

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

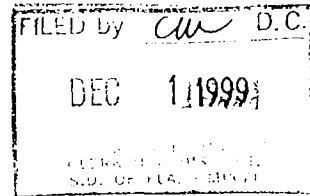
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IN RE:

Administrative Order 99-79

AMENDMENTS TO THE LOCAL RULES -  
NOTICE OF PROPOSED AMENDMENTS,  
OF OPPORTUNITY FOR PUBLIC COMMENTS,  
AND OF HEARING TO RECEIVE COMMENTS

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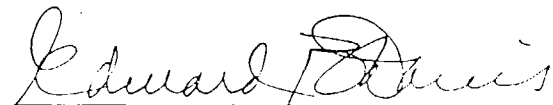


The Court's Advisory Committee on Rules and Procedures has recommended that this Court amend Local General Rules 1.1, 3.4, 3.8, 5.1, 5.4, 7.1, 16.3, 62.1, 88.4 and 88.10, Admiralty and Maritime Rules B and C, Rule 5 of the Special Rules Governing the Admission and Practice of Attorneys, and Rules II and III of the Rules Governing Attorney Discipline in the form attached. In accordance with Fed.R.Civ.P. 83(a)(1) and Fed.R.Crim.P. 57(a)(1), it is hereby

**ORDERED** that the Clerk of the Court is hereby directed, for the next 30 days: (a) to publish this Order (without the attachments) three times per week in the Daily Business Review (in the editions published in Dade, Broward and Palm Beach Counties, Florida); and (b) to offer every person who files any papers in any action in this Court, and to give to anyone who so desires, a copy of this Order with the attached proposed rule amendments.

**IT IS FURTHER ORDERED** that the Court will conduct an *en banc* public hearing on the proposed rule amendments on the 27th day of January, 2000, at 2:00 o'clock p.m. at the David W. Dyer Federal Building and United States Courthouse, 300 Northeast First Avenue, Central Courtroom, Miami, Florida. Those who want to appear and offer oral comments on the proposed rule amendments at this hearing shall file written notice to that effect with the Clerk of the Court no later than five days prior to the hearing. Those who want to offer only written comments on the proposed rule amendments must file their written comments with the Clerk of the Court no later than ten days prior to the hearing.

**DONE AND ORDERED** at Miami, Florida this 1<sup>st</sup> day of December, 1999.

  
\_\_\_\_\_  
EDWARD B. DAVIS  
CHIEF UNITED STATES DISTRICT JUDGE

- c: Honorable R. Lanier Anderson, III, Chief Judge, Eleventh Circuit Court of Appeals
- All Southern District Judges and Magistrate Judges
- Norman E. Zoller, Circuit Executive, Eleventh Circuit
- All Members of the Advisory Committee on Rules and Procedures
- Brian F. Spector, Chair, Advisory Committee on Rules & Procedures
- Library
- Daily Business Review

GENERAL RULES

RULE 1.1 SCOPE OF THE RULES

\* \* \* \* \*

B. **Effective Date.** These rules become effective February 15, 1993, provided however, that the 1994 amendments shall take effect on December 1, 1994, the 1996 amendments shall take effect on April 15, 1996, the 1997 amendments shall take effect on April 15, 1997, the 1998 amendments shall take effect on April 15, 1998, ~~and~~ the 1999 amendments shall take effect on April 15, 1999, and the 2000 amendments shall take effect on April 15, 2000 and shall govern all proceedings thereafter commenced and, insofar as just and practicable, all proceedings then pending.

