

Understanding the December 2016 Revisions (as well as some of the move overlooked provisions) to the Local Rules of the Southern District of Florida

Robert H. Thornburg



Dyer Courthouse in Miami: Built in 1931
Architect: Phineas Paist



Ferguson Courthouse in Miami: Built in 2007

Southern District of Florida: Founded on February 23, 1847

- Original “*United States District Court for the District of Florida*” was created by Congress on the same day that Florida was admitted as a state – March 3, 1845. See 5 Stat. 788.
- On February 23, 1847, the District was subdivided into the Northern and Southern Districts, by 9 Stat. 131, based upon the following boundaries:
- [T]hat part of the State of Florida lying south of a line drawn due east and west from the northern point of Charlotte Harbor, including the islands, keys, reefs, shoals, harbors, bays and inlets, south of said line, shall be erected into a new judicial district, to be called the Southern District of Florida; a District Court shall be held in said Southern District, to consist of one judge, who shall reside at Key West, in said district...

Note: Next month marks the 170th anniversary of the Southern District of Florida – Make sure you celebrate !



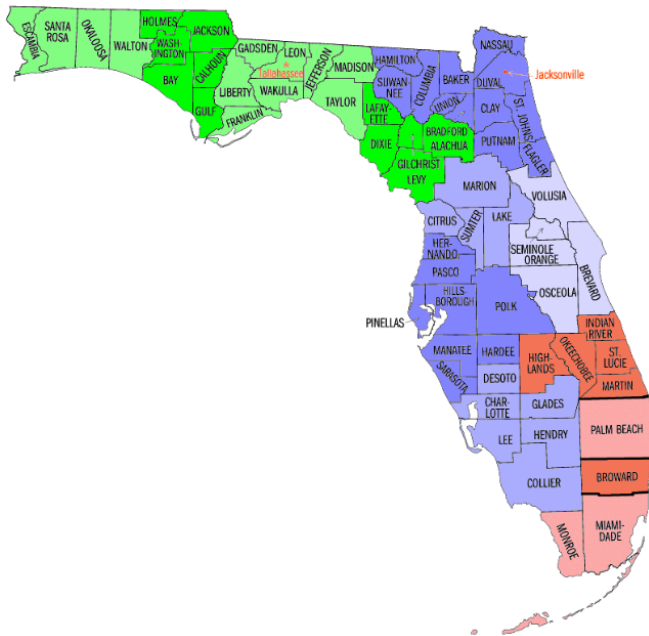
U.S. Courthouse (Completed 1891 –
Transferred to Navy in 1932)



Current Courthouse at 301 Simonton St.
(completed in 1932)

319 Miles of Judicial Awesomeness: From Sebastian Inlet to Key West

9 Counties Served: Broward, Highlands, Indian River, Martin, Miami-Dade, Monroe, Okeechobee, Palm Beach, and St. Lucie Counties.



Note: L.R. 3.1 provides that “[a]ctions and proceedings shall be tried in their country of origin, except that Highlands, Indian River, Martin, Okeechobee, and St. Lucie County Actions Shall be tried in Fort Pierce” Division.

18 Current Seats (last seat established in 2002) (24 - if old seats are counted)

Note: Middle District of Florida was created from a portion of the Northern District on July 30, 1962. What is now the Tampa Division and the Orlando Division was part of the Southern District of Florida (*i.e.*, Seat 6 – George C. Young).

Note: Robin Rosenberg is dedicated to Fort Pierce Division, but Gonzalez also hears cases there now.

Note: Moore, Martinez, and King hear cases in Key West Division.

Note: Currently there is two vacancies: Seat 9 (when Robin Rosenbaum was appointed to 11th Circuit on June 2, 2014) and Seat 24 (Cohn has taken senior status as of Aug. 5, 2016)

Note: Senior Status (active) includes King, Graham, Hurley, Gold, Seitz, Huck and Cohn.

Note: Hoeveler, Ryskamp, and Gold all now inactive as of Jan 2017 (but not J. Lawrence King who is now 89 years young).

