation revocation proceedings, and the preparation of a report and recommendation to the Court as to whether the petition should be granted or denied. (Rule 32.1, Fed.R.Cr.P. and 18 U.S.C. Section 3653.)

(17) Processing and review of habeas corpus petitions filed pursuant to 28 U.S.C. Section 2241, et seq., those filed by state prisoners pursuant to 28 U.S.C. Section 2254, or by federal prisoners pursuant to 28 U.S.C. Section 2255, and civil suits filed by state prisoners under 42 U.S.C. Section 1983, with authority to require responses, issue orders to show cause and such other orders as are necessary to develop a complete record, including the conduct of evidentiary hearings, and the preparation of a report and recommendation to the Court as to appropriate disposition of the petition or claim.

(18) Supervision and determination of all pretrial proceedings and motions made in civil cases including, without limitation, rulings upon all procedural and discovery motions, and conducting pretrial conferences; except that a magistrate judge (absent a stipulation entered into by all affected parties) shall not appoint a receiver, issue an injunctive order pursuant to Rule 65, Fed.R.Civ.P., enter an order dismissing or permitting maintenance of a class action pursuant to Rule 23, Fed.R.Civ.P., enter any order granting judgment on the pleadings or summary judgment in whole or in part pursuant to Rules 12(c) or 56, Fed.R.Civ.P., enter an order of involuntary dismissal pursuant to Rule 41(b) or (c), Fed.R.Civ.P., or enter any other final order or judgment that would be appealable if entered by a judge of the Court, but may make recommendations to the Court concerning them.

(19) Conduct of all proceedings in civil suits, before or after judgment, incident to the issuance of writs of replevin, garnishment, attachment or execution pursuant to governing state or federal law, and the conduct of all proceedings and the entry of all necessary orders in aid of execution pursuant to Rule 69, Fed.R.Civ.P.

(20) Conduct or preside over the voir dire examination and empanelment of trial juries in civil and criminal cases.

(21) Processing and review of all suits instituted under any law of the United States providing for judicial review of final decisions of administrative officers or agencies on the basis of the record of administrative proceedings, and the preparation of a report and recommendation to the Court concerning the disposition of the case.

(22) Serving as a master for the taking of testimony and evidence and the preparation of a report and recommendation for the assessment of damages in admiralty cases, non-jury proceedings under Rule 55(b)(2), Fed.R.Civ.P., or in any other case in which a special reference is made pursuant to Rule 53, Fed.R.Civ.P.

(23) In admiralty cases, entering orders

(i) appointing substitute custodians of vessels or property seized *in rem*;

(ii) fixing the amount of security, pursuant to Rule E(5), Supplemental Rules for Certain Admiralty and Maritime Claims, which must be posted by the claimant of a vessel or property seized *in rem*;

(iii) in limitation of liability proceedings, for monition and restraining order including approval of the *ad interim* stipulation filed with the complaint, establishment of the means of notice to potential claimants and a deadline for the filing of claims; and

(iv) to restrain further proceedings against the plaintiff in limitation except by means of the filing of a claim in the limitation proceeding.

(24) Appointing persons to serve process pursuant to Rule 4(c), Fed.R.Civ.P., except that, as to *in rem* process, such appointments shall be made only when the Marshal has no deputy immediately available to execute the same and the individual appointed has been approved by the Marshal for such purpose.

(25) Processing and review of petitions in civil commitment proceedings under the Narcotic Addict Rehabilitation Act, and the preparation of a report and recommendation concerning the disposition of the petition.

(26) Conduct of proceedings and imposition of civil fines and penalties under the Federal Boat Safety Act. (46 U.S.C. Section 1484(d)).

Rule 6.02 | REVIEW OF MAGISTRATE JUDGES' REPORTS AND RECOMMENDATIONS

(a) In any case in which the magistrate judge is not authorized to enter an operative order pursuant to Rule 6.01, 28 U.S.C. Section 636 or any standing or special order of the Court entered thereunder, but is authorized or directed to file a report or recommendation to the District Judge to whom the case has been assigned, a copy of such report and recommendation shall be furnished, upon filing, to the District Judge and to all parties. Within fourteen (14) days after such service, any party may file and serve written objections thereto; and any party desiring to oppose such objections shall have fourteen (14) days thereafter within which to file and serve a written response. The District Judge may accept, reject, or modify in whole or in part, the report and recommendation of the magistrate judge or may receive further evidence or recommit the matter to the magistrate judge with instructions.

Rule 6.03 | MISDEMEANOR AND PETTY OFFENSES

(a) Pursuant to 18 U.S.C. Section 3401, any full time United States Magistrate Judge of this District, sitting with or without a jury, shall have jurisdiction to try persons accused of, and sentence persons convicted of, petty offenses. With consent of the parties, any full time United States Magistrate Judge of this District, sitting with or without a jury, shall have jurisdiction to try persons accused of, and sentence persons convicted of a Class A misdemeanor committed within the District whether originating under an applicable Federal statute or regulation or a state statute or regulation made applicable by 18 U.S.C. Section 13. Cases of misdemeanors may, upon transfer into this District under Rule 20, Fed.R.Cr.P., be referred to a full time United States Magistrate Judge of this District for plea and sentence, upon defendant's consent. In a petty offense case involving a juvenile, any full time United States Magistrate Judge of this District may exercise all powers granted to the District Court under Chapter 403 of Title 18 of the United States Code. In cases of any misdemeanor, other than a petty offense involving a juvenile, in which consent to trial before a Magistrate Judge has been filed, a Magistrate Judge may exercise all powers granted to the District Court under Chapter 403 of Title 18 of the United States Code.

(b) Any person charged with a petty offense as defined in 18 U.S.C. Section 19 may, in lieu of appearance post collateral in the amount indicated for the offense, waive appearance before a magistrate judge, and consent to forfeiture of the collateral. The offenses for which collateral may be posted and forfeited in lieu of appearance by the person charged, together with the amounts of collateral to be posted, shall be specified in standing orders of the Court, in each Division of the Court, copies of which shall be maintained in the offices of the Clerk and the magistrate judges, respectively. For all petty offenses not specified in such standing orders, the person charged must appear before a magistrate judge; and further, nothing contained in this rule shall prohibit a law enforcement officer from arresting a person for the commission of any offense, including those for which collateral may be posted and forfeited, and requiring the person charged to appear before a magistrate judge or, upon arrest, taking him immediately before a magistrate judge.

(c) In the trial of all cases pursuant to this rule, Rule 58, Federal Rules of Criminal Procedure, governs practice and procedure.

Rule 6.04 | RESERVED

RESERVED

Rule 6.05 | TRIAL OF CIVIL CASES

(a) Pursuant to 28 U.S.C. Section 636(c)(1), and subject to the provisions of this rule, all full time United States Magistrate Judges in the District are hereby specially designated to conduct any or all proceedings in any jury or nonjury civil matter and order the entry of judgment in the case.

(b) Upon the filing of any civil case the Clerk shall deliver to the Plaintiff(s) written notice of the right of the parties to consent to disposition of the case by a United States Magistrate Judge pursuant to 28 U.S.C. Section 636(c) and the provisions of this rule. The Clerk shall also issue or supply at that time, for each Defendant in the case, copies of such notice which shall be attached to the summons and thereafter served upon the Defendant(s) in the manner provided by Rule 4, Fed.R.Civ.P.; provided, however, that a failure to serve a copy of such notice upon any Defendant shall not affect the validity of the service of process or the jurisdiction of the Court to proceed. If, after the initial filing of a civil case, new or additional parties enter or join in the action pursuant to the operation of any statute, rule or order of the Court, the Clerk shall immediately mail or otherwise deliver a copy of such notice to each such party.

(c) The written notice contemplated by subsection (b) of this rule shall be in such form as the judges of the Court from time to time direct. In addition, the Clerk shall maintain on hand, in a form or forms to be approved by the judges of the Court, written consent agreements for the use of the parties in communicating to the Clerk their unanimous and voluntary consent, upon entry of an order of reference by the presiding district judge, to have all further proceedings in the case, including trial with or without a jury, and the entry of judgment, conducted by a United States Magistrate Judge. One form of such consent agreements shall provide for appeal to the United States Court of Appeals (28 U.S.C. Section 636(c)(3)), and another shall provide for appeal to the presiding district judge (28 U.S.C. Section 636(c)(4)).

(d) If the parties in any civil case unanimously consent to disposition of the case by a United States Magistrate Judge pursuant to 28 U.S.C. Section 636(c) and this rule, such consent must be communicated to the Clerk on an appropriate form (provided by the Clerk in accordance with subsection (c) of this rule). The Clerk shall not accept or file any consent except in the form and manner, and within the time, prescribed by this rule.

