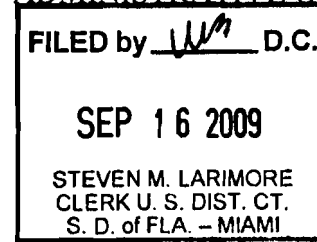


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

ADMINISTRATIVE ORDER 2009-34

IN RE: INTERIM AMENDMENTS TO
TIME CALCULATIONS IN THE
LOCAL RULES



THIS MATTER came before the Court on the petition of its Ad Hoc Committee on Rules and Procedures for an Administrative Order concerning the calculation of time periods under the Local Rules. For the reasons set forth below, the petition is GRANTED.

This Court amends its various local rules on an annual cycle corresponding to the issuance of new rules books for Florida federal practitioners by West Publishing Company, after a period of public comment, notice, and an opportunity to be heard in accordance with Fed. R. Civ. P. 83 and Fed. R. Crim. P. 57.

Substantial changes to the manner in which dates are calculated in the various Federal Rules of Procedure have been approved this year and will go into effect on December 1, 2009. The Committee has prepared corresponding amendments to the Local Rules, the Discovery Handbook, the Special Rules Governing the Admission and Practice of Attorneys, the Rules Governing Attorney Discipline, the Magistrate Judge Rules, and the Admiralty Rules. These, however, will not go into effect until April 15, 2010, subject to the notice and comment procedures described above.

To avoid any discrepancy between the manner in which time is calculated under the various Federal Rules of Procedure and the Local Rules of this District during the interim period of December 1, 2009 when the amendments to the Federal Rules go into effect and April 15, 2010 when the corresponding amendments to the Local Rules will go into effect, the Committee has requested that time-calculation changes to the above rules be set forth as an attachment to an Administrative Order,

to be in effect during the interim period. The Court has determined that this is appropriate, and it is

ORDERED that the modifications to the Local Rules, the Discovery Handbook, the Special Rules Governing the Admission and Practice of Attorneys, the Rules Governing Attorney Discipline, the Magistrate Judge Rules, and the Admiralty Rules shown on the attached table shall be effective as of December 1, 2009. This Order shall expire on April 15, 2010. It is further

ORDERED that the Clerk of the Court is directed to post this Order, with the attached table, on the Court's website, and to take such other measures as he deems necessary to advise members of the Bar of the United States District Court for the Southern District of Florida of the forthcoming changes in time calculations in the Local Rules.

DONE AND ORDERED in Chambers at Miami, Florida this 15 day of September 2009.



FEDERICO A. MORENO
CHIEF UNITED STATES DISTRICT JUDGE

Copies provided to:

Honorable Joel F. Dubina, Chief Judge, United States Court of Appeals for the Eleventh Circuit
All Southern District and Magistrate Judges
Circuit Executive
Thomas Meeks, Chair, Ad Hoc Committee on Rules and Procedures
All members of the Ad Hoc Committee on Rules and Procedures
Library
Daily Business Review

TABLE OF INTERIM RULES CHANGES
United States District Court for the Southern District of Florida
Effective December 1, 2009 — April 15, 2010

Local Rule	Existing Language	Interim Language
7.1.B.3.b(4)	<p>With respect to:... any motion or other matter as to which the Court has conducted a hearing but has not entered an order or otherwise determined the motion or matter within ninety (90) days of the hearing, the movant or applicant, whether party or non-party, shall file and serve on all parties and any affected non-parties a "Notification of Ninety Days Expiring" which shall contain the following information: ...the date of any hearing held on the motion or other matter.</p> <p>The "Notification of Ninety Days Expiring" shall be filed within ten days of the expiration of the applicable ninety (90) day period.</p>	<p>With respect to:... any motion or other matter as to which the Court has conducted a hearing but has not entered an order or otherwise determined the motion or matter within ninety (90) days of the hearing, the movant or applicant, whether party or non-party, shall file and serve on all parties and any affected non-parties a "Notification of Ninety Days Expiring" which shall contain the following information: ...the date of any hearing held on the motion or other matter.</p> <p>The "Notification of Ninety Days Expiring" shall be filed within fourteen (14) days of the expiration of the applicable ninety (90) day period.</p>