\* \* \* \* \*

RULE 3.4 ASSIGNMENT OF ACTIONS AND PROCEEDINGS

D. The District is divided into five Divisions: the Fort Pierce Division (Highlands, Indian River, Martin, Okeechobee and St. Lucie Counties); the West Palm Beach Division (Palm Beach County); the Fort Lauderdale Division (Broward County); the Miami Division (Miami-Dade County); and the Key West Division (Monroe County). ~~Each Judge in the district is assigned to either the Northern Division (Palm Beach, Highlands, Indian River, Martin, Okeechobee, St. Lucie and Broward Counties) or the Southern Division (Dade and Monroe Counties).~~ Cases are assigned by the Automated Case Assignment System to provide for blind, random assignment of cases and; to equitably distribute the District's case load, ~~and to minimize the need for Judges to travel between divisions.~~ Each Judge in the District has chambers in one of three Divisions (Miami, Fort Lauderdale or West Palm Beach). A Judge with chambers in one Division may be assigned a case with venue in another Division. Once the case has been assigned, all papers required to be served on a party shall be filed with the clerk where the assigned Judge is chambered (even if different from the Division in which venue is located) pursuant to Local General Rule 5.1.B.

Comments

(2000) Clarifies the Divisions of the Court and the manner in which cases are assigned.

\* \* \* \* \*

**RULE 3.8 DUTY JUDGE**

There shall be established for the ~~Northern and Southern~~ Miami, Fort Lauderdale and West Palm Beach Divisions on a monthly rotating basis, to be determined by the Court, a schedule designating each active resident Judge as Duty Judge who shall be available to hear and preside over the following:

**Comments**

(2000) Clarifies the Divisions of the Court.

\* \* \* \* \*

**RULE 5.1 FILING AND COPIES**

**A. Form.** All civil and criminal pleadings, motions, and other papers tendered for filing shall:

4. Include a caption with:

(a) The name of the court ~~including division~~, centered across the page;

**Comments**

(2000) Amendment to subpart 4(a) dispenses with the need for reference to the Division of the Court to avoid confusion resulting from the requirement to file papers, in accordance with Local General Rule 5.1.B, in the Division where the assigned Judge is chambered, which is different from the Division in which the case is venued. A corresponding change is made to the sample form following the rule.

**SAMPLE FORM FOLLOWING RULE 5.1**

(Two-holed punched at top of page)  
(1" from top of page, and centered,  
begin title of court)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
\_\_\_\_\_ DIVISION

[remainder of form unchanged]

\* \* \* \* \*

**RULE 5.4 FILINGS UNDER SEAL; DISPOSAL OF SEALED MATERIALS.**

**A. General Policy.** Unless otherwise provided by law, Court rule or Court order, proceedings in the United States District Court are public and Court filings are matters of public record. Where not so provided, a party seeking to file matters under seal shall follow the procedures prescribed by this rule.

**B. Procedure for filings under seal.** A party seeking to make a filing under seal shall:

1. Deliver to the Clerk’s Office two copies of the proposed filing, each contained in a separate plain envelope, with the case number and style of the action noted on the outside of each envelope. The Clerk’s Office shall note on each envelope the date of filing and docket entry number.

2. File a motion to seal, setting forth a reasonable basis for departing from the general policy of a public filing, and generally describing the matter contained in the envelope. The motion shall state the period of time that the party seeks to have the matter maintained under seal by the Clerk’s Office. Unless permanent sealing is sought, the motion shall contain a date on which the matter can be unsealed or destroyed by the Clerk. Absent extraordinary circumstances, no matter sealed pursuant to this rule may remain sealed for longer than five (5) years from the date of filing.

3. Complete and file a “Sealed Filing Cover Sheet” in the form set forth at the end of this rule. The form is available at the Clerk’s Office.

**C. Court Ruling.** If the Court grants the motion to seal, the Clerk’s Office shall maintain the matter under secure conditions until the date specified in the Court order. If the Court denies the motion to seal, both copies of the filing and the motion to seal shall be returned to the party.

**D. Disposition of Sealed Matter.** Unless the Court’s sealing order permits the matter to remain sealed permanently, the Clerk will dispose of the sealed matter upon expiration of the time specified in the Court’s sealing order by unsealing, destroying, or returning the matter to the filing party.

