***UNITED STATES DISTRICT COURT***
***OFFICE OF THE CLERK***
***Northern District of Florida***

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***Street***
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***Division Office***
***Room 129***
***100 North Palafox***
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April 14, 1995

Mr. Abel Mattos
Court Administration Division
Administrative Office of the U. S. Courts
One Columbus Circle, NE
Washington, DC 20544

Dear Mr. Mattos:

The United States District Court for the Northern District of Florida recently adopted new Local Rules which went into effect April 1, 1995. In conjunction with these new Local Rules, the court has amended the Civil Justice Reform Act Plan for this district. A copy of Chief Judge Paul's order amending the Plan is enclosed.

Although these new Local Rules have not yet been reviewed by the Judicial Council of the United States Court of Appeals for the Eleventh Circuit, they are in full force and effect unless and until any of them are abrogated by the Council.

The final version of the new Local Rules is in the process of being printed in a two-sided page format. Each rule will begin on a new odd-numbered, right-hand page. Therefore, in the attached proof copy, what appear to be "missing" even-numbered pages are blank, left-hand pages which will have nothing printed on them.

Very truly yours,

Robert A. Mossing
Clerk of Court

RAM:ms
Attachments

Copies
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4/4/95
BP

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA

4:95mc 40107

RE: CIVIL JUSTICE REFORM ACT OF 1990 1/1402-4

**AMENDMENT TO CIVIL JUSTICE REFORM ACT PLAN FOR THE NORTHERN DISTRICT OF FLORIDA**

Effective April 1, 1995, the Local Rules, Northern District of Florida, shall take precedence over and supersede any provision of the Civil Justice Reform Act Plan in conflict therewith.

**DONE AND ORDERED** for the court at Tallahassee, Florida, this 3rd day of April, 1995.

Maurice M Paul

MAURICE M. PAUL, CHIEF JUDGE

# RULES
# UNITED STATES DISTRICT COURT
# FOR THE
# NORTHERN DISTRICT OF FLORIDA

**Revised 1995**

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA

IN RE: 1995 REVISION OF RULES OF COURT

ORDER

Following the procedures outlined in 28 U.S.C. § 2071, Federal Rule of Civil Procedure 83, and Federal Rule of Criminal Procedure 57, and pursuant to the authority therein contained, the judges of this court do unanimously adopt the appended "LOCAL RULES." The appended rules shall, within their scope, govern all proceedings in the Northern District of Florida after 12:01 A.M., Eastern Standard Time, April 1, 1995. All existing rules are revoked upon said effective date.

DONE AND ORDERED by the court this 23rd day of January, 1995.

MAURICE M. PAUL, CHIEF JUDGE

WILLIAM STAFFORD, DISTRICT JUDGE

ROGER VINSON, DISTRICT JUDGE

LACEY COLLIER, DISTRICT JUDGE

Note: These Rules are effective April 1, 1995. The final version of these Rules will be formally printed at a later date. Since this version is a copy of the final "proof copy" pending printing the reader will find certain page numbers out of sequence.

# UNITED STATES DISTRICT COURT
# NORTHERN DISTRICT OF FLORIDA

## GENERAL RULES

## UNITED STATES DISTRICT COURT
## NORTHERN DISTRICT OF FLORIDA

## ADMIRALTY RULES

## RULE 1.1 Scope of the Rules

These rules shall apply to all proceedings in this court, whether civil or criminal, and may be cited as "N.D. Fla. Loc. R._____."

## RULE 3.1 Commencement of Action

A civil action does not commence until filed with the court and the filing fee is paid in accordance with 28 U.S.C. § 1914, or an order is entered pursuant to 28 U.S.C. § 1915 granting leave to proceed *in forma pauperis*. (see N.D. Fla. Loc. R. 5.1(I)).

## RULE 3.2 Divisions of the District for Docketing and Trial

(A) **Divisions.** This district shall be divided into four (4) divisions for filing, docketing, and other clerical administration of cases. All civil cases in which venue properly lies in a division of this district, and all criminal cases in which the offense was committed in a division of this district, shall be filed, docketed, and have all clerical administration in that division. This is for clerical case administration only and does not govern the place of trial or hearings. Trial of any case, criminal or civil, shall normally be held in the division where filed and docketed, but trial and any hearing may be held in any division in the discretion of the presiding judicial officer as long as consistent with law. The divisions are as follows:

(1) **Pensacola Division** shall be composed of the following counties: Escambia, Santa Rosa, Okaloosa and Walton. The docket shall be in Pensacola.

(2) **Panama City Division** shall be composed of the following counties: Jackson, Holmes, Washington, Bay, Calhoun, and Gulf. The docket shall be in Pensacola, but trials normally will be in Panama City.

(3) **Tallahassee Division** shall be composed of the following counties: Leon, Gadsden, Liberty, Franklin, Wakulla, Jefferson, Taylor and Madison. The docket shall be in Tallahassee.

(4) **Gainesville Division** shall be composed of the following counties: Alachua, Lafayette, Dixie, Gilchrist, and Levy. The docket shall be in Tallahassee, but trials normally will be in Gainesville. The docket shall be in Gainesville when a full-time clerk's office is opened in Gainesville.

(B) **Place for Docketing Removed Cases.** All cases removed to this court from the courts of the State of Florida shall be docketed in the division of the district wherein lies the county from which the action was removed.

(C) **Transfer.** The court may order any cause, civil or criminal, transferred from one division to any other division of the district for trial.

RULE 4.1 **Service of Process for *In Forma Pauperis* Actions**

(A) In any proceeding where plaintiff is seeking to proceed *in forma pauperis*, the provisions of Fed. R. Civ. P. 4(d)(2) shall not be utilized until the court grants leave to proceed *in forma pauperis*. If leave to proceed *in forma pauperis* is granted, the court may direct the manner in which service of process or waiver thereof shall be accomplished.

(B) For purposes of Fed. R. Civ. P. 4(c)(2), the court may direct service of *in forma pauperis* complaints against correctional employees of the State of Florida or any political subdivision thereof through specially appointed process servers designated for each correctional facility.

RULE 5.1 **Files and Filing**

(A) **Form of Pleadings, Motions, and Other Papers To Be Filed.**

(1) The names of the parties (the style of the case) shall be clearly set forth in the upper left-hand corner on the first page of all pleadings, motions, briefs, applications, and other papers tendered for filing. To the right of the style shall be the case number if a case number has been assigned.

(2) The title of the pleading, motion, or other paper shall immediately follow the style of the case and shall include a clear, concise and specific identification of the document being filed, the filing party, and in the case of responsive filings, the document to which the response is made.

(3) Except for forms provided by this court, all documents tendered for filing shall be double-spaced, if typewritten, and on plain white letter-sized (8½" x 11") paper with approximately one and one-fourth (1¼) inch margins. The first page of every pleading or document filed with the court shall, however, allow approximately a two (2) inch margin at the bottom of the page where the clerk shall date stamp such pleading or document filed.

(4) Each separate pleading, motion, brief, application, or other paper of more than one page which is intended by the party to be filed as a separate document shall be fastened by a staple in the upper left-hand corner.

(5) If the document is to be filed in more than one case, the party shall provide sufficient originals for filing in each case. In every case in which the convening of a three-judge district court is sought, or has been convened, parties shall file the original and three (3) copies of every pleading, motion, or other paper filed in the case until it is determined either that a three-judge court will not be convened or the three-judge court which has been convened is dissolved and the case is remanded to a single judge.

(B) **Signature Blocks.** The typed or printed name, address (including the nine-digit zip code), and telephone number of the attorney or party signing the paper, and The Florida Bar or other state bar number of the attorney shall be included directly under the original signature.

(C) **Certificate of Service.** After another party has entered an appearance in the case, each document submitted for filing shall be accompanied by a certificate of service (1) signed by an attorney of record or by a party proceeding *pro se*, (2) certifying that a copy of the document has been served upon all other parties who have appeared, and (3) specifying the date and method of such service. A certificate of service is not required for a paper properly filed for *ex parte* consideration by the court.

(D) **Facsimile Transmitted Documents.** Facsimile transmission shall not be used for the routine filing of papers. Upon a showing of good cause for expedited consideration pursuant to N.D. Fla. Loc. R. 7.1 (E), papers may be sent to the clerk by facsimile transmission. Such papers shall not be filed or docketed but shall be referred to the appropriate judicial officer. The party making the facsimile transmission to the clerk (1) shall contemporaneously transmit a copy of the paper by facsimile transmission to every other party having a facsimile receiving capability, and (2) shall, by the fastest alternative means reasonably available, transmit a copy of the paper to all other parties who do not have facsimile receiving capability. The party making the facsimile transmission shall thereafter promptly file the original with the clerk and serve a copy of the original filed. The facsimile transmission shall not be deemed to be filed until the original is filed, unless the court shall otherwise direct. Absent an order by the judicial officer granting expedited consideration, the time for filing a responsive memorandum pursuant to N.D. Fla. Loc. R. 7.1(C) runs from the date of service of a copy of the original.

(E) **Execution of Civil Cover Sheet.** A complete and executed Civil Cover Sheet, currently AO Form JS 44, shall be filed by counsel for the filing party in each civil case at the time of filing, unless for good cause shown an additional time for such filing is allowed. Persons filing civil cases *pro se* are exempt from the requirements of this subsection.

(F) **Notice of pendency of other or prior similar actions.** Whenever the newly filed case involves issues of fact or law common with such issues in another case currently pending in this district, or if the case was previously terminated by any means and has now been refiled without substantial change in issues or parties, the party filing the case shall file a "Notice of Pendency of Other or Prior Similar Actions" containing a list and description thereof.

(G) **Filing and Payment of Fees.** A civil action shall not be filed by the clerk until the fee is paid as required by 28 U.S.C. § 1914, unless the complaint or petition is accompanied by a motion for leave to proceed *in forma pauperis*. When accompanied by a motion for leave to proceed *in forma pauperis*, the clerk shall file the complaint or petition and the motion, shall assign a case number, and shall refer the same to the appropriate judicial officer pursuant to 28 U.S.C § 1915.