(e) In the event the parties file a unanimous consent pursuant to subsection (d) of this rule, the Clerk shall immediately notify the presiding district judge who will promptly (1) enter an order of reference to a United States magistrate judge, or (2) enter an order declining to do so; provided, however, the judges of the Court shall not decline to make an order or orders of reference for the purpose of limiting the types of cases to be tried by the United States magistrate judges pursuant to this rule. In making or in declining to make an order of reference the presiding judge may consider, among other things, the current allocation of pending judicial business between the judges of the Court and the magistrate judges; the judicial economy, if any, to be gained by the reference as measured in part by the extent of prior judicial labor expended and familiarity accumulated in the case by the judge or the magistrate judge, as the case might be; the extent to which the magistrate judge(s) may have time available to devote to the case giving due regard to the necessity of diligent performance of other judicial duties regularly assigned to the magistrate judges; and any other features peculiar to the individual case which suggest, in the interest of justice or judicial economy, that a reference should or should not be made.

(f) In any case in which an order of reference has been made, the presiding judge may, for cause shown on his own motion, or under extraordinary circumstances shown by any party, vacate the order of reference and restore the case to the calendar of the presiding judge.

(g) In all cases in which an order of reference has been made on the basis of a consent agreement providing for appeal to the presiding judge of the District Court pursuant to 28 U.S.C. Section 636(c)(4), any such appeal shall be governed by the applicable Federal Rules of Appellate Procedure relating to appeals in civil cases from the District Court to the Court of Appeals, except that Rules 30, 31(b), and 32, Fed.R.App.P., shall not apply.

(h) Nothing in this rule shall be construed to limit or affect the right of any judge or judges of the Court to assign judicial duties or responsibilities to a United States magistrate judge or magistrate judges pursuant to Rule 6.01, or any standing order entered under that rule, with or without the consent of the parties.

CHAPTER SEVEN | LOCAL RULES OF COURT | USFLMD

RULES: 7.01 through 7.06

TITLE: ADMIRALTY AND MARITIME RULES

Rule 7.01 | GENERAL PROVISIONS

(a) **Scope of the Local Admiralty and Maritime Rules:** The local admiralty and maritime rules apply to the procedures in admiralty and maritime claims within the meaning of Fed.R.Civ.P. 9(h), which in turn are governed by the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure.

(b) **Citation Format:**

(1) The Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure shall be cited as "Supplemental Rule (____)".

(2) The Local Rules of the Middle District of Florida shall be cited as "Local Rule (____)".

(3) The Local Admiralty and Maritime Rules shall be cited as "Local Admiralty Rule (____)".

(c) **Application of Local Admiralty and Maritime Rules:** The Local Admiralty Rules shall apply to all actions governed by Local Admiralty Rule 7.01(a), and to the extent possible should be construed to be consistent with the other local rules of this Court. To the extent that a Local Admiralty Rule conflicts with another local rule of this Court, the Local Admiralty Rule shall control.

(d) **Designation of "In Admiralty" Proceedings:** Every complaint filed as a Fed.R.Civ.P. 9(h) action shall boldly set forth the words "IN ADMIRALTY" following the designation of the Court. This requirement is in addition to any statements which may be contained in the body of the complaint.

(e) **Verification of Pleadings, Claims and Answers to Interrogatories:** Every complaint and claim filed pursuant to Supplemental Rules (B), (C) and/or (D) shall be verified on oath or solemn affirmation by a party, or an officer of a corporate party.

If a party or corporate officer is not within the district, verification of a complaint, claim and/or answers to interrogatories may be made by an agent, an attorney-in-fact, or the attorney of record. Such person shall state briefly the source of his knowledge, or information and belief, and shall declare that the document affirmed is true to the best of his knowledge, and/or information and belief. Additionally, such person shall

state that he is authorized to make this representation on behalf of the party or corporate officer, and shall indicate why verification is not made by a party or a corporate officer. Such verification will be deemed to have been made by the party to whom the document might apply as if verified personally. Any interested party may move the Court, with or without a request for stay, for the personal oath or affirmation of a party or all parties, or that of a corporate officer. If required by the Court, such verification may be obtained by commission, or as otherwise provided by Court order.

(f) **Issuance of Process:** Except as limited by the provisions of Supplemental Rule (B)(1) and Local Admiralty Rule 7.02(c); or Supplemental Rule (C)(3) and Local Admiralty Rule 7.03(b); or in suits prosecuted in forma pauperis and sought to be filed without prepayment of fees or costs, or without security; all process shall be issued by the Court without further notice of Court.

(g) **Publication of Notices:** Unless otherwise required by the Court, or applicable Local Admiralty or Supplemental Rule, whenever a notice is required to be published by any statute of the United States, or by any Supplemental Rule or Local Admiralty Rule, such notice shall be published at least once, without further order of Court, in an approved newspaper in the county or counties where the vessel or property was located at the time of arrest, attachment, or seizure, and if different, in the county within the Middle District of Florida where the lawsuit is pending.

For the purposes of this subsection, an approved newspaper shall be a newspaper of general circulation. The newspaper of largest circulation in a county in the Middle District is rebuttably presumed to be a newspaper of general circulation in that same county. For cause shown by a party or on its own motion, the court may require publication in one or more additional publications if necessary to provide notice reasonably calculated to inform interested parties.

(h) **Form and Return of Process in In Personam Actions:** Unless otherwise ordered by the Court, Fed.R.Civ.P. 9(h) process shall be by civil summons, and shall be returnable twentyone (21) days after service of process; except that process issued in accordance with Supplemental Rule (B) shall conform to the requirements of that rule.

(i) **Judicial Officer Defined:** As used in these Local Admiralty Rules, the term "judicial officer" or "Court" shall mean either a United States district judge or a United States magistrate judge.

(j) **Appendix of Forms:** The forms presented in the Appendix provide an illustration of the format and content of papers filed in admiralty and maritime actions within the Middle District of Florida. While the forms are sufficient, they are neither mandatory nor exhaustive.

(k) **Advisory Committee Notes:** Chapter Seven of these Rules was prepared and submitted to the Court, at its request, by a Subcommittee of the Admiralty Law Committee of The Florida Bar. The work product of the Subcommittee, as transmitted to the Court, contained explanatory comments following each rule entitled "Notes of Advisory Committee on Local Rules". Such notes have not been adopted by the Court as a part of the Local Admiralty Rules, however, copies of the advisory notes are available in the Office of the Clerk.

Advisory Notes to Admiralty and Maritime Rules

(a) General Comments

The Local Admiralty and Maritime Rules are promulgated pursuant to this Court's rule making authority under Fed.R.Civ.P. 83, and have been drafted to complement the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure.

The Committee has arranged these Local Admiralty Rules to correspond generally with the ordering of the Supplemental Rules, e.g., Local Admiralty Rule 7.01 corresponds generally with Supplemental Rule A, and each sequentially numbered Local Admiralty Rule addresses the subject matter of the corresponding next-in-order Supplemental Rule.

Reference to the former local admiralty rules refers to the former Chapter Seven of the Local Rules of the Middle District of Florida.

(b) Comments on Specific Sections:

7.01(a) continues in substance former Local Admiralty Rule 7.01(a).

7.01(d) continues the "IN ADMIRALTY" designation requirements of former Local Admiralty Rule 7.07(a). Under the revised rule, the "IN ADMIRALTY" designation is required to be posted to all complaints even if the complaint is filed as a Fed.R.Civ.P. 9(h) action and jurisdiction would exist on another basis, e.g., federal question or diversity jurisdiction.

7.01(e) continues the requirements of former Local Admiralty Rule 7.08(a).

7.01(f) continues the requirements of former Local Admiralty Rule 7.02(a).

7.01(g) enlarges upon former Local Admiralty Rule 7.03(a) which addressed notice by publication only in cases filed pursuant to Supplemental Rule (C)(4). The revised rule extends the publication provisions to all Fed.R.Civ.P. 9(h) actions for which notice by publication is required.

In addition, the exiting provisions have been altered to require that the publication shall be made both in the county where the vessel, or other property, was located at the time of arrest, attachment or seizure; and if different, in the county within the division of this Court in which the suit is pending.

7.01(h) continues the requirements of former Local Admiralty Rule 7.02(c).

7.01(i) adopts the definition of "Court" provided in the Advisory Notes to the August 1, 1985, amendments to the Supplemental Rules.

As defined in these Local Admiralty Rules, the term "Court" or "judicial officer" shall extend to United States Magistrate Judges assigned to the Middle District of Florida. The Committee notes that the delegation of the duties contemplated by this definition are consistent with the jurisdictional grant to United States magistrate judges as set forth in 28 USC § 636(a).