The District has Five City Locations (Seven Active Courthouses)



Alto Lee Adams Courthouse (Fort Pierce)



Paul G. Rogers Courthouse (West Palm)



Federal Building (Ft. Lauderdale)



Aronovitz Courthouse (Key West)



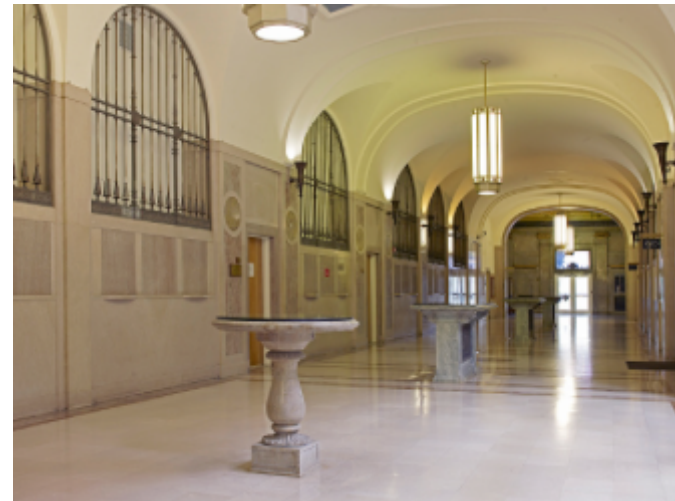
Lawrence King Courthouse (Miami)



C. Clyde Atkins Courthouse (Miami)

Note: Ft. Pierce, W. Palm Beach, Ft Lauderdale & Miami have clerks of courts (no clerk in Key West)

Status of the Dyer Building



Status of the Dyer Building



Status of the Dyer Building



12 Mon. Period Ending Sept. 30, 2016

			AL,N	AL,M	AL,S	FL,N	FL,M	FL,S	GA,N	GA,M	GA,S
Overall Caseload Statistics	Filings		2,916	1,326	1,197	2,553	11,103	12,932	6,599	1,993	1,649
	Terminations		2,963	1,212	1,208	2,342	11,190	12,373	6,125	1,920	1,667
	Pending		3,013	1,479	929	2,161	8,505	7,081	5,692	1,899	1,299
	Percent Change in Total Filings Current Year	Over Last Year	-0.1	5.2	7.7	11.9	8.2	8.1	6.3	14.7	4.9
Over 2011		-44.2	-4.3	-12.2	7.7	10.4	10.2	1.4	10.7	3.4	
Number of Judgeships			8	3	3	4	15	18	11	4	3
Vacant Judgeship Months ¹			24.0	12.0	6.8	9.0	24.0	13.8	12.0	1.0	0.0
Actions per Judgeship	Filings	Total	365	442	399	638	740	718	600	498	550
		Civil	306	359	235	534	617	554	518	395	368
		Criminal Felony	43	64	113	60	92	137	64	87	131
		Supervised Release Hearings	16	19	51	44	31	27	18	16	51
	Pending Cases		377	493	310	540	567	393	517	475	433
	Weighted Filings ¹		327	394	359	541	617	707	547	398	470
	Terminations		370	404	403	586	746	687	557	480	556
	Trials Completed		31	16	20	40	19	28	21	16	39
Median Time (Months)	From Filing to Disposition	Criminal Felony	7.1	9.7	6.9	7.2	7.3	5.4	10.0	11.5	7.3
		Civil ¹	9.7	9.4	8.3	7.9	7.1	4.2	6.2	15.2	10.0
	From Filing to Trial ¹ (Civil Only)		16.3	-	-	22.1	22.0	17.8	28.9	20.8	-

Source: http://www.uscourts.gov/sites/default/files/data_tables/fcms_na_distcomparison0930.2016.pdf

Qualifications for Admission: Special Rules 1 - 3

Special Rule 1: “An attorney is qualified for admission to the bar of this District if the attorney is currently a member in good standing of the Florida Bar.

Special Rule 2: “Each application for admission shall submit a verified petition setting forth the information specific on the form available on the Court’s website together with an application fee in the amount set by the Court.” **January 2017 Fee: \$206.00**

Special Rule 3: Attorneys must pay renewal fee every other year. “Attorneys who are not in good standing of the bar of this Court may not practice before the Court.” **Renewal Fee: Currently Suspended** (was \$25)

Special Rule 4: “only members of the bar of this Court may appear as attorneys in the Courts of this District. Attorneys residing and practicing within this District are expected to be members of the bar of this Court”

Note: If you are a member of the Florida Bar, you cannot seek *pro hac* admission (which currently costs **\$75.00** to apply for)

Attorney Appearance: Must be Timely

Must File Notice of Appearance Before Any Hearing:

L.R. 11.1(d)(2): “Any attorney representing a witness in any civil action . . . shall file a notice of appearance . . . With the Clerk of Court . . . except that the notice need not be filed when such appearance has previously been evidenced by the filing of a pleading in the action or proceeding. The notice shall be filed by the attorney *promptly upon undertaking the representation* and prior to the attorney’s appearance on behalf of the attorney’s client at any hearing . . .”