**Comment**

(2000) The rule codifies existing procedure. By its terms, this rule does not apply to materials covered by specific statutes, rules or court orders authorizing, prescribing or requiring

1 secrecy. However, the Clerk’s Office and litigants may find it helpful to complete a “Sealed  
2 Filing Cover Sheet” in the form set forth at the end of this rule for materials being filed under  
3 seal after the entry of, and pursuant to, a protective order governing the use and disclosure of  
4 confidential information.  
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[Remainder of Page Intentionally Left Blank

New Sealed Filing Cover Sheet Follows on Next Page]

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF FLORIDA  
3 Case No \_\_\_\_\_

4 A.B.  
5 Plaintiff,  
6 vs.  
7 C.D.  
8 Defendant.  
9 \_\_\_\_\_/

DOCKET ENTRY # \_\_\_\_\_  
(to be completed by Clerk of Court)

10  
11 SEALED FILING COVER SHEET

12 Party Filing Matter Under Seal:

13 Name: \_\_\_\_\_  
14 Address: \_\_\_\_\_  
15 Telephone: \_\_\_\_\_  
16 Facsimile: \_\_\_\_\_  
17 E-mail: \_\_\_\_\_

18  
19 Counsel for Party Filing Matter Under Seal:

20 Name: \_\_\_\_\_  
21 Address: \_\_\_\_\_  
22 Telephone: \_\_\_\_\_  
23 Facsimile: \_\_\_\_\_  
24 E-mail: \_\_\_\_\_

25  
26 Date of Filing: \_\_\_\_\_

27  
28 Party has filed a separate Motion to Seal, requesting that the matter remain sealed:

29 \_\_\_ Until Conclusion of Trial  
30 \_\_\_ Until Conclusion of Direct Appeal  
31 \_\_\_ Until Case Closing  
32 \_\_\_ Permanently  
33 \_\_\_ Other \_\_\_\_\_

34  
35 If permanent sealing is required, specify the authorizing law, court order or court rule: \_\_\_\_\_  
36 \_\_\_\_\_

37  
38 The moving party requests that when the sealing period expires, the filed matter should be (select one):

39 \_\_\_ unsealed and placed in the public portion of the court file  
40 \_\_\_ destroyed  
41 \_\_\_ returned to the party or counsel for the party, as identified above  
42

43  
44  
45 COURT RULING

(to be completed by Clerk based on Court's order)

46  
47  
48 Ruling on Motion to Seal: \_\_\_ Granted \_\_\_ Denied \_\_\_ Other

49 Date: \_\_\_\_\_

50  
51 Matter May Be Unsealed After:

52 \_\_\_ Conclusion of Trial \_\_\_ Conclusion of Direct Appeal  
53 \_\_\_ Case Closing \_\_\_ Other \_\_\_\_\_

54  
55 \_\_\_ Matter to remain sealed absent further Court Order

\* \* \* \* \*

**RULE 7.1 MOTIONS, GENERAL**

**A. Filing.**

\* \* \* \* \*

**3. Pre-filing conferences required of counsel**

~~Motions for extensions of time and continuances shall include a representation by the movant's counsel that counsel has made a good faith effort to contact opposing counsel and shall state whether there is any objection to the motion.~~

(a) Prior to filing any motion in a civil case, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, to involuntarily dismiss an action, or any motion relating to discovery, counsel for the moving party shall confer (orally or in writing), or make reasonable effort to confer (orally or in writing), with counsel for the opposing party in a good faith effort to resolve by agreement the issues to be raised in the motion, and counsel for the opposing party shall cooperate with such efforts to confer and be obligated to act in good faith in attempting to resolve the matters at issue. At the time of filing the motion, counsel for the moving party shall file with the Clerk a statement certifying either: (a) that counsel have conferred in a good faith effort to resolve the issues raised in the motion and have been unable to do so; or (b) that counsel for the moving party has made reasonable effort (which shall be identified with specificity in the statement) to confer with the opposing party but has been unable to do so. Failure to comply with the requirements of this rule may be cause for the court to grant or deny the motion and impose on counsel an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

(b) The pre-filing conferences required of counsel on discovery motions are governed by Local Rule 26.1.I.

**Comments**

(2000) The addition of subsection 7.1.A.3.(a) is intended to eliminate unnecessary motions and is based on M.D. Fla. Local Rule 3.01(g) and S.D. Fla. Local General Rule 26.1.I. Subsection 7.1.A.3.(b) is intended merely to direct counsel to the pre-filing conference requirements of Local Rule 26.1.I for discovery motions.

