
**LOCAL RULES OF COURT
FROM THE US DISTRICT COURT, FLORIDA, MIDDLE DISTRICT
[CHAPTER THREE]**

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TBD 0.080

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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.

APPENDIX

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