Note 1: This is attorney specific not law firm specific. If there is a motion for preliminary injunction, etc – make sure you file a timely notice.

Note 2: This requires one to file a notice of appearance before sitting in a deposition (confirmed in speaking with Clerk of Court)

Contempt of Court if not a member of the Southern District:

L.R. 11.1(b): “Any person who before his or her admission to the Bar of this Court . . . *exercises* in this District in any action or proceeding pending in this court . . . may be found guilty of contempt of Court.

Note: This motivates any attorney who is assisting in any case here to become a member – as “*exercises*” is very broad - otherwise, there is a risk of a contempt proceeding. This includes patent prosecutors helping with invalidity/infringement.

Attorney Appearance: Must be Timely

On-line membership Look-up:

<http://www.flsd.uscourts.gov/website/attyadm/barlookup.asp>

FLSD Bar Member Status and Admission Date Look-up

Please enter the following information:

Florida Bar Number:

Or

Last Name:


and

First Name:

Contempt of Court if not a member of the Southern District:

L.R. 11.1(b): “Any person who before his or her admission to the Bar of this Court . . . *exercises* in this District in any action or proceeding pending in this court . . . may be found guilty of contempt of Court.

Note: This motivates any attorney who is assisting in any case here to become a member – as “*exercises*” is very broad - otherwise, there is a risk of a contempt proceeding. This includes patent prosecutors helping with invalidity/infringement.



Home

FLSD Bar Member Status and Admission Date Look-up

Robert Houpt Thornburg has been a member of the Southern District of Florida general bar since 02/13/2007 and is currently in good standing.

On-line Filing of Complaints:

We will let you sue 7 days a week baby

L.R. 5.1(b): “. . . all documents required to be served shall be filed in compliance with the CM/ECF Administrative Procedures . . .”

CM/ECF Admin. Rule 8A:
Pursuant to Administrative Order 2009-36, as of April 5, 2010, attorneys authorized to electronically file in the CM/ECF system must electronically file new civil complaints or other civil case initiating documents via the CM/ECF system.”

Note: This includes the Civil Cover sheet and summons.

CM/ECF Admin. Rule 8C:

“The filing fees for new civil complaints . . . are filed electronically by Users . . . using ‘Pay.gov’, a secure government wide collection portal.”

Note: This is important to jurisdiction under the “First to File Rule” as Miami always wins against courts that still require traditional filing of Complaints.

We Protect Our Own *and* We Don't Let Big Firms Beat Up on the Home Team

Attorney Preservation Rule:

CM/ECF Rule 2B. 11.1(g): “Any attorney who has been permitted to appear pro hac vice will not be permitted to register as a USER in this District, but may access the electronic record through the PASER System . . . [a]ll documents, including the motion to appear *pro hac vice*, must be filed electronically through their local counsel[.]”

Note: This is a built in Florida preservation system. It also raises the ethical requirements that you read everything your co-counsel prepared before you file (and put your signature on it).

Lesson? Only agree to co-counsel if you respect your co-counsel's legal position and reputation.

Note: Only costs \$206.00 to become member (so long as you are in good standing with the Florida Bar).

7 Day Update Rule as to Contact:

L.R. 11.1(g): Each member of the Southern District of Florida Bar must inform the court within seven days of any changes to contact information (failure to do so may result in relief from deadlines by other side, etc).

Big Firm Cannot Beat Me Up Rule:

L.R. 11.1(d)(7): “not more than two (2) attorneys on search side shall argue the merits of the action or proceeding unless the Court shall otherwise permit”

Its Miami so we also protect your Cocaine and Firearms (and jewelry)

Cocaine Protection Rule

L.R. 5.3(b): “. . . all exhibits received or offered in evidence at any hearing shall be delivered to the Clerk of the Court, who shall keep them in the Clerk of Court’s possession, except that any narcotics, cash, counterfeit notes, weapons, precious stones received, including but not limited to other exhibits which, because of size or nature, require special handling, *shall remain in possession of the party introducing same during pendency of the proceeding* and any appeal. Nothing contained in this Local Rule shall prevent the Court from entering an order with respect to the handling or storage of any exhibit. The Clerk of the Court shall permit United States Magistrate Judges and official court reporters to have custody of exhibits as may be necessary.”



Reasoning:

Note: this is of special importance for cases involving knives, firearms, Tasers, etc.