\* \* \* \* \*

**RULE 16.3 CALENDAR CONFLICTS**

**A. Priorities.** In resolving calendar conflicts between the federal courts or between this Court and the courts of the State of Florida, the following case priorities must be considered:

- 1. Criminal cases should prevail over civil cases.
- 2. Jury trials should prevail over non-jury trials.
- 3. Appellate arguments, hearings, and conferences should prevail over trial court proceedings.
- 4. The case in which the trial date has been first set by written order should take precedence.

**B. Additional Circumstances.** Factors such as cost, numbers of witnesses and attorneys involved, travel, length of trial, age of case, and other relevant matters may warrant deviation from these case priorities.

**C. Notice and Agreement; Resolution by Judges.** When an attorney is scheduled to appear in two courts at the same time and cannot arrange for other counsel to represent the clients' interests, the attorney shall give prompt written notice of the conflict to opposing counsel, the clerk of each court, and the presiding judge of each case, if known. If the presiding judge of the case cannot be identified, written notice of the conflict shall be given to the chief judge of the court having jurisdiction over the case, or to the chief judge's designee. The judges or their designees shall confer and undertake to avoid the conflict by agreement among themselves. Absent agreement, conflicts should be promptly resolved by the judges or their designees in accordance with the above case priorities.

**Authority**

(2000) Resolution of the Florida State-Federal Judicial Council Regarding Calendar Conflicts Between State and Federal Courts. See also Fla.R.Judim.Admin. 2.052.

**Comments**

(2000) The adoption of this rule was prompted by the Resolution of the Florida State-Federal Judicial Council Regarding Calendar Conflicts Between State and Federal Courts.

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RULE 62.1 APPEAL BONDS; AUTOMATIC STAY

A. Appeal Bonds: A supersedeas bond staying execution of a money judgment shall be in the amount of 110% of the judgment, to provide security for interest, costs, and any award of damages for delay. Upon its own motion or upon application of a party the court may direct otherwise.

B. Extension of Automatic Stay When Notice of Appeal Filed. If within the ten (10) day period established by Fed.R.Civ.P. 62(a), a party files any of the motions contemplated in Fed.R.Civ.P. 62(b), or a notice of appeal, then unless otherwise ordered by the Court, a further stay shall exist for a period not to exceed thirty (30) days from the entry of the judgment or order. The purpose of this additional stay is to permit the filing of a supersedeas bond, which shall be filed by the end of the thirty (30) day period provided herein.

Comments

(2000) Added to eliminate the necessity for court approval of supersedeas bonds in every case in which a money judgment has been entered by fixing a standard amount, and to specify the time by which the bond must be filed in order to stay execution. Extension of the automatic stay is modeled after W.D. Okla. Local Rule 62.1, N.D. Okla. Local Rule 62.1 and E.D.N.C. Local Rule 97.00.

\* \* \* \* \*

**RULE 88.4 PETTY CERTAIN OFFENSES PERTAINING TO — NATIONAL PARKS, PRESERVES, GOVERNMENT RESERVATIONS, HISTORIC SITES, TREATIES AND WILDLIFE ACTS**

A. Covered Offenses. This Rule shall apply to petty offenses, as defined in 18 U.S.C. §1, and to certain misdemeanors as shall be identified from time to time by the Court in collateral schedules. Collectively, these petty offenses and identified misdemeanors shall be referred to for purposes of this Rule as “covered offenses”.

B. Collateral and Mandatory Appearance.

1. Covered Petty offenses, as defined in 18 U.S.C. § 1, which are committed within the boundaries of National Parks, Preserves, Historic Sites, or Government Reservations, including but not limited to military installations and violations under the various Treaties and Wildlife Acts, for which collateral may be posted and forfeited in lieu of appearance by the person charged, together with amounts of collateral to be posted and offenses for which a mandatory appearance is required, shall be in accordance with schedules which may from time to time be approved by the Court and filed with the Clerk.

