



THE FLORIDA BAR
LABOR & EMPLOYMENT LAW SECTION
E - U P D A T E S
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December 2017

Carlo D. Marichal
Publications Sub-Committee Chair

**SUMMARY OF AMENDMENTS TO LOCAL RULES FOR S.D. FLA.
ADMINISTRATIVE ORDER 2017-60 (EFFECTIVE DEC. 1, 2017)**

Rule 5.3 Files and Exhibits

(a) Removal of Original Papers.

Implements new exceptions (summarized below) as provided in this rule which, in pertinent part, states: “No original papers in the custody of the Clerk of Court shall be removed by anyone without order of the [c]ourt until final adjudication of the action or proceeding and disposition of the appeal”

(b) Exhibits.

(1) Delivery to and Retention by Clerk.

Adds a provision permitting a party to retrieve from the Clerk of Court an exhibit offered or introduced into evidence during a hearing or trial once the exhibit is electronically filed with the court.

Distinguishes offering into evidence an exhibit consisting of drugs, cash, counterfeit notes, weapons, etc., which, because of the size or nature, requires special handling, and in such case, *that party shall contemporaneously deliver to the Clerk of Court a photograph of the physical exhibit, to be later electronically filed, and that party shall retain the exhibit, or representative sample, during the pendency of the proceeding or appeal, and in a criminal case, shall retain the exhibit for an additional period of one (1) year after the date on which the conviction becomes final.*

(2) Mandatory Electronic Filing. (NEW RULE)

Implements new rule that, unless otherwise ordered by the court, *a party must within ten (10) days of the conclusion of a hearing or trial (1) file an electronic version of each documentary exhibit offered or introduced into evidence; and (2) file a digital photograph of each non-documentary physical exhibit offered or introduced into evidence.*

Before filing, such party must review each exhibit and redact any sensitive, confidential, or private information (in accordance with Fed. R. Civ. P. 5.2; Fed. R. Crim. P. 49.1), or seek a court order to seal the exhibit or exempt the exhibit from electronic filing.

(3) Exemptions from Mandatory Filing. (NEW RULE)

The following exhibits are exempt from mandatory filing: (1) sealed/ex parte exhibits in criminal cases; (2) contraband images, audio recordings, and video recordings, which must be physically filed with the Clerk of Court within ten (10) days of the conclusion of the hearing or trial, via CD, DVD, or other electronic medium, if such exhibit was offered or introduced into evidence, or in original physical form if not offered or introduced into evidence; or (3) by order of the court, exhibits containing voluminous amounts of confidential information subject to privacy protections, which must be delivered in original physical form, or via CD, DVD, or other electronic medium, to the Clerk of Court within ten (10) days of the hearing or trial, but such exhibits need not be filed.

(4) Certification of Compliance Requirement. (NEW RULE)

When the exhibits offered or introduced into evidence at a hearing or trial are (1) electronically filed by a party, or (2) delivered to the Clerk of Court in accordance with the procedures for exempt exhibits, the attorney shall complete and file a Certification of Compliance Re Admitted Evidence form.

(5) Attorney Responsibility and Failure to Comply. (NEW RULE)

It is the responsibility of the attorney to discharge a party's obligations at a hearing or trial during which that party offered or introduced an exhibit.

A party's failure to timely electronically file exhibits or a Certificate of Compliance may result in the imposition of sanctions.

(6) Dismissals, Acquittals, and Voluntary Dismissals. (NEW RULE)

Unless court ordered sua sponte or on motion of a party, compliance with the exhibit requirements above is not required for a (1) criminal trial concluding in a verdict of acquittal, (2) pre-verdict dismissal on all charges, or (3) dismissal in a civil case.

(c) Removal of Exhibits.

Implements more specific requirements regarding a party's removal of exhibits.

Within ten (10) days of filing exhibits offered or introduced into evidence at a hearing or trial, a party must make arrangements with the Clerk of Court to retrieve all original exhibits electronically filed. Any exhibits returned to or retained by the filing party must be kept for safe keeping until conclusion of any appeals, and in a criminal case, for one (1) year after the conviction becomes final.

For any exhibit retained by the Clerk of Court because the exhibit was exempt from electronic filing, the party offering or introducing the exhibit into evidence at the hearing or trial shall retrieve the exhibit from the Clerk of Court within three (3) months after final adjudication and disposition of any appeals, and in a criminal case, shall retain the exhibit for one (1) year after the conviction becomes final.

Rule 5.4 Filings Under Seal; Disposal of Sealed Materials

(b) Procedure for Filing Under Seal in Civil Cases.

(1) Adds language that requires a party seeking to file under seal in a civil case *not otherwise sealed in its entirety as permitted or required by federal law, to file electronically via CM/ECF a motion to file under seal. Proposed sealed material shall not be filed under seal unless the court grants the motion to file under seal. "Notice of Sealed Filing" must accompany sealed filing.*

Further, if prior to issuance of a decision on the motion to file under seal, a party files publicly or reveals the content of the proposed sealed material, then the moving party must redact all content subject to motion.

(2) In brief, a pro se party must comply with the above, with some additional procedural requirements to file under seal.

(3) *"A party or pro se party seeking to seal a case in its entirety must file a motion to seal conventionally with the Clerk of Court in a plain envelope clearly marked 'sealed document' with the style of the case noted on the outside of the envelope." If such motion is granted, subsequent filings must be filed conventionally with the Clerk of Court as sealed documents. The filer must complete service conventionally as well.*

(e) Court Ruling.