Where the terms "Court" and "judicial officer" are not used, these rules contemplate that without further order of Court as required by Local Rule 6.01(a), the responsibility of taking the specific action shall be vested with a district judge.

7.01(j) provides for an Appendix of Forms to the Local Admiralty Rules. The former rules attempted to incorporate the text of the form within the specific local rules. The Appendix of Forms provides an alternate method of presenting the format and content of necessary admiralty forms.

As noted in the revised rule, these forms are provided as examples, and are not intended to be mandatory. In addition to the specific forms referred to in the Local Admiralty Rules, the Appendix also includes other commonly used admiralty forms for the use and convenience of counsel.

(c) Other Considerations:

The Committee considered, but declined to recommend, a rule which would set the rate of pre-judgment interest allowed. The case construing pre-judgment interest appears to suggest that the issue is a substantive one in which the rate of pre-judgment interest is intended to compensate the prevailing party for the loss of use of funds during the pendency of the action. As such, the decision as to the rate of pre-judgment interest would appear to require evidentiary support. Therefore, the Committee decided not to incorporate such a rate in these rules. See, *Complaint of M/V Vulcan*, 553 F.2d 489 (5th Cir. 1977); *cert. denied, Sabine Towing & Transportation Co. v. Zapata Uglan Drilling, Inc.*, 434 U.S. 855 [98 S.Ct.175, 54 L.Ed.2d 127] (1977).

Rule 7.02 | ATTACHMENT AND GARNISHMENT: SPECIAL PROVISIONS

(a) **Definition of "Not Found Within the District":** In an action in personam filed pursuant to Supplemental Rule (B), a defendant shall be considered "not found within the district" if he cannot be served within the Middle District of Florida with the summons and complaint as provided by Fed.R.Civ.P. 4(e)(1) or (2), (g), (h)(1), or (j)(1) or (2).

(b) **Verification of Complaint Required:** In addition to the specific requirements of Local Admiralty Rule 7.01(e), whenever verification is made by the plaintiff's attorney or agent, and that person does not have personal knowledge, or knowledge acquired in the ordinary course of business of the facts alleged in the complaint, the attorney or agent shall also state the circumstances which make it necessary for that person to make the verification, and shall indicate the source of the attorney's or agent's information.

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

(1) **Judicial Review Prior to Issuance:** Except as provided in Local Admiralty Rule 7.02(c)(2), a judicial officer shall first review the verified complaint, and any other relevant case papers, prior to the Clerk issuing the requested process of attachment and garnishment. No notice of this pre-arrest judicial review is required to be given to any person or prospective party.

If the Court finds that probable cause exists to issue the process of attachment and garnishment, plaintiff shall prepare an order for the Court's signature directing the Clerk to issue the process. This order shall substantially conform in format and content to the form identified as MDF 700 in the Appendix of these Local Admiralty Rules.

Upon receipt of the signed order, the Clerk shall file the order and, in accordance with Local Admiralty Rule 7.02(c)(3), issue the summons and process of attachment and garnishment. Thereafter the Clerk may issue supplemental process without further order of Court.

(2) **Certification of Exigent Circumstances:** If the plaintiff files a written certification that exigent circumstances make review by the Court impracticable, the Clerk shall, in accordance with Local Admiralty Rule 7.02(c)(3), issue a summons and the process of attachment and garnishment.

Thereafter at any post-attachment proceedings under Supplemental Rule (E)(4)(f) and Local Admiralty Rule 7.02(e), plaintiff shall have the burden of showing that probable cause existed for the issuance of process, and that exigent circumstances existed which precluded judicial review in accordance with Local Admiralty Rule 7.02(c)(1).

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

The process of attachment and garnishment shall substantially conform in format and content to the form identified as MDF 701 in the Appendix to these Local Admiralty Rules, and shall in all cases give adequate notice of the post-seizure provisions of Local Admiralty Rule 7.02(e).

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

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

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

of the process of attachment and garnishment with the defendant or garnishee at his usual place of business.

(e) Post-attachment Review Proceedings:

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

(2) **Hearing on the Answer and Claim:** The claimant may be heard before a judicial officer not less than three (3) days after the answer and claim has been filed and service has been perfected upon the plaintiff.

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

If the seizure was predicated upon a showing of "exigent circumstances" under Local Admiralty Rule 7.02(c)(2), and the Court finds that such exigent circumstances did not exist, the judicial officer shall award attorney's fees, costs, and other expenses incurred by any party as a result of the seizure.

(f) Procedural Requirements for the Entry of Default: In accordance with Rule 55, Fed.R.Civ.P. and Local Rule 1.07(b), a party seeking the entry of default in a Supplemental Rule (B) action shall file a motion and supporting legal memorandum in accordance with Local Rule 3.01, and shall offer other proof sufficient to demonstrate that due notice of the action and seizure have been given in accordance with Local Admiralty Rule 7.02(d).

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

(g) **Procedural Requirements for the Entry of Default Judgment:** Not sooner than seven (7) nor later than thirty (30) days following notice of the entry of default, the party seeking the entry of default judgment shall file a motion and supporting legal memorandum in accordance with Local Rule 3.01, along with other appropriate exhibits to the motion sufficient to support the entry of default judgment. The moving party shall serve these papers upon every other party to the action and file a Certificate of Service indicating the date and manner in which service was perfected.

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

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

Advisory notes to Admiralty and Maritime Rules

(a) General Comments:

Local Rule 7.02 is intended to enhance and codify the local procedural requirements uniquely applicable to actions of maritime attachment and garnishment under Supplemental Rule (B). Other local procedural requirements involving actions in rem and quasi in rem proceedings can be found in Local Admiralty Rule 7.05.

When read in conjunction with Supplemental Rule (B) and (E), Local Admiralty Rules 7.02 and 7.05 are intended to provide a uniform and comprehensive method for constitutionally implementing the long-standing and peculiar maritime rights of attachment and garnishment. The Committee believes that Local Admiralty Rules 7.02 and 7.05 correct the deficiencies perceived by some courts to exist in the implementation of this unique maritime provisions. *Schiffahrtsgesellschaft Leonhardt & Co. v. A. Bottacchi S.A. de Navegacion*, 552 F. Supp. 771 (S.D. Ga. 1982); *Cooper Shipping Company v. Century 21*, 1983 A.M.C. 244 (M.D. Fla. 1982); *Crysen Shipping Co. v. Bona Shipping Co., Ltd.*, 553 F. Supp. 139 (M.D. Fla. 1982); and *Grand Bahama Petroleum Co. v. Canadian Transportation Agencies, Ltd.*, 450 F. Supp. 447 (W. D. Wa. 1978), discussing Supplemental Rule (B) proceedings in light of *Fuentes v. Shevin*, 407 U.S. 67 [92 S.Ct. 1883, 32 L.Ed.2d 556] (1972) and *Sniadach v. Family Finance Corp.*, 395 U.S. 337 [89 S.Ct. 1820, 23 L.Ed.2d 349] (1969).

Although the Committee was aware of the Eleventh Circuit's decision in *Schiffahrtsgesellschaft Leonhardt & Co. v. A. Bottacchi S.A. de Navegacion*, 732 F.2d 1543 (11th Cir. 1984), the Committee believes that from both a commercial and legal viewpoint, the better practice is to incorporate the pre-seizure scrutiny and post-attachment review provisions provided by this rule. These provisions protect the rights of any person claiming an interest in the seized property by permitting such persons to file a claim against the property, and thereafter permitting a judicial determination of the propriety of the seizure.

(b) Comments on Specific Sections:

7.02(a) codifies the governing law of this circuit as set forth in *LaBanca v. Ostermunchner*, 664 F.2d 65 (5th Cir., Unit B, 1981).

7.02(b) codifies the verification requirements of Supplemental Rule (B)(1) and former Local Admiralty Rule 7.08.

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

This rule also incorporates the "exigent circumstances" provision of Supplemental Rule (B)(1). Read in conjunction with Local Admiralty Rule 7.02(e)(2), this rule requires that the plaintiff carry the burden of proof at any post-attachment proceedings to establish not only the prima facie conditions of a maritime attachment and garnishment action under Supplemental Rule (B), but also that "exigent circumstances" precluded judicial review under Local Admiralty Rule 7.02(c)(1). The Committee believes that this additional requirement will place upon plaintiff's counsel a burden of extra caution before invoking the "exigent circumstance" provision of the rule.

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

Rule 7.03 | ACTION IN REM

(a) **Verification Requirements:** Every complaint and claim filed in an *in rem* proceeding pursuant to Supplemental Rule (C) shall be verified in accordance with Local Admiralty Rules 7.01(e) and 7.02(b).