2. Collateral may not be posted for any ~~designated~~ covered offense if the alleged violator has previously been convicted of any such offense.

**B C. Forfeiture of Collateral.**

1. Any person issued a violation notice for a ~~petty~~ covered offense for which collateral can be posted may, upon request of the issuing officer, post the required amount by placing cash, personal check or money order in the official violation notice envelope and, after sealing same, delivering it to authorized personnel at a designated office where a receipt will be given. All such envelopes received will be forwarded via mail each day, except for those containing cash which shall be personally delivered to the Clerk of this Court.

2. The posting of collateral shall signify that the offender does not wish to appear ~~contest the charge~~ nor request a hearing before the Judge. Collateral so posted shall be forfeited to the United States of America and the proceedings shall be terminated ~~such forfeiture will be tantamount to a finding of guilt.~~

**E D. Failure to Post Collateral.**

1. If a person charged with an covered offense for which collateral is required fails to post and forfeit collateral any punishment, including fine, imprisonment or probation may be imposed within the limits established by law upon conviction by plea or after trial.

2. No person shall be detained for failure to post collateral for a ~~petty~~ covered offense for which collateral may be posted unless ~~he~~ the person is placed under arrest.

**D E. Arrest.** Nothing contained in these Rules shall prohibit a law enforcement officer from arresting an alleged violator for the commission of any offense, including those for which collateral may be posted or mandatory appearance required, and forthwith notifying a Magistrate Judge for the purpose of appearance or setting bail.

(Schedule of fines and mandatory appearance on file with office of Clerk and agencies charged with enforcement thereof.)

**Comments**

(2000) Encompasses certain misdemeanors as well as petty offenses.

\* \* \* \* \*

**RULE 88.10 CRIMINAL DISCOVERY**

[No change in rule.]

**Comments**

(2000) With regard to discovery practices related to search warrants in criminal cases see September 7, 1999 letter from United States Attorney Thomas E. Scott which has been posted at the U.S. Attorney's web site at [http://www.usdoj.gov/usao/fls/Discovery\\_Practices.html](http://www.usdoj.gov/usao/fls/Discovery_Practices.html).

\* \* \* \* \*

**ADMIRALTY AND MARITIME RULES**

**RULE B. ATTACHMENT AND GARNISHMENT:  
SPECIAL PROVISIONS**

\* \* \* \* \*

**(7) Procedural Requirements for the Entry of Default Judgment.** Not later than ~~five (5)~~ thirty (30) days following notice of the entry of default, the party seeking the entry of default judgment shall file a motion and supporting legal memorandum, along with other appropriate exhibits to the motion sufficient to support the entry of default judgment. The moving party shall serve these papers upon every other party to the action and file a Certificate of Service indicating the date and manner in which service was perfected.

**Advisory Notes**

(2000) Local Rule B7 is amended to give the party seeking entry of a default judgment up to 30 days, rather than 5 days, to file a motion and supporting legal memorandum.

\* \* \* \* \*

**RULE C. ACTION IN REM**

\* \* \* \* \*

**(9) Procedural Requirements for the Entry of Default Judgment.** Not later than ~~five (5)~~ thirty (30) days following notice of the entry of default, the moving party shall file a motion, and supporting legal documents, for the entry of default judgment pursuant to Rule 55(b), Fed.R.Civ.P. The moving party may also file as exhibits for the motion such other

1 documentation as may be required to support the entry of default judgment. Thereafter the court  
2 will consider the motion as indicated below:

3  
4 **Advisory Notes**

5  
6 (2000) Local Rule C9 is amended to give the party seeking entry of a default judgment  
7 up to 30 days, rather than 5 days, to file a motion and supporting legal memorandum.

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9 \* \* \* \* \*

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11 **SPECIAL RULES GOVERNING THE**  
12 **ADMISSION AND PRACTICE OF ATTORNEYS**

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14 **RULE 5. PEER REVIEW**

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16 **E. Duties and Responsibilities of the Committee.**

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18 1. *Referral.* Any District Judge, ~~or~~ Magistrate Judge, or Bankruptcy Judge shall refer  
19 in writing to the Committee the name of any attorney he or she has observed practicing law in  
20 a manner which raises a significant question as to the adequacy of such attorney's ability to  
21 represent clients in a competent manner. The referral shall be accompanied by a statement of  
22 the reasons why such question is raised.

