

Amendments to Southern District of Florida Local Rules

January 11, 2024

The U.S. District Court for the Southern District of Florida has enacted amendments that became effective on Dec. 1, 2023. Fortunately for lawyers that practice in federal court, this year's amendments are modest and will not have significant impact on practice in the Southern District.

Amendments to Publication Rules S.D. Fla. L.R. 5.2(c) and S.D. Fla. Admiralty R. A(7) address the procedure for publication when notice of is required to be published in a newspaper of general circulation. S.D. Fla. L.R. 5.2(c) had formally contemplated that the court would, from time to time, designate certain newspapers as official newspapers for the publication of notices. The new version of S.S.D. Fla. L.R. 5.2(c) is much more simple as says: (c) Publication. Publication required by law or rule of court shall be made in a newspaper of general circulation in the county in which the action is pending, e.g., The Daily Business Review. **Letters to the Court** Lawyers who regularly practice in the Southern District of Florida are likely familiar with S.D. Fla. L.R. 7.7 that prohibits letters to the court. This rule sometimes comes as a surprise to out of state lawyers who may practice in states or federal districts where the concept of a "letter motion" is common and accepted. The rule, however, previously only prohibited letters from attorneys and parties represented by an attorney. This technically meant that rule did not apply to a pro se party. That has been changed; the new version of S.D. Fla. L.R. 7.7 explicitly prohibits correspondence from attorneys and parties. **Proposed Jury Instructions** S.D. Fla. L.R. 16.1(k) is the rule that addresses jury instructions in civil cases. As for criminal cases, there previously was not a local rule that specifically addressed jury instructions in criminal cases. There are three changes to the local rules that address jury instructions. First, S.D. Fla. L.R. 88.9 is renamed to include jury instruction in its title so the title of the rule is now, "Motions In Criminal Cases and Jury Instructions." And then 88.9(d) is a new rule that applies to criminal cases and provides: (d) Parties shall use pattern jury instructions whenever applicable. Unless a court order provides otherwise, any proposed jury instruction shall identify its source and cite any supporting authorities. If the source of the jury instruction is identified as a pattern jury instruction, the party shall also state whether the proposed jury instruction is a modified version of that pattern jury instruction and, if so, how it has been modified. This specific language—which is the entirety of S.D. Fla. L.R. 88.9(d)—has also been added to be part of S.D. Fla. L.R. 16.1(k), the corresponding rule for jury instructions in civil cases. **Death of an Attorney** There is a new rule that addresses the unfortunate circumstance when an attorney for a party dies. The new rule provides that any party

can provide notice of the death of an attorney. This rule, in particular, fills a gap where one party is represented by a solo practitioner and that lawyer dies. Under the new rule, the opposing party's lawyer now has the right—and the responsibility—of notify the court if they learn about the death. Specifically, the rule provides that (h) Any party learning of the death of an attorney who has appeared in an action or proceeding (including an attorney who has appeared pro hac vice) shall promptly file and serve a notice titled “Notice of Deceased Attorney” stating only that the attorney has died. Once a Notice of Deceased Attorney has been filed in a case, no further notice of the death of that attorney need be filed by any other party. While the new rule does not mention a related Florida Bar rule, it is a good time to remind attorneys that R. Regul. Fl. Bar 1-3.8(e) requires that every member of the Florida Bar designate another member of the Florida Bar to act as their inventory attorney. The rule provides as follows: (e) Designation of Inventory Attorney. Each member of the bar who practices law in Florida shall designate another member of The Florida Bar who has agreed to serve as inventory attorney under this rule; provided, however, that no designation is required with respect to any portion of the member's practice as an employee of a governmental entity. When the services of an inventory attorney become necessary, an authorized representative of The Florida Bar shall contact the designated member and determine the member's current willingness to serve. The designated member shall not be under any obligation to serve as inventory attorney.

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