(b) **Pre-seizure Requirements:** In accordance with Supplemental Rule (C)(3), the process of arrest *in rem* shall issue only after one of the following conditions has been met:

(1) **Judicial Review Prior to Issuance:** Except as provided in Local Admiralty Rule 7.03(b)(2), a judicial officer shall first review the verified complaint, and any other relevant case papers, prior to the Clerk issuing the warrant of arrest and/or summons *in rem*. No notice of this pre-seizure judicial review is required to be given to any person or prospective party.

If the Court finds that probable cause exists for an action *in rem*, plaintiff shall prepare an order for the Court's signature directing the Clerk to issue a warrant of arrest and/or summons. This order shall substantially conform in format and content to the form identified as MDF 702 in the Appendix to these Local Admiralty Rules.

Upon receipt of the signed order, the Clerk shall file the order and, in accordance with Local Admiralty Rule 7.03(b)(3) issue the warrant of arrest and/or summons. Thereafter the Clerk may issue supplemental process without further order of the Court.

(2) **Certification of Exigent Circumstances:** If the plaintiff files a written certification that exigent circumstances make review by the Court impracticable, the Clerk shall, in accordance with Local Admiralty Rule 7.03(b)(3), issue a warrant of arrest and/or summons.

Thereafter at any post-arrest proceedings under Supplemental Rule (E)(4)(f) and Local Admiralty Rule 7.03(g), plaintiff shall have the burden of showing that probable cause existed for the issuance of process, and that exigent circumstances existed which precluded judicial review in accordance with Local Admiralty Rule 7.03(b)(1).

(3) **Preparation and Issuance of the Warrant of Arrest and/or Summons:** Plaintiff shall prepare the warrant of arrest and/or summons, and deliver them to the Clerk for filing and issuance.

The warrant of arrest shall substantially conform in format and content to the form identified as MDF 703 in the Appendix to these Local Admiralty Rules, and shall in all cases give adequate notice of the post-arrest provisions of Local Admiralty Rule 7.03(g).

(c) **Special Requirements for Actions Involving Freight, Proceeds and/or Intangible Property:**

(1) **Instructions to be Contained in the Summons:** Unless otherwise ordered by the Court, the summons shall order the person having control of the freight, proceeds and/or intangible property to either:

(A) File a claim within fourteen (14) days after service of the summons in accordance with Local Admiralty Rule 7.03(f)(1); or

(B) Deliver or pay over to the Marshal, the freight, proceeds, and/or intangible property, or a part thereof, sufficient to satisfy plaintiff's claim. The summons shall also inform the person having control of the freight, proceeds, and/or intangible property that service of the summons has the effect of arresting the property, thereby preventing the release, disposal or other distribution of the property without prior order of the Court.

(2) **Requirements for Claims to Prevent the Delivery of Property to the Marshal:** Any claim filed in accordance with Supplemental Rule (E)(4) and Local Admiralty Rule 7.03(f)(1) shall describe the nature of claimant's interest in the property, and shall articulate reasons why the seizure should be vacated.

The claim shall be served upon the plaintiff, Marshal, and all other parties to the litigation. Additionally, the claimant shall file a Certificate of Service indicating the date and manner in which service was perfected.

(3) **Delivery or Payment of the Freight, Proceeds, and/or Intangible Property to the U. S. Marshal:** Unless a claim is filed in accordance with Supplemental Rule (E) (4) (f), and Local Admiralty Rule 7.03(f) (1), any person served with a summons issued pursuant to Local Admiralty Rule 7.03(b) (1) or (2), shall within fourteen (14) days after execution of service, deliver or pay over to the Marshal all, or part of, the freight, proceeds, and/or intangible property sufficient to satisfy plaintiff's claim.

Unless otherwise ordered by the Court, the person tendering control of the freight, proceeds, and/or intangible property shall be excused from any further duty with respect to the property in question.

(d) **Publishing Notice of the Arrest as Required by Supplemental Rule (C) (4):**

(1) **Time for Publication:** If the property is not released within fourteen (14) days after the execution of process, the notice required by Supplemental Rule (C) (4) shall be published by the plaintiff in accordance with Local Admiralty Rule 7.01(g). Such notice shall be published within twenty-one (21) days after execution of process. The notice shall substantially conform to the form identified as MDF 706 in the Appendix to these Local Admiralty Rules.

(2) **Proof of Publication:** Plaintiff shall file with the Clerk, proof of publication not later than fourteen (14) days following the last day of publication. It shall be sufficient proof for the plaintiff to file the sworn statement by, or on behalf of, the publisher or editor, indicating the dates of publication, along with a copy or reproduction of the actual publication.

(e) **Undertaking in Lieu of Arrest:** If, before or after the commencement of an action, a party accepts any written undertaking to respond on behalf of the vessel and/or other property in return for foregoing the arrest, the undertaking shall be substituted for the vessel or other property sued *in rem*.

The undertaking shall be referred to under the name of the vessel or other property in any pleading, order, or judgment; providing, however, that the undertaking shall only respond to

orders or judgments in favor of the party accepting the undertaking, and any parties expressly named therein, to the extent of the benefit thereby conferred.

(f) **Time for Filing Claim or Answer:** Unless otherwise ordered by the court, any claimant of property subject to an action *in rem* shall:

(1) File his claim within fourteen (14) days after process has been executed; and

(2) Serve his answer within twenty-one (21) days after the filing of the claim.

(g) **Post-arrest Proceedings:** Coincident with the filing of a claim pursuant to Supplemental Rule (E) (4) (f), and Local Admiralty Rule 7.03(f) (1), the claimant may also file a motion and proposed order directing plaintiff to show cause why the arrest should not be vacated. If the court grants the order, the court shall set a date and time for a show cause hearing. Thereafter, if the court orders the arrest to be vacated, the court shall award attorney's fees, costs, and other expenses incurred by any party as a result of the arrest.

Additionally, if the seizure was predicated upon a showing of "exigent circumstances" under Local Admiralty Rule 7.03(b) (2), and the court finds that such exigent circumstances did not exist, the court shall award attorneys' fees, costs and other expenses incurred by any party as a result of the seizure.

(h) **Procedural Requirements Prior to the Entry of Default:** In accordance with Rule 55, Fed.R.Civ.P. and Local Rule 1.07(b), a party seeking the entry of default *in rem* shall first file a motion and supporting legal memorandum in accordance with Local Rule 3.01.

The party seeking the entry of default shall also file such other proof sufficient to demonstrate that due notice of the action and arrest have been given by:

(1) Service upon the master or other person having custody of the property; and

(2) Delivery, or by certified mail, return receipt requested (or international effective equivalent), to every other person, including any known owner, who has not appeared or intervened in the action, and who is known to have, or claims to have, a possessory interest in the property.

The party seeking entry of default judgment under Local Admiralty Rule 7.03(i) may be excused for failing to give notice to such "other person" upon a satisfactory showing that diligent effort was made to give notice without success; and

(3) Publication as required by Supplemental Rule (C)(4) and Local Admiralty Rule 7.03(d).

Upon review of the motion, memorandum, and other proof, the Clerk, may, where appropriate, enter default in accordance with Rule 55, Fed.R.Civ.P.. Thereafter, the Clerk shall serve notice of the entry of default upon all parties represented in the action.

(i) **Procedural Requirements for the Entry of Default Judgment:** Not sooner than seven (7) nor later than thirty (30) days following notice of the entry of default, the moving party shall file a motion, and supporting legal documents, for the entry of default judgment pursuant to Rule 55(b), Fed.R.Civ.P.. The moving party may also file as exhibits for the motion such other documentation as may be required to support the entry of default judgment. Thereafter the court will consider the motion as indicated below:

(1) **When No Person Has Filed a Claim or Answer:** Unless otherwise ordered by the court, the motion for default judgment will be considered by the court without oral argument.

(2) **When Any Person Has Filed An Appearance, But Does Not Join in the Motion for Entry of Default Judgment:** If any person has filed an appearance in accordance with Local Admiralty Rule 7.03(f), but does not join in the motion for entry of default judgment, the party seeking the entry of default judgment shall serve notice of the motion upon the party not joining in the motion, and thereafter the opposing party shall have seven (7) days from receipt of the notice to file written opposition with the court.