Note: “custody of exhibits as may be necessary” for official court reporters implies that they can take possession if an item is presented at deposition/hearing.

That said, we are a bit skittish about copyright claims involving porn . . .

The David Sigalow's Client Protection Rule:

CM/ECF Admin Procedures Section 6E
– Filing of Materials, Including Images,
Inappropriate for Display or
Distribution to the Public, Including
Minors

“Users shall not electronically file materials which would otherwise be inappropriate for display or distribution to the public . . . through PACER or the CM/ECF System.”

“These inappropriate materials include images (not textual descriptions) depicting sexual acts or excretory acts that could be described as pornography or indecent or vulgar even if not legally obscene”



Note: in appropriate materials can be filed electronically if the images are redacted and the image is described in words

Note: Documents with inappropriate materials can be filed conventionally as long as it is done under seal

– “Counsel and parties are cautioned that failure to protect such images from public dissemination, which includes minors, may subject them to the disciplinary authority of the Court.”

As of Dec. 2016: Email Service Only (without Need for Stipulation)

Federal Rule 5(a)(1)(D):

“Unless these rules provide otherwise, each of the following papers must be served on every party a discovery paper required to be served on a party, unless the court orders otherwise[.]”

(New) L.R. 5.1(e):

“Service of papers required to be served pursuant to [Fed. R. Civ. P. 5\(a\)](#) . . . but not filed, such as [discovery requests](#), may be made via email to the address designated by an attorney for receipt of notices of electronic filings.

[Point 1](#): This basically removed the need to serve written discovery via email and U.S. Mail – as opposing counsel need not reach stipulation as to e-mail service as traditionally required.

[Point 2](#): No more tricks when addressing counsel in multi offices (*i.e.*, serve the ADDMG Miami Office when lead trial counsel is in Orlando).

As of Dec. 2016: New Discovery Deadlines (no mailing days)

Responses in Opposition (20 pg):

14 Days (if served via CM/ECF or hand-delivery): Count starting the day after the filing. If last days falls on Saturday, Sunday or legal holiday – response due on the next business day.

17 Days (if by Mail): If the motion/memoranda is served only via mail (likely in event of *pro se* party), then its effectively 17 days. Court the day it was mailed, then add 14 days, then 3 mailing days, and response is due (unless it falls on a Sat., Sun. or legal holiday).

Note: Watch for Friday 11:59 pm filings under this scenario – as it affords only ten (10) business days for response.

Reply Briefs (automatic) (10 pg):

7 Days (if served via CM/ECF or hand-delivery): Count starting the day after the filing. If last days falls on Saturday, Sunday or legal holiday – response due on the next business day.

10 Days: If the motion/memoranda is served only via mail (likely in event of *pro se* party), then its effectively 17 days. Court the day it was mailed, then add 14 days, then 3 mailing days, and response is due (unless it falls on a Sat., Sun. or legal holiday).

Note: These short deadlines do benefit big firms / bigger litigation practices.

As of Dec. 2016: Rule 26.1(g)(1)

Waiver of Discovery Motion Practice

30 Day Waiver Rule:

L.R. 26.1(g)(1): “All disputes relating to discovery shall be presented to the Court by motion . . . Within thirty (30) days from the (a) original due date . . . of the response or objection to the discovery request . . . (b) date of the deposition in which the dispute arose, or (c) date on which a party first learned of or should have learned of a purported deficiency concerning the production of discovery materials.”

Note: Before the 30 days began running after an impasse of a meet and confer – now its just response / objection date.

Timetable for Noticing of Depositions

L.R. 26.1(g): “A party desiring to take the deposition within Florida 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).”

Note: If deponent is out of state (ie, outside of Florida), reasonable notice is fourteen (14) days notice in writing per above.

Caveat – Introductory State of the Local Rules:

“counsel will seek to accommodate their fellow practitioners, including in matters of scheduling, whenever reasonably possible and that counsel will work to eliminate disputes by reasonable agreement to the fullest extent permitted by the bounds of zealous representation and ethical practice.”

Note: Absent caveat, possible to suggest compliance with 26.1(g) based upon 11:59 pm Friday notice, for deposition following Friday.