<p>7.1.C</p>	<p>Memorandum of Law. Each party opposing a motion shall serve an opposing memorandum of law no later than ten days after service of the motion as computed in the Federal Rules of Civil Procedure. Failure to do so may be deemed sufficient cause for granting the motion by default. The movant may, within five days after service of an opposing memorandum of law, serve a reply memorandum in support of the motion, which reply memorandum shall be strictly limited to rebuttal of matters raised in the memorandum in opposition without reargument of matters covered in the movant's initial memorandum of law. No further or additional memoranda of law shall be filed without prior leave of Court.</p> <p>1. Time. Time shall be computed under this Local Rule as follows:</p> <p>(a) If the motion or memorandum was served by mail or filed via CM/ECF, count ten days (five days for a reply) from the date the motion, response, or memorandum to which one is responding was certified as having been mailed or filed via CM/ECF. Do not include Saturdays, Sundays, or legal holidays. Beginning on the next calendar day, including Saturday, Sunday, or a legal holiday, count three days. The third day is the due date for the opposing memorandum or reply. If the third day falls on a Saturday, Sunday, or legal holiday, the due date is the next business day.</p> <p>(b) If the motion or memorandum was served by hand delivery, start counting ten or five days on the business day after receipt of the motion or memorandum, excluding Saturdays, Sundays and legal holidays. The tenth or fifth day is the due date for the opposing memorandum or reply, respectively.</p>	<p>Memorandum of Law. Except with respect to a response or reply to a summary judgment motion, the timing for which is governed by Federal Rule of Civil Procedure 56, each party opposing a motion shall serve an opposing memorandum of law no later than fourteen (14) days after service of the motion. Failure to do so may be deemed sufficient cause for granting the motion by default. The movant may, within seven (7) days after service of an opposing memorandum of law, serve a reply memorandum in support of the motion, which reply memorandum shall be strictly limited to rebuttal of matters raised in the memorandum in opposition without reargument of matters covered in the movant's initial memorandum of law. No further or additional memoranda of law shall be filed without prior leave of Court.</p> <p>1. Time. Time shall be computed under this Local Rule as follows:</p> <p>(a) If the motion, response, or memorandum was served by mail or filed via CM/ECF, count fourteen (14) calendar days (seven (7) calendar days for a reply) from the date the motion, response, or memorandum was certified as having been mailed or filed via CM/ECF. Beginning on the next calendar day, including Saturday, Sunday, or a legal holiday, count three days. The third day is the due date for the opposing memorandum or reply. If the third day falls on a Saturday, Sunday, or legal holiday, the due date is the next business day.</p> <p>(b) If, in addition to being filed via CM/ECF, the motion, response, or memorandum was served by hand delivery, count fourteen (14) calendar days (seven (7) calendar days for a reply) from the date the motion, response, or memorandum was received. The fourteenth or seventh day is the due date for the opposing memorandum or reply, respectively. If the due date falls on a Saturday, Sunday, or legal holiday, the due date is the next business day.</p>
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7.2	<p>Motions Pending on Removal or Transfer to This Court. When a court transfers or a party removes an action or proceeding to this Court and there is a pending motion for which the moving party has not submitted a memorandum, the moving party shall file a memorandum in support of its motion within ten days after the filing of the notice of removal or the entry of the order of transfer. Each party shall then comply with the briefing schedule provided in Local Rule 7.1.C above.</p>	<p>Motions Pending on Removal or Transfer to This Court. When a court transfers or a party removes an action or proceeding to this Court and there is a pending motion for which the moving party has not submitted a memorandum, the moving party shall file a memorandum in support of its motion within fourteen (14) days after the filing of the notice of removal or the entry of the order of transfer. If the moving party has filed a memorandum in support of the motion prior to removal, the party opposing the motion shall file a memorandum in opposition within fourteen (14) days after the filing of the notice of removal or the entry of the order of transfer. Each party shall then comply with the briefing schedule provided in Local Rule 7.1.C above.</p>
16.1.D	<p>Pretrial Disclosures and Meeting of Counsel. Unless otherwise directed by the Court, at least thirty (30) days before trial each party must provide to the other party and promptly file with the Court the information prescribed by Federal Rule of Civil Procedure 26(a)(3). No later than ten days prior to the date of the pretrial conference, or, if no pretrial conference is held, ten days prior to the call of the calendar, counsel shall meet at a mutually convenient time and place and:</p>	<p>Pretrial Disclosures and Meeting of Counsel. Unless otherwise directed by the Court, at least thirty (30) days before trial each party must provide to the other party and promptly file with the Court the information prescribed by Federal Rule of Civil Procedure 26(a)(3). No later than fourteen (14) days prior to the date of the pretrial conference, or, if no pretrial conference is held, fourteen (14) days prior to the call of the calendar, counsel shall meet at a mutually convenient time and place and:</p>
16.1.E	<p>Pretrial Stipulation Must Be Filed. It shall be the duty of counsel to see that the pretrial stipulation is drawn, executed by counsel for all parties, and filed with the Court, no later than five days prior to the pretrial conference, or, if no pretrial conference is held, five days prior to the call of the calendar. The pretrial stipulation shall contain the following statements in separate numbered paragraphs as indicated:</p>	<p>Pretrial Stipulation Must Be Filed. It shall be the duty of counsel to see that the pretrial stipulation is drawn, executed by counsel for all parties, and filed with the Court, no later than seven (7) days prior to the pretrial conference, or, if no pretrial conference is held, seven (7) days prior to the call of the calendar. The pretrial stipulation shall contain the following statements in separate numbered paragraphs as indicated:</p>