(H) **Withdrawal of Files.** The clerk shall maintain all files, and no files shall be removed from the clerk's office. The clerk may, however, permit counsel of record to withdraw transcripts for a limited period of time and may set conditions for such withdrawal. Counsel shall be personally responsible for returning the transcripts in the same condition as when withdrawn.

(I) **Noncompliance.** Any document presented to the clerk for filing which substantially fails to comply as to form with the requirements of these rules or federal procedural rules shall be referred to a judicial officer for determination as to whether the document will be returned without filing, whether

the document will be disregarded until the defects are remedied, or for other appropriate action by the court.

(J) **Applications for Writs of Habeas Corpus Pursuant to 28 U.S.C. §§ 2241 and 2254, Motions Pursuant to 28 U.S.C. § 2255, and Civil Actions Commenced by *Pro Se* Litigants Pursuant to 42 U.S.C. § 1983 or 28 U.S.C. §§ 1331 and 1346.**

(1) All proceedings instituted in this court pursuant to 28 U.S.C. §§ 2254 and 2255 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.

(2) Form petitions or complaints are available in the offices of the clerk of this court relevant to each of the above types of cases. No application for writ of habeas corpus under 28 U.S.C. §§ 2254 or 2241, motion under 28 U.S.C. § 2255, or civil action commenced by *pro se* litigants under 42 U.S.C. § 1983, 28 U.S.C §§ 1331 or 1346, shall be considered by the court unless the appropriate forms have been properly completed and filed by the litigant.

(K) **Special Procedural and Filing Requirements Applicable to Habeas Corpus Involving the Death Penalty.**

(1) In habeas corpus cases involving the death penalty, it is the responsibility of the party who first makes reference in a pleading or instrument to a deposition or an exhibit to:

(a) Obtain either the original or a certified copy of that deposition and include that deposition or exhibit as an exhibit to their pleading or instrument; or

(b) To file a certificate indicating why the deposition or exhibit is not included as an exhibit to the pleading or instrument.

(2) It is the responsibility of the party offering for filing any portion of a prior state or federal court record or transcript to:

(a) Obtain from the clerk's office a habeas corpus checklist and review the various phases of court proceedings identified on the checklist.

(b) Review each prior state or federal court record to be submitted and identify, within each record, the first page of every portion of the submitted record identified on the checklist, using the colored tabs and numbering scheme as indicated below:

(i) Petitioner shall use red index tabs and shall sequentially number the index tabs commencing with the number "P-1," "P-2," etc.

(ii) Respondent shall employ blue index tabs and shall sequentially number the index tabs commencing with the number "R-1," "R-2," etc.

(iii) *Amicus curiae* or other parties permitted to intervene or otherwise participate shall employ green index tabs and shall sequentially number the index tabs commencing with the number "X-1," "X-2," etc.

(c) Cross-reference the index tab number to the checklist.

(d) File a completed checklist concurrently with the filing of the first pleading or instrument which makes reference to any portion of a prior state or federal court record or transcript.

(e) Serve a copy of the checklist on all parties and file a certificate of service along with the checklist, indicating service upon all parties.

(3) In order to facilitate the timely and efficient processing of habeas corpus capital cases, checklists and index tabs may be obtained in advance of filing from the clerk's office.

RULE 5.2 **Exhibits - Disposition**

(A) All exhibits offered or received in evidence during any proceedings in this court shall be delivered to the clerk who shall keep them in custody unless otherwise ordered by the court, except:

(1) Sensitive exhibits, such as, but not limited to, illegal drugs, explosives, weapons, currency, articles of high monetary value, exhibits of a pornographic nature, or the like, shall be retained by the submitting law enforcement agency or party who shall then be responsible to the court for maintaining custody and the integrity of such exhibits, and

(2) The clerk may, without special order, permit an official court reporter to retain custody pending preparation of the transcript.

(B) All models, diagrams and exhibits remaining in the custody of the clerk shall be retrieved by the parties within three (3) months after the case is finally decided, unless an appeal is taken. In all cases in which an appeal is taken, all exhibits shall be retrieved within thirty (30) days after the filing and recording of the mandate of the appellate court finally disposing of the case.

(C) If exhibits are not retrieved as required by this rule, the clerk may destroy them or make such other disposition as may be authorized by the court.

## RULE 6.1 **Time: Stipulations Extending Time and Continuances**

Stipulations between counsel with respect to extensions of time for serving or filing any paper, pleading, brief, or other document required to be served or filed shall not be effective until approved by the court for good cause shown.

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.

RULE 7.1 **Motions, General**

(A) **Memoranda Required.** Unless a motion is unopposed, or the parties have stipulated that the relief sought by the motion may be granted, or the motion is a motion listed below, a moving party shall serve and file with every motion in a civil or criminal proceeding a memorandum with citation of authorities in support of the motion. The memorandum may be included in the same document as the motion. No memorandum may exceed twenty-five (25) pages absent good cause shown and prior order of the court. Failure to file a memorandum when required by this rule may be cause for the denial of the motion. The following motions need not be accompanied by a memorandum:

(1) Motion for extension of time or for a continuance, provided that good cause is set forth in the motion;

(2) Motion for appearance *pro hac vice*;

(3) Motion to withdraw or substitute counsel;

(4) Application for leave to proceed *in forma pauperis*;

(5) Petition for writ of habeas corpus ad testificandum or ad prosequendum;

(6) Motion for out-of-state process;

(7) Motion for order of publication for process;

(8) Application for default;

(9) Motion for judgment upon default;

(10) Motion for confirmation of sale;

(11) Motion to withdraw or substitute exhibits;

(12) Motion for refund of bond, provided cause for granting the motion is set forth in the motion;

(13) Motion to deposit funds with the court.

(B) **Conference Required.** Counsel for the moving party, or a party who proceeds *pro se*, shall confer with counsel for the opposing party and shall file with the court, at the time of filing a motion, a statement certifying that counsel or the *pro se* party has conferred with counsel for the opposing party in a good faith effort to resolve by agreement the issues raised or has attempted to so confer but, for good cause stated, was unsuccessful. If certain of the issues have been resolved by agreement, the certificate shall specify the issue so resolved and those remaining for resolution. Counsel shall clearly identify those motions which are consented to in their entirety. Counsel for the moving party, or a party proceeding *pro se*, need not confer with counsel for all other parties before making the following motions:

(1) A motion for which a memorandum is not required by N.D. Fla. Loc. R. 7.1(A), except a motion for extension of time or for a continuance, a motion for confirmation of sale, a motion to withdraw or substitute exhibits, or a motion for refund of bond;

(2) An oral motion made in open court;

(3) Motions in civil cases for judgment as a matter of law, for summary judgment, and for new trial;

(4) Motions in criminal cases for dismissal for denial of a speedy trial, to suppress evidence, for judgment of acquittal, and for new trial.

(C) **Responsive and Reply Memoranda.**

(1) Each party opposing a motion shall have fourteen (14) days from the date of service of the motion in which to file and serve a responsive memorandum with citation of authorities in opposition to the motion. The responsive memorandum shall be limited to twenty-five (25) pages absent good cause shown and prior order of the court. No responsive memorandum need be filed to a stipulated or unopposed motion or to the excepted motions listed in N.D. Fla. Loc. R. 7.1(A).

Failure to file a responsive memorandum may be sufficient cause to grant the motion.

(2) No reply memoranda shall be filed absent a showing of good cause and upon leave of the court.

(D) **Oral Argument.** Motions shall generally be determined without oral argument. The court may require oral argument or may allow oral argument upon the written request of a party. Parties requesting oral argument shall state their estimate of the time required.

(E) **Motions of an Emergency Nature.** Upon its own motion, or upon the written request of either party, the court may waive the time requirements of this rule and grant an immediate hearing on any matter requiring such expedited procedure. Any request shall set forth in detail the reason for such expedited procedure.

RULE 7.2 **Removal of Cases From State Court**

(A) Any party effecting removal shall comply with 28 U.S.C. § 1446. Within ten (10) days of filing the notice of removal, the removing party shall file true and legible copies of all process, pleadings, motions, and orders then on file in the state court.

(B) A motion that is pending at the time of removal will not be ruled upon by the court until the moving party files true and legible copies of the motion and all documents filed in support of or in opposition to the motion. If the movant did not previously file a memorandum in support of the motion, the movant must file a memorandum in compliance with N.D. Fla. Loc. R. 7.1 (A), and the parties will be governed by N.D. Fla. Loc. R. 7.1 as to filing responsive memoranda.

RULE 11.1 **Attorneys**

(A) **Qualifications for Admission.**

An attorney is qualified for admission to the bar of this district if the attorney: (1) is currently in good standing as an attorney admitted to The Florida Bar; and (2) has received a satisfactory score as determined by the District Examination Committee on an examination approved by the committee.

(B) **Procedure for Admission and Proof of Qualifications.**

(1) **Applications.** An applicant for admission shall file a verified petition setting forth the information specified on the official form provided by the clerk.

(2) **Good Standing.** A showing of good standing to satisfy section (A) shall be made by The Florida Bar.

(3) **Application and Admission Limits and Fees.** No person shall be permitted to take the examination for admission more than three (3) times in any calendar year. Any application pending for over a period of twelve (12) months will be destroyed by the clerk and a new application will be required. A fee in the amount set by the court and payable to the clerk is required upon formal admission to practice in this court.

(C) **Retention of Membership in the Bar of This Court.**

To maintain good standing in this district, the attorney must remain an active member in good standing of The Florida Bar and must comply with all requirements imposed upon members of The Florida Bar.