If the court grants the motion and enters the default judgment, such judgment shall establish a right on the part of the party or parties in whose favor it is entered. The judgment shall be considered prior to any claims of the owner of the defendant property against

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

Advisory Notes to Admiralty and Maritime Rules

7.03(b): The August 1 1985, revisions to Supplemental Rule (C)(3) provides for an arrest *in rem* either following a "pre-arrest" judicial review, or upon the showing of "exigent circumstances" by plaintiff's attorney. Well reasoned authority has upheld Supplemental Rule (C), specifically holding that a pre-seizure judicial hearing is not required where a vessel, freight, or intangible property is proceeded against to enforce a maritime lien. *Amstar Corporation v. S/S. Alexandros T*, 664 F.2d 904 (4th Cir. 1981); *Merchants Nat'l Bank v. Dredge Gen. G. L. Gillespie*, 663 F.2d 1338 (5th Cir., Unit A, 1981); *Schiffahrtsgesellschaft Leonhardt & Co. v. A. Bottacchi S.A. de Navegacion*, 732 F.2d 1543 (11th Cir. 1984).

The desirability of providing by local admiralty rule an available avenue for reasonably prompt and effect post-arrest judicial relief is indicated. See, *Merchants Nat'l Bank v. Dredge Gen. G.L. Gillespie*, *supra*, at 1344, 1350. This provision is incorporated in Local Admiralty Rule 7.03(g).

The procedure made available through this rule has proven effective. *Maryland Ship Building & Dry-Dock Co., v. Pacific Ruler Corp.*, 201 F. Supp. 858 (SDNY 1962). In fact, the procedure established by this local rule goes beyond that encountered in *Merchants Nat'l Bank v. Dredge Gen. G.L. Gillespie*, *supra*, or *Maryland Ship Building & Dry-Dock Co. v. Pacific Ruler Corp.*, *supra*.

Under this rule, the claimant or intervenor may petition the Court to order the plaintiff to establish probable cause for the arrest of the property. Therefore at an early stage of the litigation, plaintiff can be required to establish a prima facie case that he is asserting a claim which is entitled to the dignity and status of a maritime lien against the arrested property. This rule contemplates the entry of an order with conclusory findings following the post-arrest proceedings. More detailed findings may be requested by any party.

The rule is not intended to provide a method for contesting the amount of security to be posted for the release of the vessel. Once a prima facie case for the maritime lien has been established, or the question of lien status remains uncontested, the matter of security is left to the provisions of Local Admiralty Rule 7.05.

7.03(c): Supplemental Rule (C)(3) also addresses the less commonly encountered action *in rem* to enforce a maritime lien against freights, proceeds or other intangible property. The revision to this rule designates the U. S. Marshal to take custody of all tangible and intangible properties arrested in accordance with this rule, and to bring these properties under the control of the Court. This is the practice in many other districts, and when implemented will provide the greatest uniformity in the treatment of tangible and intangible property.

7.03(d): The substance of former Local Rule 7.03(c) is continued.

7.03(e): Although this section is new to the local rules, it reflects the current local practice with respect to undertakings and stipulations in lieu of arrest. Such undertakings and stipulations have been held effective to permit a Court to exercise its *in rem* admiralty jurisdiction so long as

either at the time the undertaking or stipulation is given, or at any subsequent time prior to the filing of the action, the vessel or other property is, or will be, present within the district.

7.03(f): The substance of former Local Rule 7.02(b) is continued.

7.03(g): See the comments for Local Admiralty Rule 7.03(b).

7.03(h) and (i): These sections are designed to mesh Supplemental Rule (C) with Fed.R.Civ.P. 55. For purpose of default and default judgments, the rule recognizes two distinct groups of *in rem* claimants.

The first category of claimants include those who by ownership or otherwise, would, but for the arrest of the property, be entitled to its possession. Pursuant to Supplemental Rule (C)(6), these claimants must file a claim setting forth their interest in the property, demand their right to receive possession, and to appear and defend the action. In the case of such claimants, the operation of standard default procedures foreclose their rights to contest positions of the party in whose favor the default is rendered, and the entry of default judgment is both fair and appropriate.

The second category of claimants embodies a potentially numerous and varying class of claimants. The claims of these other claimants do not give rise to a right of possession of the vessel from the marshal or other appropriate custodian, but rather invoke the power of the Court in admiralty to foreclose against the property by the ultimate rendering of a judgment *in rem* against property entitlements. Such judgments would be predicated upon non-possessory liens.

The time in which the second category of claimants may intervene is governed by the provisions of Local Admiralty Rule 7.05. Such lien claimants are not obligated, and indeed are probably not entitled to file a claim of possession to the vessel, or to answer and defend in the name of the vessel. As to them, in accordance with Fed.R.Civ.P. 8, the essential averments of all the complaints are taken as automatically denied.

No default judgment entered pursuant to this rule will operate to adjudicate priorities among competing non-possessory lien claimants.

In attempting to reconcile the traditional notions of default and default judgments with the concept of *in rem* proceedings, the final language has been formulated to maintain the efficacy of the default procedure without resulting in premature adjudication effecting priorities and distributions. The default procedure establishes in favor of the holder of such a default judgment, a lien position against the proceeds of the property, resulting from any sale or disposition, or, if currency is involved, the ultimate adjudication, inferior to all other competing priorities, except the otherwise escheating right of the property owner to the remnants and surpluses after all full-claims satisfactions. At the same time, the right of a person obtaining a default judgment to contend and compete with other claimants for priority distribution remains unaffected.

Rule 7.04 | POSSESSORY, PETITORY AND PARTITION ACTIONS

(a) **Establishing Dates for the Return of Process:** In possessory actions filed pursuant to Supplemental Rule (D), the Court may order that process be returnable at a time shorter than that prescribed by Rule 12(a), Fed.R.Civ.P..

If the Court shortens the time, the Court shall specify the date upon which the answer must be filed, and may also set a hearing date to expedite the disposition of the possessory action. When possible, possessory actions shall be given preference on a judicial officer's calendar.

(b) **Service of Notice:** Notice of all possessory, petitory and/or partition actions pursuant to Supplemental Rule (D) shall be made in accordance with Local Admiralty Rule 7.01(g).

Advisory notes to Admiralty and Maritime Rules

This rule recognizes the equity in allowing for a prompt resolution in possessory actions. Since a possessory action is brought to reinstate an owner of a vessel alleging wrongful deprivation of property, rather than to allow original possession, the rule permits the Court to expedite these actions, thereby providing a quick remedy for one wrongfully deprived of his rightful property. *Silver v. Sloop Silver Cloud*, 259 F. Supp. 187 (SDNY 1966).

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

Rule 7.05 | ACTIONS IN REM AND QUASI IN REM: GENERAL PROVISIONS

(a) **Statement of Itemized Damages and Expenses Required:** Every complaint in a Supplemental Rule (B) or (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.

(b) **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 U.S. 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:

(1) **Intervention of Right When No Sale of the Vessel or Property is Pending:** Except as limited by Local Admiralty Rule 7.05(b)(2), 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 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 indicating the manner and date of service.

(2) **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 when the Court has ordered the sale of the vessel or property, and the date of the sale is set within fourteen (14) 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:

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

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

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

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

(E) 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 to issue the supplemental process.

Upon receipt of the order permitting intervention, the Clerk 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 indicating the manner and date of service.

(c) **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 consortium available and known to exist among them collegially or individually.

(d) **Form of Stipulations 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.

Stipulations for costs with corporate surety need not be signed or executed by the party, but may be signed by the party's agent or attorney.

(e) **Stipulation for Costs:**

(1) **Seaman's Wage Claims:** Actions initiated by seamen pursuant to 28 U.S.C. Section 1916 may be filed without the posting of a stipulation for costs.

(2) **Security for Costs:** In an action under the Supplemental Rules, a party may move upon notice to all parties for an order to compel an adverse party to post security for costs with the clerk pursuant to Supplemental Rule E(2)(b). Unless otherwise ordered, the amount of security shall be \$250. The party so ordered shall post the security within seven (7) days after the order is entered. A party who fails to post security

when due may not participate further in the proceedings. A party may move for an order increasing the amount of security for costs.

(3) Security for Costs and Limitation of Liability Proceedings: The amount of security for costs under Supplemental Rule F(1) shall be \$250, and it may be combined with the security for value and interest, unless otherwise ordered.

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

(1) 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.

(2) Proration of Marshal's Fees and Expenses Upon Intervention: When one or more parties intervene pursuant to Local Admiralty Rule 7.05(b)(1) or (2), 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:

(A) 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.

(B) 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. 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 7.05(b)(1) or (2). 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 ten (10) 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 7.05(f)(3). The Marshal need not re-arrest or re-attach the vessel and/or property until the deposit is received from the intervening plaintiff.

(3) **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.

(4) **Judicial Relief From Deposit Requirements:** Any party aggrieved by the deposit requirements of Local Admiralty Rule 7.05(f)(2) may apply to the Court for relief. Such an 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.

(5) **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 7.05(f)(3).

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.