23  
24 **Comments**

25  
26 (2000) Clarification of the authority and responsibilities of District Judges, Magistrate  
27 Judges and Bankruptcy Judges.

28  
29 \* \* \* \* \*

30  
31 **RULES GOVERNING ATTORNEY DISCIPLINE**

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33 **RULE II. GRIEVANCE COMMITTEE**

34  
35 **A. Appointment.** The Court, consisting of the active District Judges thereof, may  
36 appoint a [at least one] standing committee consisting of at least five members of the bar to be  
37 known as the "Grievance Committee." One of those first appointed shall serve a term of one  
38 year; two for two years; and the remainder and all thereafter appointed for a term of three years.  
39 Each member shall serve until his or her successor has been appointed: The Court may vacate  
40 any such appointment at any time. The Court shall designate one of the members to serve as  
41 chairman~~person~~. A majority of the committee shall constitute a quorum.

1           **B. Purpose and Function.** The purpose and function of the Committee is to  
 2 conduct, upon referral by the Court, ~~or a~~ District Judge, Magistrate Judge or Bankruptcy Judge  
 3 of the Court, investigations of alleged misconduct of any member of the Bar of this Court, or any  
 4 attorney appearing and participating in any proceeding before the Court; to conduct, upon  
 5 referral by the Court, ~~or a~~ District Judge, Magistrate Judge or Bankruptcy Judge of the Court,  
 6 inquiries and investigations into allegations of inadequate performance by an attorney practicing  
 7 before the Court, as hereinafter provided; to conduct and preside over disciplinary hearings  
 8 when appropriate and as hereinafter provided; and to submit written findings and  
 9 recommendations to the Court or referring District Judge, Magistrate Judge or Bankruptcy Judge  
 10 for appropriate action by the Court, except as otherwise described herein. The members of the  
 11 Grievance Committee, while serving in their official capacities, shall be considered to be  
 12 representatives of and acting under the powers and immunities of the Court, and shall enjoy all  
 13 such immunities while acting in good faith and in their official capacities.

**Comments**

14  
 15  
 16  
 17           (2000) Clarification of the authority and responsibilities of District Judges, Magistrate  
 18 Judges and Bankruptcy Judges.

\* \* \* \* \*

**RULE III. DISCIPLINARY PROCEEDINGS**

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 26           **A.** When misconduct or allegations of misconduct which, if substantiated, would  
 27 warrant discipline on the part of an attorney admitted to practice before this Court shall come  
 28 to the attention of a District Judge, Magistrate Judge or Bankruptcy Judge of this Court, whether  
 29 by complaint or otherwise, the District Judge, Magistrate Judge or Bankruptcy Judge may, in  
 30 his or her discretion, refer the matter to the Grievance Committee for investigation and, if  
 31 warranted, the prosecution of formal disciplinary proceedings or the formulation of such other  
 32 recommendation as may be appropriate. [The Court of Appeals may, in addition to or instead  
 33 of referring a disciplinary matter to its own Grievance Committee, refer a complaint to the Chief  
 34 Judge of a District Court for consideration.]

\* \* \* \* \*

35  
 36  
 37  
 38           **E.** Upon receipt of the Committee's finding that misconduct occurred, the Court shall  
 39 issue an order requiring the attorney to show cause why the Committee's recommendation should  
 40 not be adopted by the Court. The Court may, after considering the attorney's response, by  
 41 majority vote of the active District Judges thereof, adopt, modify, or reject the Committee's

1 findings that misconduct occurred, and may either impose those sanctions recommended by the  
2 Committee or fashion whatever penalties provided by the rules which it deems appropriate.

3  
4 **Comments**

5  
6 (2000) Clarification of the authority and responsibilities of District Judges, Magistrate  
7 Judges and Bankruptcy Judges.