Rules for Filing (under CM/ECF) Materials under Seal

If Entire Case Under Seal:

- CM/ECF Admin Procedures Section 5A– Cases filed under seal
 - “If the entire civil case is sealed, the initial complaint or other initialing document as well as subsequent sealed filings must continue to be filed conventionally.”
 - “Documents filed under seal will not be available for inspection by case participants or the public. Litigants must serve a notice of filing upon all other parties by conventional means and must file such notice with the sealed document”

For Regular Filings Under Seal:

- Rule 5.4(b)(1) – seeking to make a filing under seal
- a motion to seal must
 - be filed electronically
 - “set forth the factual and legal basis for departing from the policy that Court filings be public”
 - “describe the proposed sealed filing with as much particularity as possible without revealing confidential information”
 - “specify the proposed duration of the requested sealing”
- the proposed sealed filing must
 - “be filed electronically as a sealed document in CM/ECF using events specifically earmarked for sealed civil filings as described in detail in Section 9 of the CM/ECF Administrative Procedures” *See section 9 below*
- “filer must complete any required service of the sealed document(s) conventionally, indicating the corresponding document number of the sealed document(s)”

Rules for Filing (under CM/ECF) Materials under Seal

If Court Denies Motion to Seal:

Rule 5.4(d)(1) – Court rulings on sealed filings

- “If the Court denies the motion to seal, the proposed sealed filing shall not be public and shall be deleted from the docket by the Clerk’s Office”

For Regular Filings Under Seal:

- Rule 5.4(b)(1) – seeking to make a filing under seal
- a motion to seal must
 - be filed electronically
 - “set forth the factual and legal basis for departing from the policy that Court filings be public”
 - “describe the proposed sealed filing with as much particularity as possible without revealing confidential information”
 - “specify the proposed duration of the requested sealing”
- the proposed sealed filing must
 - “be filed electronically as a sealed document in CM/ECF using events specifically earmarked for sealed civil filings as described in detail in Section 9 of the CM/ECF Administrative Procedures” *See section 9 below*
- “filer must complete any required service of the sealed document(s) conventionally, indicating the corresponding document number of the sealed document(s)”

Rules for Filing (under CM/ECF) Materials under Seal

- CM/ECF Admin Procedures Section 9A – Electronic Filing of Motions to Seal and Proposed Orders
 - If a case is otherwise open to the public, sealed files must be submitted electronically
 - “Attorneys authorized to file electronically in the CM/ECF system must file sealed documents in cases otherwise open to the public and civil ex parte matters”
 - Motions to seal and proposed order must be uploaded using the “Motion to Seal” (public) event and notifications will be sent to CM/ECF users, conventional service must be provided to non-ECF users
 - “Attorneys must upload motions to seal and the proposed order via CM/ECF using the “Motion to Seal” (public) event. Notices of Electronic Filing will be sent to CM/ECF users. Attorneys must continue to provide service to pro se parties and other non-ECF users.”
 - If the motion to seal is denied, the Court may delete the material from the docket.
 - “If the motion to seal is denied, the Clerk’s Office will process the matter as directed by the Court (*e.g.*, replace the image of the proposed sealed filing with an image indicating the document has been replaced pursuant to Court order denying the motion to seal).”
 - If you would like for the motion to seal be “under seal” an additional request to seal the motion to seal must be filed
 - “Attorneys requesting to file a motion to seal such that the motion itself will be “under seal” must file the request as a motion to seal and the proposed motion to seal (which will itself be sealed) must be filed as a proposed sealed document as instructed below.”

Rules for Filing (under CM/ECF) Materials under Seal

- CM/ECF Admin Procedures Section 9A – Proposed Sealed Filings and Subsequent Sealed Documents
 - The sealed filings must be filed separately from the motion to seal under “Sealed Document” events in CM/ECF
 - “Attorneys must file electronically proposed sealed filings separate from the motion to seal (which is public record), using “Sealed Motion or Sealed Document” events in CM/ECF.”
 - You must indicate the authority under which sealed documents are being filed, as well as the date and docket entry number of the order.
 - “When uploading sealed documents, attorneys must indicate the authority under which the documents are being filed under seal (*e.g.*, Local Rule 5.4(b), sealed per previously entered protective order, or other Court order), and the date and docket entry number of any applicable order.”
 - “Attorneys will not have access to their sealed filings via PACER”
 - “Attorneys must complete any required service of a sealed document conventionally, indicating the corresponding docket entry number of the sealed document.”

	Sealed Filings	Ex Parte Filings	Emergency Matters
Civil	Electronic*	Electronic	Electronic
Criminal	Conventional	Conventional	Electronic (unless also sealed or ex parte)

**If the entire case is sealed, civil sealed filings must be conventionally filed.*

THANK YOU