(g) **Property in Possession of a United States Officer:** Whenever the property to be arrested or attached is in the custody of a U.S. 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.

(h) **Process Held in Abeyance:**

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

(2) **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 in 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 7.05(b) (1) or (2). 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.

(i) **Release of Property in Accordance with Supplemental Rule (E) (5) :**

(1) **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 his 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 his 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:

(A) **Actions Entirely for a Sum Certain:** The amount alleged to be due in the complaint, with interest at six percent (6%) per annum from the date claimed

to be due to a date forty-eight (48) 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.

(B) 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 7.06(c).

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 7.05(b)(1) or (2).

(C) 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.

(2) 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 MDF 707 in the Appendix to these Local Admiralty Rules. Additionally, the party shall prepare, and offer for filing, a proposed order directing the release. This order shall substantially conform in format and content to the form identified as MDF 708 in the Appendix to these Local Admiralty Rules.

However, as a precondition to the release, the Marshal shall require a stipulation, bond, or other security, as specified in Local Admiralty Rule 7.05(i)(1)(A), (B) or (C), as appropriate.

(3) **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.

(4) **Release Subsequent to the Posting of a General Bond:**

(A) **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.

(B) **Responsibility for Maintaining a Current Listing of General Bonds:** The Clerk 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.

(C) **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 his 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.

(j) **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.

(k) **Custody and Safekeeping:**

(1) **Initial Responsibility:** The Marshal shall initially take custody of any vessel, cargo and/or other property arrested, or attached in accordance with these rules. Thereafter, and until such time as substitute custodians may be authorized in accordance with Local Admiralty Rule 7.05(k)(3), the Marshal shall be responsible for providing adequate and necessary security for the safekeeping of the vessel or property.

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

(2) **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 7.05(k)(1), no person may handle cargo, conduct repairs, or move a vessel without prior order of Court.

(3) **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 MDF 704 in the Appendix of these Local Admiralty Rules.

(A) **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 custodians. The application shall also be served upon all other parties to the litigation.

(B) **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 his 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 MDF 705 in the Appendix to these Local Admiralty Rules.

(C) **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.

(4) **Insurance Requirements:**

(A) **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, his deputies, keepers, and custodians from liability arising from the arrest or attachment.

The insurance shall also protect the Marshal and his 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.

(B) **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.

(C) **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.

(5) **Contribution by Intervening Parties to Expenses of Substitute Custodian:** When a substitute custodian has been authorized under Local Admiralty Rule 7.05(k)(3), the Court in its discretion may require contribution by intervening parties (a) to all expenses of the substitute custodian and (b) to insurance premiums required under Local Admiralty Rule 7.05(k)(4) upon equitable terms. In addition to all relevant facts, the Court may consider the provisions of Local Admiralty Rule 7.05 (f)(2)(B).

(1) **Preservation, Humanitarian and Repatriation Expenses:**

(1) **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 his 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 7.05(1)(5).

(2) **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.

(3) **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.

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.

(4) **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.

(5) **Claim by a Supplier for Payment of Charges:** Any person who claims payment for furnishing services or supplies in compliance with Local Admiralty Rule 7.05(1), 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.

(m) Property in Incidental Custody and Otherwise Not Subject to the Arrest or Attachment:

(1) 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.

(2) 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 7.05(q); the costs of such separation shall be treated as an expense of preservation and taxed as a cost of custody.

(3) **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.

(n) **Dismissal:**

(1) **By Consent:** No action may be dismissed pursuant to Fed.R.Civ.P. 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 7.05(f).

(2) **Involuntary Dismissal:** If the Court enters a dismissal pursuant to Fed.R.Civ.P. 41(b), the Court shall also designate the costs and expenses to be paid by the party or parties so dismissed.

(o) **Judgments:**

(1) **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.

(2) **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.

(p) **Stay of Final Order:**

(1) **Automatic Stay for Fourteen (14) Days:** In accordance with Fed.R.Civ.P. 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.

(2) **Stays Beyond the Fourteen (14) Day Period:** If within the fourteen (14) day period established by Fed.R.Civ.P. 62(a), a party files any of the motions contemplated in Fed.R.Civ.P. 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.

(q) **Notice of Sale:**

(1) **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 7.01(g).

(2) **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 one (1) calendar week prior to the date of the sale, and the second at least three (3) calendar days prior to the date of the sale.

(r) **Sale of a Vessel or Property:**

(1) **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:

(A) **If the Bid is Not More Than \$500.00:** The successful bidder shall immediately pay the full purchase price.

(B) **If the Bid is More Than \$500.00:** The bidder shall immediately deposit with the Marshal \$500.00, or 10% of the bid, whichever sum is greater. Thereafter the bidder shall pay the remaining purchase price within three (3) working days.

If an objection to the sale is filed within the time permitted by Local Admiralty Rule 7.05(r) (7), the successful bidder is excused from paying the remaining purchase price until three (3) working days after the Court confirms the sale.

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

(3) **Custodial Costs Pending Payment:** When a successful bidder fails to pay the balance of the bid within the time allowed by Local Admiralty Rule 7.05(r) (1) (B), 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.

(4) **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.

(5) **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.

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

In order to confirm the sale, plaintiff's counsel shall file a **"Request for Confirmation of Sale"** on the day following the last day for filing an objection. The **"Request for Confirmation of Sale"** shall substantially conform in format and content to the form identified as MDF 709 in the Appendix to these Local Admiralty Rules. Plaintiff's counsel shall also prepare and offer for filing a **"Confirmation of Sale"**. The **"Confirmation of Sale"** shall substantially conform in format and content to the form identified as MDF 710 in the Appendix to these Local Admiralty Rules. Thereafter the Clerk 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.

(7) **Objections to Confirmation:**

(A) **Time for Filing Objections:** Unless otherwise permitted by the Court, an objection must be filed within three (3) working 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 five (5) 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.

(B) 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 seven (7) days. Proof of the deposit with the Marshal's office shall be delivered to the Clerk'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.

(8) 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.

(s) 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.

Advisory Notes to Admiralty and Maritime Rules

7.05(a): This section continues the provisions of former Local Rule 7.07(c).

7.05(b): The rule continues, expands and clarifies the intervention provisions of former Local Rule 7.09.

The rule does 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 7.02(c) or 7.03(b); 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 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 contemplates that the marshal will normally not require the initial security deposit otherwise required by Local Admiralty Rule 7.05(e). The marshal shall, however, access custodial costs against the intervening plaintiff in accordance with Local Admiralty Rule 7.05(f)(2).

7.05(c): This section continues the provision of former Local Rule 7.07(d).

7.05(d): This section continues the provisions of former Local Rule 7.06(a).

7.05(e): This section continues the provisions formerly found in Local Rules 7.05(a), (b), (c) and (d).

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

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

It was the Committee's view that a system initially self-executing and ministerial would minimize situations calling for judicial intervention while affording the marshal the protection of assured and certain procedures. At the same time, the Committee was strongly of the opinion that the rules should do substantial equity as between claims showing wide variation in amounts and potential priorities and, at the same time, should be so structured as to require all potential claimants to come forward and share in the cost of custody, discouraging the sometime practice of claimants' waiting to intervene until the last moment in order to allow other parties to bear the burdens of making such advances.

The Committee had for a model, a practice embodied in an order entered in a Jacksonville Division case providing essentially the features incorporated in this section.

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

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

7.05(h): The provisions of section (h) are new. Paragraph (1), following rules promulgated in other districts, states what is understood by the advisory committee to have been the practice in this district. Paragraph (2) is designed to mesh the concept of process held in abeyance with the requirements of Local Rule 7.05(b) regarding intervening claims, and is designed to foreclose the possibility of a vessel or other property being arrested or attached in the district as a result of more than one civil action. Since under Local Rule 7.05(b), the automatic, permissive intervention is not triggered until the vessel or other property has been arrested, attached or seized, a suit in rem in which process is held in abeyance will not form the basis for such an intervention. On the other hand, once the property is arrested, attached or seized, the issuance of process in the earlier suit would be destructive of the "only one civil action" concept, and, consequently paragraph (2) requires a party whose process was held in abeyance to refile as an intervenor pursuant to 7.05(b), making provision for the proper disposition of the earlier action.

7.05(i): Section (i) continues, with editorial and stylistic changes, the provisions of Local Rule 7.11 (1984). In formulating the text of paragraph (1), due regard was given to, and concerning expressed about the Eleventh Circuit decision in *Industria Nacional del Papel, C.A. M/V. Albert F.*, 730 F.2d 622 (1984). Reasonable economic projections indicate that the 6% per annum will be insufficient to provide full security, and it was the view of the Advisory Committee that a higher figure, subject to adjustment by application to the Court or stipulation, should be specified.