16.1.F	<p>Unilateral Filing of Pretrial Stipulation Where Counsel Do Not Agree. If for any reason the pretrial stipulation is not executed by all counsel, each counsel shall file and serve separate proposed pretrial stipulations not later than five days prior to the pretrial conference, or, if no pretrial conference is held, five days prior to the call of the calendar, with a statement of reasons no agreement was reached thereon.</p>	<p>Unilateral Filing of Pretrial Stipulation Where Counsel Do Not Agree. If for any reason the pretrial stipulation is not executed by all counsel, each counsel shall file and serve separate proposed pretrial stipulations not later than seven (7) days prior to the pretrial conference, or, if no pretrial conference is held, seven (7) days prior to the call of the calendar, with a statement of reasons no agreement was reached thereon.</p>
16.1.H	<p>Discovery Proceedings. All discovery proceedings must be completed no later than ten days prior to the date of the pretrial conference, or, if no pretrial conference is held, ten days prior to the call of the calendar, unless further time is allowed by order of the Court for good cause shown.</p>	<p>Discovery Proceedings. All discovery proceedings must be completed no later than fourteen (14) days prior to the date of the pretrial conference, or, if no pretrial conference is held, fourteen (14) days prior to the call of the calendar, unless further time is allowed by order of the Court for good cause shown.</p>
16.1.J	<p>Memoranda of Law. Counsel shall serve and file memoranda treating any unusual questions of law, including motions in limine, no later than five days prior to the pretrial conference, or, if no pretrial conference is held, five days prior to the call of the calendar.</p>	<p>Memoranda of Law. Counsel shall serve and file memoranda treating any unusual questions of law, including motions in limine, no later than seven (7) days prior to the pretrial conference, or, if no pretrial conference is held, seven (7) days prior to the call of the calendar.</p>
16.2.D.1(b)	<p>Direct the parties, within fifteen days of the date of the order of referral, to agree upon a mediator. The parties are encouraged to utilize the list of certified mediators established in connection with Local Rule 16.2.B., but may by mutual agreement select any individual as mediator. The parties shall file a "Notice of Selection of Mediator" within that period of time. If the parties are unable to agree upon a mediator, plaintiff's counsel, or plaintiff if self-represented, shall file a "Request For Clerk To Appoint Mediator," and the Clerk will designate a mediator from the list of certified mediators on a blind, random basis.</p>	<p>Direct the parties, within fourteen (14) days of the date of the order of referral, to agree upon a mediator. The parties are encouraged to utilize the list of certified mediators established in connection with Local Rule 16.2.B, but may by mutual agreement select any individual as mediator. The parties shall file a "Notice of Selection of Mediator" within that period of time. If the parties are unable to agree upon a mediator, plaintiff's counsel, or plaintiff if self-represented, shall file a "Request For Clerk To Appoint Mediator," and the Clerk will designate a mediator from the list of certified mediators on a blind, random basis.</p>