(D) **Appearances.**

(1) **Who May Appear Generally.** Except when *pro hac vice* appearance is permitted by the court, only members of the bar of this district may appear as counsel of record in this district. Nonmembers of the bar of this district may appear *pro hac vice* only if they are nonresidents of the Northern District of Florida and are members in good standing in the bar, or trial

bar where existing, of another United States district court. Attorneys residing and practicing within this district are expected to be members of the bar of this district.

(2) **Waiver in Exceptional Cases.** In an exceptional case, when the interest of justice is best served by a waiver of the admission requirements, the judge before whom the matter is pending may permit a person not admitted to the bar of this district to appear alone in any aspect of the pending matter, civil or criminal. Permission granted under this paragraph applies to the pending matter only.

(3) ***Pro Hac Vice* Appearance.** Prior to any appearance, any attorney not admitted to the bar of this district must request permission in writing to appear, certifying that he or she has knowledge of these local rules and that he or she is not a resident of this district. A certificate of good standing from the United States district court to which said attorney has been admitted, together with an appearance fee equal to the fee set by section (B)(3) of this rule, shall accompany said request.

(4) **Counsel for the United States or a State Officer or Agency.** Any attorney representing the United States, or any officer or agency thereof, may, without petitioning for admission, appear and participate in particular cases in which the United States or such counsel's agency is involved. Any attorney representing the State of Florida, or any officer or agency thereof, who is not yet a member of the bar of this district may, upon motion, temporarily appear in any such case until the next scheduled admission examination, upon the condition that the attorney immediately apply for admission and take that examination.

**(E) District Examination Committee.**

(1) **Membership.** A District Examination Committee shall be appointed by the judges of this district. It shall consist of five (5) members of the bar of this district with at least one (1) member from each division.

(2) **Purpose.** The Examination Committee is charged with the development of a testing format and the administration of the examinations. The clerk's office shall cooperate with the committee to the fullest extent practicable.

**(F) *Pro Se* Appearance.**

Any party represented in a suit by counsel of record 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.

**(G) Disbarment and Discipline.**

(1) **Professional Conduct.** Except where an act of Congress, federal rule of procedure, Judicial Conference Resolution or rule of court provides otherwise, the professional conduct of all members of the bar of this district shall be governed by the Rules of Professional Conduct of the Rules Regulating The Florida Bar.

(2) **Contempt of Court.** Any person, who, prior to admission to the bar of this district or during any period of prohibition of practice in this district, exercises in any action or proceedings pending in this court any of the privileges of a member of the bar, or who pretends to be entitled to do so, may be found guilty of contempt of court.

(3) **Prohibition of Practice.** Whenever it is made to appear that any attorney has been disbarred or suspended from practice by the Supreme Court of Florida or any other state bar, or by any federal court, such attorney shall be prohibited from practice in this district. If subsequently reinstated by such court or bar, the attorney may apply for readmission to practice in this district upon satisfying the requirements of sections (A) and (B) of this rule, provided, however, that the court may impose such reasonable additional requirements as may be appropriate.

(4) **Conviction of Crime.** Whenever it is made to appear to the court that an attorney has been convicted of any felony or crime involving dishonesty or moral turpitude in any court, such attorney shall be prohibited from practice in this district. The acceptance by any court of a plea of guilty or *nolo contendere* to any felony or crime involving dishonesty or moral turpitude, or a jury or court verdict of guilty as to such offenses, which plea or verdict is not subsequently set aside, shall be deemed a conviction for the purposes of this rule, whether or not guilt is adjudicated by that court.

(5) **Additional Grounds for Prohibition of Practice.** Nothing in this rule shall be deemed to limit the court's authority to discipline a member of the bar of this district for conduct involving dishonesty, moral turpitude or any other activity inconsistent with the member's legal and ethical responsibilities. An attorney may be prohibited from practice in this district for a definite period, reprimanded, or subjected to such other discipline as the court may deem proper after notice and an opportunity to be heard.

(H) **Withdrawal of Attorneys.**

(1) **Approval of Court Required.** No attorney, firm, or agency, having made an appearance, 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 all other counsel of record.

(2) **Non-Payment of Fees.** Failure to pay attorneys' fees shall not be reason for seeking leave to withdraw if the withdrawal of counsel is likely to cause a continuance of a scheduled trial, hearing or other court proceeding.

(I) **Responsibility of Retained Counsel in Criminal Cases.**

(1) Unless the court, within seven (7) calendar days after arraignment, is notified in writing of counsel's withdrawal because of the defendant's failure to make satisfactory financial arrangements, the court will expect retained criminal defense counsel to represent the defendant until the conclusion of the case. Failure of a defendant to pay sums owed for attorneys' fees or failure of counsel to collect a sum sufficient to compensate for all the services usually required of defense counsel will not constitute good cause for withdrawal after the seven-day (7) period has expired.

(2) If a defendant moves the court to proceed on appeal *in forma pauperis* and/or for appointment of Criminal Justice Act appellate counsel, counsel retained for trial will, in addition to the information required under Form 4 of the Rules of Appellate Procedure, be required to fully disclose *in camera* (a) the attorneys' fee agreement and the total amount of such fees and costs paid to date, in cash or otherwise; (b) by whom fees and costs were paid; (c) any fees and costs remaining unpaid and the complete terms of agreements concerning payment thereof; (d) the costs actually incurred to date; and (e) a detailed description of services actually rendered to date, including a record of the itemized time (to the nearest 1/10 of an hour) for each service, both in-court and out-of-court, and the total time. All such information submitted will be viewed *in camera* by the court for the purpose of deciding the defendant's motion and will be a part of the record (sealed if requested) in the case.

RULE 15.1 **Amendments of Pleadings**

When leave is sought to amend a pleading pursuant to a motion, a copy of the proposed amended pleading in its entirety shall accompany the motion. If the court grants the motion to amend, the clerk shall forthwith file the proposed amended pleading attached to the motion as the amended pleading, and it will be deemed filed as of the date of the order granting the motion.

Likewise, when any amendment is submitted as a matter of course under Fed. R. Civ. P. 15(a), the amended pleading shall be filed in its entirety with all of the amendments incorporated therein.

Matters not set forth in the amended pleading are deemed to have been abandoned.

## RULE 16.1 **Scheduling Orders**

(A) In order to set out the parameters of discovery at the earliest opportunity, an initial scheduling order will be entered in civil cases as soon as at least one of the defendants has appeared, but in no event later than the times set out in Rule 16(b). Upon consideration of the parties' joint report filed in accordance with Rule 26(f), or after consultation with the parties, the court may modify the initial scheduling order as appropriate or continue the initial scheduling order, so that a final scheduling order will be in effect as contemplated by Fed. R. Civ. P. 16(b).

(B) Magistrate judges of this court may enter and modify scheduling orders in cases assigned to them by consent, in cases referred to them by a district judge, and in all cases in which they conduct the Fed. R. Civ. P. 16(b) scheduling conference.

(C) Except as otherwise ordered by a judge of the court in a particular case, a scheduling order need not be entered in the categories of actions exempted under N.D. Fla. Loc. R. 26.1.

## RULE 16.2 Notice of Settlement, Pleas, Continuance, Dismissal and Assessment of Costs

(A) It shall be the duty of counsel in any case, civil or criminal, to immediately notify the court by the most expeditious means that the case has been disposed of by settlement, change of plea or through any other method of termination. Further, if counsel in a civil or criminal case reasonably believes that a scheduled trial might have to be delayed or learns of circumstances that might make the calling of a jury panel unnecessary, counsel shall immediately communicate that fact to the court by the most expeditious means, with simultaneous notification to all other counsel of record or party proceeding *pro se*, and request emergency consideration by the court.

(B) If the notice required herein is not given at least one (1) full business day prior to the day the jurors are scheduled to report for *voir dire* or for attendance at trial, then, except for good cause shown, all costs of the jury panel, including attendance fees, mileage and per diem, shall be assessed against the responsible parties or their counsel. In addition, if by failure to give the notice as required herein, witness expenses, court travel expenses, marshal and court security costs, and expenses of other counsel were unnecessarily incurred, the costs thereof shall likewise be assessed against the responsible parties or their counsel.

(C) "Counsel" as used herein includes an attorney representing the United States or an agency thereof, an attorney associated with the Federal Public Defender, an attorney representing the State of Florida or an agency or subdivision thereof, a court-appointed attorney, an attorney appearing *pro hac vice*, and any other attorney who appears of record in a civil or criminal case. In criminal cases where counsel is proceeding under the Criminal Justice Act, any expense assessed against court-appointed counsel shall be deducted from any fees to which counsel would otherwise be entitled.

(D) When notified that a civil case has been settled, and for purposes of administratively closing the file, the court may order that a case be dismissed, but shall retain jurisdiction

for sixty (60) days thereafter (or for such other period of time as the court may specify). During that period any party may move the court, for good cause shown, to reopen the case for further proceedings.

RULE 16.3 **Mediation**

(A) **Definition.** Mediation is an opportunity for the parties to negotiate their own settlement. Mediation is a supervised settlement conference presided over by a neutral mediator to promote conciliation, compromise and the ultimate settlement of a civil action. The mediator may be a mediator certified in accordance with these rules or any person mutually agreed upon by all parties. The mediator's role in the settlement of cases is to assist the parties in the identification of interests, suggest alternatives, analyze issues, question perceptions, 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 or consent of the parties, the mediator will only report to the presiding judge whether the case settled, was adjourned or continued for further mediation, or was terminated because settlement was not possible and the mediator declared an impasse.

(B) **Purpose.** Mediation is intended as an alternative method to resolve civil cases, thereby saving time and cost 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.

(C) **Qualifications of Mediators.** Any person who is certified and remains in good standing as a circuit court mediator under the rules adopted by the Supreme Court of Florida is qualified to serve as a mediator in this district. By mutual agreement and with court approval, any other person may be a mediator in a specific case.

(D) **Standards of Professional Conduct for Mediators.** All mediators, whether certified or not, who mediate in cases pending in this district shall be governed by standards of professional conduct and ethical rules adopted by the Supreme Court of Florida for circuit court mediators.