However, in light of the express provision of Supplemental Rule (E)(5), the implementation by local rule of a figure higher than 6% per annum was precluded. Consequently, the period of time was increased to forty-eight (48) months, an effort on the Committee's part to at least mitigate the effects of the interaction of decisional law. The supplemental rule provision limiting such interest to 6% per annum needs to be addressed at the appropriate level.

7.05(j): Section (j) continues in effect the provisions of former Local Rule 7.05(c) (1984), relocated so as to make the relationship between Section (i) and Section (j) more readily apparent. The provisions of Section (j) are expressly authorized by Supplemental Rule (E)(6) and offer some potential for relief from the automatic operations and other provisions of Supplemental Rule (E) regarding security for value and interest. The decision in *Industria Nacional del Papel, C.A. M/V Albert F.*, 730 F.2d 622 (1984) indicates that such an application must be made prior to the entry of judgment.

7.05(k): Section (k) is new. It is designed to reflect the actual practice in the district, and follows the rules promulgated in several other districts. In formulating this rule, the Committee studied Section 6.3 of the "Marshal's Manual", the internal operating guide for the United States Marshal's Service.

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

7.05(m): Section (m) is new. It addresses a situation which has arisen in the district in the past and which can be foreseen as possibly arising in the future. While the subject is not addressed in other local rules studied by the Committee, nor has it been the subject of any oft-cited leading cases, it was the opinion of the Committee that the area should be addressed by local rule and that the provisions of Section (m) are both consistent with the general maritime laws of the United States and designed to permit efficient administration without the necessity for undue judicial intervention. As with the claims of intervenors and the allocation of deposits against custodial costs, the provisions of Section (m), in keeping with the design of these local rules, are intended to be essentially self-executing, with the emphasis on the ministerial role of Court officers and services.

7.05(n): Section (n) is new. It follows Rule 41, Fed.R.Civ.P., and addresses the necessarily greater concern for costs and expenses inherent in the in rem admiralty procedure.

7.05(o): Section (o) continues the provisions of former Local Rule 7.12 (1984).

7.05(p): Section (p) incorporates the provisions of former Local Rule 7.13(a) (1984).

7.05 (q) and (r): The provisions of former Local Rule 7.04(a) (1984) have been expanded to provide a standardized procedure governing sales of property, which procedure the Court, at its option, may utilize, in whole or in part, thus shortening and simplifying orders related to sales and accompanying procedures.

7.05(s): Consistent with the provision of Local Rule 7.05(b), former Local Rule 7.15(a) (1984) has been clarified to give express notice of the distinct positions of claims pre-sale and post-sale.

Rule 7.06 | ACTIONS TO LIMIT LIABILITY

(a) **Publication of the Notice:** Immediately upon the commencement of an action to limit liability pursuant to Supplemental Rule (F), plaintiff shall, without further order of Court, effect publication of the notice in accordance with the provisions set forth in Supplemental Rule (F)(4) and Local Admiralty Rule 7.01(g).

(b) **Proof of Publication:** Plaintiff shall file proof of publication not later than the return date. It shall be sufficient proof for plaintiff to file the sworn statement by, or on behalf of, the publisher or editor, indicating the dates of publication, along with a copy or reproduction of the actual publication.

(c) **Appraisals Pursuant to Supplemental Rule (F)(7):** Upon the filing of a claimant's motion pursuant to Supplemental Rule (F)(7), demanding an increase in the funds deposited in Court or the security given by plaintiff, the Court shall order an appraisal of the value of the plaintiff's interest in the vessel and pending cargo.

Upon receipt of the order directing the appraisal, the parties shall have seven (7) days to file a written stipulation to an appraiser. In the event that the parties do not file a stipulation, the Court shall appoint the appraiser.

The appraiser shall promptly conduct an appraisal and thereafter file the appraisal with the Clerk and serve a copy of the appraisal upon the moving party and the plaintiff. The appraiser shall also file a Certificate of Service indicating the date and manner in which service was perfected.

(d) **Objections to the Appraisal:** Any party may move to set aside the appraisal within fourteen (14) days following the filing of the appraisal with the Clerk.

(e) **Fees of the Appraiser:** The Court shall establish the fee to be paid the appraiser. Unless otherwise ordered by the Court, the fee shall be taxed against the party seeking relief under Supplemental Rule (F)(7).

Advisory Notes to Admiralty and Maritime Rules

7.06(a): This section incorporates the publication provisions of Local Admiralty Rule 7.01(g), and applies them to limitation of liability actions. The rule provides for the publication of the notice required by Supplemental Rule (F)(4) without further order of the Court. The Committee believes that this self-executing aspect of the rule will save judicial time and at the time will not impair the rights of any party or claimant.

7.06(b): The Committee determined that filing proof of publication with the clerk was essential in order to establish an adequate record of the publication.

CHAPTER EIGHT | LOCAL RULES OF COURT | USFLMD

RULES: 8.01 through 8.06

TITLE: COURT ANNEXED ARBITRATION

Rule 8.01 | ARBITRATION

(a) It is the purpose of the Court, through adoption and implementation of this rule, to provide an alternative mechanism for the resolution of civil disputes in accord with 28 U.S.C. Sections 651-658.

(b) The Chief Judge shall certify those persons who are eligible and qualified to serve as arbitrators under this rule. An individual may be certified to serve as an arbitrator under this rule if admitted to The Florida Bar for at least five (5) years, admitted to practice before this Court, and determined by the Chief Judge competent to perform the duties of an arbitrator. An advisory committee or committees comprised of members of the bar in each Division of the Court, respectively, may be constituted to assist the Chief Judge in screening applicants and aiding in the formulation and application of standards for selecting arbitrators.

(c) Each individual certified as an arbitrator shall take the oath or affirmation prescribed by 28 U.S.C. Section 453 before serving as an arbitrator. Depending upon the availability of funds from the Administrative Office of the United States Courts, or other appropriate agency, arbitrators may be compensated for their services in such amounts and in such manner as the Chief Judge shall specify from time to time. No arbitrator shall charge or accept for services any fee or reimbursement from any other source. Any member of the bar who is certified and designated as an arbitrator pursuant to these rules shall not for that reason be disqualified from appearing and acting as counsel in any other case pending before the Court.

Rule 8.02 | CASES FOR ARBITRATION

(a) Any civil action may be referred to arbitration in accordance with this rule if the parties consent in writing to arbitration, except that referral to arbitration may not occur if:

(1) the action is based on an alleged violation of a right secured by the Constitution of the United States:

(2) jurisdiction is based in whole or in part on 28 U.S.C. Section 1343; or

(3) the relief sought consists of money damages in an amount greater than \$150,000.

(b) No party or attorney can be prejudiced for refusing to participate in arbitration by consent.

Rule 8.03 | REFERRAL TO ARBITRATION

Within twenty-one (21) days after referral to arbitration, the Court shall select three (3) certified arbitrators to conduct the arbitration proceedings. Not more than one member or associate of a firm or association of attorneys shall be appointed to the same panel of arbitrators. Any person selected as an arbitrator may be disqualified for bias or prejudice as provided in 28 U.S.C. Section 144, and shall disqualify himself in any action in which he would be required to do so if he were a justice, judge, or magistrate judge governed by 28 U.S.C. Section 455.

Rule 8.04 | ARBITRATION HEARING

(a) Immediately upon selection and designation of the arbitrators pursuant to Rule 8.03, the Clerk shall communicate with the parties and the arbitrators in an effort to ascertain a mutually convenient date for a hearing, and shall then schedule and give notice of the date and time of the arbitration hearing which may be held in space provided in the United States Courthouse. The hearing shall be scheduled within ninety (90) days from the date of the selection and designation of the arbitrators on at least twenty-one (21) days notice to the parties. Any continuance of the hearing beyond that ninety (90) day period may be allowed only by order of the Court for good cause shown.

(b) At least fourteen (14) days prior to the arbitration hearing each party shall furnish to every other party a list of witnesses, if any, and copies (or photographs) of all exhibits to be offered at the hearing. The arbitrators may refuse to consider any witness or exhibit which has not been so disclosed.

(c) Individual parties or authorized representatives of corporate parties shall attend the arbitration hearing unless excused in advance by the arbitrators for good cause shown. The hearing shall be conducted informally; the Federal Rules of Evidence shall be a guide, but shall not be binding. It is contemplated by the Court that the presentation of testimony shall be kept to a minimum, and that cases shall be presented to the arbitrators primarily through the statements and arguments of counsel.

(d) Any party may have a recording and transcript made of the arbitration hearing at the party's expense.