16.2.D.1(c)	Direct that, at least ten days prior to the mediation date, each party give the mediator a confidential written summary of the case identifying issues to be resolved.	Direct that, at least fourteen (14) days prior to the mediation date, each party give the mediator a confidential written summary of the case identifying issues to be resolved.
16.2.F.1	<i>Mediation Report.</i> Within five days following the mediation conference, the mediator, if an authorized user of the Court's electronic filing system (CM/ECF), shall electronically file a Mediation Report. If the mediator is not an authorized CM/ECF user, the mediator shall file the Mediation Report in the conventional manner. The report shall indicate whether all required parties were present and whether the case settled (in full or in part), whether the mediation was adjourned, or whether the mediator declared an impasse	<i>Mediation Report.</i> Within seven (7) days following the mediation conference, the mediator, if an authorized user of the Court's electronic filing system (CM/ECF), shall electronically file a Mediation Report. If the mediator is not an authorized CM/ECF user, the mediator shall file the Mediation Report in the conventional manner. The report shall indicate whether all required parties were present and whether the case settled (in full or in part), whether the mediation was adjourned, or whether the mediator declared an impasse.
16.2.H (ORDER OF REFERRAL) ¶ 9	If a full or partial settlement is reached in this case, counsel shall promptly notify the Court of the settlement in accordance with Local Rule 16.2.F, by the filing of a notice of settlement signed by counsel of record within ten days of the mediation conference. Thereafter the parties shall forthwith submit an appropriate pleading concluding the case.	If a full or partial settlement is reached in this case, counsel shall promptly notify the Court of the settlement in accordance with Local Rule 16.2.F, by the filing of a notice of settlement signed by counsel of record within fourteen (14) days of the mediation conference. Thereafter the parties shall forthwith submit an appropriate pleading concluding the case.
26.1.G.4(d)	The business records and materials shall be made available for inspection and copying within ten days after service of the answers to interrogatories or at a date agreed upon by the parties.	The business records and materials shall be made available for inspection and copying within fourteen (14) days after service of the answers to interrogatories or at a date agreed upon by the parties.

26.1.J

Reasonable Notice of Taking Depositions. Unless otherwise stipulated by all interested parties, pursuant to Federal Rule of Civil Procedure 29, and excepting the circumstances governed by Federal Rule of Civil Procedure 30(a), a party desiring to take the deposition within this State of any person upon oral examination shall give at least five working days' notice in writing to every other party to the action and to the deponent (if the deposition is not of a party), and a party desiring to take the deposition in another State of any person upon oral examination shall give at least ten working days' notice in writing to every other party to the action and the deponent (if the deposition is not of a party). Failure by the party taking the oral deposition to comply with this rule obviates the need for protective order. Notwithstanding the foregoing, in accordance with Federal Rule of Civil Procedure 32(a)(3), no deposition shall be used against a party who, having received less than eleven calendar days' notice of a deposition as computed under Federal Rule of Civil Procedure 6(a), has promptly upon receiving such notice filed a motion for protective order under Federal Rule of Civil Procedure 26(c)(2) requesting that the deposition not be held or be held at a different time or place and such motion is pending at the time the deposition is held.