(E) **Disqualification of a Mediator.** After reasonable notice and hearing, and for good cause, the presiding judge shall have discretion and authority to disqualify any mediator from serving as mediator in a particular case. Good cause may include violation of the standards of professional conduct for mediators. Additionally, any person selected as a mediator may be disqualified for bias or prejudice as provided in 28 U.S.C. § 144, and shall be disqualified in any case in which such action would be required by a justice, district judge, or magistrate judge governed by 28 U.S.C. § 455.

(F) **Compensation of Mediators.** Absent agreement by all parties to the contrary, mediators shall be compensated and reimbursed for expenses at the rate set by the court. Further, absent agreement of the parties to the contrary or order of the court for good cause shown, the cost of the mediator's services shall be paid 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 compensation, fee, or any other thing of value from any other source without prior written approval of the court.

(H) **Mediators as Counsel in Other Cases.** Any member of the bar who is certified or selected as a mediator pursuant to these rules shall not, for that reason alone, be disqualified from appearing and acting as counsel in any other case pending in this district.

(I) **Referral to Mediation.** Any pending civil case may be referred to mediation by the presiding judicial officer at such time as the judicial officer may determine to be in the interests of justice. The parties may request the court to submit any pending civil case to mediation at any time.

## RULE 23.1 Class Actions

(A) In any case sought to be maintained as a class action pursuant to Fed. R. Civ. P. 23, 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 Fed. R. Civ. P. 23(a) and (b). The appropriate allegations thought to justify such claim should include, but are not necessarily limited to:

(1) A reference to the portion or portions of Fed. R. Civ. P. 23, under which it is claimed that the suit is properly maintainable as a class action;

(2) The size (or approximate size) and definition of the alleged class;

(3) The basis upon which the plaintiff(s) claim(s);

(a) to adequately represent the plaintiff class, or,

(b) if there is a class composed of defendants, that those named as parties are adequate representatives of that class;

(4) The alleged questions of law and fact claimed to be common to the class;

(5) In actions claimed to be maintainable as class actions under the alternative provisions of Rule 23(b), allegations thought to support the findings required by that specific alternative.

(B) Within ninety (90) days after the filing of a complaint in a class action, unless this period is extended on motion for good cause appearing, the plaintiff shall move for a determination under Fed. R. Civ. P. 23(c)(1), as to whether the case is to be maintained as a class action.

(C) The foregoing provisions shall apply, with appropriate adaptations, to any counterclaim or crossclaim alleged to be brought for, or against, a class.

## RULE 24.1 Constitutional Challenges: Federal and State

(A) **Act of Congress.** In any action, suit, or proceeding in which the constitutionality of an act of Congress affecting the public interest is challenged, and to which action the United States or some agency, officer, or employee thereof is not a party, counsel representing the party who challenges the act shall forthwith notify in writing the judge to whom the action is assigned of the existence of the constitutional question. The notice shall contain the full title and number of the action and shall designate the statute assailed and the grounds upon which it is assailed, so that the court may comply with its statutory duty to certify the fact to the Attorney General of the United States as required by 28 U.S.C. § 2403 and Fed. R. Civ. P. 24(c).

(B) **State Statute.** In any action, suit, or proceeding in which the constitutionality of a Florida statute, charter, ordinance, or franchise is challenged, counsel shall comply with the notice provisions of Section 86.091, Florida Statutes. Additionally, when the constitutionality of a state statute affecting the public interest is drawn in question in any action in which the State of Florida or any agency, officer, or employee thereof is not a party, counsel representing the party who challenges the statute shall forthwith notify in writing the judge to whom the action is assigned of the existence of the constitutional question. The notice shall contain the full title and number of the action and shall designate the statute assailed and the grounds upon which it is assailed, so that the court may comply with its statutory duty to certify the fact to the Attorney General of Florida as required by 28 U.S.C. § 2403 and Fed. R. Civ. P. 24(c).

RULE 26.1 **Exemptions From Mandatory Discovery and Conference**

Absent a contrary order in a specific case, the following categories of cases are exempted from the disclosure requirements of Fed. R. Civ. P. 26(a)(1) and (2) and the meeting requirement of Fed. R. Civ. P. 26(f):

(A) All cases in which the plaintiff is a prisoner and is not represented by an attorney;

(B) All applications for writs of habeas corpus under 28 U.S.C. § 2241 or 28 U.S.C. § 2254, and motions under 28 U.S.C. § 2255.

(C) Actions filed under 42 U.S.C. § 405(g) and other statutes seeking review, upon a fully developed record, of administrative determinations of governmental departments or agencies;

(D) Bankruptcy appeals and withdrawals;

(E) Deportation actions;

(F) Freedom of information actions;

(G) Government collection actions;

(H) Actions to register or enforce judgments;

(I) Proceedings to enforce or contest government summons and private party depositions;

(J) Garnishment actions.

RULE 26.2 **Discovery - Civil**

Due to the cost to the parties of furnishing discovery materials and the problems encountered by the court with storage, the following procedure is adopted with regard to the filing of discovery materials with the court.

(A) **Discovery Not To Be Filed.** Interrogatories and the answers thereto, and requests for production or inspection shall be served upon other counsel or parties, but shall not be filed with the court. The party responsible for service of the discovery material shall retain the original and become the custodian. Likewise, deposition transcripts shall not be filed with the court. If interrogatories, requests, answers, responses or depositions are to be used at trial or are necessary to a pretrial motion which might result in a final order on any issue, the portions to be used shall be filed with the clerk at the outset of the trial or at the filing of the motion insofar as their use can be reasonably anticipated. When documentation of discovery not previously in the record is needed for appeal purposes, upon an application and order of the court, or by stipulation of counsel, the necessary discovery papers shall be filed with the clerk.

(B) **Discovery To Be Filed.** Requests for admissions under Fed. R. Civ. P. 36, and responses thereto, as well as notices of taking depositions shall continue to be filed with the clerk.

(C) **Number of Interrogatories or Requests for Admission.** In any case, the combined total number of interrogatories or requests for admission from one party to another shall not exceed fifty (50) in number, including subparts. For good cause shown, the court may allow a larger number of interrogatories or requests for admission on motion of a party or *sua sponte*.

(D) **Motions To Compel.** Motions to compel discovery in accordance with Fed. R. Civ. P. 33, 34, 36, and 37 shall (1) quote verbatim each interrogatory, request for admission, or request for production to which objection is taken, (2) quote in full the opponent's specific objection, and (3) state the

reasons such objection should be overruled and the motion granted.

(E) **Objections to Discovery and Motions for a Protective Order.**

(1) Objections and grounds for objections shall be addressed to the specific interrogatory, request for admission, or request for production, and may not be made generally.

(2) For the guidance of counsel in either preparing or opposing motions for a protective order, it is the policy in this district that the deposition of a non-resident plaintiff may be taken at least once in this district. Otherwise, depositions of parties should usually be taken as in the case of other witnesses pursuant to the Federal Rules of Civil Procedure.

RULE 26.3 **Discovery - Criminal**

(A) **Policy.** It is the court's policy to rely on the standard discovery procedure as set forth in this rule as the sole means for the exchange of discovery in criminal cases except in extraordinary circumstances. This rule is intended to promote the efficient exchange of discovery without altering the rights and obligations of the parties, but at the same time eliminating the practice of routinely filing voluminous and duplicative discovery motions.

(B) **Discovery Upon Defendant's Request.** At the earliest opportunity and no later than five (5) working days after the date of arraignment, the defendant's attorney shall contact the government's attorney and make a good faith attempt to have all properly discoverable material and information promptly disclosed or provided for inspection or copying. In addition, upon request of the defendant, the government shall specifically provide the following within five (5) working days after the request:

(1) **Defendants Statements Under Fed. R. Crim. P. 16(a)(1)(A).** Any written or recorded statements made by the defendant; the substance of any oral statement made by the defendant before or after the defendant's arrest in response to interrogation by a then known-to-be government agent which the government intends to offer in evidence at trial; and any recorded grand jury testimony of the defendant relating to the offenses charged.

(2) **Defendant's Prior Record Under Fed. R. Crim. P. 16(a)(1)(B).** The defendant's complete arrest and conviction record, as known to the government.

(3) **Documents and Tangible Objects Under Fed. R. Crim. P. 16(a)(1)(C).** Books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which the government intends to use as evidence-in-chief at trial, which are material to the preparation of the defendant's defense, or which were obtained from or belong to the defendant.

(4) **Reports of Examinations and Tests Under Fed. R. Crim. P. 16(a)(1)(D).** Results or reports of physical or mental examinations and of scientific tests or experiments, or copies thereof, which are material to the preparation of the defendant's defense or are intended for use by the government as evidence-in-chief at trial.

(5) **Expert Witnesses Under Fed. R. Crim. P. 16(a)(1)(E).** A written summary of testimony the government intends to use under Rules 702, 703, or 705 of the Federal Rules of Evidence.

(C) **Reciprocal discovery by defendant.** If the defendant requests disclosure under subdivisions (a)(1)(C),(D), or (E) of Fed.R.Crim.Proc.16, the government shall make its reciprocal requests within three (3) working days after compliance with the defendant's request, and the defendant shall provide the following within five (5) working days after the government's request:

(1) **Documents and Tangible Objects Under Fed. R. Crim. P. 16(b)(1)(A).** Books, papers, documents, photographs, tangible objects, or copies or portions thereof, which the defendant intends to introduce as evidence-in-chief at trial.

(2) **Reports of Examinations and Tests Under Fed. R. Crim. P. 16(b)(1)(B).** Results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which the defendant intends to introduce as evidence-in-chief at trial, or which were prepared by a witness whom the defendant intends to call at trial and which relate to that witness's testimony.

(3) **Expert Witnesses Under Fed. R. Crim. P. 16(b)(1)(C).** A written summary of testimony the defendant intends to use under Rules 702, 703, or 705 of the Federal Rules of Evidence.