Rule 8.05 | ARBITRATION AWARD AND JUDGMENT

(a) The award of the arbitrators shall be filed with the Clerk within fourteen (14) days following the hearing, and the Clerk shall give immediate notice to the parties. The award shall state the result reached by the arbitrators without necessity of factual findings or legal conclusions. A majority determination shall control the award.

(b) At the end of thirty (30) days after the filing of the arbitrator's award the Clerk shall enter judgment on the award if no timely demand for trial de novo has been made. If the parties have previously stipulated in writing that the award shall be final and binding, the Clerk shall enter judgment on the award when filed.

(c) Pursuant to 28 U.S.C. Section 657(b), the contents of any arbitration award shall be sealed and shall remain unknown to any judge assigned to the case --

(1) Except as necessary for the Court to determine whether to assess costs or attorney fees under 28 U.S.C. Section 655 or

(2) Until the District Court has entered final judgment in the action or the action has been otherwise terminated, at which time the award shall be unsealed.

Rule 8.06 | TRIAL DE NOVO

(a) Within thirty (30) days after the filing of the arbitration award with the Clerk, any party may demand a trial *de novo* in the District Court. Written notification of such a demand shall be filed with the Clerk and a copy shall be served by the moving party upon all other parties.

(b) Upon a demand for a trial *de novo* the action shall be placed on the calendar of the Court and treated for all purposes as if it had not been referred to arbitration, and any right of trial by jury shall be preserved inviolate.

(c) At the trial *de novo* the Court shall not admit evidence that there has been an arbitration proceeding, the nature or amount of the award, or any other matter concerning the conduct of the arbitration proceeding, except that testimony given at an arbitration hearing may be used for any purpose otherwise permitted by the Federal Rules of Evidence, or the Federal Rules of Civil Procedure.

(d) No penalty for demanding a trial *de novo* shall be assessed by the Court.

CHAPTER NINE | LOCAL RULES OF COURT | USFLMD

RULES: 9.01 through 9.07

TITLE: COURT ANNEXED MEDIATION

Rule 9.01 | GENERAL PROVISIONS

(a) **Definitions:** Mediation is a supervised settlement conference presided over by a qualified, certified and neutral mediator to promote conciliation, compromise and the ultimate settlement of a civil action.

The mediator is an attorney, certified by the chief judge in accordance with these 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 only to the presiding judge as to whether the case settled, was adjourned for further mediation (by agreement of the parties), or that the mediator declared an impasse.

(b) **Purpose:** It is the purpose of the Court, through adoption and implementation of this rule, to provide an alternative mechanism for the resolution of civil disputes (a Court annexed, mandatory mediation procedure) leading to disposition before trial of many civil cases with resultant savings in time and costs to the 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.

Rule 9.02 | CERTIFICATION; QUALIFICATION AND COMPENSATION OF MEDIATORS

(a) **Certification of Mediators:** The chief judge shall certify those persons who are eligible and qualified to serve as mediators under this 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.

(b) **Lists of Certified Mediators:** Lists of certified mediators shall be maintained in each division of the Court, and shall be made available to counsel and the public upon request.

(c) **Qualifications of Mediators:** An individual may be certified to serve as a mediator if:

- (1) He or she is a former state court judge who presided in a court of general jurisdiction and was also a member of the bar in the state in which he presided; or
- (2) He or she is a retired federal judicial officer; or
- (3) He or she has been a member of a state bar or the bar of the District of Columbia for at least ten (10) years and is currently admitted to the Bar of this Court.

In addition, an applicant for certification must have completed a minimum of 40 hours in the Florida Circuit Court Mediation Training Course certified by the Florida Supreme Court and be found competent by the chief judge to perform mediation duties. At the direction of the chief judge, an advisory committee may be constituted to assist in formulating policy and additional standards relating to the qualification of mediators and to assist in reviewing applications of prospective mediators.

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

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

(f) **Compensation of Mediators:** Absent agreement of the parties and the mediator, mediators shall be compensated at a reasonable hourly rate provided by order of the Court after consideration of the amount in controversy, the nature of the dispute, the resources of the parties, the prevailing market rate for mediators in the applicable market, the skill and experience of the mediator, and other pertinent factors. Unless altered by order of the Court, the cost of the mediator's services shall be borne equally by the parties to the mediation conference.

(g) **Limitations on Acceptance of Compensation or Other Reimbursement:** Except as provided by these rules, no mediator shall charge or accept in connection with the mediation of any particular case, any fee or thing of value from any other source whatever, absent written approval of the Court given in advance of the receipt of any such payment or thing of value.

(h) **Mediators as Counsel in Other Cases:** Any member of the bar who is certified and designated as a mediator pursuant to these rules shall not for that reason be disqualified from appearing and acting as counsel in any other case pending before the Court.

Rule 9.03 | TYPES OF CASES SUBJECT TO MEDIATION; WITHDRAWAL

(a) **Court Referral:** Upon order by the presiding judge, any civil action or claim may be referred by the Court to a mediation conference, providing the action or claim has not already been arbitrated in accordance with Chapter Eight of the Rules of the Middle District of Florida, except:

- (1) Appeals from rulings of administrative agencies.
- (2) Habeas corpus and/or extraordinary writs.
- (3) Forfeitures of seized property.
- (4) Bankruptcy appeals.

(b) **Stipulation of Counsel:** Any action or claim may be referred to a mediation conference upon the stipulation of counsel of record. Such application shall also certify agreement to pay the mediator's fee in accordance with these rules.

(c) **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 a determination for any reason that the case is not suitable for mediation.

Rule 9.04 | PROCEDURES TO REFER A CASE OR CLAIM TO MEDIATION

(a) **Order of Referral:** In every case in which the Court determines that referral to mediation is appropriate pursuant to Rule 9.03(a) or (b), the Court shall enter an order of referral which shall:

(1) Designate the mediator if one has previously been selected by the parties or, if not, allow fourteen (14) days for the parties to make such selection and notify the Court.

(2) Define the window of time in which the mediation conference may be conducted, preferably not sooner than 45 days and not later than fourteen (14) days before the scheduled trial date.

(3) Designate an attorney as lead counsel, who shall be responsible for coordinating two alternate mediation conference dates agreeable to the mediator and all counsel of record.

Rule 9.05 | SCHEDULING THE MEDIATION CONFERENCE

(a) **Report of Lead Counsel:** Not later than twenty-one (21) days after the entry of the order of referral pursuant to Rule 9.04(a), lead counsel shall file a report indicating the agreeable alternate mediation conference dates.

(b) **Scheduling Mediation Conference Date:** Upon receipt of the report of lead counsel, or upon failure of lead counsel to either file the report or secure mutually agreeable mediation conference dates, the Court shall fix the date for the mediation conference by order. Unless otherwise provided by order, the mediation conference shall be conducted in the United States Courthouse.

(c) **Party Attendance Required:** Unless otherwise excused by the presiding judge in writing, all parties, corporate representatives, and any other required claims professionals (insurance adjusters, etc.), shall be present at the Mediation Conference with full authority to negotiate a settlement. Failure to comply with the attendance or settlement authority requirements may subject a party to sanctions by the Court.

(d) **Continuance of Mediation Conference Date:** Subject to the availability of mediation conference space in the Courthouse, the mediator may, with the consent of all parties and counsel, reschedule the mediation conference to a date certain not later than fourteen (14) days prior to the scheduled trial date. Any continuance beyond that time must be approved by the presiding judge.

(e) **Mediation Absent Party Attendance:** Subject to approval of the mediator, the mediation conference may proceed in the absence of a party who, after due notice, fails to be present. Upon the recommendation of the mediator, sanctions may be imposed by the Court on any party who, absent good cause shown, failed to attend the mediation conference.

Rule 9.06 | MEDIATION REPORT; NOTICE OF SETTLEMENT; JUDGMENT

(a) **Mediation Report:** Within seven (7) days following the conclusion of the mediation conference, the mediator shall file a Mediation Report indicating whether all required parties were present and had authority to settle the case. The report shall also indicate whether the case settled, was continued with the consent of the parties, or whether the mediator was forced to declare an impasse.

(b) **Notice of Settlement:** In the event that the parties reach an agreement to settle the case or claim, lead counsel shall promptly notify the Court of the settlement in accordance with Local Rule 3.08, and the Clerk shall enter judgment accordingly.

Rule 9.07 | TRIAL DE NOVO

(a) **Trial De Novo Upon Impasse:** If the mediation conference ends in an impasse, the case will be tried as originally scheduled.

(b) **Restrictions on the Use of Information Derived During the Mediation Conference:** All proceedings of the mediation conference, including statements made by any party, attorney, or other participant, are privileged in all respects. The proceedings may not be reported, recorded, placed into evidence, made known to the trial 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 settlement is reached.

APPENDIX

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