Reasonable Notice of Taking Depositions. Unless otherwise stipulated by all interested parties, pursuant to Federal Rule of Civil Procedure 29, and excepting the circumstances governed by Federal Rule of Civil Procedure 30(a), a party desiring to take the deposition within this State of any person upon oral examination shall give at least seven (7) days' notice in writing to every other party to the action and to the deponent (if the deposition is not of a party), and a party desiring to take the deposition in another State of any person upon oral examination shall give at least fourteen (14) days' notice in writing to every other party to the action and the deponent (if the deposition is not of a party). Failure by the party taking the oral deposition to comply with this rule obviates the need for protective order. Notwithstanding the foregoing, in accordance with Federal Rule of Civil Procedure 32(a)(5)(A), no deposition shall be used against a party who, having received less than fourteen (14) days' notice of a deposition as computed under Federal Rule of Civil Procedure 6(a), has promptly upon receiving such notice filed a motion for protective order under Federal Rule of Civil Procedure 26(c)(1)(B) requesting that the deposition not be held or be held at a different time or place and such motion is pending at the time the deposition is held.

62.1.B	<p>Extension of Automatic Stay When Notice of Appeal Filed. If within the ten day period established by Federal Rule of Civil Procedure 62(a), a party files any of the motions contemplated in Federal Rule of Civil Procedure 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 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 day period provided herein.</p>	<p>Extension of Automatic Stay When Notice of Appeal Filed. If within the fourteen (14) day period established by Federal Rule of Civil Procedure 62(a), a party files any of the motions contemplated in Federal Rule of Civil Procedure 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.</p>
87.4.B	<p>B. Limited Authority of Bankruptcy Court to Dismiss Appeals Prior to Transmittal of Record to District Court. The Bankruptcy Court is authorized and directed to dismiss an appeal for (1) appellant's failure to pay the prescribed filing fees; (2) failure to comply with the time limitations specified in Federal Rule of Bankruptcy Procedure 8002; and (3) appellant's failure to file a designation of the items for the record or copies thereof or a statement of the issues as required by Federal Rule of Bankruptcy Procedure 8006, and Local Bankruptcy Rule 8006-1. The Bankruptcy Court is further authorized and directed to hear, under Federal Rule of Bankruptcy Procedure 9006(b), motions to extend the foregoing deadlines and to consolidate appeals which present similar issues from a common record. Bankruptcy Court orders entered under this subsection may be reviewed by the District Court on motion filed in the District Court within ten (10) days after entry of the order sought to be reviewed pursuant to subsection C(c) of this Local Rule.</p>	<p>B. Limited Authority of Bankruptcy Court to Dismiss Appeals Prior to Transmittal of Record to District Court. The Bankruptcy Court is authorized and directed to dismiss an appeal for (1) appellant's failure to pay the prescribed filing fees; (2) failure to comply with the time limitations specified in Federal Rule of Bankruptcy Procedure 8002; and (3) appellant's failure to file a designation of the items for the record or copies thereof or a statement of the issues as required by Federal Rule of Bankruptcy Procedure 8006, and Local Bankruptcy Rule 8006-1. The Bankruptcy Court is further authorized and directed to hear, under Federal Rule of Bankruptcy Procedure 9006(b), motions to extend the foregoing deadlines and to consolidate appeals which present similar issues from a common record. Bankruptcy Court orders entered under this subsection may be reviewed by the District Court on motion filed in the District Court within fourteen (14) days after entry of the order sought to be reviewed pursuant to subsection C(c) of this Local Rule.</p>