(D) **Other Disclosure Obligations of the Government.** The government's attorney shall provide the following

within five (5) days after the defendant's arraignment, or promptly after acquiring knowledge thereof:

(1) ***Brady* Material.** All information and material known to the government which may be favorable to the defendant on the issues of guilt or punishment, without regard to materiality, that is within the scope of *Brady v. Maryland*, 373 U.S. 83 (1963) and *United States v. Agurs*, 427 u.S. 97 (1976).

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

(3) **Testifying Informant's Convictions.** A record of prior convictions of any alleged informant who will testify for the government at trial.

(4) **Defendant's Identification.** If a lineup, showup, photo spread or similar procedure was used in attempting to identify the defendant, the exact procedure and participants shall be described and the results, together with any pictures and photographs, shall be disclosed.

(5) **Inspection of Vehicles, Vessels, or Aircraft.** If any vehicle, vessel, or aircraft was allegedly utilized in the commission of any offenses charged, the government shall permit the defendant's counsel and any experts selected by the defense to inspect it, if it is in the custody of any governmental authority.

(6) **Defendant's Latent Prints.** If latent fingerprints, or prints of any type, have been identified by a government expert as those of the defendant, copies thereof shall be provided.

(E) **Obligations of the Government.**

(1) The government shall advise all government agents and officers involved in the case to preserve all rough notes.

(2) The government shall advise the defendant of its intention to introduce evidence in its case-in-chief at trial, pursuant to Rule 404(b), Federal Rules of Evidence.

(3) If the defendant was an "aggrieved person" as defined in 18 U.S.C. § 2510(11), the government shall so advise the defendant and set forth the detailed circumstances thereof.

(4) The government shall anticipate the need for, and arrange for the transcription of, the grand jury testimony of all witnesses who will testify in the government's case-in-chief, if subject to Fed. R. Crim. P. 26.2 and to 18 U.S.C. § 3500. *Jencks* Act materials and witnesses' statements shall be provided as required by Fed. R. Crim. P. 26.2 and § 3500. However, the government, and where applicable, the defendant, is requested to make such materials and statements available to the other party sufficiently in advance so as to avoid any delays or interruptions at trial.

(F) **Obligations of the Defendant.**

(1) **Insanity.** If a defendant intends to rely upon the defense of insanity at the time of the alleged crime, or intends to introduce expert testimony relating to a mental disease, defect, or other mental condition bearing upon the issue of guilt, the defendant shall give written notice thereof to the government within ten (10) working days after arraignment.

(2) **Alibi.** If the attorney for the government makes demand for notice of defendant's intent to offer a defense of an alibi, the defendant shall respond thereto within five (5) working days thereafter.

(3) **Entrapment.** If the defendant intends to rely upon the defense of entrapment, such intention shall be

disclosed to the government's attorney prior to trial. *See United States v. Webster*, 649 F.2d 346 (5th Cir. 1981).

(G) **Joint obligations of Attorneys.**

(1) **Conference and Joint Report.** The attorneys for the government and the defendant shall confer at least five (5) working days prior to the scheduled date for jury selection and shall discuss all discovery requested and provided. They shall also make every possible effort in good faith to stipulate to facts, to points of law, and to the authenticity of exhibits (particularly regarding those exhibits for which records custodian witnesses may be avoided). A joint written statement, signed by the attorney for each defendant and the government, shall be prepared and filed prior to commencement of trial. It shall generally describe all discovery material exchanged and shall set forth all stipulations. No stipulation made shall be used against a defendant unless the stipulation is in writing and signed by both the defendant and the defendant's attorney.

(2) **Newly Discovered Evidence.** It shall be the duty of counsel for both sides to immediately reveal to opposing counsel all newly discovered information, evidence, or other material within the scope of this rule, and there is a continuing duty upon each attorney to disclose by the speediest means available.

(3) **Discovery Motions Prohibited.** No attorney shall file a discovery motion without first conferring with opposing counsel, and no motion will be considered by the court unless it is accompanied by a certification of such conference and a statement of the moving party's good faith efforts to resolve the subject matter of the motion by agreement with opposing counsel. No discovery motions should be filed for information or material within the scope of this rule.

(4) **Filing of Requests.** Discovery requests made pursuant to Fed. R. Crim. P. 16 and this local rule require no action on the part of this court and should not be filed with the court, unless the party making the request desires to preserve a discovery matter for appeal.

RULE 41.1 **Dismissal for Failure To Prosecute or To Comply With the Rules or a Court Order**

(A) Whenever it appears that no activity by filing of pleadings, orders of the court or otherwise has occurred for a period of more than ninety (90) days in any civil action, 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. If no satisfactory cause is shown, the case may then be dismissed by the court for want of prosecution.

(B) On motion of any party or on its own motion, the court may enter an order to show cause why a claim, counterclaim, crossclaim, or defense, should not be dismissed for failure to comply with these rules, the Federal Rules of Civil Procedure, or a court order. If good cause is not shown, a dismissal may be entered for this reason.

RULE 54.1 **Motions for Attorneys' Fees**

(A) **Time for Filing.** A motion for an award of attorneys' fees and related nontaxable expenses (not otherwise taxable as costs) shall be filed and served within the time specified in the scheduling order entered in the case and as otherwise provided in Fed. R. Civ. P. 54(d). The pendency of an appeal from the judgment shall not toll the time for filing the motion. {*see also*, Fed. R. Civ. P. 58}.

(B) **Attorneys' Fees Records.** In any proceeding in which any party is seeking an award of attorneys' fees from the opposing party pursuant to any statute, contract, or law, the party seeking such an award of attorneys' fees shall:

(1) Maintain a complete, separate, and accurate record of time (to the nearest 1/10 of an hour) devoted to the particular action, recorded contemporaneously with the time expended, for each attorney and each specific activity involved in the action (*i.e.*, not just "research" or "conference"); and

(2) File a summary of such time record with the clerk by the fifteenth (15th) day of each month during the pendency of the action, for work done during the preceding month.

(3) If claim will be made for services performed by any person not a member of the bar, a separate time record shall be maintained for each such individual and filed as specified below, together with the hourly rate at which such person is actually reimbursed.

(4) These records may be filed under seal simply by placing the records in a sealed envelope no larger than 8½ by 11 inches and writing thereon "ATTORNEY TIME RECORDS - FILE UNDER SEAL." However, if the time records are sealed, then the attorney must, at the time of such filing, also file a summary of the time records and serve a copy thereof on opposing parties or their counsel, which summary shall state the total of the hours represented by the sealed filing, *i.e.*,

"TOTAL ATTORNEY HOURS THIS FILING"

"TOTAL NON-ATTORNEY HOURS THIS FILING"

If the attorney does not place these time records in a sealed envelope, such records will remain unsealed. Attorney time records will not be placed in the general case action file but will be maintained in a separate folder in the clerk's office. Upon termination of the case or the determination of attorneys' fees, whichever occurs later, all time records in the case will be destroyed.

(5) Failure to comply with these requirements will result in attorneys' fees being disallowed for the omitted period.

(C) **Settlement Encouraged.** No motion for attorneys' fees will be considered until the parties have conferred as required by N.D. Fla. Loc. R. 7.1(B) and have made good faith efforts to settle both liability for, and amount of, attorneys' fees. A certificate of conference must accompany the motion filed under this rule.

(D) **Bifurcated Procedure for Determining Attorneys' Fees.** If the settlement efforts are unsuccessful, the court's determination of attorneys' fees and related nontaxable expenses will be bifurcated {*see* rule Fed. R. Civ. P. 54(d)(2)}. The initial motion and the opposing response will be in accordance with N.D. Fla. Loc. R. 7.1 and will address only the issue of liability. The court will rule on the motion and if it is granted, the provisions of subsections (E) and (F) will thereafter control.

(E) **Determination of the Amount of Fee.** If the court has awarded fees or expenses, the party awarded such fees or expenses shall file and serve, within fourteen (14) days of the order determining liability:

(1) An affidavit setting out the requested amount and specifically describing the requested rate of compensation and the numbers of hours spent in the prosecution or defense of the case as are reflected in the monthly reports filed with this court, with sufficient detail to identify the exact

nature of the work performed. As an example of the specificity here required, it would not be appropriate to simply list the subject as "research;" rather, it is required that the specific matter being researched be specified in such detail as would permit a determination being made as to (a) the necessity for the research, and (b) whether the hours attributable to it are reasonable; and

(2) If the party prevailed on some, but not all, claims that were the subject of the complaint/defense for which fees or expenses are being awarded, then the affidavit must clearly identify those hours that were spent only on the compensable claim(s).

(3) The party awarded fees shall also file and serve a supporting affidavit from an attorney, familiar with the area of law involved, that the requested rate for hourly compensation is in line with the prevailing market rate for the work performed.

(4) Within fourteen (14) days after service of the affidavits in (1) and (3), the party or parties against whom the fees and costs are being sought shall file and serve an acceptance or rejection of the amount being claimed as attorneys' fees. If the amount being claimed is rejected, the rejecting party shall:

(a) Identify which hours are objected to and for what reason;

(b) If there is objection as to the proposed "prevailing market rate," the objecting party must submit an affidavit as to the prevailing hourly rate believed to be more appropriate; and

(c) Propose an amount of attorneys' fees or expenses that the party would be willing to pay, without prejudice to pursue on appeal the legal liability of that party for attorneys' fees and expenses, or the amount thereof.

(5) The party awarded fees or expenses shall thereafter file and serve an acceptance or rejection of the counteroffer within fourteen (14) days from the service thereof.

(F) **Referral to Special Master.** If a rejection is filed, indicating that an agreement has not been reached between the parties as to the amount of such fees or expenses, the court may enter an order referring such matter to a special master, pursuant to Fed. R. Civ. P. 53 and 54(d)(2)(D), who shall conduct such hearings as may be necessary and submit written findings and recommendations within forty-five (45) days from the order of referral. The special master's report shall specify which party should pay the fees and costs of the special master or in what manner the fees and costs should be prorated, taking into account the reasonableness of the parties' respective positions concerning the amount of the attorneys' fees. The findings of fact made by the special master will be accepted by the referring judge unless clearly erroneous.