(1) Sealed Filings.

Removes language that provided that in the event the court denies a motion to file under seal, the proposed sealed filing shall not be public and shall be deleted from the docket.

Rule 7.1 **Motions, General**

(a) Filing.

(2) *Adds language that requires any motion seeking emergency or ex parte relief or a temporary restraining order (and other motions listed previously) be accompanied by a proposed order that is filed and submitted via e-mail to the court.*

(b) Memorandum of Law.

(2) *Table of Contents and Table of Citations no longer counted toward twenty- (20-) page limit on memoranda of law, nor ten- (10-) page limit on reply memoranda.*

Rule 16.1 **Pretrial Procedure in Civil Actions**

(2) Conference Report.

Adds one (1) requirement to contents of Conference Report.

Among other things, *the written conference report outlining the discovery plan must include any issues about (i) disclosure, discovery, or preservation of ESI; (ii) claims of privilege or of protection as trial preparation materials; and (iii) when parties have agreed to use the ESI Checklist.*

(3) Joint Proposed Scheduling Conference.

Shortens period in which court must enter a Scheduling Order.

The court “shall enter a Scheduling Order as soon as practicable but in any event within sixty (60) days after the appearance of a defendant and within ninety (90) days after the complaint has been served on defendant.” It is within the discretion of the judge to decide whether to hold a scheduling conference prior to entering the Scheduling Order.

Rule 16.2 **Court Annexed Mediation**

(f) Mediation Report; Notice of Settlement; Judgment.

(1) Mediation Report

The mediator must provide the parties with a Mediation Report within seven (7) days following the mediation conference (*regardless of whether the mediator has access to CM/ECF*).

If the mediator is an authorized user of CM/ECF, the mediator must electronically file the Mediation Report. *If the mediator is not an authorized user of CM/ECF, the mediator shall either: (a) file the Mediation Report conventionally, or (b) with the consent of the parties, arrange for one of the parties to file a “Notice of Filing Mediator’s Report,” which shall attach the report as an exhibit.*

(2) Notice of Settlement

Now requires that counsel promptly notify the court in the event the parties reach an agreement as to settlement *pursuant to the requirements of S.D. Fla. L.R. 16.4.*

Rule 16.4 **Notice of Settlement** (NEW RULE)

Implements a provision *requiring counsel to notice the court if the parties reach an agreement to settle the entire case or certain claims or issues therein, by filing a notice of settlement within (2) court days of such agreement being reached.*

Further, *the notice shall be filed jointly by counsel for all parties to the settlement.*

Alternatively, the parties may file a notice of stipulation, as applicable, pursuant to Fed. R. Civ. P. 41 (Dismissal of Actions). However, unless a notice or stipulation is filed within two (2) court days of the parties reaching settlement, the parties are still required to file a separate notice of settlement.

Rule 23.1

Class Actions

(E) Actions In Rem and Quasi In Rem: General Provisions

(10) Custody and Safekeeping

Notwithstanding the provisions of other rules, “*in this District it is the practice of the Marshall to not take custody of any arrested vessel or execute an arrest warrant until a substitute custodian is in place.*” If the Marshal takes custody, then the Marshal shall be responsible for providing adequate and necessary security for safekeeping *until a substitute custodian is appointed.*

*****S.D. Fla. released a new “Checklist for Rule 26(f) Conference Regarding Electronically Stored Information (ESI)”**

- Range of topics includes preservation, e-discovery liaisons, informal discovery about location and types of systems, proportionality and costs, search, phasing, production, and privilege.
- The court encourages use of the above-referenced checklist in connection with and preparation of a federal 26(f) or local 16.1(b) (2) conference report.

~ By Alex T. Harne, Ford Harrison LLP

January 2018 Section Calendar

January 9, 2018

AUDIO WEBCAST:

Nuts and Bolts of Union Formation and Elections (2578R)

12:00 noon to 12:50 p.m.

Susan Potter Norton, Allen Norton & Blue, P.A., Coral Gables

Thursday, January 18, 2018

Labor & Employment Law Section Executive Council Meeting

5:00 p.m. to 6:00 p.m.

The Florida Bar Winter Meeting

DoubleTree by Hilton

(at the entrance of Universal Orlando)

January 18–19, 2018

18th Labor and Employment Annual Update and Certification Review (2592R)

The Florida Bar Winter Meeting

DoubleTree by Hilton

See next page for more information



Save the Date!

18TH LABOR AND EMPLOYMENT LAW ANNUAL UPDATE AND CERTIFICATION REVIEW (2592)

January 18 - 19, 2018

**DoubleTree by Hilton
at the Entrance of Universal Orlando
5780 Major Boulevard • Orlando, Florida 32819 • (407) 351-0000**

Make your hotel room reservation online or contact the hotel and indicate you will be attending the Florida Bar Winter Meeting. Our special group rate of \$155 single/double occupancy will be available until December 29th or until the group block is sold-out, whichever comes first. Group Code: WIN. Deposit required at time of reservation.

OVERNIGHT PARKING

Discounted Self-Parking = \$13.00
Discounted Valet Parking = \$23.00

DAILY PARKING / DRIVE-INS

Discounted Self-Parking = \$11.00
Discounted Valet Parking = \$23.00