## RULE 54.2 Motions To Tax Costs

A motion to tax costs in actions or proceedings shall be filed not later than thirty (30) days after entry of judgment.

RULE 56.1 **Motions for Summary Judgment**

(A) Any motion for summary judgment filed pursuant to Fed. R. Civ. P. 56 [or Fed. R. Civ. P. 12(b)(6) which requires reference to matters outside the pleading] shall be accompanied by a separate, short and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried. Failure to submit such a statement constitutes grounds for denial of the motion.

The statement shall reference the appropriate deposition, affidavit, interrogatory, admission, or other source of the relied upon material fact, by page, paragraph, number, or other detail sufficient to permit the court to readily locate and check the source.

The party opposing a motion for summary judgment shall, in addition to other papers or matters permitted by the rules, file and serve a separate, short and concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried, in the format set forth above.

All material facts set forth in the statement required to be served by the moving party will be deemed to be admitted unless controverted by the statement required to be filed and served by the opposing party.

(B) Motions for summary judgment will be taken under advisement by the court twenty-one (21) calendar days after the motion is filed or seven (7) calendar days after the responsive memorandum is required to be filed under N.D. Fla. Loc. R. 7.1(C)(1), whichever is later, unless the court specifically sets the motion for hearing or sets a different advisement date. Parties are required to file and serve affidavits and any other documents or materials authorized to be filed under the Federal Rules of Civil Procedure prior to the advisement date. Only those documents and evidentiary materials in the record prior to the advisement date will be considered in ruling on the motion.

RULE 72.1 **Authority of United States Magistrate Judges**

(A) **Duties Under 28 U.S.C. § 636.** All United States magistrate judges serving within the territorial jurisdiction of the Northern District of Florida have the authority conferred by 28 U.S.C. § 636 and may exercise all other powers and duties conferred or imposed by law and the federal procedure rules.

(B) **Designation for Trial of Misdemeanor Cases Upon Consent Under 18 U.S.C. § 3401.**

(1) With the consent of the defendant, all United States magistrate judges serving within the territorial jurisdiction of the Northern District of Florida are hereby designated to try persons accused of, and sentence persons convicted of, misdemeanors and petty offenses committed within this district.

(2) All magistrate judges may perform all other judicial acts necessary with respect to the case, including without limitation: issuing warrants, setting conditions of release, conducting jury or nonjury trials, hearing and determining modification or revocation of probation, and directing the probation service of the court to conduct a presentence investigation.

(C) **Designation for Trial of Civil Cases Upon Consent Pursuant to 28 U.S.C. § 636(c).** With the consent of the parties, full-time magistrate judges are hereby designated to conduct civil trials, including the entry of final judgment.

RULE 72.2 **Referral of Matters to Magistrate Judges by this Rule**

(A) **Misdemeanor Cases.** All misdemeanor cases, including those transferred to this district pursuant to Fed. R. Crim. P. 20, shall be assigned by the clerk, upon the filing of an information, complaint, or violation notice, or the return of an indictment, to a magistrate judge, who shall proceed in accordance with the provisions of 18 U.S.C. § 3401 and of the Fed. R. Crim. P. 58.

(B) **Applications for Post-Trial Relief by Persons Convicted of Criminal Offenses and Other Cases Filed Under 28 U.S.C. §§ 2241, 2254, and 2255.** Except in cases in which the death penalty has been imposed, all cases seeking post-trial or postconviction relief by persons convicted of state or federal offenses and all other cases arising under 28 U.S.C. §§ 2241, 2254, or 2255, shall be assigned to a district judge and, unless otherwise ordered, shall be referred by the clerk to a full-time magistrate judge for all proceedings, including preliminary orders, conduct of necessary evidentiary hearings, and filing of a report and recommendation containing proposed findings of fact and conclusions of law and recommending disposition of the application or petition.

(C) **Civil Rights Cases Filed by Prisoners.** All prisoner petitions and complaints challenging conditions of confinement pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1331 (*Bivens* actions), or pursuant to similar statutes, shall be assigned to a district judge and, unless otherwise ordered, shall be referred by the clerk to a full-time magistrate judge for all proceedings, including preliminary orders, conduct of necessary evidentiary hearings, and filing of a report and recommendation containing proposed findings of fact and conclusions of law and recommending disposition of the complaint.

(D) **Social Security Cases and Other Administrative Proceedings.** All actions brought under section 205(g) of the Social Security Act, 42 U.S.C. § 405(g) and related statutes, and all other actions to review administrative determi-

nations on a developed administrative record shall be assigned to a district judge and, unless otherwise ordered, shall be referred by the clerk to a magistrate judge for all proceedings, including preliminary orders, conduct of necessary hearings, and filing of a report and recommendation containing proposed findings of fact and conclusions of law and recommending disposition of the petition or complaint.

(E) **Additional Duties.** Absent an order by a district judge in a specific case to the contrary, the following additional matters shall routinely be referred by the clerk to magistrate judges serving within the territorial jurisdiction of the Northern District of Florida when a magistrate judge is available, and magistrate judges to whom such matters have been referred shall have authority to:

(1) Issue criminal complaints and issue appropriate arrest warrants or summons;

(2) Issue search warrants pursuant to Fed. R. Crim. P. 41, and issue administrative search or inspection warrants;

(3) Review for probable cause and issue process upon any other application by the United States (for example, for seizure of real property in rem) for which there is evolving legal precedent indicating a need for a judicial finding of probable cause before proceeding;

(4) Authorize the installation of pen registers and direct telephone company assistance to the government for such installations;

(5) Conduct initial appearances in felony cases, consider and determine motions for detention, impose conditions of release pursuant to 18 U.S.C. § 3142, conduct arraignments upon indictments for purposes of taking a not guilty plea, and issue scheduling orders setting trial;

(6) Appoint counsel for indigent persons pursuant to 18 U.S.C. § 3006A;

(7) Consider and determine motions for detention and impose conditions of release for material witnesses pursuant to 18 U.S.C. § 3144;

(8) Conduct preliminary hearings upon criminal complaints and determine probable cause;

(9) Conduct and determine removal hearings and issue warrants of removal;

(10) Conduct first appearances and preliminary hearings, by whatever name called, in proceedings for the revocation of parole, supervised release, mandatory release, or probation;

(11) Receive the return of indictments by the grand jury and issue process thereon;

(12) Hear and order discharge of indigent prisoners or persons imprisoned for debt under process or execution issued by a federal court pursuant to 18 U.S.C. § 3569 and 28 U.S.C. § 2007;

(13) Appoint interpreters in cases pending before a magistrate judge initiated by the United States pursuant to 28 U.S.C. §§ 1827 and 1828;

(14) Issue warrants and conduct extradition proceedings pursuant to 18 U.S.C. § 3184;

(15) Perform the functions specified in 18 U.S.C. §§ 4107, 4108, and 4109, regarding proceedings for verification of consent by offenders to transfer to or from the United States and the appointment of counsel therein;

(16) Institute proceedings against persons violating certain civil rights statutes under 42 U.S.C. §§ 1987 and 1989;

(17) Issue subpoenas, writs of habeas corpus ad testificandum or habeas corpus ad prosequendum, or other orders necessary to obtain the presence of parties, witnesses or

evidence needed for court proceedings in any civil and criminal cases;

(18) Issue attachment or other orders to enforce obedience to an Internal Revenue Service summons to produce records or give testimony pursuant to 26 U.S.C. § 7604(a) and (b);

(19) Settle and certify the non-payment of seaman's wages and conduct proceedings for the disposition of deceased seaman's effects under 46 U.S.C. §§ 603, 604, 627, and 628;

(20) Enforce awards of foreign consul and arbitrate differences between captains and crews of vessels of the consul's nations under 22 U.S.C. § 358a;

(21) Review prisoner correspondence;

(22) Enter court orders to withdraw funds from the registry of the court in matters handled by the magistrate judge;

(23) Preside at naturalization ceremonies and issue orders granting motions for naturalization;

(24) Preside at attorney admission ceremonies and issue orders granting applications for admission of attorneys to practice before this court;

(25) Adopt schedules for forfeiture of collateral under Fed. R. Crim. P. 58(d)(1);

(26) Issue warrants of arrest in rem, attachment, garnishment, or other process in admiralty; and

(27) Determine actions to be taken regarding non-complying documents submitted for filing under N.D. Fla. Loc. R. 5.1(I) or the Federal Rules of Civil or Criminal Procedure.

RULE 72.3 **Specific Referrals of Matters to Magistrate Judges**

Any district judge may assign any matter, civil or criminal, to a magistrate judge of this district to the full extent permitted by 28 U.S.C. § 636. The assignment and designation of duties to magistrate judges by district judges may be made by written standing order entered jointly by the resident district judges of the district or of any division of the district or through oral directive or written order by any individual district judge in any case, cases, or category of cases assigned to that judge.

## RULE 73.1 Procedures for Consent to Trial Before a Magistrate Judge

### (A) Civil Cases.

(1) **Notice.** In all civil cases, the clerk shall notify the parties that, pursuant to 28 U.S.C. § 636(c), they may consent to have a full-time magistrate judge conduct any or all proceedings in the case and order the entry of a final judgment. Such notice shall be given or mailed to the plaintiff or his representative at the time an action is filed and to other parties as attachments to copies of the complaint and summons, when served. Additional notice may thereafter be provided to the parties upon direction or order by either a district judge or magistrate judge pursuant to 28 U.S.C. § 636(c)(2). The notice shall state that the parties are free to withhold their consent without adverse substantive consequences.

(2) **Execution of Consent.** Any party who consents to trial of any or all of the civil case by a magistrate judge must execute a consent form and return it to the office of the clerk of the court within forty-five (45) days of the date of service of the notice. The form shall not be returned if the party does not consent. No magistrate judge, district judge, or other court official may attempt to coerce any party to consent to the reference of any matter to a full-time magistrate. This rule, however, shall not preclude any district judge or magistrate judge from informing the parties that they may have the option of having a case referred to a full-time magistrate judge for all proceedings, including trial.

(3) **Reference.** Cases in which the parties have timely filed a fully executed consent form shall be referred by the clerk to a full-time magistrate judge, and notice thereof shall be made a part of the file, with copies furnished to the parties. Cases docketed in the Pensacola or Panama City division shall be referred to a magistrate judge resident in Pensacola, and cases docketed in Tallahassee or Gainesville shall be referred to a magistrate judge resident in Tallahassee. Upon reference to a magistrate judge, the magistrate judge shall have the authority

to conduct any and all proceedings, including a jury or non-jury trial, and to direct the clerk of court to enter
a final judgment in the same manner as if a district judge had presided.

(B) **Misdemeanor Cases.**

(1) If the defendant consents to disposition of a misdemeanor or petty offense case by a magistrate judge, the magistrate judge shall proceed as provided in Fed. R. Crim. P. 58. If the defendant does not consent to disposition of the case by a magistrate judge, the magistrate judge shall:

(a) If the prosecution is on a complaint charging a misdemeanor other than a petty offense, proceed as provided in Fed. R. Crim. P. 5(c) and 5.1.

(b) In all other cases, order the defendant to appear before a district judge for further proceedings on notice, fix appropriate conditions of release under 18 U.S.C. § 3142, and appoint counsel for eligible defendants under 18 U.S.C. § 3006A.

## RULE 77.1 Photographs; Broadcasting or Televising

Except as provided in N.D. Fla. Loc. R. 77.2, the taking of photographs or the broadcasting or televising of judicial proceedings is prohibited, except that a judge may authorize:

(A) the use of electronic or photographic means for the presentation of evidence or for the perpetuation of a record; and

(B) the broadcasting, televising, recording, or photographing of investiture, ceremonial, naturalization, or other special proceedings.

In order to facilitate the enforcement of this rule, no photographic, broadcasting, television, sound or recording equipment of any kind, except that of court personnel or other employees of the United States on official business in the building, will be permitted in any part of any building where federal judicial proceedings of any kind are usually conducted or upon the exterior grounds thereof, unless such is done with the approval of one of the judges of this court.

## RULE 77.2 Video or Telephone Transmissions in Civil Cases

### (A) Hearings and Conferences.

In the discretion of the judicial officer, conferences and hearings, including evidentiary hearings, may be held in civil cases by means of video or telephonic transmission from remote locations.

### (B) Trials.

In the discretion of the presiding judicial officer, unless prohibited by law or rule, evidence may be received in civil trials by means of video or telephonic transmissions from remote locations.

## RULE 77.3 Release of Information in Criminal and Civil Cases

(A) **Release of Information by Officials - General.** No judicial branch employee (including a judge's staff, clerks, probation officers, and court reporters), no officer, employee or representative of the United States Marshals Service or court security officer, nor any state, local, or federal law enforcement officer or employee associated with or assisting in the preparation or trial of a criminal case, may disseminate by any means of public communication, without authorization by the court, information relating to an imminent or pending criminal or civil case that is not part of the public records of the court.

(B) **Release of Information by Attorneys - Criminal Cases.**

(1) It is the duty of attorneys, including the United States Attorney, who represent parties in criminal cases, and their respective staffs, not to release or authorize the release of information or opinion which a reasonable person would expect to be disseminated by means of public communication, in connection with pending or imminent criminal litigation with which the attorney is associated, if there is a substantial likelihood that such dissemination will cause material prejudice to a fair trial or otherwise cause material prejudice to the due administration of justice.

(2) With respect to a grand jury or other pending investigation of any criminal matter, an attorney participating in or associated with the investigation shall refrain from making any extrajudicial statement which a reasonable person would expect to be disseminated by 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.

(3) From the time of arrest, issuance of an arrest warrant, or the filing or a complaint, information, or indictment in any criminal matter until the commencement of trial or disposition without trial, no attorney nor others associated with the prosecution or defense shall release or authorize the release of any extrajudicial statement which a reasonable person would expect to be disseminated by means of public communication, relating to that matter and concerning:

(a) The prior criminal record (including arrests, indictment, or other charges of crime) or the character or reputation of the accused, except that the attorney may make a factual statement of the accused's name, age, residence, occupation, and family status. If the accused has not been apprehended, an attorney associated with the prosecution may release any information necessary to aid in apprehension of the accused or to warn the public of any dangers the accused may present;

(b) 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;

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

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

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

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

(4) These prohibitions shall not be construed to preclude the attorney, in the proper discharge of 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 the investigation; from making an announcement, at the 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.

(5) During the trial of any criminal matter, including the period of selection of the jury, no attorney 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 which a reasonable person would expect to be disseminated by means of public communication, except that an attorney may quote from or refer without comment to public records of the court in the case.

(6) After the completion of a trial or disposition without trial of any criminal matter, and prior to the imposition of sentence, an attorney associated with the prosecution or defense shall refrain from making or authorizing any extrajudicial statement which a reasonable person would expect to be disseminated by means of public communication if there is a substantial likelihood that such dissemination will materially prejudice the imposition of sentence.

(7) 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 attorney who represented a party from replying to charges, made public, of attorney misconduct.

(C) **Release of Information by Attorneys - Civil Cases.** An attorney associated with a civil action shall not during its investigation or litigation make or participate in making an extrajudicial statement, other than a quotation from or reference to public records, which a reasonable person would expect to be disseminated by means of public communication if there is a substantial likelihood that such dissemination will cause material prejudice to a fair trial and which relates to:

(a) Evidence regarding the occurrence or transaction involved;

(b) The character, credibility, or criminal record of a party, witness, or prospective witness;

**(c)The performance or results of any examinations or tests or the refusal or failure of a party to submit to such;**

(d) An opinion as to the merits of the claims or defenses of a party, except as required by law or administrative rule; or

(e) Any other matter reasonably likely to interfere with a fair trial of the action.

(D) **Special Orders in Widely Publicized and Sensational Cases.** 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: (1) extrajudicial statements by parties and witnesses likely to interfere with the rights of the accused to a fair trial by an impartial jury, (2) the seating and conduct in the courtroom of spectators and news media representatives, (3) management and sequestration of jurors and witnesses, and (4) any other matters which the court may deem appropriate for inclusion in such an order.

**RULE 77.4 Marshal to Attend Court**

Unless excused by the presiding judge, the United States Marshal of this district, or deputy, or, as an alternative in civil cases only, a court security officer, shall be in attendance during all sessions of any kind conducted in open court.

## RULE 87.1 **Appeals in Bankruptcy Cases**

Appeals to the district court in bankruptcy cases shall be commenced by the filing of a notice of appeal within ten (10) days after entry of the bankruptcy judge's ruling and the time limits otherwise applicable shall be in accordance with Bankruptcy Rules, Part VIII, Appeals to District Court or Bankruptcy Appellate Panel.

## RULE 88.1 Presentence Investigation Reports; Presentencing Procedures; Provisions of Pretrial Services

(A) Ordinarily, sentencing will occur approximately seventy (70) calendar days following the defendant's plea of guilty or *nolo contendere*, or upon being found guilty, subject to the time limitations and other provisions of Fed. R. Crim. P. 32, and following the preparation of a presentence report by the probation officer.

(B) The presentence report shall be disclosed only as permitted under Fed. R. Crim. P. 32; however, the probation officer's recommendation, if any, on the sentence, shall be disclosed only to the sentencing judge.

(C) The presentence report shall be deemed to have been disclosed (1) when a copy of the report is physically delivered; or (2) one (1) day after the report's availability for inspection is orally communicated; or (3) three (3) days after a copy of the report or notice of its availability is mailed.

(D) No person shall otherwise disclose, copy, reproduce, deface, delete from or add to any report within the purview of this rule.

(E) 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 request 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 probation officer of this court, the probation officer may file a petition seeking instruction from the court with respect to the manner in which that officer should respond to such subpoena or such process.

(F) 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. § 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 United States and to the defendant.

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

## RULE 88.2 Appeal of a Magistrate Judge's Rulings in Consent Misdemeanor Cases

(A) Appeals from any decision, order, judgment, or sentence entered by a magistrate judge in a misdemeanor criminal case, including petty offenses, as to which the defendant has consented to proceed before a magistrate judge shall be governed by Fed. R. Crim. P. 58.

(B) Upon receipt of the notice of appeal, the clerk shall docket the appeal and assign the case to a district judge.

(C) Unless excused by order of the district judge, every appellant shall be responsible for preparation of a typewritten transcript of the proceedings before the magistrate judge from which an appeal has been taken. If such transcript has been prepared from an audio tape recording, the transcript shall be submitted to the magistrate judge for certification of its accuracy. After certification by the magistrate judge, the transcript shall be forwarded to the clerk for filing, and the clerk shall promptly notify the parties of the filing. A copy of the record of such proceedings shall be made available, at the expense of the court. to a person who establishes by affidavit the inability to pay or give security therefore.

(D) Within fifteen (15) days of the date on which the transcript is filed in the clerk's office, or if there is to be no transcript, within fifteen (15) days of the filing of the notice of appeal, the appellant shall serve and file a brief which shall enumerate each reversible error claimed to have occurred in the proceedings before the magistrate judge. Within fifteen (15) days of service of appellant's brief, the appellee shall serve and file a brief. The appellant may serve and file a reply brief within seven (7) days of service of appellee's brief.

(E) The district judge to whom the appeal is assigned may hear oral argument or may decide the appeal on the briefs. Requests for oral argument shall be made at the time briefs are filed and shall be granted at the discretion of the district judge.

## RULE 4. Verification

Verification of pleadings and answers to interrogatories, when required, shall be by the parties, or any of them; provided, if no party be within the district or reasonably available, verification may be made by an agent, attorney in fact or the attorney of record, who shall state briefly the sources of this knowledge or information, declare that the document affirmed to is true to the best of his knowledge, information, and belief, and state the reason why the verification is not made by a party. If the personal oath of the party or all of the parties be demanded, motion may be made for a stay, pending the procurement of such verification by commission or otherwise.

RULE 5. **Form of Salvage Claims**

In cases of salvage, the complaint shall also separately state the value of the hull, cargo, freight, and other property saved, the amount claimed in respect of each, the names of the principal salvors and that the suit is instituted in their behalf and in behalf of all other persons interested or associated with them. It shall also have attached to it a list of the names of all the salvors and all persons entitled to share in the salvage so far as is known and also the agreement of consortship existing among them, so as to enable the court to divide the salvage according to the rights or interests of the parties.

RULE 6. **Other Matters**

Special maritime procedures and remedies, such as petitions for surveys of ship and berths, for authorization of a master to sell his damaged vessel, for discharge of a crew or of a particular seaman, and orders for appraisement of property and appointment of appraisers are left to be handled by an originating motion under the provisions of Rule 7 (b) of the Federal Rules of Civil Procedure.

RULE 7. **Security and Costs**

Security for costs shall not be required for an admiralty and maritime claim under Rule 9(h), Federal Rules of Civil Procedure, where such action is solely in personam. There shall be filed with the initial pleading in all other admiralty and maritime actions in rem or quasi in rem, including actions in personam with process of maritime attachment and garnishment, actions in rem, limitation of liability, salvage and petitory, possessory, and partition actions a stipulation for costs in the principal sum of $500.00 on condition that the principal shall pay all costs awarded against him, it, or them, by this court and in case of appeal by any appellate court. The stipulation for costs shall have at least one surety resident in Florida. Any incorporated surety company authorized to do business in this district may be accepted as such surety. In place of the stipulation for costs with surety, a party may deposit the necessary amount in the registry of the court to secure such costs as may be awarded. Where a single cause is proceeding both in rem and in personam the stipulation for costs shall likewise be in the sum of $500.00.

RULE 8. **Form of Stipulation**

Except in cases instituted by the United States by information or complaint of information upon seizure for any breach of the revenue, navigation, or other laws of the United States, stipulations or bonds in admiralty need not be under seal and may be executed by the agent or attorney of the stipulator or of the obligor. Stipulations for costs need not be signed or executed by the party and shall be sufficient if executed only by the surety or sureties.

## RULE 9. Combined Stipulations

In cases where a stipulation for value or release bond is given, the claimants or defendant may, at his option, increase the amount of such stipulation as fixed by the court, or by agreement, by the amount of the appropriate stipulation for costs, in which event no separate stipulation for costs shall be required.

## RULE 12. Appraisement and Appraisers

An order for appraisement of property under arrest or attachment shall issue only upon motion and notice pursuant to Rule 7 (b), Federal Rules of Civil Procedure, or upon the consent of the attorneys for the respective parties. Only one appraiser is to be appointed, unless otherwise ordered.

Appraisers, before executing their trust, shall be sworn or affirmed to faithful discharge thereof before the clerk or his deputy, or other person authorized to administer oaths, and the appraisement, when made, shall be returned to the clerk's office, who shall give notice thereof to the parties or their attorneys and an appeal instanter therefrom may be taken to the court.

The appraisers, for making and filing appraisement, shall receive fees to be fixed by the court and paid by the party at whose instance the appraisement was ordered to be thereafter taxed as costs in the cause.

RULE 13. **Attachment and Garnishment**

With respect to any admiralty or maritime claim in personam, a verified complaint may contain a prayer for process to attach the defendant's goods and chattels, or credits and effects in the hands of garnishees named in the complaint to the amount sued for, if the defendant shall not be found within the district. Such a complaint shall be accompanied by an affidavit signed by the plaintiff or his attorney that, to the affiant's knowledge, or to the best of his information and belief, the defendant cannot be found within the district, and such affidavit shall set forth the steps taken to ascertain that the defendant could not be found within the district.

When a verified complaint supported by such an affidavit also states that the defendant's property expected to be found in the district and sought to be attached or garnished is such as may be removed from the jurisdiction, concealed, or destroyed so as to frustrate jurisdiction, the clerk shall forthwith issue a summons and process of maritime attachment and garnishment.

In all other instances, process of maritime attachment and garnishment shall issue only upon order of the court after hearing, upon reasonable notice to the defendant, by mail, telegraph or other reasonable means, except that such hearing and order shall not be required if the plaintiff or his attorney further shows by verified factual allegations that such notice cannot be given with reasonable diligence.

## RULE 14. **Actions In Rem: Default**

No judgment by default shall be entered in any action in rem except upon proof, which may be by affidavit, (a) that the plaintiff has given notice of the action to the last person, if any, known or believed by the plaintiff to be an owner of the property arrested, to any person known to the plaintiff to claim to be an owner of such property and, if the property is a vessel, to every person having an interest in the vessel if such interest is recordable and recorded under the navigation laws of the United States, under the Ship Mortgage Act of 1920, as amended, 46 USC 911-984, or under any state statute enacted pursuant to the Federal Boating Act of 1958, 46 USC 527, by mailing to him a copy of the complaint and warrant of arrest, using any form of mail requiring a return receipt, or (b) that the complaint and warrant of arrest have been served on such person in a manner authorized by Rule 4 (d) or (i) of the Federal Rules of Civil Procedure, or (c) that the plaintiff has made diligent efforts to give notice of the action to such person but has been unable to do so.

**RULE 15. Actions In Rem and Quasi In Rem: General Provisions**

(A) **Restricted Appearance.** An appearance to defend against an admiralty and maritime claim with respect to which there has issued process in rem, or process of attachment and garnishment, may be expressly restricted to the defense of such claim, and in that event shall not constitute an appearance for the purpose of any other claim with respect to which such process is not available or has not been served. An appearance of a defendant at a hearing prior to the issuance of a writ of attachment or garnishment shall not be deemed an appearance for any other purpose.

(B) **Hearing on Security or Release of Property.** In any case where property is attached, garnished or arrested, the court, upon application of any party asserting an interest in such property and upon notice to other known interested parties, may forthwith grant a hearing at which the court may entertain motions for, and where appropriate grant, relief as follows:

(1) fixing the amount of security, pursuant to Rule E (5) of the Supplemental Rules for Certain Admiralty and Maritime Claims;

(2) reducing the amount of security given pursuant to Rule E (6) of the Supplemental Rules;

(3) permitting the amendment of the complaint, pursuant to Rule 15, F.R.C.P.;

(4) dismissing a complaint in rem and ordering the release of arrested property for failure of the complaint to state a maritime claim upon which relief can be granted against the arrested property, in compliance with Rule E (2) (a), of the Supplemental Rules, subject to any prompt and adequate amendment of the complaint, or ordering the release of property illegally or mistakenly arrested;

(5) ordering the release of attached or garnished property for failure of the plaintiff to comply with Rule B (1) and E (2) (a), of the Supplemental Rules, subject to any prompt and adequate amendment of the complaint, or for failure of the plain-

tiff, upon demand, to show probable cause for attachment or garnishment, or for illegal or mistaken attachment;

(6) ordering that the plaintiff forthwith give security adequate to respond to any damages recoverable by the owner or other parties having any right, title or interest in the property by reason of its improper arrest, attachment or garnishment or requirement of excessive security, upon good cause shown by such owner or other party, and that, upon failure to post such security, the property be released;

(7) granting a preliminary injunction to protect any party from irreparable injury, loss or damage;

(8) awarding the costs of the hearing.

**RULE 16. Notice of Seizure to be Published**

Unless a stipulation for value has been filed or other security satisfactory to plaintiff or his attorney of record has been given, and the property which has been seized has been released within ten (10) days after execution of process, the plaintiff shall cause public notice of the action and arrest to be given in a newspaper of general circulation in the district designated by order of the court. The notice shall be substantially as follows:

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

Cause No. ( )

(Name(s) of Plaintiff or Intervenor) vs.
(Description of Property Seized)

NOTICE: The United States Marshal, Northern District of Florida, has arrested the foregoing (Vessel and appurtenances) (property) in the above cause, civil and maritime for (nature of claim, i.e. contract, salvage, damage, collision, foreclosure of preferred mortgage, etc.) amounting to ($ ) (and nature of unliquidated items). Process returnable on (month, day and year, i.e. 30 days following execution of process) at the United States Court House, (city), Florida, and any person claiming any interest therein must appear no later than that date and file written claims, answer or other defense, in person, or by attorney, or default and condemnation will be ordered.

DATED at (city of publication), Florida, (month, day and year of publication).

(Name)
(Address)
Attorney(s) for (Plaintiff) (Intervenor)

Unless otherwise directed by order of the court, such public notice may be given by publication once, without order specifically designating such newspaper, in any newspaper of general circulation in the county in which the arrest is made.

## RULE 18. **Limitation of Claims After Sale**

In proceedings in rem, after sale of the property under a final judgment, claims upon the proceeds of sale, except for seamen's wages, will not be admitted in behalf of lienors filing complaints or motions to intervene after the sale, to the prejudice of lienors under complaints or motions to intervene filed before the sale, but shall be limited to the remnants and surplus unless for cause shown it shall be otherwise ordered.

## RULE 19. **Premiums on Surety Bonds to be Taxed as Costs**

If costs shall be awarded to either or any party, then the reasonable premiums or expenses paid on all bonds or stipulations or other security by the prevailing party in whose favor such costs are allowed shall be taxed as part of the costs of the case.

## RULE 20. **Dismissals by Consent**

An action subject to the admiralty and maritime jurisdiction of this court may be dismissed and stipulations or bonds given therein cancelled and writ of restitution issued by the clerk as of course, upon the filing in such cause of the written consent of all parties of record, including intervenors, if any.